MEMORANDUM Agenda Item No. 11(A)(38)

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

DATE: May 3, 2011

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

SUBJECT: Resolution rescinding Administrative Order 3-41 and authorizing Implementing Order 3-41: Small Business Enterprise ("SBE') Program for the purchase of goods and services

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This resolution was amended at the Internal Management and Fiscal Responsibility Committee to change the sentence dealing with a fourth violation and finding of noncompliance, from "*may* be the cause for suspension....", to "shall be the cause for suspension...."

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

R. A. Cuevas, Jr.
County Attorney

RAC/up

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: Resolution Rescinding Administrative Order 3-41 and Authorizing Implementing Order 3-41: Small Business Enterprise Program for the Purchase of Goods and Services

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This item differs from the original in that the requirement for a firm to be in business for one (1) year prior to certification remains. The substitute also 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. Additionally, this item was amended during the Internal Management and Fiscal Responsibility Committee meeting of April 12, 2011 to indicate that a fouth violation and finding of noncompliance shall be cause for suspension or termination and debarment.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution rescinding Administrative Order 3-41 and authorizing Implementing Order 3-41: Small Business Enterprise (SBE) Program for the Purchase of Goods and Services.

Scope

The impact of this agenda item is countywide in nature.

Fiscal Impact/Funding Source

The accompanying resolution will have an estimated fiscal impact of $2,000 annually attributed to the cost of appeal hearings of certification denial, decertification or 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 IO are as follows:

Certification Amendments

1. Provides for a three (3) year certification renewal period. Currently, certifications are valid for one (1) year with annual expiration dates which potentially negatively impact firms' small business status due to issues beyond their control. Based on this potential impact, a significant backlog in applications and staff reductions, it is recommended that firms' certification expire every three years. Within that three-year period, firms would be required to annually submit an "Affidavit for Continuing Eligibility" and minimal documentation. This will result in a more customer friendly, streamlined process that eliminates the negative impact of administrative backlogs.

2. Authorizes the Mayor or designee to adjust the SBE/Micro-SBE size limits every five (5) years 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.

3. Amends the timeframe allowed for the application certification

   Firms denied certification may reapply for certification 12 months from the time of denial of certification; Graduated firms may reapply for certification after filing and submitting their most recent corporate tax returns subsequent to the notice of graduation.

4. Clarifies that acting as a broker is not considered a commercially useful function for purposes of certification eligibility.

5. Simplifies the definition of affiliated businesses.

Program Amendments

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

2. Amends the policy of Miami-Dade County to increase the minimum participation/utilization of Micro-Enterprise firms from 5% to 10% for contracts of $50K and under by County departments.

3. Streamlines the Review Committee Process

   It is proposed that the existing Review Committee process be amended to model the Expedited Review Committee 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.

4. Establishes the use of the Schedule of Intent Affidavit

   When a SBE measure is applied to a contract bidders/proposers are required to submit a subcontract agreement at the time of bid submission. The current policy requires the establishment of a contractual agreement between the prime and SBE subcontractor prior to a recommendation of award by the County.

   It is proposed that a Schedule of Intent Affidavit replace the subcontract agreement at bid submission and bidders/proposers be allowed to cure correctable defects on the Schedule of Intent Affidavit within 48 hours upon notification by SBD. Upon award successful bidders/proposers will be required to enter into subcontract agreements with SBEs fulfilling goals. Requiring the subcontract agreement after award is consistent with standard industry practice and the other small business programs. This policy establishes consistency among the programs.

5. Modifies the Appeal Process 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 SBE 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 3-41 and the provisions of Section 2-8.1.1.1.1, Miami-Dade County Code, as amended, applicable to the particular violations to be heard.

6. Allows for Penalties/Sanctions for Measure Non-compliance

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 shall 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. 11(A)(38)

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

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

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(38)
5-3-11

RESOLUTION NO. _____

RESOLUTION RESCINDING ADMINISTRATIVE ORDER 3-41 AND AUTHORIZING IMPLEMENTING ORDER 3-41: SMALL BUSINESS ENTERPRISE ("SBE") PROGRAM FOR THE PURCHASE OF GOODS AND SERVICES

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA that this Board rescind Administrative Order 3-41 and authorizes Implementing Order 3-41, Small Business Enterprise ("SBE") Program for the Purchase of Goods and Services.

The Prime Sponsor of the foregoing resolution is Commissioner Barbara J. Jordan. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro	Lynda Bell
Jose "Pepe" Diaz	Sally A. Heyman
Barbara J. Jordan	Jean Monestime
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	

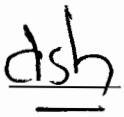
The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of May, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



David Stephen Hope

~~A~~I.O. NO.: 3-41[1]
Ordered:
Effective:

MIAMI-DADE COUNTY
~~ADMINISTRTIVE~~ IMPLEMENTING ORDER

SMALL BUSINESS ENTERPRISE (SBE) PROGRAM FOR THE PURCHASE OF GOODS AND SERVICES

Order: ~~4/19/05~~ **Effective: ~~4/29/05~~**

AUTHORITY:

Sections 1.01, 2.02 and 5.02 ~~4.02~~ of the Miami-Dade County Home Rule Amendment and Charter and Section 2-8.1.1.1.1 of the Code of Miami-Dade County.

SUPERSEDES:

This Implementing Order supersedes previous Administrative Order 3-41, ordered April 19, 2005 and effective April 29, 2005.

POLICY:

A. This Small Business Enterprise ("SBE") Program shall apply to all County and Public Health Trust contracts for the purchase of goods and services, including professional services other than architectural, engineering, architectural landscape and land surveying professional services governed by Florida Statutes 287.055. The SBE Program shall not apply to construction; leases or rental of real property; licenses and permits; concessions; franchise agreements; contracts for attorney and/or legal services; nor contracts for investment banking services.

