

Memorandum



Date: May 1, 2012

Agenda Item No. 1F3

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

From: Carlos A. Gimenez
Mayor

A handwritten signature in cursive script, likely belonging to Carlos A. Gimenez.

Subject: Sunset Review of County Boards for 2012 – Small Business Advisory Board

In accordance with the provisions of Section 2-11.40 of the Code of Miami-Dade County, I am transmitting the 2012 Sunset Review of County Boards Report for the Small Business Advisory Board. The Board approved the attached report at its meeting on January 31, 2012 and has recommended the continuation of its board.

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Deputy Mayor

mayor07812

Memorandum



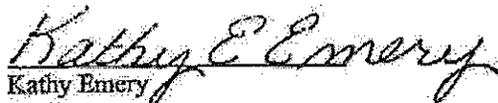
Date: February 6, 2012
To: Carlos A. Gimenez
Mayor
From: Kathy Emery
Chairperson, Small Business Enterprise Advisory Board
Subject: Sunset Review of County Boards for 2012 - Small Business Enterprise Advisory Board

Pursuant to Section 2-11.40 of the Code of Miami-Dade County, I am submitting the 2012 Sunset Review of County Boards Report for the Small Business Advisory Board (SBA) for transmittal to the Board of County Commissioners (BCC). The Board approved the attached report at its meeting of January 31, 2012.

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

BACKGROUND

The SBA Advisory Board was created February 1, 2005, for the Small Business Enterprise (SBE) Program. The Advisory Board operates as a focal point for the public and provides oversight for the SBE program. The Board consists of fifteen (15) members, with each commissioner, the manager and the Mayor appointing a member to the SBA Advisory Board.


Kathy Emery
Chairperson

**SUNSET REVIEW QUESTIONNAIRE
MIAMI-DADE COUNTY BOARDS
FY 2012**

I. GENERAL INFORMATION

1. Name of Board reporting: Small Business Advisory Board

2. Indicate number of board members, terms of office, and number of vacancies:
Number of Board Members: There are eleven (11) Advisory Board members.
The Board unanimously voted on October 20, 2011 the removal of four (4) Board members because of their unexcused absences for more than 10 of the 13 meetings held for fiscal years 2010 and 2011.
Terms of Office: The term of office is four (4) years.
Number of Vacancies: There are four (4) vacancies.

3. Identify number of meetings and members' attendance (Attach records reflecting activity from **January 1, 2010** through **December 31, 2011**):
Number of Meetings: 13
Number of Meetings with a Quorum: 7
Attendance Records: See Attachment Attendance Roster (see Attachment #1).

Note: The number of meetings with official quorums from January 1, 2010 through December 31, 2011 was 7 Board meetings. Pursuant to Miami-Dade County Code, Sec. 2-11-39-1 ... a quorum shall consist of a majority of those persons duly appointed to the Board, provided that at least one-half of the Board membership has been appointed. At least half of the Board membership was appointed in May 2006.

4. What is the source of your funding?
There is no budgeted funding source for the direct & indirect cost to the Small Business Development.

5. Date of Board Creation: February 1, 2005.

6. Attach a copy of the ordinance creating the Board (Please include all subsequent amendments). See Attachment: Attachment #2

7. Include the Board's Mission Statement or state its purpose: As outlined in establishing ordinance (Attachment #2).

8. Attach the Board's standard operating procedures, if any: N/A

9. Attach a copy of the Board's By-Laws, if any. See Attachment #3

10. Attach a copy of the Board minutes approving the Sunset Review Questionnaire, **including a vote of the membership.** See Attachment - Summary of Meeting Minutes for January 31, 2012:

II. EVALUATION CRITERIA

1. Is the board serving the purpose for which it was created? (Please provide detailed information) Yes, see "Goals and Objectives" (Attachment #5).
2. Is the board serving current community needs? (Please provide detailed information)
Yes, by providing awareness of opportunities of the programs that are available for small business owners. Small business owners are invited to the SBD meetings to provide input. The Board establishes venues to recruit potential small businesses.
3. What are the board's major accomplishments?
 - a. Last 24 months: (Attachment # 6)
 - b. Since Established: The creation and endorsement of a Standardized Quote Form for the departments' small purchases (Attachment #6).
4. Is there any other board, either public or private, which would better serve the function of this board?
No, there are no other boards that would better serve the function of this board.
5. Should the ordinance creating the board be amended to better enable the Board to serve the purpose for which it was created? Proposed amendment (Attachment #7)
6. Should the Board's membership requirements be modified?
The Board membership requirements should not be modified at this time. However it is recommended that the appointment of new board members by serving Commissioners be more forthcoming to ensure compliance to the code.
7. What is the operating cost of the Board, both direct and indirect (Report on FY 2010 and FY 2011): Fiscal years 2010-2011 Un-funded Staff Supports cost. - \$4,646
8. Describe the board's performance measures developed to determine its own effectiveness in achieving its stated goals.
See Attachment #8.

