

# MEMORANDUM

EDPC  
Substitute  
Agenda Item No. 1G3

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**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** June 12, 2014


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

**SUBJECT:** Ordinance pertaining to  
Small Business Enterprise  
Program; amending  
Section 2-8.1.1.1.1 of the Code

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**This substitute differs from the original in that the Ordinance: (i) it no longer allows manufacturers and wholesalers to be certified as Micro Enterprises; (ii) removes the reinstatement of monthly review committee meetings; (iii) excludes funds invested in an IRA, 401k, pension, or other retirement account from the owner's personal net worth; and (iv) provides that SBE certified manufacturers and wholesalers receive a ten percent (10%) bid preference on contracts of \$100,000 or less.**

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.

  
\_\_\_\_\_  
R. A. Cuevas, Jr.  
County Attorney

RAC/lmp

# Memorandum



Date:

To: Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

From: Carlos A. Gimenez  
Mayor

Subject: Ordinances pertaining to Community Business Enterprise Programs; Amending Sections 2-8.1.1.1, 2-10.4.01 & 10-33.02 of Miami-Dade County Code. Relating to Reinstating the County's Review Committee  
**Legistar Numbers: 140285, 140286 and 140287**

The proposed ordinances pertaining to Community Business Enterprise Program amends Sections 2-8.1.1.1, 2-10.4.01 and 10-33.02 of Miami-Dade County Code and proposes various changes to the Community Small Enterprise Program, including certification criteria and graduation criteria. It reinstates biweekly Review Committee (RC) meetings requiring projects from the County's construction, architectural and engineering services and goods and services to be submitted to the Review Committee for approval of applicable measures for small business participation.

There will be additional costs incurred by the Internal Services Department, Small Business Development Division due to re-establishment of the RC. The RC will require substantial, additional project review and analysis activities necessary to compile documentation, prepare agenda packages, schedule and confirm committee members, follow-up with additional information requests, and prepare responses as needed. The RC will require at least one new Contract Certification Specialist position and a Clerk 4 position, at an annualized, recurring cost of approximately \$120,600 (not including cost of living and merit increases in subsequent years). These resources are not included in the budget.

The RC process was a process that was previously eliminated to expedite the construction projects and the ability to procure goods and services. Reinitiating this process will delay our ability to take projects to the market, which, in and of itself, has associated intangible costs.

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

Edward Marquez  
Deputy Mayor

Fis4514



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** July 1, 2014

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

**SUBJECT:** Agenda Item No.

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor'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.

ORDINANCE NO. \_\_\_\_\_

ORDINANCE PERTAINING TO SMALL BUSINESS ENTERPRISE PROGRAM; AMENDING SECTION 2-8.1.1.1.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO CREATE GRADUATION CRITERIA FOR WHOLESALERS AND MANUFACTURERS, PROVIDE VIRTUAL OFFICE DEFINITION, REQUIRE ONE YEAR DOING BUSINESS IN MIAMI-DADE COUNTY PRIOR TO CERTIFICATION, INCLUDE TEMPORARY AND PART-TIME EMPLOYEES AND INDEPENDENT CONTRACTORS FOR CERTIFICATION PURPOSES, REQUIRE QUARTERLY REPORTING OF CONTRACTS TO CERTIFIED FIRMS BY PUBLIC HEALTH TRUST, ALLOW APPLICATION FOR RECERTIFICATION AFTER SUBMITTAL OF REQUIRED DOCUMENTS, AND CONTRIBUTION TO ECONOMIC DEVELOPMENT AND WELL-BEING OF MIAMI-DADE COUNTY; AND PROVIDING SEVERABILITY, INCLUSION IN CODE AND EFFECTIVE DATE

**WHEREAS**, the Small Business Enterprise Program provides opportunities for small business participation on Miami-Dade County contracts for procurement of goods and services; and

**WHEREAS**, the Board wishes to align the requirements of its three small business programs; and

**WHEREAS**, the Board wishes to include graduation provisions based on personal net worth to maintain the integrity of its small business programs, consistent with federal Disadvantaged Business Enterprise (“DBE”) program guidelines; and

**WHEREAS**, the Board wishes to align its small business program requirements with the local preference requirements, including requiring participating firms to do business in Miami-Dade County for one year prior to certification and contribute to the economic development and well-being of the County; and