B. It is the policy of Miami-Dade County that a minimum of ~~5~~10% of the total value of contracts $50,000 and under be awarded to Micro Enterprises,

C. Small Business Enterprise Measures may be applied to contracts greater than $50,000.

[1] Words stricken through shall be deleted. Words underscored constitute the amendment proposed. The differences between the substitute and the original item are indicated as follows: words double stricken through shall be deleted, words doubled underlined constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

~~A~~I.O. NO.: 3-41[1]
Ordered:
Effective:

MIAMI-DADE COUNTY
~~ADMINISTRTIVE~~ IMPLEMENTING ORDER

SMALL BUSINESS ENTERPRISE (SBE) PROGRAM
FOR THE PURCHASE OF GOODS AND SERVICES

Order: ~~4/19/05~~ Effective: ~~4/29/05~~

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B. It is the policy of Miami-Dade County that a minimum of ~~5~~10% of the total value of contracts $50,000 and under be awarded to Micro Enterprises,

C. Small Business Enterprise Measures may be applied to contracts greater than $50,000.

D. The application of contract measures to contracts for goods or services purchased by the Public Health Trust shall be governed by this

[1] The differences between this item and the original item are indicated as follows: words stricken through shall be deleted, words underscored constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

~~Administrative~~ Implementing Order, except that the Public Health Trust shall establish its own administrative procedures consistent with this ~~Administrative~~ Implementing Order to govern the application of contract measures to its purchases of goods and services except for construction and/or architectural and engineering services.

I. DEFINITIONS:

This ~~Administrative~~ Implementing Order incorporates completely, definitions listed in the SBE ordinance. Additional terms necessary for the understanding of this ~~administrative~~ implementing order, are listed below:

A. Billing means any request for payment by an SBE/Micro Enterprise, whether through a regular invoice, change order, claim, etc.

B. Board means the Board of County Commissioners of Miami-Dade County, Florida.

C. Compliance Monitor means the Director of the Department of Small Business Development or designee assigned to review compliance with Ordinance No. 05-29 and this ~~Administrative~~ Implementing Order.

D. Contract Measure means a contract set-aside, a subcontract goal, a bid preference, or a selection factor, singly or in any combination.

E. Contracting Officer means a department director or his/her designee, who prior to award manages the bid process or post award and has primary responsibility to manage the contract and enforce contract requirements.

F. County means Miami-Dade County, Florida, a political subdivision of the State of Florida.

G. Debar means to exclude a contractor, its individual officers, its shareholders with significant interests, its qualifying agent, or its affiliated businesses from county contracting and subcontracting for a specified period, not to exceed five (5) years.

H. Micro Enterprise means a business entity certified by SBD to provide goods or services, having an actual place of business in Miami-Dade County and whose three year average gross revenues does not exceed $2 million, or a manufacturer with fifty (50) employees or less, or a wholesaler with fifteen (15) employees or less whose actual place of business is in Miami-Dade County.

I~~H~~. NAICS means North American Industry Classification System.

J~~I~~. NIGP means National Institute of Governmental Purchasing.

K~~J~~. Review Committee or RC means the committee established by the County ~~Manager~~ Mayor or designee to review proposed contracts for the application of contract measures where SBD and the contracting department have not established consensus ~~and for administrative and/or appeal hearings~~.

L. SBD means the Department of Small Business Development.

M. *Schedule of Intent Affidavit (SOI)* means a form contained in the bid documents of a SBE contract set-aside or a contract with subcontractor goals in which bidders list at the time of bid submission all SBEs to be used to meet the set-aside or the goal, and the scope of work each will perform, including the goods or services to be provided, and the percentage value of such work.

N. Small Business Enterprise (SBE) means a business entity certified by SBD, providing goods or services, which has an actual place of business in Maimi-Dade County and whose three year average gross revenues does not exceed $5 million. The term Small Business Enterprise shall also include a manufacturer with one hundred (100) employees or less or wholesaler with fifty (50) employees or less without regard to gross revenues whose actual place of business is located in Miami-Dade County. Representations as to a business entity's average gross revenues and payroll shall be subject to audit.

The County Mayor or designee shall be authorized to adjust the SBE/Micro-SBE size limits every five (5) years at his/her discretion based on the 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 figures provided for the calendar year ended December 31, 2012, and every five (5) years thereafter. The County Mayor or designee shall advise the Board of any such adjustment.

O~~K~~. Utilization Report means a report completed by the successful bidder on a contract that is set-aside, or on a contract with trade set-asides or subcontractor goals listing all work performed in the past month by the SBE identified in the Schedule of Intent Affidavit ~~subcontract agreement~~ and all expenditures paid to date to the identified SBE.

P~~L~~. Vendor means one who sells goods and/or services.

II. MANAGEMENT & TECHNICAL ASSISTANCE (MTA) PROGRAM

A. Description

The Department of Small Business Development (S~~D~~BD) will provide management and technical assistance and community outreach to certified SBEs and Micro Enterprises performing as vendors and providing goods and/or services to Miami-Dade County. These services will be referred to as the "Program."

B. Program Requirements

For Micro/SBE firms to participate in the MTA Program they must meet certain program requirements, which includes regular meetings with S~~D~~BD and participation in community outreach events.

C. Management and Technical Assistance Services

The Department of Small Business Development will be responsible for providing services to small businesses that should include, but should not be limited to pre- and post-award services and access to business management services. Each firm will be assigned a Technical Assistance Coordinator in order to assess and address their particular needs.

D. Community Outreach

The ~~Business Assistance Division of the~~ Department of Small Business Development shall provide community outreach to stimulate the interest of the small business community in the program. The department shall design and implement an outreach program that will communicate the advantages of the program as well as convincing potential participants that contracting opportunities exist. The program shall provide on-going recruitment and assistance to small businesses.

E. Program Restrictions

The following restrictions shall apply to the program applicant:

1. An applicant who exceeds the Small Business Enterprise (SBE) Program size standards after one year of being formally notified is prohibited from continued participation.

2. Firm must have an actual place of business in Miami-Dade County.

3. Loss of certification shall result in prohibition from the program.

III. BONDING AND FINANCIAL ASSISTANCE PROGRAM

A. Program Description

Upon the County Commission's approval of a Bonding and Financial Assistance Program and award of the contracts necessary to implement same, SBEs/Micro Enterprises that are certified and in good standing with Miami-Dade County may be eligible to receive bonding and financial assistance. The County shall establish guidelines and procedures for the implementation of the Financial Assistance program to include eligibility requirements for application.

B. Program Requirements

1. Bond Application Assistance Process

Upon completion of the bond application package, the same shall be reviewed for completeness and thereafter shall be submitted to the entities with whom the County contracts for the Program. Any additional information required by such entities shall be requested directly from the SBE/Micro Enterprise with a copy of such request to S~~D~~BD staff.

2. Bonding and Financial Application Process

a. The Program participant will provide all the necessary documentation to complete a Bonding and/or Financial Assistance application. S~~D~~BD, through partnering relationships with bonding agencies and lending institutions, shall assist SBEs/Micro Enterprises in obtaining bonding and financial assistance.

b. S~~D~~BD shall assist the Program participant in preparing and completing the Bonding and/or Financial Assistance application package.

c. Upon completion of the Bonding and/or Financial Assistance application package, S~~D~~BD staff will perform a review of the Program participant's application for completeness and thereafter submit same to the entities with whom S~~D~~BD has partnered for the Program. S~~D~~BD staff shall be notified of the approval status of the bonding or loan application.

