MEMORANDUM Agenda Item No. 7(A)

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

DATE: May 3, 2011

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

SUBJECT: Ordinance pertaining to Community Small Business Enterprise ("CSBE") Program amending Section 10-33.02 of the Code

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This ordinance 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 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/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: Ordinance Amending Section 10-33.02 of the Code of Miami-Dade County, Relating to the Community Small Business Enterprise Program for the Purchase of Construction Services

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This item 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 in 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 ordinance amending Section 10-33.02 of the Code of Miami-Dade County, relating to the Community Small Business Enterprise (CSBE) Program for the purchase of construction 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. Authorizes the Mayor or designee to adjust the CSBE 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. Allows firms that graduated from the program to remain eligible to be awarded contracts as prime or subcontractors for bids submitted prior to notice of graduation. CSBEs who graduate will not be eligible to receive any new contracts under the CSBE program.

Program Amendments

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

2. Streamline 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.

3. Clarifies the net worth of each of the firm's owners to be no greater than $1.5 million. This was an amendment approved by the Board in 2007, which is now being formally included in the Code.

4. Includes a definition of a Miscellaneous Construction Contract.

5. Trade Set-Asides

   Trade set-aside means that an entire specialty trade component(s) of a County miscellaneous construction contract is reserved for first tier subcontracting among certified CSBEs (for example, the entire plumbing or roofing or electrical component of a specific contract is reserved for limited competition among certified CSBEs). It is proposed that the definition of trade set-aside be revised to also include open contracts that are work order based where no specific item quantities have been determined prior to bid (unit price contracts).

6. First Tier CSBE Goals

   The CSBE Ordinance currently provides that in the case of Construction Manager-at-Risk contracts, if a Construction Manager-at-Risk exceeds the first tier subcontractor goal, the amount by which the first tier CSBE subcontractor goal is exceeded shall count toward fulfillment of the second, third and fourth tier subcontractor goal on the contract. This requirement applies solely to Construction Manager-at-Risk contracts. It is proposed that the amount by which the first tier goal is exceeded by a prime contractor count toward fulfillment of the second, third and fourth tier subcontractor goal on any contract with a CSBE subcontractor goal.

7. CSBE Goal Deficit and Make-Up Penalties After Final Contract Payment

   The CSBE ordinance is silent as it relates to issuing findings of non-compliance to contractors after the County has made final payment to the contractor. It is proposed that after completion or final payment on a contract, SBD review the final Monthly Utilization Report and other project documents and make a determination of whether the bidder met the CSBE measure. If it is determined that the bidder did not meet the CSBE measure, SBD will notify the bidder in writing of the deficit and corresponding make-up penalty. This amendment will allow the County to address goal deficits and issue corresponding make-up penalties after final payment is issued when necessary.

8. On February 6, 2007, amendments to the CSBE ordinance were approved by the Board which revised the CSBE definition increasing the maximum aggregate net worth of CSBE owners and increasing the CSBE size standards and contracting participation levels. The maximum net worth of CSBE owners increased from $750,000 in the aggregate to $1,500,000 for each individual owner. The CSBE size standards increased as follows: SIC 15 – from $5,000,000 to $10,000,000; SIC 16 – from $3,000,000 to $6,000,000; and SIC 17 – from $2,500,000 to $5,000,000. The CSBE contracting

participation levels increased as follows: Level I – from $750,000 to $2,000,000; Level II – from $2,000,000 to $5,000,000, and Level III – from $5,000,000 to $10,000,000. We are amending the Code to reflect the Board's intent.

9. It is proposed that language be amended to denote that monies received from the payment of penalties imposed as a result of non-compliance with the Code requirements be utilized to defray SBD's cost of administering the program and remove that penalties shall be paid into the Minority Business Development Trust Fund.

10. 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.