SBE Advisory Board Attendee Record

Period from January 2010 thru December 2011

Commission District	Board Member	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Jan-11	Jul-11	Oct-11
1	Stacey Silveira	X	X	X	X	X	X		X	X			X	
2	Ann McNeill **	X	X	X	X			X						
3	Kathy Emery	X	X	X	X	X	X	X	X	X	X	X	X	X
4	Vacant													
5	Sylvia Gomez			X	X	X	X	X	X	X	X			
6	Maria Gonzalez									X		X	X	X
7	Jose Mallea					X		X				X		
8	Karen Hollis		X			X								
9	Vacant *													
10	Julio Selas								X				X	
11	Vacant **													
12	Vacant													
13	Vacant													
City Manager	Vacant													
Mayor	Laura Perez	X	X	X	X				X	X		X	X	X
New Appointees														
2	Michael Joseph											X		X
11	Alfredo Santamaria											X		
Voluntary Withdrew Appointment														
9	Richard Cason													
Meetings with Quorum		NQ	Q	Q	Q	NQ	NQ	NQ	Q	Q	NQ	Q	Q	NQ



Miami-Dade
File Number: 042881

ATTACHMENT 2

Printable PDF Format Print this page

File Number: 042881 **File Type:** Ordinance **Status:** In Committee
Version: 0 **Reference:** **Control:** County Commission
File Name: SMALL BUSINESS ENTERPRISE (SBE) PROGRAM **Introduced:** 10/12/2004
Requester: Business Development **Cost:** **Final Action:**
Agenda Date: 1/20/2005 **Agenda Item Number:** 4DD

Notes: PH 6 WEEKS TLL- 10/12/04.

Title: ORDINANCE CREATING SMALL BUSINESS ENTERPRISE PROGRAM APPLICABLE TO CONTRACTS FOR THE PURCHASE OF CERTAIN GOODS OR SERVICES; PROVIDING DEFINITIONS; PROVIDING PENALTIES; REPEALING ARTICLE XXIVA, SECTIONS 2-221 THROUGH 2-228, OF THE CODE OF MIAMI-DADE COUNTY FLORIDA PERTAINING TO THE SMALL BUSINESS ADVISORY COUNCIL; CREATING THE SMALL BUSINESS ADVISORY BOARD; EXEMPTING BOARD MEMBERS FROM CERTAIN ASPECTS OF THE CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE.

Indexes: SMALL BUSINESS PROGRAMS **Sponsors:** NONE
Sunset Provision: No **Effective Date:** **Expiration Date:**
Registered Lobbyist: None Listed

LEGISLATIVE HISTORY

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
County Manager	1/28/2005		Assigned	Alex Munoz		1/28/2005	
REPORT: RETURN ITEM TO ACM-EG							
Board of County Commissioners	1/20/2005	4DD	Withdrawn				
REPORT: See Agenda Item 4DD SUBSTITUTE, Legislative File No. 050068.							
County Manager	1/14/2005		Deferrals		1/20/2005		
REPORT: County Manager is requesting deferral of this item to February 1, 2005 BCC meeting.							
County Manager	1/4/2005		Referred	Community Empowerment & Econ. Revitalization Cmte.	1/11/2005		
County Attorney	12/17/2004		Assigned	Budget and Finance Committee	1/13/2005		
Budget and Finance Committee	12/10/2004	43A	Deferred to next committee meeting				P
Board of County Commissioners	10/19/2004	13P	Adopted on first reading		12/10/2004		P
REPORT: County Attorney Robert Ginsburg read the foregoing proposed ordinance, for first reading, into the record. There being no questions or comments, the Board proceeded to vote. The foregoing proposed ordinance was adopted on first reading and set for public hearing before the Budget and Finance Committee on December 10, 2004.							
Board of County Commissioners	10/19/2004		Scheduled for a public hearing	Budget and Finance Committee	12/10/2004		
County Manager	10/12/2004		Assigned	Alex Munoz	10/12/2004	10/12/2004	
County Manager	10/12/2004		Assigned	County Attorney	10/19/2004		
REPORT: DBD (1ST RDG 10/19; PH 11/12 B&F CMTE)							
County Manager	10/12/2004		Referred	Budget and Finance Committee	11/12/2004		
County Attorney	10/12/2004		Assigned	R. A. Cuevas, Jr.			

LEGISLATIVE TEXT

TITLE

ORDINANCE CREATING SMALL BUSINESS ENTERPRISE PROGRAM APPLICABLE TO CONTRACTS FOR THE PURCHASE OF CERTAIN GOODS OR SERVICES; PROVIDING DEFINITIONS; PROVIDING PENALTIES; REPEALING ARTICLE XXIVA, SECTIONS 2-221 THROUGH 2-228, OF THE CODE OF MIAMI-DADE COUNTY FLORIDA PERTAINING TO THE SMALL BUSINESS ADVISORY COUNCIL; CREATING THE SMALL BUSINESS ADVISORY BOARD; EXEMPTING BOARD MEMBERS FROM CERTAIN ASPECTS OF THE CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE.

BODY

WHEREAS, a program which affords opportunities to small businesses to participate in the County's procurement of goods and services would foster growth in the economy of Miami-Dade County, by affording small businesses and micro businesses the opportunity to gain the experience, knowledge and resources to compete and survive, both in the government contracting arena as well as in the private contracting arena; and

WHEREAS, Miami-Dade County greatly impacts the local economy and business development through its spending of revenue for various County projects, goods, services and other needs; and

WHEREAS, the Board of County Commissioners hereby establishes an ordinance to assure that all businesses, within the relevant market area, are afforded fair treatment by the County government in the competitive process of supplying goods, services and professional services that promotes growth and employment.

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

Section 1. The Code of Miami-Dade County is hereby amended to add the following new section as follows:

Sec. 2-8.1.1.1.1 Small Business Enterprise Program.