IV. CERTIFICATION

A. Eligibility Requirements

14

1. SDBD is the County agency responsible for certifying, decertifying and re-certifying applicants for the SBE/Micro Enterprise Program.

2. SBE/Micro Enterprise applicants must be profit-motivated businesses. Not-for-profit or non-profit corporations are not eligible for certification.

3. Only firms that meet size limits of SBEs/Micro Enterprises as to average annual gross revenues for the last three years or in the case of manufacturers and wholesalers - the number of full-time, permanent employees, may be certified as SBEs/Micro Enterprises.

4. Size determinations for SBEs/Micro Enterprises certification eligibility shall take into account the combined gross revenues of the applicant firm and all of its domestic and foreign affiliates or in the case of manufacturers and wholesalers – the number of full-time, permanent employees of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included. Section F below provides additional information regarding affiliation determinations.

5. Applicants and certified SBEs/Micro Enterprises 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, must be established for at least one (1) year, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified. When determining whether the applicant has an actual place of business in Miami-Dade County, SDBD shall consider evidence such as, but not limited to:

   ~~a. If the principle place of business is not located in Miami-Dade County, then the 51% majority owner(s) must reside in Miami-Dade County;~~

   ab. The existence of a Miami-Dade County telephone number in the name of the SBE/Micro Enterprise or the name with which the SBE/Micro Enterprise is doing business; and

   bc. Offices, premises related to business, or other facilities within Miami-Dade County at which the goods or services to be provided are produced or performed.

   c. Local Business Tax Receipt issued by Miami-Dade County.

6. Interested parties may obtain the certification application from S~~D~~BD and are encouraged to request an explanation of the certification process. A copy of the certification application and an explanation of the certification process are also available on S~~D~~BD's Web Page through the County's Internet Portal. The Web Page address is http://www.miamidade.gov/~~d~~sbd.

B. Terms of Certification

1. Certification for an SBE/Micro Enterprise firm is valid for a ~~one (1)~~ three (3) year period. Certification for SBE/Micro Enterprises is continuous within the three year period with the firm's submission of an Affidavit for Continuing Eligibility. SBD shall require that all SBE/Micro firms, in order to continue eligibility, submit an affidavit for Continuing Eligibility annually on or before the Anniversary Date. The Affidavit for Continuing Eligibility shall include, at a minimum:

   a. Most recent, signed, complete business tax return(s) or extension(s) for the firm and all affiliates.

   b. Current business, professional licenses and certifications, and Local Business Tax Receipt issued by Miami-Dade County.

   c. Current lease agreement or warrantee deed for the firm's actual place of business.

   d. Notarized, sworn affiliation affidavit.

2. Additional supporting documentation may be required by SBD to verify eligibility.

3. SBD will take the following action if a SBE/Micro firm's Affidavit for Continuing Eligibility is not received on or before the Anniversary Date:

   a. SBD shall prepare a "Notice of Certification Removal".

   b. SBD shall mail the Notice to the SBE/Micro firm.

   c. SBD shall allow the SBE/Micro firm fifteen (15) days from the date of the notice to provide the "Affidavit for Continuing Eligibility" and supporting documentation.

   d. If the SBE/Micro firm does not provide the "Affidavit for Continuing Eligibility" and supporting documentation within

the timeframe stipulated above, SBD shall decertify the firm and notify the firm of the writing of the decertification.

e. The "Notice of Certification Removal" will be dated the day following the deadline established pursuant to "c." above.

4~~2~~. An SBE/Micro Enterprise firm, its individual officers, its shareholders, its qualifying agent or its affiliated businesses that has been denied certification~~/recertification,~~ or continuing eligibility, or that has been decertified, is not eligible to apply for certification for twelve (12) months from the time of the denial or, decertification. Graduating firms may be eligible to reapply for certification, after filing and submitting their most recent corporate tax return subsequent to graduation, if and only if, said tax return was not previously considered.

5~~3~~. An SBE/Micro Enterprise must be certified by the applicable type of goods and/or services it provides in accordance with the applicable NAICS/NIGP Commodity Code in which the SBE/Micro Enterprise is ~~registered and/or~~ licensed (if applicable.) An SBE/Micro Enterprise can be certified in more than one NAICS/NIGP Commodity Codes. SBD will determine the appropriate codes for certification under the program based on the licenses held by the firm and experience submitted to SBD.

6~~4~~. A business owner, alone or as a member of a group, shall own or control only one SBE/Micro Enterprise firm~~ at a time~~. If a non-SBE/Micro Enterprise in the same or similar line of business as an SBE/Micro Enterprise has an equity ownership of such SBE/Micro Enterprise that exceeds ten (10) percent, the SBE/Micro Enterprise shall not be certified or recertified.

7~~5~~. Certified SBEs/Micro Enterprises shall provide written notice to S~~D~~BD of any changes that affect their eligibility as SBEs/Micro Enterprises. SBEs/Micro Enterprises shall submit a Change ~~of~~ Request Form and supporting documentation describing the nature of the change, and ~~stating~~ the effective date of the change(s) to S~~D~~BD within thirty (30) calendar days of the effective date of the change(s). Change Request Forms will be available on-line or upon receipt of written notification from the firm. This form must be completed and returned to S~~D~~BD in order for the change to be processed by S~~D~~BD.

8~~6~~. An SBE/Micro Enterprise must have a valid certification in effect at time of bid submittal. For successful bidders, certification must be maintained from ~~the time of~~ bid award ~~submittal~~ throughout the

duration of the agreement. With the exception of ~~provisions described in the SBE/Micro Enterprise Ordinance for~~ graduation from the SBE/Micro Enterprise program, loss of SBE/Micro Enterprise certification may lead to removal of the firm from continued participation in the SBE/Micro Enterprise program. S~~D~~BD staff shall not be limited to Eligibility Review Meetings (ERMs) and/or site visits when attempting to determine continuing compliance with certification requirements.

~~7.~~ ~~SBEs/Micro Enterprises are responsible for returning the recertification application at least fifteen (15) calendar days prior to expiration of their current certification.~~

C. Certification Process

1. S~~D~~BD shall collect, analyze and verify all information needed to establish the eligibility of an applicant and continued eligibility of SBEs/Micro Enterprises.