11. The CSBE Ordinance established a 15 member Advisory Board which includes membership appointments by 12 specific industry organizations. Two (2) of the 12 organizations that recommend appointees no longer have active corporations in the State of Florida; specifically, the Association of Women Architects and Engineers and the Black Business Association. Two (2) of the appointing organizations – the Air Conditioning and Refrigeration Association, Inc., and the Association of Black Architects and Engineers, do not exist in State of Florida corporate records. As such, the CSBE Advisory Board has recommended amendments to replace the Association of Women Architects and Engineers, the Black Business Association and the Association of Black Architects and Engineers with the BAC Funding Corporation, the Miami-Dade Chamber of Commerce and the National Association of Women in Construction; and remove the Air Conditioning and Refrigeration Association, Inc., which does not exist as a corporation.

This proposed amendment establishes a 14 member CSBE Advisory Board and ensures continued effectiveness and expediency by authorizing the County Mayor or designee to replace delineated organizations for failure to comply, upon recommendations from the current CSBE Advisory Board.

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. 7(A)

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

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

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

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 7(A)

5-3-11

ORDINANCE NO. _____

ORDINANCE PERTAINING TO COMMUNITY SMALL BUSINESS ENTERPRISE ("CSBE") PROGRAM; AMENDING SECTION 10-33.02 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING SEVERABILITY, INCLUSION IN CODE, AND AN EFFECTIVE DATE

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

Section 1. Section 10-33.02 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows[1]:

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

* * *

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

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

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

* * *

Community Small Business Enterprise (CSBE) means a construction related enterprise, including a design-build firm, and any firm providing trades and/or services for the completion of a construction project, as defined in Chapter 10 of the Code of Miami-Dade County, which has an actual place of business in Miami-Dade County and whose average annual gross revenues for the last three (3) years do not exceed: ten million dollars ($10,000,000.00) for SIC 15 - Building Construction, General Contractors and Operative Builders; six million dollars

[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.

($6,000,000.00) for SIC 16 - Heavy Construction, other than Building Construction; or five million dollars ($5,000,000.00) for SIC 17 - Specialty Trade Contractors. CSBEs shall be categorized by the type of construction they perform in accordance with the two-digit Standard Industrial Classification (SIC) code, or the six-digit North American Industry Classification System (NAICS), of the Census applicable to such type of construction. A CSBE will graduate out of the program [[~~once~~]] >>upon notification by SBD that<< it has exceeded these size limits based on its three-year average annual gross revenues. A certified CSBE that graduates out of the program shall continue to submit financial information as to cumulative gross revenues and bonding capacity to [[~~DBD~~]] >>SBD<< annually for 3 years thereafter in order to further the County's ability to assess the effectiveness of the program.

>>The County Mayor or designee shall be authorized to adjust the CSBE-size limits every five (5) years at his/her discretion 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 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.<<

* * *

A firm's eligibility to participate in the CSBE program and the contracting participation level at which it will participate shall be determined based on the three-year average gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A [which can be found in the County Clerk's office attached to Ordinance Number 97-52]. No firm shall be certified as a CSBE where the [[~~aggregate~~]] >>individual<< net worth of [[~~all~~]] >>any of<< its owners is more than one million five hundred thousand dollars ($1,500,000). Representations as to gross revenues and net worth of owners shall be subject to audit.

* * *

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

* * *

Contracting participation level refers to the level in which a CSBE firm is classified based on the average gross revenues of the firm over a three-year period. In addition, construction contracts of [[~~five~~]] >>ten<< million [[~~($5,000,000.00)~~]] >>($10,000,000.00)<< or less (which may be reserved for limited competition amongst CSBEs) will be classified into one (1) of

the three (3) contracting participation levels based on estimated project cost. The three (3) contracting participation levels are:

* * *

Prime contracts with estimated project construction cost in excess of [[~~five~~]] >>ten<< million dollars ([[~~$5,000,000.00~~]] >>$10,000,000.00<<) shall be "open market" contracts which all firms can bid on.