(1) Title. This section shall be referred to as the Small Business Enterprise Program.

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

1. Agreement is a duly executed legally binding contract

2. Available or availability means to have prior to bid submission, the ability to provide goods or services under a contract, by having:

a. Reasonably estimated, uncommitted capacity;

b. All necessary licenses, permits, registrations and certifications, including Small Business Enterprises (SBE) or Micro Business Enterprises (MicroBEs) certification to provide the type of goods or services being purchased under the contract;

c. The ability to obtain financing/insurance that is reasonably required and consistent with normal industry practice; and

d. The ability to otherwise meet bid specifications.

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

4. Bid preference means an amount deducted from the total bid price in order to calculate the bid price to be used to evaluate the bid submitted by a MicroBE or SBE on a competitively bid contract to be awarded on the basis of price (as opposed to an RFP, RFI or RFQ) which is not set aside.

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

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

7. Broker means an individual or business that acts as a conduit for the sale of goods or services which are ordered from a supplier, manufacturer, or distributor who may be an authorized representative of the manufacturer, supplier, and/or distributor representative of the manufacturer, supplier, and/or distributor who, for a fee or commission, negotiates contracts of purchase and sale and personally takes title to or possession of the goods being sold.

8. Commercially useful function means contractual responsibility for the execution of a distinct element of the work of a contract by a SBE and the carrying out of its contractual responsibilities by actually performing, managing, and supervising the work involved... The determination of whether an activity is a commercially useful function shall include the evaluation of the amount of work subcontracted; normal industry practices; the skills, qualifications, or expertise of the enterprise to perform the work; whether the business owner performs, manages, and/or supervises the work involved; and other relevant factors.

9. Contract means an agreement for the purchase of goods or services, including professional services. Professional services as used in this section includes but is not limited to accounting, legal, health care, consulting and management services. Contract does not mean an agreement to purchase, lease, or rent real property; a grant, license, permit, franchise or a concession; an agreement to acquire professional architectural, engineering, landscape architectural or land surveying and mapping services; or a contract for construction or construction management services.

10. DBD means the Department of Business Development.

11. Goods mean any tangible product, material or supply that is not a service.

12. Graduation means the SBE or MicroBE has exceeded the specific size limits stated for the program.

13. Gross Revenue is defined to include all revenue in whatever form received or accrued from whatever source, including sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns and allowances. However, proceeds from sales of capital assets, and investments, proceeds from transaction between a firm and its domestic and foreign affiliates are excluded.

14. Joint venture means an association of two or more persons, partnerships, corporations or other business entities under a contractual agreement to conduct a specific business enterprise for a specified period with both sharing profits and losses.

15. Management and Technical Assistance (MTA) means a program designed to provide direct and indirect assistance for small business enterprise development.

16. Mentor-Protégé Program is a program whose purpose is to build effective working relationships between leaders of mature

established companies and emerging SBEs and MicroBEs in order for the latter to benefit from the knowledge and experience of the established Mentor firms.

17. Micro Business Enterprise (MicroBE) means a business entity certified by DBD, providing goods or services, which has an actual place of business in Miami-Dade County and whose three year average gross revenues does not exceed \$2 million, except manufacturers and wholesalers whose number of employees does not exceed fifty (50). Representations as to a business entity's average gross revenues and payroll shall be subject to audit.

18. Prompt Payment is the intent of the Board that all firms, including SBEs and MicroBEs providing goods and services to the county, receive payments promptly as specified herein.

19. Selection factor means a factor considered in evaluating the response submitted to an RFP, RFQ or RFI by a bidder that is:

A SBE,

A joint venture with one or more SBEs, or

A non-SBE that demonstrates Small Business Utilization in accordance with requirements herein

20. Small Business Advisory Board is the board established for the purpose of supporting and promoting the Small Business Enterprise Program.

21. Small Business Enterprise (SBE) means a business entity certified by DBD, providing goods or services, which has an actual place of business in Miami-Dade County and whose three year average gross revenues does not exceed \$5 million except manufacturers and wholesalers whose number of employees does not exceed one hundred (100). Representations as to a business entity's average gross revenues and payroll shall be subject to audit.

22. Service means work offered for public or private consumption that does not consist primarily of goods.

23. Set-aside means the designation of a given contract for competition among SBEs.

24. Subcontractor goal means a proportion of a total contract value stated as a percentage to be subcontracted to SBE(s) to perform a commercially useful function.

25. Small Business Utilization means a bidder has expended 5 % or more of its total amount expended for goods and services with SBEs and MicroBEs within the last 12 months. Such utilization is subject to review and approval by DBD.

26. Work means the provision of goods or services.

(3) Program.

(a) Application: Except where federal or state laws or regulations mandate to the contrary, the provisions of this ordinance shall be applicable to Miami-Dade and Public Health Trust contracts (as defined in this section) funded in whole or in part by County funds. The County Manager shall prepare administrative orders, bid and contract documents implementing the provisions of this section. The County Manager by administrative order may exclude classes of contracts, or parts thereof, from application of this section. The words County Manager in this section shall mean the County Manager or his or her designee.

(b) Contracts of \$50,000 or less.

1. Within the fiscal year, it is required that County departments expend with MicroBEs a minimum of 5% of the total value of contracts less than \$50,000 for goods and/or services. The County Manager shall consider the above requirement as part of the performance review and management objectives of every appropriate department director and supervisor. The departmental requirement shall be used as a guideline and shall not be construed as a ceiling for MicroBE participation. Such efforts shall include:

1. Requiring departments whenever possible to solicit bids or quotes from at least four bidders: 2 certified MicroBEs and 2 non-MicroBEs.