~~2.~~ ~~DBD shall attempt to make a certification decision within twenty calendar days of receipt of a completed application. An application is complete when it includes all required supporting documents.~~

2~~3~~. S~~D~~BD shall not certify an applicant, shall not grant continuing eligibility~~re-certify~~ an SBE/Micro Enterprise, and shall decertify an SBE/Micro Enterprise who:

a. Fails to comply with the criteria or procedures of the SBE Ordinance, this ~~Administrative~~ Implementing Order and/or participation provisions;

b. Fails to complete the application process;

c. Fails to provide full disclosure;

d. Falsifies information; or

e. Has been debarred by the County.

3~~4~~. S~~D~~BD shall certify each SBE/Micro Enterprise by the type of good and/or service it performs in accordance with the applicable NAICS/NIGP code(s).

4~~5~~. S~~D~~BD shall give written notice, including the reasons for its decision, to applicants who are denied certification and to

SBEs/Micro Enterprises who are decertified, or denied continuing eligibility ~~recertification~~, or have graduated.

5~~6~~. SD~~D~~BD may require applicants and SBEs/Micro Enterprises to submit information regarding their business operations including, but not limited to, a breakdown of the applicant's or SBE's/Micro Enterprise's ownership and gross annual sales receipts.

6~~7~~. SD~~D~~BD shall provide written ~~renewal~~ procedures and/or forms for continuing eligibility to certified SBEs/Micro Enterprises no later than thirty (30) calendar days prior to their anniversary date.~~certification expiration. DBD's failure to provide the form does not extend the firm's certification beyond the current expiration date.~~

7~~8~~. SD~~D~~BD shall maintain and publish ~~at least monthly,~~ an updated list of SBEs/Micro Enterprises, identifying each listed based on each NAICS/NIGP commodity code(s) by which the SBE is ~~registered~~ certified.

D. Decertification

1. If during the period of certification, the County receives information that an SBE/Micro Enterprise received certification improperly or that the firm no longer qualifies to be certified as an SBE or Micro Enterprise, then SD~~D~~BD shall conduct an investigation of the allegations.

2. SD~~D~~BD shall ~~recommend~~ decertify~~ication of~~ the firm if the investigation indicates that:

   a. The firm cannot be contacted at the last known address;

   b. The firm is no longer in business;

   c. The firm is no longer licensed to do the type of business for which it was certified;

   d. The firm obtained its original certification and/or recertification through false representation or deceit; or

   e. The firm has been debarred by Miami-Dade County.

3. When decertifying an SBE/Micro Enterprise, SD~~D~~BD shall either:

a. Give notice to the SBE/Micro Enterprise that the decertification decision will be effective at the completion of any appeal under this ~~Administrative~~ Implementing Order; or

b. Suspend the certification of the SBE/Micro Enterprise during any appeal of the decertification decision.

~~E. Appeal of Certification Decisions~~

~~1. Applicants denied certification or decertified shall be notified in writing, setting forth the reasons for DBD's determination, and informed of their right to appeal DBD's decision.~~

~~2. Any firm that believes it has been wrongly denied certification or decertified may file an appeal in writing with the Director of DBD within fifteen (15) calendar days from the date of receipt of the notice.~~

~~3. DBD may extend time for filing an appeal or waive the time limit in the interest of justice, specifying, in writing, the reason(s) for doing so.~~

~~4. DBD shall forward all written appeals to the Review Committee (RC). The RC, or a committee thereof appointed by the chairperson of the RC, shall hear all appeals and forward recommendations regarding the appeal to the County Manager or his/her designee.~~

~~5. Decisions by the County Manager shall be final unless the County Commission agrees in its sole discretion, upon request of the affected party, to review the County Manager's decision.~~

~~6. DBD's Director will provide written notice to the affected party as to the outcome of the hearing within fifteen (15) business days of the date of the final determination.~~

E~~F~~. Affiliation Determination

General: Only small firms that meet size limits of SBEs as to average annual adjusted gross revenues for the last three years or number of employees for manufacturers and/or wholesalers may be certified as SBEs. Size determinations for SBE shall take into account the combined gross revenues and/or employees of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included.

1. Affiliation: Firms are considered affiliates of each other when either directly or indirectly:

   a. One firm controls or has the power to control the other, or

   b. A third party or parties controls or has the power to control both, or

   c. An identity of interest between or among parties exists such that affiliation may be found.

2. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, related business lines or related scopes of work, common facilities, common management, and contractual relationships. Examples of affiliation include:~~Variations of these factors are examined more closely below:~~

   a. Nature of control in determining affiliation

      1) Every firm is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

      2) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.

      ~~3) Control can arise through management positions where a firm's vote stock is so widely distributed that no effective control can be established.~~

   b. Identity of interest between and among persons as an affiliation determinant. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one firm. In determining who controls or has the power to control a firm, persons with an identity of interest may be treated as though they were one person.

3. Affiliation through stock ownership~~.~~:

~~a.~~ ~~A person is presumed to control or have the power to control a firm if he or she owns or controls or has the power to control fifty-one (51) percent or more of its voting stock.~~

~~b.~~ ~~A person is presumed to control or have the power to control a firm even though he or she owns, controls or has the power to control less than fifty (50) percent of the firm's voting stock, if the block of stock he or she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.~~

~~c.~~ ~~If each of two or more persons owns, controls or has the power to control less than fifty (50) percent of the voting stock of a firm; such minority holdings are equal or approximately equal in size; and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each such person individually controls or has the power to control the firm; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.~~

~~4.~~ ~~Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the firm. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another firm before it actually does so.~~

4~~5.~~ Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another firm.

5~~6~~. Affiliation through common facilities. Affiliation generally arises where one firm shares office space and/or employees and/or other facilities with another firm, particularly where such firms are in the same or related industry or field of operations, or where such firms were formerly affiliated.

6~~7~~. Affiliation with a newly organized firm. Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one firm organize a new firm in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the firm is

furnishing or will furnish the other firm with sub-consulting agreements, financial or technical assistance, proposal or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.

7~~8~~. Affiliation through contractual relationships. Affiliation generally arises where one firm is dependent upon another firm for consulting agreements and business to such a degree that its economic viability would be in jeopardy without such agreements/business.