* * *

>>*Miscellaneous Construction Contracts* are open contracts designed to consolidate an indeterminate number of individual small construction, repair, installation, or alteration activities which may be needed over a fixed period of time, or open contracts that are work order based where no specific item quantities have been determined prior to bid (unit price contracts).<<

* * *

Review Committee >>*or RC* means the committee established by the County Mayor or designee to review proposed projects for the application of contract measures where SBD and contracting department have not established consensus.<< [[~~The County Manager shall establish an administrative procedure for the review of each proposed County contract to which this section applies, including the establishment of a committee to recommend whether CSBE measures provided in this section should be applied.~~]]

* * *

>>*SBD* means the Miami-Dade County Department of Small Business Development, or successor agency.<<

* * *

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

* * *

Set-Aside means reservation for competition solely among CSBEs of a given prime County contract whose estimated cost is [[~~five~~]] >>ten<< million dollars ([[~~$5,000,000.00~~]] >>$10,000,000.00<<) or less.

* * *

Trade set-aside means that an entire specialty trade component(s) of a County contract or a miscellaneous construction contract is reserved for first tier subcontracting amongst certified CSBEs (for example, the entire

plumbing or roofing or electrical component of a specific contract is reserved for limited competition amongst certified CSBEs). All such subcontracts shall be in writing and shall be executed by the prime contractor and the first tier CSBE subcontractor. [[~~No CSBE may be awarded more than one (1) trade set-aside on any one specific miscellaneous construction contract.~~]]

* * *

(3) *Program components:*

* * *

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

1. Prompt payment.

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

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

* * *

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

* * *

j. In addition to any sanction available pursuant to Subsection (3)(B)1.h. above, construction contracts to which a CSBE trade set-aside or subcontractor goal at any subcontractor tier level has been applied shall provide that failure of the prime contractor or any subcontractor in direct privity to the CSBE to make prompt payment as provided in Section 10-33.02 (3)(B)1,et seq., shall result in the imposition of a penalty of $75.00 per day for each day payment to a CSBE subcontractor is not made within the time frames specified in these provisions. Any such penalty shall be >>deducted<< [[~~paid into the Minority Business Development Trust Fund administered by the department of business development by deduction~~]] from the prime contractor's next invoice. >>Monies received from payment of penalties imposed hereunder shall be utilized to defray SBD's cost of administering this ordinance.<< Contractual documents shall also require the prime contractor or any subcontractor in direct privity to the CSBE to make payment to the CSBE of one (1) percent interest per month on any balance not paid by the time frame specified in these provisions; unpaid balance shall bear interest from thirty (30) days after the due date at a rate of one (1) percent per month. The CSBE must invoice the prime contractor for any interest

accrued in order to receive the interest payment. Any overdue period of less than one (1) month shall be considered as one (1) month in computing interest. Unpaid interest shall cease to accrue after interest on that payment has accrued for twelve (12) months. For purposes of this section, one (1) month shall constitute a period beginning on any day of one month and ending on the same day of the following month. No contract between the prime contractor and the CSBE or any subcontractor in privity thereto shall prohibit the CSBE from invoicing for late payment interest charges allowed under this section.

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

* * *

5. *Trade Set-asides:* Trade set-aside means that an entire specialty trade component(s) of a County >>contract or a<< miscellaneous construction contract which the prime contractor shall subcontract at the first tier level to certified CSBEs (for example, the entire plumbing or roofing or electrical component of a specific contract). All such subcontracts shall be in writing and shall be executed by the prime contractor and the first tier CSBE subcontractor.

6. *Subcontractor goals*:

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

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

* * *

Bid documents shall provide that:

* * *

(ii) Expenditures to CSBEs for acting essentially as a conduit to transfer funds to a non-CSBE shall not be counted toward meeting a subcontractor goal unless such conduct receives prior approval from the Department of >>Small<< Business as

consistent with normal industry practice; and

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

(iv) Only expenditures to CSBEs made under a written first tier subcontract executed by both the prime contractor and the CSBE shall be counted towards meeting a first tier subcontractor goal. >>If the prime contractor exceeds the first-tier CSBE subcontractor goal, the amount by which the first-tier CSBE subcontractor goal is exceeded shall count towards fulfillment of the second, third and fourth tier subcontractor goal on that contract.<< Only expenditures made under a written second, third or fourth tier subcontract executed by both the next tier level subcontractor and the lower tier CSBE subcontractor shall be counted towards meeting a second, third or fourth tier subcontracting goal.