2. Bids or quotes submitted by MicroBEs shall automatically receive a 10% bid preference. The departments shall deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation.

3. DBD shall provide a form to the departments to provide monthly reporting of MicroBE awards to DBD and quarterly to the Review Committee.

4. Annually, DBD shall provide a report of awards to MicroBEs and SBEs to the Board.

(c) Contracts Greater than \$50,000:

The following SBE measures may be applied to contracts greater than \$50,000:

1. Set-asides:

a. Competitive bidding requirements may be waived (by the County Manager or County Commission depending on whether the amount of the contract is above or below the minimum amount established by ordinance for competitive bidding) for a contract and the contract set-aside for bidding solely by SBEs where prior to bid advertisement, there are at least three (3) available SBEs to perform the contract, and where such set-aside is in the best interests of the County.

b. Transferring to a non-SBE through subcontracting or otherwise all or part of the actual work of a set-aside contract to a non-SBE is prohibited unless such transfer receives prior approval from DBD.

2. Subcontractor goals:

a. Subcontractor goals may be applied to a contract based on estimates made prior to bid advertisement of the quality, quantity and type of subcontracting opportunities provided by the contract and the availability of SBEs to perform such work. Bid documents for contracts to which a SBE subcontract goal is applied shall provide that only SBEs certified to provide the type of goods or services for which a goal is imposed shall be counted towards meeting a goal. The bid documents shall further provide that a bidder must be found in compliance with the requirements of subsections b and c below in order to be eligible for award of the contract.

b. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder must submit with its bid a copy of subcontract agreements with those SBE subcontractors the bidder proposes to utilize in order for such proposed participation to be eligible to be counted towards meeting the goal. Each agreement shall be in writing, shall be executed by the bidder and the SBE, and shall specify the type of goods or services the SBE is to provide and the price the SBE is to be paid therefor. Each agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Program. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a SBE may itself meet the goal to the extent it is certified to provide the type of goods or services that are the subject of the contract. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a joint venture one or more of whose venturers is an SBE must submit with its bid a copy of the joint venture agreement in order for such venturer(s)'s participation to be eligible to be counted towards meeting the goal. The joint venture agreement shall be in writing, signed by all venturers, and shall specify the ownership, control, profits and financial risk assumed by each venturer, including the SBE venturer(s). The joint venture agreement shall also specify the portion of the contract work (i.e., the goods or services to be provided) to be performed by the SBE venturer(s) in detail separately from the work to be performed by the non-SBE member. The bidder shall receive credit towards meeting the goal to the extent that the combined dollar value of the SBE's participation as shown in the joint venture agreement submitted in conformity with and meeting the requirements of this paragraph bears to the total contract price bid by the bidder.

c. A bidder that is a SBE may meet up to 100% of the subcontractor goal with its own forces. A bidder that is a joint venture having one or more SBEs venturers may comply with the goal based on the percentage participation of the SBE joint venturer(s) in the ownership, control and profits of the joint venture, and in the performance of the contract work.

d. Bid documents shall provide that (1) only expenditures to SBEs for performing a commercially useful function shall be counted toward meeting a subcontractor goal, (2) expenditures to SBEs for acting essentially as a broker to a non-SBE as defined herein shall be counted toward meeting a subcontractor goal, and (3) expenditures to SBEs who subcontract work further to non-SBEs shall not be counted toward meeting a specified goal unless such subcontracting receives prior approval from the DBD.

3. Bid Preference:

a. A bid preference shall apply to all contracts which are to be awarded on the basis of price (as opposed to RFPs, RFIs and RFQs) and are not set-aside. The preference shall be used only to evaluate a bid and shall not affect the contract price.

b. The preference accorded on contracts \$1 million or less shall be ten (10) percent of the price bid. The preference accorded on contracts greater than \$1 million shall be 5% of the price bid.

Preferences shall be applied to the bid price of bidders that:

Are SBEs/MicroBEs;

Are joint ventures with at least one SBE/MicroBE; or

Demonstrate Small Business Utilization

c. Bidders that utilize SBEs, MicroBEs in their purchases of goods or services in order to receive a preference, shall list at the time of bid submission or as may otherwise be specified, their purchases of goods and services and their utilization of SBEs/MicroBEs in such purchases for the twelve-month period prior to bid submission.

d. Joint ventures must be approved by DBD prior to bid opening. The SBE/MicroBE member of the joint venture shall perform work, manage the job and take financial risks in proportion to its level of participation in the joint venture. Agreements establishing joint ventures shall be in writing and shall specify work and financial risk assumed by the SBE/MicroBE. Bid and contract documents shall require that the portion of the work to be performed by the SBE/MicroBE member of the joint venture be set forth in detail separately from the work to be performed by the non-SBE/MicroBE member.

4. SBE Selection Factor. Any bidder that is an SBE, a joint venture with a SBE, or a non-SBE that demonstrates Small Business Utilization shall be accorded a selection factor on all RFPs, RFQs and RFIs for contracts greater than \$50,000 that are not set aside for bidding solely by SBEs.