8~~9~~. Affiliation under joint venture arrangements

~~a. A joint venture for size determination purposes is an association of firms and/or individuals, with interests in any degree or proportion, formed by agreement, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.~~

~~b. For the purpose of financial assistance to a joint venture, the parties thereto are considered to be affiliated with each other. Where the financial assistance, however, is to a firm for its own use, outside the joint venture, an affiliation determination shall not automatically arise from the existence of the joint venture arrangement. In this latter situation, the existence of affiliation shall be determined under these regulations.~~

~~c. Firms proposing on a particular agreement as joint ventures are affiliated with each other with regard to performance of the agreement. This determination of affiliation does not extend to other contracts or business outside the joint venture arrangement.~~

~~d. An ostensible sub-consultant which performs or is to perform primary or vital requirements of an agreement may have such a controlling role that it must be considered a joint venture affiliated on the agreement with the prime consultant. In determining whether sub-consulting arises to the level of affiliation as a joint venture, DBD considers whether the prime consultant has unusual reliance on the sub-consultant.~~

~~e. Even though a firm might not be an affiliate of its joint ventures for the purpose of operations apart from the joint venture, it nevertheless must include its proportionate share of the joint venture receipts or employees in determining its eligibility under the size standards.~~

V. JOINT VENTURES BIDDING ON CONTRACTS WITH SBE MEASURES

A. Bidders who are joint ventures, one of whose venturers is an SBE, may receive credit towards meeting an SBE contract measure where the joint venture has been approved by S~~D~~BD in accordance with this ~~Administrative~~ Implementing Order. Joint ventures must be lawfully established as business entities with actual places of business in Miami-Dade County.

B. Joint Ventures must be approved by S~~D~~BD prior to bid submittal. A joint venture is permissible only where the SBE/Micro Enterprise lacks the necessary capacity to perform the contract on its own and the agreement is fair and equitable and will be of substantial benefit to the SBE/Micro Enterprise. However, where S~~D~~BD concludes that an SBE/Micro Enterprise brings only its certification as contribution to the joint venture relationship S~~D~~BD will not approve the joint venture. A Joint Venture Agreement is complete when it includes all required supporting information.

C. The SBE/Micro Enterprise member of the joint venture shall be responsible for a distinct clearly defined portion of work of the contract and whose share in the capital contribution, control management, risks and profits of the joint venture are commensurate with its ownership interest.

D. Agreements establishing joint ventures shall be in writing and shall specify work and financial risk assumed by the SBE/Micro Enterprise.

E. Bid and contract documents shall require that the portion of the work to be performed by the SBE/Micro Enterprise member of the joint venture be set forth in detail separately from the work to be performed by the non-SBE/Micro Enterprise member.

F. A joint venture agreement must specify the distribution of profits for the Joint Venture and must specify what the combined SBE or Micro Enterprise participants will receive and the specified percentage of the profits earned by the Joint Venture.

G. Joint ventures must submit, prior to bid or proposal submission, a Joint Venture Agreement containing the following:

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

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

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

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

5. A description of any management or incentive fees for the member;

6. A statement of the percentage of the joint venture that is owned and controlled by the qualifying members and the basis for such percentages; and

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

H. Joint ventures with at least fifty-one (51) percent SBE membership may bid on set-aside contracts valued $500,000 and above. The SBE/Micro Enterprise participant in the joint venture shall count towards meeting any subcontract goal with that portion of the total dollar value of the contract equal to the distinct clearly defined portion of the work that the SBE/Micro Enterprise performs.

I. If the SBE member of the joint venture is unable to perform at anytime during the contract period, the non-SBE member shall subcontract with an SBE to provide the services to be provided by the prior SBE member. The non-SBE member must request approval for the change from S~~D~~BD by submitting a request in writing addressed to the Director of S~~D~~BD through the Contracting Officer. The request must include a Schedule of Intent Affidavit ~~subcontract agreement~~ and verification from the SBE member that it is unable to perform. The Compliance Monitor shall review the request and make a recommendation regarding the SBE subcontractor to the Contracting Officer.

VI. PROGRAM MANAGEMENT

A. Contracts $50,000 and Under

1. County Departments/agencies that issue or use contracts are required within the fiscal year to expend a minimum ~~5~~10% of the total value of contracts for goods and/or services $50,000 and under with Micro Enterprises. An automatic 10% bid preference will be applied to bids/quotes submitted by Micro Enterprises. The preference amount shall be deducted from the total bid or quoted

price in order to calculate the price to be used for evaluation. County Departments are also required to solicit bids or quotes from at least four firms where available (two available certified Micro Enterprises and two non-certified firms).

2. S~~D~~BD shall review reports of the utilization of Micro Enterprises and shall inform departments failing to meet the requirements set forth herein, and shall report awards to Micro Enterprises to the BCC bi-annually.

B. Contracts Greater than $50,000

1. Prior to advertisement, each contract, purchase, or blanket purchase of goods or services in excess of fifty thousand dollars ($50,000), and each purchase order that may accumulate an aggregate amount greater than fifty thousand dollars ($50,000) shall be reviewed for the application of contract measures.

2. Departments shall submit contracts to S~~D~~BD to review for the application of measures and shall work in conjunction with S~~D~~BD in making a recommendation. S~~D~~BD shall seek concurrence with the issuing and user departments when making a recommendation. Departments shall advise S~~D~~BD of any contract advertisement dates that are in excess of 120 days of the initial RC recommendation. Departments shall also advise S~~D~~BD of any projects not advertised within 180 days of the recommendation ~~RC action~~. Those contracts not advertised within 180 days will be re-submitted to SBD ~~the RC~~ for reconsideration.

3. Department shall advise S~~D~~BD of any changes in bid specifications, post award changes and all contracts with measures that are cancelled.

4. The County Mayor~~nager~~ or ~~his/her~~ designee may approve emergency purchases with measures that meet the County's definition of emergency. Such measures shall be submitted ~~presented~~ to SBD ~~the RC~~ for ratification.

5. Standard participation provisions shall be included in all contract documents with applied measures unless S~~D~~BD approves substitute proposal documents.