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

* * *

b. *Application to >>C<<[[~~c~~]]onstruction >>M<<[[~~m~~]]anager-at->>R<<[[~~r~~]]isk contracts.*

* * *

(ii) Actual construction portion of the work.

* * *

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

* * *

>>8<<[[~~7~~]]. *Contract measures*:

* * *

a. Contract set-asides: The County Commission or Public Health Trust may determine it is in its best interest to waive any competitive bidding or selection requirement and set-aside a prime County construction contract for CSBEs when determined, prior to bid advertisement, that there are at least three (3) CSBEs available in the Standard Industrial Classification (SIC) category, as well as in the contracting participation level that the contract is classified in (based on the estimated project construction cost). Contracts with estimated project construction cost less than or equal to [[~~five~~]] >>ten<< million dollars [[~~($5,000,000.00)~~]]

>>($10,000,000.00)<< may be set-aside for competition by CSBEs. Such contracts will be placed into one (1) or three (3) contracting participation levels based on the estimated project construction cost, and will be classified by Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) code. The three (3) contracting participation levels, based on average gross revenues for the past three (3) years are:

TABLE INSET:

1.	Level I.....Three-year average gross revenues of $0.00—[[~~$750,000.00~~]] >>$2,000,000.00<<
2.	Level II.....Three-year average gross revenues above [[~~$750,000.00~~]] >>$2,000,000.00<< but not exceeding [[~~$2,000,000.00~~]] >>$5,000,000.00<<
3.	Level III.....Three-year average gross revenues above [[~~$2,000,000.00~~]] >>$5,000,000.00<< but not exceeding [[~~$5,000,000.00~~]] >>$10,000,000.00<<

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

* * *

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

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

* * *

b. Selection Factor: A contractor responding to an RFP or RFQ for a prime county construction contract which is not set-aside for competition solely amongst CSBEs shall be entitled to a program incentive of up to ten (10) percent of the total evaluation points for participation in the

Worker Training Program or the Mentor-Protégé Program. The County Manager shall establish a sliding scale which provides the extent of preference given a contractor hereunder. In no event shall the cumulative effect of the selection factor hereunder, exceed ten (10) percent of the total evaluation points on any one (1) RFP or RFQ.

Any committee formed to evaluate a response to an RFP or RFQ with a CSBE selection factor shall include a voting representative from the Department of >>Small<< Business Development.

* * *

>>9<<[[~~8~~]]. *Advisory board:* There is hereby created a Miami-Dade County Advisory Board for the CSBE Program. Board members shall be appointed by the Board of County Commissioners and shall consist of one (1) each of the following:

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

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

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

1. One (1) member from the list of recommended appointees submitted by the Allied Minority Contractor's Association, Inc.;

2. One (1) member from the list of recommended appointees submitted by the South Florida Chapter of the Associated General Contractors of America;

[[~~3. One (1) member from the list of recommended appointees submitted by the Association of Women Architects and Engineers;~~]]

>>3<<[[~~4~~]]. One (1) member from the list of recommended appointees submitted by the [[~~Black Business Association~~]] >>BAC Funding Corporation<<;

>>4<<[[~~5~~]]. One (1) member from the list of recommended appointees submitted by the Construction Association of Florida, Inc;

>>5<<[[~~6~~]]. One (1) member from the list of recommended appointees submitted by the engineering Contractor's Association of South Florida, Inc.;

>>6<<[[~~7~~]]. One (1) member from the list of recommended appointees submitted by the Latin Builders' Association;

[[~~8. One (1) member from the list of recommended appointees submitted by the Air Conditioning and Refrigeration Association, Inc.;~~]]

>>7<<[[~~9~~]]. One (1) member from the list of recommended appointees submitted by the Underground Contractors' Association of South Florida, Inc.;