RFPs, RFQs and RFIs that assign weights to evaluation or selection criteria, shall provide that a bidder entitled to a selection factor shall receive an additional ten (10%) percent of the evaluation points scored on the technical portion of such bidder's proposal. RFPs, RFQs and RFIs that do not assign weights to evaluation or selection criteria, shall provide that whenever there are two best ranked proposals that are substantially equal and only one of the two so ranked is submitted by a bidder entitled to a selection factor, the selection factor shall be the deciding factor for award.

(d) Review Committee. The County Manager shall establish an administrative procedure for the review of each proposed County

contract greater than \$50,000 to which this section applies.

(e) Management & Technical Assistance. The Department of Business Development (DBD) will provide Management and Technical Assistance and Community Outreach to business entities certified as SBEs or MicroBEs with Miami-Dade County.

(f) SBE Financial Assistance. DBD will develop a program to identify methods of financial assistance to SBE/MicroBE vendors on Miami-Dade County contracts.

(g) Small Business Advisory Board. There is hereby created a Miami-Dade County Advisory Board for the SBE Program.

1. The Advisory Board will operate as a focal point for the public and with the assistance of the County Manager, will collect, input and disseminate information related to economic opportunities within Miami-Dade County government for small business owners.

2. The Board shall consist of 15 members, as follows

- a. One member to be appointed by each County Commissioner.
- b. Two members to be appointed by the County Manager

3. The terms of each commissioner appointed member shall be coterminous with the term of the appointing commissioner.

4. The terms of each County Manager appointed member shall be at the will and discretion of the County Manager

5. In no event shall a Board member serve more than four (4) consecutive years.

6. Members shall serve without compensation.

7. The Board shall submit an annual written report to the County Commission on ways to improve such communication. The Board may submit interim reports as it deems appropriate.

8. DBD shall provide appropriate staff support.

9. 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 ordinance.

(h) Certification.

1. The County Manager shall implement eligibility criteria and procedures for entities to be certified as SBEs/MicroBEs.

2. Any SBE/MicroBE that exceeds the size limits established by this Section shall be allowed to retain its certification for one (1) additional year from the date it is formally notified it has exceeded the size limits. Such SBE/MicroBE shall be allowed to remain through the contract period on awarded contracts. With exception of provisions described in the ordinance for graduation from the SBE/MicroBE program, loss of certification may lead to removal of the firm from continued participation in the Small Business Enterprise program.

3. The Department of Business Development shall maintain and publish at least every other week an updated list of SBEs and MicroBEs, identifying each listed SBE and MicroBE based on the nature of the goods and/or services the SBE and MicroBE shall be certified to provide.

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

5. Certification shall be renewed annually, and must be in effect at the time of bid submission, bid award, and throughout the duration of the contract. SBEs and MicroBEs experiencing changes in ownership shall notify DBD within thirty (30) days of the effective date of such changes.

6. Applicants and certified SBEs or MicroBEs must have an occupational license for an actual place of business in Miami-Dade County at which they perform a commercially useful function in the provision of the type of goods or services for which certification is sought in order to be eligible for certification or remain certified.

7. A business entity shall be eligible to be certified as a SBE or MicroBE only if the owner holding at least 10 percent shares or ownership in the business entity personally possesses any regulatory licenses and satisfies the qualifying requirements required in order to engage in the business of providing the type of goods or services for which certification is sought.

8. A business owner alone or as a member of a group, shall own or control only one SBE or MicroBE at a time and shall not own and control another separate business certified under the Small Business Enterprise Program.

9. The Department of Business Development may require applicants and SBEs or MicroBEs to submit information regarding their business operations in order to determine eligibility for certification.

(i) Prompt Payment.

1. All firms, including SBEs and MicroBEs providing goods and services to the County, shall receive payments promptly in order to maintain sufficient cash flow.

2. The County or Public Health Trust shall establish administrative procedures requiring that billings from SBE/MicroBE prime vendors on contracts shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within 30 calendar days of receipt of such billing by the County or Trust.

3. A prime vendor on a contract with SBE measures shall include in its billings to the County or Trust copies of undisputed billings from SBE subcontractors within 14 calendar days of receipt of such billings, or by the next scheduled billing whichever comes first. The prime vendor shall pay those amounts not in dispute to subcontracting SBEs within 2 days of receipt of payment from

the County. If the prime vendor fails to submit undisputed billings from a SBE to the County as specified herein or chooses not to submit any billing to the County pursuant to the billing schedule, the prime vendor must pay the full amount of the received SBE billings by the next billing cycle or 40 calendar days from receipt, whichever is less.

4. The County or prime vendor in direct privity with a SBE/MicroBE on a contract with SBE measures must notify the SBE/MicroBE and DBD, in writing, of those amounts billed by the SBE/MicroBE which are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing, or by the next scheduled billing whichever comes first. Failure of the County or prime vendor to comply with the applicable requirements of this subsection shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE/MicroBE and payment shall be forthcoming from the County or prime vendor as appropriate by the next billing date or 40 calendar days from receipt of billing, whichever is less. Departments shall report disputed invoices to the Board on a quarterly basis.

5. A SBE/MicroBE may invoice the County or prime vendor, as appropriate, 1% interest per month for any undisputed amount that is not promptly paid.

(J) Sanctions

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 section or its implementing administrative orders may result in the imposition of one or more of the following sanctions:

1. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
2. Work stoppage;
3. Termination, suspension, or cancellation of the contract in whole or part;
4. In the event a bidder, SBE or MicroBE attempts to comply with the provisions of this ordinance 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, SBE or MicroBE committed such acts. In addition, and as a further sanction, the County may impose any of the above-stated sanctions on any other contracts or subcontracts the bidder, SBE or MicroBE has on County projects. In each instance, the bidder, SBE or MicroBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs.