VII. CONTRACT ADMINISTRATION

A. Pre-Award Compliance Review

1. Bid documents shall require bidders to submit a completed Schedule of Intent Affidavit ~~subcontract agreement~~ at the time of bid submission identifying all SBEs to be utilized to meet the subcontractor goal, the commodity code of the work each will perform, the dollar value of such work, and incorporating the prompt payment obligations and rights provided by the SBE Program. Upon notification from S~~D~~BD, bidders are allowed up to 48-hours ~~after bid submission~~ to cure correctable defects on the Schedule of Intent Affidavit ~~subcontract agreement~~. Correctable defects may include: calculation errors, percentage of work not identified for subcontractor on Schedule of Intent Affidavit signed by subcontractor, no signature of subcontractor on the Schedule of Intent Affidavit and no signature of prime contractor on the Schedule of Intent Affidavit. Non-correctable defects may include: blank Schedule of Intent Affidavit and listing of non-certified subcontractor. Failure to correct defects within 48 hours of notification by SBD may be deemed non-responsive. Failure to submit the required Schedule of Intent Affidavit ~~subcontract agreement at the specified time~~ shall deem the bid/proposal non-responsive. ~~Correctable defects may include but are not limited to the SBE percentage not properly indicated, the prime or subcontractor failed to sign the Schedule of Intent Affidavit subcontract agreement, or mere calculation errors.~~

2. The Compliance Monitor shall notify the bidder in writing stating the facts and the reasons on which the non-compliance is based. Upon notification from S~~D~~BD, the bidder may request a meeting in writing within two business days from the date of the notification of non-compliance. The bidder shall supply further relevant information as required by the Compliance Monitor. No new altered Schedule of Intent Affidavit ~~subcontract agreement~~ will be accepted.

3. The Compliance Monitor shall issue a written recommendation to the Contracting Officer that includes facts and reasons for the bidder's compliance or noncompliance.

VIII. APPLICATION OF CONTRACT MEASURES

A. Set-asides:

The County Commission or Public Health Trust may determine it is in its best interest to waive competitive bidding or selection requirements and set-aside a contract for SBEs where, prior to bid advertisement, there are at least three (3) available SBEs to perform the set-aside contract.

B. Subcontractor Goals:

A recommendation to apply a subcontractor goal is appropriate when there are three or more certified firms available to provide the portion of the contract.

C. Bid Preference:

1. A 10% percent bid preference shall apply to contracts $1 million or less and 5% percent on projects greater than $1 million that are not set-aside. The preference shall be utilized for bid evaluation, and shall not affect the contract price. SBEs are not accorded a bid preference on contracts under $50,000. Contract documents shall include standard language indicating the application of a bid preference.

2. On contracts on which a preference is applied, S~~D~~BD shall conduct a periodic review of contracts hereunder and will prepare a report to the issuing department's director.

D. SBE Selection Factor

1. Any bidder that is an SBE or a joint venture with an SBE, shall be accorded a selection factor on RFPs, RFQs, and RFIs for contracts greater than $50,000 that are not set-aside for bidding solely by SBEs. Contract documents shall include standard language indicating the application of a selection factor.

E. Review Process

1. SBD shall publish a list of projects under review daily on the department's webpage. SBD shall review the proposed contracts and the departmental recommendations. Should SBD and the Department(s) not reach consensus, on recommended measures or goals, and when public input requires deliberation regarding the measure/goal the contract will go through the Review Committee Process, as detailed below. Upon obtaining departmental concurrence with the recommended measure, SBD shall post projects and recommended goals daily on the SBD web page.

2. SBD shall consider public comments in writing on projects pre- and post measure or goal recommendations.

3. All projects with recommended measures shall contain language to allow for public comment to be submitted to SBD within 36 hours of posting via a designated email address or mail.

4. All advertised projects shall contain language to allow for public comments to be submitted to SBD within 36 hours of date of advertisement via a designated email address or mail. SBD and the contracting department shall review comments and make recommendations, as applicable, to the Mayor or designee.

5. Changes to goal recommendations, approved by the Mayor or designee, as a result of public comment shall require issuance of an addendum to the project advertisement.

F. Review Committee Process

SBD is responsible for recommending to the Mayor or designee whether to apply SBE set-asides or subcontractor goals to a contract. The Mayor or designee may accept, reject, modify or otherwise alter SBD's or Review Committee's recommendation.

1. All recommendations shall be agreed upon between SBD and the contracting department, prior to final recommendation to the Mayor or designee.

2. The Mayor or designee shall establish a standing Review Committee (RC) to meet periodically, or as often as needed, to review projects in which consensus was not established between SBD and the contracting department and when public input requires deliberation regarding the measure/goal. The RC will make recommendations to the Mayor or designee.

3. The RC shall conduct public deliberations and make recommendations whether to apply SBE set-asides or subcontractor goals to a contract. The Mayor or designee may accept, reject, modify or otherwise alter SBD's or Review Committee's recommendation.

4. The standing members of the RC shall be: Director, Public Works Department; Director, Office of Capital Improvements; Director, Department of Procurement Management; a rotating Director of the County's capital departments or their designees; and a County Manager appointed Chairperson. A quorum of the RC shall be three (3) members. Staff support shall be provided to the Review Committee by SBD.

5. SBD shall staff the RC and make recommendations of measures to the RC and County Mayor or designee.

6. The RC shall meet as needed. SBD shall timely publish meetings, listing the meeting location, date, and time. All RC meetings are subject to Government-in-the-Sunshine requirements. The chair shall allow participation of the public at RC meetings consistent with accomplishing the agenda of the RC.

7. The RC shall have authority to promulgate rules of general application to carry out its responsibilities, which rules are subject to review and approval by the County Mayor or designee.

8. The RC may, after public deliberation and consideration of alternatives, accept, reject, modify or otherwise alter the staff recommendation. The County Mayor or designee may accept, reject, modify or otherwise alter SBD's recommendations. The Board of County Commissioners may accept, reject, modify or otherwise alter the County Manager's recommendations. The Mayor may accept or veto the Board of County Commissioners' recommendations. In accordance with the policy established by the Board of County Commissioners, the Board of County Commissioners may overrule the Mayor's veto.

IX. BIDDER'S RESPONSIBILITY WHERE A SBE SUBCONTRACTOR GOAL IS APPLIED:

Bid documents to which an SBE subcontractor goal is applied shall require bidders to submit a signed Schedule of Intent Affidavit ~~subcontract agreement~~ at the time of bid submission identifying all SBEs to be utilized to meet the SBE subcontractor goal. Each Schedule of Intent Affidavit ~~subcontract agreement~~ shall specify the scope of work and commodity code the SBE will perform if appropriate, including the type goods or services the SBE will provide. ~~Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Program.~~ Bidders/proposers shall be allowed up to 48-hours to cure correctable defects in the Schedule of Intent Affidavit ~~subcontract agreement~~. The Successful Bidder shall enter into a written subcontract agreement for approval, corresponding in all respects to the Successful Bidder's Schedule of Intent Affidavit to include the type of goods and services the SBE is to provide and the percentage and price. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Program.