>>8<<[[~~10~~]]. One (1) member from the list of recommended appointees submitted by the [[~~Association of Black Architects and Engineers~~]] >>Miami-Dade Chamber of Commerce<<;

>>9<<[[~~11~~]]. One (1) member from the list of recommended appointees submitted by the Contractor's Resource Center;

>>10<<[[~~12~~]]. One (1) member from the list of recommended appointees submitted by the UPPAC;

>>11.<< One (1) member from the list of recommended appointees submitted by the National Association of Women in Construction;

>>12<<[[~~13~~]]. A representative of the local bonding industry;

>>13<<[[~~14~~]]. A representative of the local banking and financial industry; and

>>14<<[[~~15~~]]. A certified CSBE.

>>The County Mayor or designee shall approve the replacement of any of the delineated recommending organizations above, where said organization(s) fails to either (i) provide a list of recommended appointees within thirty (30) days of written notice from the Department of Small Business Development, or (ii) continue to operate in Miami-Dade County, or the appointed CSBE Advisory Board member fails to participate in board activities for a period of six (6) months. The current CSBE Advisory Board shall provide the name(s) of a recommended replacement organization(s) to be considered by the County Mayor, by majority vote.<<

* * *

>>10<<[[~~9~~]]. Graduation: Upon [[~~recertification~~]] review, any CSBE that exceeds the size limits, based on the firm's three-year average gross revenues, established by this section shall be [[~~immediately~~]] graduated from the CSBE program >>upon notification by SBD and may no longer be eligible for participation in the CSBE Program<<. These firms shall be allowed to complete any currently awarded contract >>and remain eligible to be awarded contracts as primes or subcontractors for bids submitted prior to notice of graduation<<. However, the graduated firm will not eligible to receive any new contracts under the CSBE program.

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

1. The Department of >>Small<< Business Development shall maintain and publish at least every other week an updated list of CSBEs, identifying each listed CSBE based on each >>Standard Industry Classification (<<SIC>>)<< category >>or North American Industry Classification System (NAICS) code<< and

each specialty trade the CSBE is certified in, and noting what contracting participation level the firm is classified in.

2. The Department of >>Small<< Business Development shall not certify an applicant, shall not recertify a CSBE, and shall decertify a CSBE that fails to comply with the criteria or procedures for obtaining or maintaining certification. The Department of >>Small<< Business Development shall have authority to suspend the certification of a CSBE during any appeal of a decertification decision.

3. Applicants and certified CSBEs must be properly licensed to conduct business in Miami-Dade County, must perform a commercially useful function with an actual place of business in Miami-Dade County, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified.

4. The qualifier of the certified CSBE firm must own at least ten (10) percent of the certified firm's issued stock.

5. >>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 bid submittal. [[~~For s~~]]>>S<<uccessful bidders >>must be certified at<< [[~~, certification must be maintained from~~]] the time of bid submittal>>, bid award, and<< throughout the duration of the contract. With the exception of provisions previously described for graduation from the CSBE program, loss of CSBE certification may lead to removal of the firm from continued participation in the CSBE program. CSBEs experiencing changes in ownership shall notify the County [[~~Manager~~]] within thirty (30) days of the effective date of such changes.

* * *

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

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

* * *

iv. In the event a bidder or CSBE attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Miami-Dade County Code, the County shall, whenever practicable, terminate the contract or require the termination or cancellation of the first tier subcontract for the project on which the bidder or CSBE committed such acts. In addition, and as a further sanction, the County Ma>>yor<<[[~~nager~~]] or designee may impose any of the above-stated sanctions on any other contracts or first tier subcontracts the bidder or CSBE has on County projects. In each instance, the bidder or CSBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The bidder or CSBE may also be subject to debarment.