The foregoing notwithstanding, the County Manager shall include language in all prospective contracts containing a SBE subcontractor goal which provides that, in addition to any other sanction for failure to fulfill the SBE subcontractor 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 subcontractor goal in the prior contract. The foregoing obligation shall be in addition to any SBE subcontractor goal otherwise applicable to the future contract.

(K) Administrative Penalties.

The County Manager may impose, notwithstanding any other provision of this section, one or more of the following penalties for violation of or noncompliance with this section or its implementing administrative orders and bid documents:

1. 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.
2. The loss of eligibility to be certified as a SBE or MicroBE for a specified period of time, not to exceed three (3) years, for an applicant or a SBE or MicroBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.
3. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this ordinance 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 MicroBE certification for a specified period of time, not to exceed 5 years.
4. 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 ordinance 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 MicroBE certification, for a specified period of time, not to exceed five (5) years.

(L) Appeals.

1. Appeals of decisions other than contractual violations, made under this ordinance by the Department of Business Development or other designees of the County Manager, shall be made to the County Manager.
2. Decisions by the County Manager under this ordinance shall be final unless the County Commission agrees in its sole discretion to review any such decision.
3. The County Manger shall designate procedures for the investigation, presentation and hearing of appeals.

Section 2 Article XXIVA, Sections 2-221 through 2-228, of the Code of Miami-Dade County, Florida, is hereby repealed in its entirety.

Section 3. If any section, subsection, sentence or clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Miami-Dade County. 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 5. This ordinance shall become effective 10 days after the date of its adoption unless vetoed by the Mayor and, if vetoed,

shall become effective only upon override by this Board and shall apply to contracts advertised after approval by this Board of an implementing Administrative Order which provides a reasonable time period for interested firms to apply for certification and provides a reasonable time period thereafter for DBD to review the applications received and make determinations thereon.

HEADER

Date:

To: Honorable Chairperson Barbara Carey-Shuler, Ed. D.
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Ordinance Establishing the Small Business Enterprise (SBE) Program

STAFF RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached ordinance establishing the Small Business Enterprise (SBE) Program for the acquisition of goods and services.

MANAGER'S BACKGROUND

On August 20th, 2004, Federal District Court Judge Adalberto Jordan issued a ruling in the case of Hershel Gill Consulting Engineers, Inc. et al, v.s. Metropolitan Dade County. This is the second federal court decision finding that the County's B/H/WBE programs do not meet the rigorous prerequisites required for the application of race-, ethnicity- or gender-conscious measures to county contracting. The County Attorney advised the effect of these two federal court decisions is that the B/H/WBE programs can no longer be applied to the bid and award of any County contract.

County staff, including the Department of Business Development (DBD) and the Department of Procurement Management have met with representatives from the affected market areas and with members of the Minority and Women-Owned Business Advisory Board to discuss the establishment of a County race and gender neutral small business program for goods and services. As proposed, the Small Business Enterprise (SBE) Program incorporates two sectors of the local market place: a) very small businesses, defined as Micro Business Enterprises (MicroBEs) whose three year average gross revenues do not exceed \$2,000,000 (manufacturers and wholesalers with 50 or more employees are ineligible) and b) small businesses, defined as SBEs whose three year average gross revenues do not exceed \$5,000,000 (manufacturers and wholesalers with 100 or more employees are also ineligible).

Under the SBE program, certified MicroBEs will receive an automatic 10% bid preference on contracts of \$50,000 and under. County departments will be required to solicit bids or quotes from at least four firms where available (2 available certified MicroBEs and 2 non-certified firms) for contracts of \$50,000 and under. County departments are also required to expend at least 5% of the total value of contracts \$50,000 and under with MicroBEs. On contracts that exceed \$50,000, certified SBEs will be afforded opportunities to participate through the application of set-asides and subcontractor goals. The proposed ordinance will also create the Small Business Advisory Board which shall be responsible for reviewing program activities and making recommendations to DBD and the Board on matters pertaining to the program.

DBD will be responsible for monitoring the compliance and utilization of contracts with SBE measures in addition to providing management and technical assistance, financial assistance and community outreach to firms interested in participating in the program once adopted by the Board.

In order to demonstrate utilization, DBD will provide an annual report to the Board that will illustrate the County-wide participation levels of MicroBEs and SBEs.

In sum, small businesses account for the vast majority of economic activity in Miami-Dade County, the SBE Program will help provide opportunities to small businesses, including entrepreneurial development opportunities for certified MicroBEs and SBEs.

Alex Muñoz
Assistant County Manager

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ATTACHMENT 3

BYLAWS

SMALL BUSINESS ENTERPRISE ADVISORY BOARD

ARTICLE I.

The name of this organization shall be the Small Business Enterprise Advisory Board, hereinafter called "the Board" an organization established by the Board of County Commissioners by Ordinance No. 05-29 on February 15, 2005.

ARTICLE II.

OBJECTIVE

Section 1. This Advisory Board will operate as a focal point for the public and with the assistance of the County Manager, will collect, input and disseminate information related to economic opportunities within Miami-Dade County government for small business owners.