X. PROMPT PAYMENT:

It is the County's intent that all firms, including SBEs and Micro Enterprises providing goods and services to the County, shall receive payments promptly in order to maintain sufficient cash flow. The prime vendor in direct privity with the SBE must notify the SBE, the managing agency and S~~D~~BD, in writing, of those amounts billed by the SBE that are in dispute, and the specific reasons why they

are in dispute, within fourteen (14) calendar days of submittal of such billing by the SBE/Micro Enterprise. Failure of the prime vendor to comply with the applicable requirements of this Section shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE and payment shall be forthcoming.

A. Contracting Officer's Responsibilities

1. The Contracting Officer administering a contract with an SBE measure shall forward undisputed billings from SBE/Micro Enterprise prime contractors to the Finance Department for payment within 14 calendar days of receipt of such billings.

2. The Contracting Officer must notify the SBE/Micro Enterprise prime contractor and S~~D~~BD, in writing, of those amounts billed by the SBE/Micro Enterprise that are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing by the SBE/Micro Enterprise. Failure of the Contracting Officer to comply with the applicable requirements of this Section shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE/Micro Enterprise and payment shall be forthcoming from the County by the next billing date or 30 calendar days from receipt of billing, whichever is less.

3. An SBE/Micro Enterprise prime contractor may invoice the County 1% interest per month for any undisputed amount that is not paid promptly as provided by this subsection.

4. S~~D~~BD may investigate reported instances of late payment to SBEs/Micro Enterprises.

5. Departments shall report disputed invoices to the Board on a quarterly basis.

XI. POST AWARD COMPLIANCE AND MONITORING

A. S~~D~~BD shall monitor and enforce the compliance of the vendor with the requirements of this ~~Administrative~~ Implementing Order, and any related program requirements, during the duration of the contract and may monitor for up to one year after notice of completion of the work or full payment of contract obligations, whichever comes last.

B. Successful Bidders and SBE/Micro Enterprises shall permit the County to have access during normal business hours to all books and records relating to the compliance with the contract measure applied to the contract or relating to compliance with certification requirements. This right

of access shall be granted for one year after completion of the work or full payment of contract obligations, whichever comes last, or for one year after the expiration of SBE certification.

C. Successful Bidders and SBEs/Micro Enterprises shall permit the County to have access to employees performing work during normal business hours in order to conduct visual inspections and interviews that may be conducted private when necessitated by County staff.

D. Successful Bidders and SBEs/Micro Enterprises shall comply with all reporting requirements established by S~~D~~BD. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County.

E. In the event that during the performance of a contract containing an SBE subcontractor goal, an SBE is not able to provide the services specified in the Schedule of Intent Affidavit ~~subcontract agreement~~ submitted at the time of bid, the Successful Bidder must locate an SBE to substitute. The Successful Bidder must receive approval for substitution from S~~D~~BD. A Successful Bidder that cannot secure a substitute SBE must provide a written statement to the Compliance Monitor.

F. SBD ~~The Compliance Monitor~~ shall be responsible for monitoring the performance of the Successful Bidder regarding compliance with a contract measure applied to the contract. The Compliance Monitor may, at his or her discretion, investigate deviations in the utilization of SBEs from that required by the contract and make recommendations regarding compliance to the Contracting Officer. The Contracting Officer shall not make a final determination without a recommendation regarding compliance from the Compliance Monitor. Deviations from the contract measure stated in the contract that shall be monitored include, but are not limited to:

1. Termination of an SBE's subcontract agreement

2. Reduction in the scope of work to be performed by an SBE

3. Modifications to the terms of payment or price to be paid to an SBE

4. Failure to enter into a contract with an SBE being utilized to meet a contract measure

G. If, after execution of a subcontract agreement, the Successful Bidder submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and

could not reasonably have been aware, until subsequent to the date of execution of such subcontract, an SBE, who entered into such subcontract has committed a material breach of the subcontract agreement, the Successful Bidder shall be entitled to exercise such rights as may be available to him/her to terminate the subcontract agreement. The procedures of paragraphs H and I below apply to this paragraph.

H. County's Determination of Bidder's Excusal or Termination of SBE Subcontract Agreement.

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

I. Alternative Subcontracts.

If the Successful Bidder is excused from entering into a subcontract or rightfully terminates a subcontract under this ~~Administrative~~ Implementing Order and without such subcontract the Successful Bidder will not achieve the level of SBE participation upon which the contract was awarded, the Successful Bidder shall make every reasonable effort to propose and submit a Schedule of Intent Affidavit and enter into an alternative subcontract or subcontracts for the same work to be performed by another available SBE as appropriate, for a subcontract price or prices totaling not less than the subcontract price under the excused or terminated subcontract, less all amounts previously paid thereunder. The Successful Bidder must submit to the Compliance Officer a Schedule of Intent Affidavit and subcontract agreement with the new SBE and provide all documentation required by the County. A Successful Bidder that cannot secure a substitute SBE must provide all supporting documentation required by the County. The procedures of paragraphs 1 and 2 below apply to this paragraph:

1. The Compliance Monitor may require the Successful Bidder to produce such information, as the Compliance Monitor deems appropriate and may obtain further information from other sources. The Compliance Monitor shall make his/her recommendation under this paragraph to the Contracting Officer and forward a copy to the bidder.

2. The Contracting Officer will consider objections to the Compliance Monitor's recommendation only if such written objections are

received by the Contracting Officer within five business days from the Successful Bidder's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, and as he/she in his/her discretion may determine, will reply to the Successful Bidder's written objection within ten business days of receipt of these objections.

XII. CONTRACTUAL SANCTIONS

A. Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's or SBE/Micro Enterprise's violation of or failure to comply with the Small Business Enterprise Program Ordinance and this ~~administrative~~ implementing order may result in the imposition of one or more of the following sanctions:

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

2. Work stoppage; or

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

B. In the event a bidder or SBE/Micro Enterprise attempts to comply with the provisions of this ~~administrative~~ implementing order through fraud, misrepresentation, or material misstatement, the County shall, whenever practicable, terminate the contract or require the termination or cancellation of the subcontract for the project on which the bidder or SBE committed such acts. In addition, and as a further sanction, the County may impose any of the above-stated sanctions on any other contracts and subcontracts the bidder or SBE has on other County projects. In each instance, the bidder or SBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The bidder or SBE/Micro Enterprise may also be subject to debarment.

C. The foregoing notwithstanding, the Mayor or designee ~~County Manager~~ shall include language in all prospective projects containing an SBE goal which provides that, in addition to any other sanction for failure to fulfill the SBE goal requirements for such contract, the contractor's eligibility to receive any future County contract shall be conditioned upon the contractor making up the deficit in SBE participation in such future contract by having SBEs perform work equal to double the dollar value of the deficiency in the SBE goal in the prior contract.