v. The foregoing notwithstanding, the County Ma>>yor<<[[~~nager~~]] or designee shall include language in all prospective contracts containing a CSBE measure which provides that, in addition to any other sanction for failure to fulfill the CSBE measure requirements, the contractor's eligibility to receive any future county contracts may be conditioned upon the contractor making up the deficit in CSBE participation in such future contracts by having CSBE(s) perform equal to double the dollar value of the deficiency in the CSBE measure in the prior contract. Contract language shall provide that in order to be eligible for future county contracts, a contractor who fails to meet an established CSBE goal shall submit a CSBE Make-up Plan for the approval of the Director. A Make-up Plan and a corresponding Schedule of Intent Affidavit must be submitted as part of any bid or proposal submitted for future contracts at the time of bid or proposal submittal. The Schedule of Intent Affidavit must identify all CSBEs to be utilized to meet the first tier

subcontractor goal and the trade designation of work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to include the required Schedule of Intent Affidavit with bids or proposals for any future contracts shall result in the submittal being deemed nonresponsive. Any contractor subject to an approved Make-up Plan that fails to comply with any of the material terms of that Make-up plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a six (6) month period. A contractor that fails to comply with any of the material terms of a second Make-up plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a one (1) year period. A contractor that fails to comply with any of the material terms of a third Make-up plan, without good cause, may be subject to debarment and shall automatically be referred to the debarment committee. After serving a debarment for failure to satisfy a make-up plan for no good cause, the subject firm shall be deemed ineligible for bidding on county contracts with measures for 1 additional year unless the County Ma>>yor<<[[~~anager~~]] or designee determines that an emergency exists justifying such participation, and the Board of County Commissioners approves such decision. The foregoing obligation shall be in addition to any CSBE measure otherwise applicable to the future contract.

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

* * *

5. Failure to comply with CSBE certification requirements, including not maintaining a >>actual<< place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;

6. Failure to maintain certification;

7. Deviation from the schedule of participation without prior approval from [[~~DBD~~]] >>SBD<<;

8. Termination of the CSBE's contract without prior approval from [[~~DBD~~]] >>SBD<<;

9. Reduction of the scope of work of a first tier CSBE subcontract without prior approval from [[~~DBD~~]] >>SBD<<. Reduction of the scope of work of a second, third or fourth tier CSBE subcontract utilized to meet a second, third or fourth tier subcontractor goal without prior approval of [[~~DBD~~]] >>SBD<<;

10. Modifications to the terms and/or prices of payment to a CSBE without prior approval from [[~~DBD~~]] >>SBD<<;

* * *

(6) Administrative penalties. For violation of or noncompliance with this ordinance or its [[~~administrative~~]] >>implementing<< orders, bid, and competitive selection documents, the County Man[[~~ager~~]]>>yor or 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 CSBE for a specified period of time, not to exceed three (3) years, for an applicant or a CSBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.

>>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~~]][2]>>shall<< >>be cause for

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

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.

A. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Ma[[~~nager~~]]>>yor or designee<< by submitting a written request to the County Ma[[~~nager~~]]>>yor 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 Ma[[~~nager~~]]>>yor 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.

B. Upon completion of the administrative hearing, the hearing officer shall [[~~render a final decision, in writing, addressing all matters before him or her, including, where appropriate, a determination of the sanction to be imposed; provided, however, the Mayor or designee may appeal the hearing officer's decision to the Board of County Commissioners.~~]] >>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 [[~~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.

>> C. 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.<<

[[~~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.~~

~~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 10-33.02 of the Code of Miami-Dade County.~~

~~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.~~]]

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

* * *

10. [[~~DBD~~]] >>SBD<< shall assign a CSBE coordinator to each county department issuing capital construction contracts whose responsibility shall be to seek out contracting opportunities for CSBEs and serve as liaison between [[~~DBD~~]] >>SBD<< and the department.

>>11. Upon completion of a contract or after final payment on a contract SBD shall review the final Monthly Utilization Report and other project documents to include final payments and make a

determination as to whether the bidder met the CSBE measure. If the bidder has not met the CSBE measure, SBD will notify the bidder in writing of the deficit and corresponding sanctions for contractual violations.<<

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 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 an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as to form and legal sufficiency:

Prepared by: dsh

David Stephen Hope

Prime Sponsor: Commissioner Barbara J. Jordan