Section 2. The Small Business Enterprise Advisory Board shall have the following duties, functions, powers and responsibilities as established in Dade County Ordinance No. 05-26:

- a. To review County set-aside programs for Small Business Enterprises, and for making recommendations concerning said programs to the board of county commissioners.
- b. The Board shall serve as a focal point for the public, consulting with representatives of small businesses to address their issues and needs.
- c. The Board, with the assistance of the County Manager will collect, input, and disseminate information related to economic opportunities within Miami - Dade County government for SBE's.
- d. The Board shall submit an annual written report to the County Commission on ways to improve communication between the SBE community and the County.
- e. The Board shall advise the Board of County Commissioners on all matters pertaining to the Small Business Enterprise Program. The board shall have the authority to make recommendations to the board of county commissioners relative to:

- (1) Certain aspects of the administration of the program, providing guidance on the application of SBE measures; approval of standard bid documents by DBD, DBD information collection and publication efforts, county appeals procedures, and bidder disclosure requirements;
- (2) Proposed ordinances affecting or amending the SBE Program, including provision establishing graduation from the Program;
- (3) Reports from the county Manager or DBD that is required under the SBE Program.

- f. The Board and its members may make inquiry into all matters concerning the Small Business Enterprise program, except for specific bid protests or challenges, compliance determinations, certification decisions appeals or other such matters under the Small Business Enterprise program, while they are pending before the County. Willful violation of this provision shall be good cause for removing the Board member from office.
- g. To perform such other duties as may from time to time be assigned to it by resolution of the County Commission.
- h. To appear before any government entity or non-governmental agency to make recommendations and suggestions on behalf of the Commission and, with the approval and permission of the Board of County Commissioners, make suggestions and recommendations on behalf of Dade County and the Small Business Enterprise Program Advisory Board to any and all agencies.
- i. To express in the name of the Small Business Enterprise Program Advisory Board only those opinions which have received prior approval by vote of the majority of the members of the Board.

ARTICLE III

Members

Section 1. The membership of this organization shall consist of 15 members, all of whom shall be permanent residents of Miami - Dade County. To assure representative members, each of the thirteen County Commissioners, the County Manager and the Mayor shall appoint one member. The term of each member shall be coterminous with the term of the appointing commissioner, manager and mayor. In no event shall a Board member serve more than four (4) years. Members shall serve without compensation.

Section 2. Members, while serving, shall not become candidates for election to any public office.

Section 3. Each member shall serve on at least one Task Force/Committee.

Section 4. It shall be the responsibility of each member to attend all meetings of the SBE Program Advisory Board. A board member shall be automatically removed if, in a given fiscal year: (i) he or she is absent from two (2) consecutive meetings without an acceptable excuse; or (ii) if he or she is absent from three (3) of the Board's meetings without an acceptable excuse. A member of the Board shall be deemed absent from a meeting when he or she is not present at the meeting at least seventy-five (75) percent of the time. An "acceptable excuse" is defined as an absence for medical reasons, business reasons, personal reasons, or any other reason which the Board, by a two-thirds vote of the membership, deems appropriate. By a two-thirds vote of the members of the full BCC, the provisions of this section may be waived. Such absences shall be calculated from October 1st until September 30th. The member shall then be deemed to be removed and a vacancy created.

- a. The provisions of these by-laws may be waived, by two thirds vote of the members of the full Advisory Board.

Section 5. Members may speak on behalf of the Small Business Enterprise Program Advisory Board only with the permission of the Chairperson or with the approval of the membership.

Section 6. Any member desiring to resign from the organization shall submit his or her resignation in writing to the appointing Commissioner and the Chairperson.

ARTICLE IV.

Officers

Section 1. The officers of the SBE Advisory Board shall be the chairperson, and first vice chairperson. In addition, the immediate past Chair shall serve automatically as an officer of the Board for one (1) year. A board member, at Large shall be a member of the Board, in good standing, nominated and elected by the Board at the September meeting.

Section 2. The First Vice Chairperson shall be of active assistance to the chairperson and shall perform the duties of the chairperson in his or her absence or inability to serve.

Section 3. At the regular meeting in August, the Chair Person shall open the floor for nominations, starting with the office of chairperson. Officers shall be elected by a voice vote if there is only one nominee and if more than one nominee by a simultaneous written ballot, signed by the member casting the ballot, to be made a part of the public record. Officers shall serve for one (1) year or until their successors are elected, and their term of office shall begin at the close of the meeting at which they are elected. No vote by proxy shall be permitted. Election shall be by a majority of the votes cast by members present and voting.

Section 4. No member shall be eligible to serve more than two (2) consecutive terms in the office.

**SUNSET REVIEW OF COUNTY BOARDS FOR 2012
SMALL BUSINESS ENTERPRISE ADVISORY BOARD
SUMMARY MINUTES**

DATE: Tuesday, January 31, 2012

CALL TO ORDER TIME: 1:00 p.m.

MEMBERS PRESENT: Laura Perez
Alfredo Santamaria
Stacey Silvera
Kathy Emery
Michael Joseph
Maria Gonzalez

MEMBERS ABSENT: Silvia Gomez
Jose Mallera
Julio Salas
Karen Hollis
Richard Cason

SPEED/SBD

STAFF PRESENT: Laurie Johnson, SBD Manager
Caesar Suarez, SBD Construction Specialist

Board members were provided with a copy of the Sunset Review Package for review, comments and approval. The package included the attendance records listing all active and non-active Board members, scheduled meetings and meetings with quorums; 2012 Questionnaire and the requested 2009 Questionnaire with attachments.