D. The foregoing obligation shall be in addition to any SBE goal otherwise applicable to the future contract. The procedures for making up the SBE deficit shall follow S~~D~~BD policy.

E. Some of the contractual violations that may result in the imposition of sanctions listed in this ~~administrative~~ implementing order include, but are not limited, to the following:

1. An SBE/Micro Enterprise serving as a conduit for SBE work awarded to a firm as an SBE, but which is being performed by a non-SBE firm;

2. A prime vendor not meeting SBE contract measure;

3. Not obtaining or retaining SBE/Micro Enterprise certification while performing work designated for SBE/Micro Enterprise firms;

4. Failure to timely submit utilization reports;

5. Failure to comply with SBE/Micro Enterprise 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. Deviations from the SBE Schedule of Intent Affidavit ~~subcontract agreement~~ without prior approval from S~~D~~BD;

8. Termination of the SBE's Schedule of Intent Affidavit ~~subcontract agreement~~ without prior approval from S~~D~~BD;

9. Reduction of the scope of work of a first tier SBE subcontract without prior approval from S~~D~~BD; and

10. Modifications to the terms and/or prices of payment to an SBE without prior approval from S~~D~~BD.

11. Failure to comply with the Living Wage Ordinance pursuant to Section 2-8.9 of the Code of Miami-Dade County.

XIII. Administrative Penalties

Administrative penalties may range from de-certification to debarment. The County Mayor or designee~~nager~~ may impose, notwithstanding any other

provision of this section, one or more of the following penalties for violation of or noncompliance with this ~~administrative~~ implementing order and bid documents:

A. The exclusion from county contracting and subcontracting for a specified period of time, not to exceed three (3) years, of a contractor, its individual officers, its shareholders with significant interests, and its affiliated businesses.

B. The loss of eligibility to be certified as an SBE or Micro Enterprise for a specified period of time, not to exceed three (3) years, for an applicant or a SBE or Micro Enterprise, its individual officers, its shareholders with significant interests, and its affiliated businesses.

C. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this ~~administrative~~ implementing order through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, and SBE or Micro Enterprise certification for a specified period of time, not to exceed 5 years.

D. If any individual or corporation, partnership or other entity, or any individual officer, shareholder with significant interests, director or partner of such entity or affiliated business of such entity participates in an attempt to comply with the provisions of this ~~administrative~~ implementing order through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, subcontracting, and SBE or Micro Enterprise certification, for a specified period of time, not to exceed five (5) years.

E. 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.

F. 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~~]][2]>>shall<<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 the program.

G. 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.

XIV. Appeals Process

~~A respondent may initiate the appeals process after administrative penalties are imposed.~~

~~A. Appeals of decisions other than contractual violations, made under this Administrative Order by the Department of Business Development or other designees of the County Manager, shall be made to the County Manager.~~

~~B. Decisions by the County Manager under this Administrative Order shall be final unless the County Commission agrees in its sole discretion to review any such decision.~~

~~C. The County Manger shall designate procedures for the investigation, presentation and hearing of appeals.~~

~~D. 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.~~

[2] Committee amendments are indicated as follows: words double sticken through and/or [[double bracketed]] shall be deleted, words double underlined and/or >>double arrowed<< constitute the amendment proposed.

~~E. 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 the program.~~

~~F. 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.~~

A. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this Implementing Order, Section 2-8.1.1.1.1, Code of Miami-Dade County, as amended, or implementing bid documents may appeal such action. The Compliance Monitor shall notify the affected party, in writing, setting forth the reasons for the determination and advising of this appeals process. The affected party may appeal the determination by filing a written appeal with the Director of SBD within thirty (30) days of receipt of the notice. This appeals process does not apply to appeals of decisions made pursuant to bid documents implementing the SBE program when such bid documents provide procedures for appeals of such decisions.

B. Decisions by the County Mayor under this Implementing Order shall be final.

C. PROCEDURES FOR ADMINISTRATIVE HEARING:

The procedure for administrative hearings shall provide that:

1. SBD will schedule a hearing date before a hearing officer, upon timely receipt of a request for an administrative hearing along with a $250 nonrefundable filing fee to appeal certification denial, decertification or a determination of non-compliance with the requirements of this Implementing Order, section 2-8.1.1.1.1, Miami-Dade County, as amended, or implementing bid documents.

2. 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.

3. SBD shall serve upon the firm, contractor (or subcontractor) and/or lessee a notice of hearing within five (5) working days of the appointment of the administrative hearing officer. Such notice shall include:

   a. A copy of SBD's determination of non-compliance, as appropriate, outlining alleged prohibited practices upon which it is based;

   b. A description of the administrative penalties being considered;

4. An administrative hearing shall be scheduled to be heard before an administrative hearing officer within twenty (20) days after service of the notice. The notice shall also advise the appellant that he or she may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them.

5. Within five (5) days after completion of the administrative hearing, the administrative 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. The determination of the Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

D. QUALIFICATIONS OF HEARING OFFICERS:

1. Administrative hearing officers shall be residents of Miami-Dade County who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional

ability. Appointments shall be made by the County Mayor or designee. The list of administrative hearing officers should 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 should become acquainted with this Implementing Order and the provisions of section 2-8.1.1.1.1, Code of Miami-Dade County, as amended, applicable to the particular violation(s) to be heard. Additional qualifications include, but are not limited to, experience in equal opportunity, anti-discrimination, contacting, procurement, bonding or financial services activities. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk. The Clerk shall submit an annual report to the Board on the number of women who have served as administrative hearing officers.

2. The County Mayor or designee shall appoint as many administrative hearing officers as are deemed necessary. Every effort will be made to ensure that the appointment of hearing officers reflect the diversity of the demographics of Miami-Dade County. Appointments shall be made for a term of one (1) year. Any administrative hearing officer may be reappointed at the discretion of the County Mayor, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual administrative hearing officer; provided, however, that a determination as to reappointment must be made for each administrative hearing officer at the end of his or her one-year term. The County Mayor shall have the authority to remove administrative hearing officers at any time. Appointments to fill a vacancy shall be for the remainder of the unexpired term.

3. Administrative hearing officers shall not be County employees but shall be compensated for their services.

4. The Miami-Dade County Attorney's Office shall serve as general counsel to the administrative hearing officer.

This ~~Administrative~~ Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

~~George M. Burgess~~
Alina T. Hudak
County Manager