**WHEREAS**, the Board wishes to provide public input for the review and application of goal recommendations prior to advertisement; and

**WHEREAS**, the Board wishes to include temporary and part-time employees, and independent contractors to determine certification eligibility; and

**WHEREAS**, providing quarterly reports to this Board regarding Public Health Trust awards and utilization of small business will ensure compliance with the small business requirements; and

**WHEREAS**, the Board wishes to allow firms that have been decertified due to the non-submittal of required documents, to be able to immediately reapply for recertification once said documents have been submitted and verified, rather than waiting a year before doing so,

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

**Section 1.** Section 2-8.1.1.1.1, Code of Miami-Dade County, is hereby amended as follows<sup>1</sup>:

**Sec. 2-8.1.1.1.1. Small Business Enterprise Program.**

\* \* \*

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

\* \* \*

10. *Graduation* means the SBE or Micro Enterprise has exceeded >>either the personal net worth, or<<the specific size limits stated for the program and may no longer be eligible to participate in the program.

<sup>1</sup> 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.

\* \* \*

15. *Micro Enterprise* means a business entity certified by SBD, providing goods or services, which has >>a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification,<< an actual place of business in Miami-Dade County>>, not a Virtual Office,<< and whose three year average gross revenues does not exceed two million dollars (\$2,000,000.00) [~~or a manufacturer with fifty (50) >>independent contractors, temporary, part-time and full-time <<employees or less, or a wholesaler with fifteen (15) >>independent contractors, temporary, part-time and full-time<<employees or less whose actual place of business is in Miami Dade County]]<sup>2</sup> >>No manufacturer or wholesaler can be certified as a Micro Enterprise.<< >>No firm shall be certified as a Micro Enterprise where the personal net worth of any of its owners is more than one million five hundred thousand dollars (\$1,500,000), exclusive of:<< >>(a)<< >>the value of the business;<< >>and<< >>(b) funds invested in an individual retirement account ("IRA"), 401k, pension, or other official retirement account, that are unavailable to the owner until retirement age without significant penalty. In order to properly assess whether such retirement account invested funds may be excluded from an owner's personal net worth, said owner MUST provide information about the terms and restrictions of the account(s) to SBD, and certify that the retirement account(s) is legitimate.<< >>Representations as to average gross revenues,<< >>personal<< >>net worth of owners and payroll shall be subject to audit.<<~~

\* \* \*

17. *Review Committee* or *RC* means the committee established by the Mayor or designee to review proposed projects for the application of contract measures[~~where SBD and the contracting~~

<sup>2</sup> The differences between the substitute and the original item are indicated as follows: Words double stricken through and/or [[double bracketed]] are deleted, words double underlined and/or >>double arrowed<< are added.

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~~department have not established consensus and when]]>>where SBD and the contracting department have not established consensus and when<<[[The RC shall meet at a minimum of once every month to ensure the opportunity for]] public input [[requires deliberation]]>>requires deliberation<< regarding the measure>>§<</goal>>§<< recommendation>>§<< The RC will make recommendations to the Mayor or designee>>as needed<<~~

\* \* \*

22. *Small Business Enterprise (SBE)* means a business entity certified by SBD, providing goods or services, which has >>a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification,<<an actual place of business in Miami-Dade County>>, not a Virtual Office,<< and whose three>>=<<year average gross revenues does not exceed five million dollars (\$5,000,000.00). The term Small Business Enterprise shall also include a manufacturer with one hundred (100) >>independent contractors, temporary, part-time and full-time<<employees or less >>to be calculated based on the last four (4) quarters preceding certification application or recertification,<< or wholesaler with fifty (50) >>independent contractors, temporary, part-time and full-time<<employees or less >>to be calculated based on the last four (4) quarters preceding certification application or recertification,<< without regard to gross revenues whose actual place of business is located in Miami-Dade County.>>No firm shall be certified as a SBE where the personal net worth of any of its owners is more than one million five hundred thousand dollars (\$1,500,000), exclusive of:<< >>(a)<< >>the value of the business.<< and (b) funds invested in an individual retirement account ("IRA"), 401k, pension, or other official retirement account, that are unavailable to the owner until retirement age without significant penalty. In order to properly assess whether such retirement account invested funds may be excluded from an owner's personal net worth, said owner MUST provide

information about the terms and restrictions of the account(s) to SBD, and certify that the retirement account(s) is legitimate.<< Representations as to a business entity's average gross revenues>><sub>3</sub><< >>personal<< >>net worth of owners<< and payroll shall be subject to audit.