The Board approved the number of meetings held with and without a quorum.

Chairperson Kathy Emery recommended that the Board review the Sunset Review Package for 2009 and consider the responses to the questionnaire, she requested any updates be duly noted such as the performance measures, accomplishments, proposed changes, goals and objectives; she stated that the Board's mission was still the same and should be considered and reflected in their response.

The Board voted unanimously to approve that the response to the Sunset Review Questionnaire for 2012 remains consistent with the previous Sunset Review Questionnaire for 2009. Attachments No. 5, 6, 7 & 8 were discussed and minor updates made. The Board acknowledged the additional recommendation and requests noted by Board members Michael Joseph and Laura Perez and voted for its incorporation.

Board member Michael Joseph motion to the Board and it was second by Board member Laura Perez to consider, as authorized by Code, that Board becomes involved in the Appeals process for Certification and any SBE Compliance Hearings. It was voted and unanimously approved by the Board that such inclusion occurs.

Board member Laura Perez motion to the Board and it was seconded by Board member Maria Gonzalez to request SBD give first review, advice and consent for any recommended changes to the SBE program before it is made public or presented to the Board of County Commissioners. It was voted and unanimously approved by the Board that such request occurs.

Board Member Stacy Silvera reminded the Board that the meeting call was a special meeting to review and approve the 2012 Sunset Review Questionnaire to be submitted to the Board of County Commissioners and all other issues related to their functions and oversight review will be discussed at the next schedule Advisory Board meeting.

SBD staff, Ms. Laurie Johnson restated to the Board their response to the questionnaire presented and duly noted all the recommendations made by the Board members to be documented as attachments stating the Board's accomplishments, goals and objectives.

A motion was made by Chairperson Kathy Emery and seconded by Stacey Silvera to accept the 2012 Sunset Review report as noted; the SBE Advisory Board voted on the acceptance of the report and unanimously approved it.

Meeting Adjournment

The meeting was adjourned at approximately 2:45 p.m.

**Small Business Advisory Board Goals and Objectives
FY 2010-2011**

1. Gain a better understanding of the challenges small businesses face when working with Miami-Dade County (MDC).
2. Increase awareness for the SBD certification program for categories of businesses lacking participation.
3. Participate in County and regional events targeting small businesses.
4. Identify why small businesses receiving contracts do not get work from the County.
5. Monitor for effectiveness of how the Department of Procurement Management and department staff consider small businesses with bids.
6. Enhance the understanding of the Department of Procurement Management staff on the importance of utilizing SBE and MBE firms and to insure the discounts are applied to their pricing.
7. Further understand and address the late payment issues for the SBE and MBE firms.
8. Evaluate other Micro financing opportunities for SBE and MBE firms to provide working capital for contracts.
9. Develop and monitor a recognition program for departments that are exceeding their SBE and MBE goals.
10. Encourage BCC to fill any vacancies on the Small Business Advisory Board.
11. Review reports quarterly.
12. Semi-annually review Ordinances and Administrative Orders.
13. Attend various trade shows to promote SBE program
14. Participate in Quarterly Small Business forums
15. Place an interactive bulletin on the Small Business Development's website

**Small Business Advisory Board
Major Accomplishments 2010-2011**

1. Gained a better understanding of the challenges small businesses face when working with Miami-Dade County (MDC).
2. Participated in County and regional events targeting small businesses.
3. Monitored for effectiveness of how the Department of Procurement Management and department staff consider small businesses with bids.
4. Enhanced the understanding of the Department of Procurement Management staff on the importance of utilizing SBE and MBE firms and to insure the discounts are applied to their pricing. *(Standardized Quote Form)*
5. Further understand and address the late payment issues for the SBE and MBE firms.
6. Evaluated other Micro financing opportunities for SBE and MBE firms to provide working capital for contracts. *(Bonding & Financial)*
7. Encouraged BCC to fill any vacancies on the Small Business Advisory Board.
8. Reviewed reports quarterly.
9. Semi-annually reviewed Ordinances and Administrative Orders.
10. Successfully assisted SBD in the review and drafting of SBE amendment approved on May 3, 2011 by the Board of County Commissioners. The amendment incorporated the boards proposed changes as follows:
 - Increase the County's minimum expenditure objective for County projects from 5% to 10% for Micro/SBE.
 - Include for the purpose of supporting and promoting the Community Business Enterprise (CBE) program.
 - Streamline the Certification application review process.
 - Maintain the one year in business requirement for firms interested in certification.

Proposed Changes to SBE Ordinance

The Board voted unanimously to support the amendment to Section 2.8.1.1.1.1 of the Code, to create a certified small business enterprise set-aside for contracts up to \$100,000.00, sponsored by Commissioner Jean Monestime.

**Small Business Advisory Board 2010-2011
Performance Measures**

The Small Business Advisory Board's performance measures are to operate as a focal point for the public. The Advisory Board attended meetings at various venues to include; Miami-Dade Chamber of Commerce, Southern Florida Minority Supplier Development Council, Minority Business Enterprise Centers funded by the MBDA, etc., during which information about the SBE program was disseminated to the various firms in attendance.

The Advisory Board reviews various reports that monitor the participation of small businesses on county contracts. At a minimum, county departments are to expend at least 10% of their purchases of \$50,000 or less with small businesses.