The County Mayor or designee shall be authorized to adjust the SBE/Micro[[SBE]] >>Enterprise<< size limits every five (5) years at his/her discretion based on the Consumer Price Index for All Urban Consumers (CPI-U) calculated by the U.S. Department of Commerce or other appropriate tool of inflation measures as applied to Miami-Dade County for the preceding five (5) years. The first indexing adjustment shall occur for the 2013-2014 calendar year using the figures provided for the calendar year ended December 31, 2012, and every five (5) years thereafter. The County Mayor or designee shall advise the Board of any such adjustment.

\* \* \*

26. >>Virtual Office means an agreement that provides a receptionist, mail and facsimile services, and similar services, that give the appearance of having a business presence at a location, but the business entity has no ongoing, full-time physical presence in the building. Virtual Offices are invalid for certification purposes.

27.<< Work means the provision of goods or services, as defined herein.

\* \* \*

(3) *Program.*

(a) *Application.* Except where federal or state laws or regulations mandate to the contrary, the provisions of this section 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 Public Health Trust shall provide data on a quarterly basis of all contracts awarded to SBEs and



Micro Enterprises.<<The County Mayor or designee shall prepare implementing orders, bid and contract documents implementing the provisions of this section. The County Mayor or designee by implementing order may exclude classes of contracts, or parts thereof, from application of this section. The words County Mayor or designee in this section shall mean the County Mayor or designee.

(b) *Contracts of \$100,000 or less.*

1. Within the fiscal year, it is required that County departments expend with SBEs one hundred (100) percent of the total value of contracts less than one hundred thousand dollars (\$100,000.00) for goods and/or services. The departmental requirement shall be complied with unless SBD determines that there is either not enough capacity, or the contracts(s) can only be handled by a non-SBE firm(s).
2. Bids or quotes submitted by Micro Enterprises >>and SBE certified manufacturers and wholesalers,<< shall automatically receive a ten (10) percent 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. Annually, SBD shall provide a report of awards to Micro Enterprises and SBEs to the Board.

\* \* \*

- (d) ~~[[Review Committee]]~~>>Administrative Procedure<<. The County Mayor or designee shall establish an administrative procedure for the review of each proposed County contract greater than ~~[[fifty]]~~>>one hundred<< thousand dollars (~~[[5]]~~>>10<<0,000.00) to which this section applies.

\* \* \*

(h) *Certification.*

\* \* \*

2. Any SBE/Micro Enterprise that exceeds the >>personal net worth or <<size limits shall immediately be graduated from the program after formal written notification. Such SBE/Micro Enterprises shall be allowed to remain through the contract period on awarded contracts and any options to renew on the contract. The graduated firm shall not be eligible for any new contracts under the SBE program under the existing certification. With exception of provisions described in the ordinance for graduation from the SBE/Micro Enterprise program, loss of certification may lead to removal of the firm from continued participation in the Small Business Enterprise program.

\* \* \*

4. The Department of Small Business Development shall not certify an applicant, shall not recertify an SBE or Micro Enterprise, and shall decertify an SBE or Micro Enterprise that fails to comply with the criteria or procedures for obtaining or maintaining certification. SBD shall have authority to suspend the certification of a SBE or Micro Enterprise during any appeal of a decertification decision.>>Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD.<<

\* \* \*

6. Applicants and certified SBEs or Micro Enterprises must have a[[n]] >>valid business tax receipt issued by Miami-Dade County at least one (1) year prior to

certification, <<[[occupational license]] and an actual place of business in Miami-Dade County>>, not a Virtual Office, << at which they perform a commercially useful function in the provision of the type of goods and services for which certification is sought in order to be eligible for certification or remain certified.>>In addition, a firm shall not be certified unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to the retention and expansion of employment opportunities and the support and increase to the County's tax base.<<


\* \* \*

**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: 

David Stephen Hope

Prime Sponsor: Commissioner Audrey M. Edmonson