MEMORANDUM

EDPC
Agenda Item No. 1G2

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: January 15, 2015

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

SUBJECT: Ordinance pertaining to Small Business Enterprise Architecture & Engineering Program; amending section 2-10.4.01 of the Code to create A/E Advisory Board, reduce tier 1 threshold, create tier 3 category, and allow higher tier set-aside given unavailability at a lower tier; amending section 2-8.1.1.1.1 of the Code to remove Small Business Advisory Board Architecture & Engineering Jurisdiction

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

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date:

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Ordinance Pertaining to the Small Business Enterprise Architecture & Engineering Program; Amending Section 2-10.4.01 of the Code to Create the A/E Advisory Board; Reduce Tier 1 Threshold; Create Tier 3 Category, and Allow Higher Tier Set-Aside Due to Unavailability at a Lower Tier; Amending Section 2-8.1.1.1.1 of the Code to Remove Small Business Advisory Board Architecture & Engineering Jurisdiction

---

The proposed ordinance pertaining to the Small Business Enterprise Architecture and Engineering Program does the following: 1) amends Section 2-10.4.01 of the County Code (Code) to create the A/E Advisory Board, reduce the Tier 1 threshold, create a Tier 3 category, and allow a higher Tier set-aside due to unavailability at a lower Tier; and 2) amends Section 2-8.1.1.1.1 of the Code to remove the Small Business Advisory Board's Architecture and Engineering jurisdiction, which will now receive oversight by the A/E Advisory Board.

There is no fiscal impact associated with this ordinance. The Internal Services Department's Small Business Development Division is already responsible for assigning goals/measures to County contracts and existing staff will manage the proposed changes to this ordinance.

Edward Marquez
Deputy Mayor

Fis02415

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: November 5, 2014

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

SUBJECT: Agenda Item No. 4(D)

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. 4(D)
11-5-14

ORDINANCE NO. _____

ORDINANCE PERTAINING TO SMALL BUSINESS ENTERPRISE ARCHITECTURE & ENGINEERING PROGRAM; AMENDING SECTION 2-10.4.01 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO CREATE A/E ADVISORY BOARD, REDUCE TIER 1 THRESHOLD, CREATE TIER 3 CATEGORY, AND ALLOW HIGHER TIER SET-ASIDE GIVEN UNAVAILABILITY AT A LOWER TIER; AMENDING SECTION 2-8.1.1.1.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO REMOVE SMALL BUSINESS ADVISORY BOARD ARCHITECTURE & ENGINEERING JURISDICTION; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE

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

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

Sec. 2-10.4.01. Small Business Enterprise Architecture & Engineering Program.

* * *

(2) *Definitions*. For purposes of this section:

* * *

>>C. *A/E Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise Architecture & Engineering Program.<<

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

[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.

[[~~D~~]]>>E<<. *Business day* means a regular weekday (Monday through Friday) normally starting at 8:00 a.m. and finishing at 5:00 p.m., excluding Saturdays and Sundays and excluding all legal holidays recognized by the Federal, State or Miami-Dade County governments.

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

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

[[~~G~~]]>>H<<. *Calendar day* means a twenty-four (24) hour period covering all days of the week (Monday through Sunday including all holidays), starting at 12:00 a.m. and finishing at 11:59 p.m.

[[~~H~~]]>>I<<. *Commercially useful function* means contractual responsibility for the execution of a distinct element of the work of an agreement by a firm and the carrying out of the contractual responsibilities by actually performing, managing, and supervising the work involved. Acting as a broker is not considered a commercially useful function. The determination of whether an activity is a commercially useful function shall include:

1. The evaluation of the amount of work subconsulted;
2. Normal industry practices;

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

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

[[~~I. *Community Business Enterprise (CBE-A/E)* means a firm providing architectural, landscape architectural, engineering, or surveying and mapping professional services, including a design-build firm, which has 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 (3) year average annual gross revenues do not exceed two million dollars ($2,000,000.00) for all Tier 1 CBE-A/Es, four million five hundred thousand dollars ($4,500,000.00) for Tier 2 CBE-A/Es in the case of architectural services, or six million dollars ($6,000,000.00) for Tier 2 CBE-A/Es in the case of landscape architectural services, engineering, and surveying and mapping services. A CBE-A/E will graduate out of the program once it has exceeded the Tier CBE A/E size limits based on its three year average annual gross revenues. As part of the certification process, CBE A/Es must go through a technical certification process, which will be used to determine which of the technical certification categories the CBE A/E will be placed in. A firm's eligibility to participate in the CBE A/E program shall be determined based on the cumulative adjusted gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A. No firm shall be certified as a CBE-A/E 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 primary residence for which there is a homestead exemption; (b) the value of the business; and (c) funds invested in an individual retirement account~~

~~("IRA"), 401k, pension, or other official retirement account. The 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. The Contracting Participation Levels are as follows:~~

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

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

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

~~The County Mayor or designee shall be authorized to adjust the CBE A/E 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 Consumer Price Index 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.~~]]

J. *Construction* means the building, renovating, retrofitting, rehabbing, restoration, painting, altering, or repairing of a public improvement.

K. *Continuing contract* shall mean the term "continuing contract" as defined in Section 2-10.4(1)(f).

L. *Debar* means to exclude a consultant, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses from County agreements, whether as a prime consultant or subconsultant, for a specified period of time, not to exceed five (5) years.

M. *Design-build contract* means a single contract with a design-build firm for the design and construction of a public construction project.

N. *Design-build firm* means a partnership, corporation, or other legal entity which:

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

   a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or

   b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.2193[, Florida Statutes,] to practice architecture; or certified under Section 481.319[, Florida Statutes,] to practice landscape architecture.

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

   a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and

b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219[, Florida Statutes,] to practice architecture; or certified under Section 481.319[, Florida Statutes,] to practice landscape architecture.

O. *Firm* means any individual, firm, partnership, corporation, association, joint venture or other legal entity permitted by law to practice architecture, engineering, landscape architecture, design-build, and land surveying and mapping services, which has a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, and an actual place of business in Miami-Dade County, not a Virtual Office. No Firm shall be certified as a CBE-A/E 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 primary residence for which there is a homestead exemption; (b) the value of the business; and (c) funds invested in an individual retirement account ("IRA"), 401k, pension, or other official retirement account. The 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.

P. *Graduation* means the CBE-A/E has exceeded either the personal net worth, or the specific size limits stated for the Program and thus may no longer be eligible for participation in the Program.

Q. *Joint venture* means an association of two or more CBE-A/Es. Joint ventures shall be subject to the size limitations set forth in this section; such size limitations include affiliates as set forth in Appendix A to the ordinance from which this section derives.

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

S. *Owned* means having all the customary incidents of ownership, including the right of disposition, and the right or obligation to share in all risks and profits commensurate with the degree of ownership interest.

T. *Professional services* are those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

U. *Project Specific awards* are contracts for professional services between Miami-Dade County and a firm whereby the firm provides professional services to the agency for work of a specified nature for a fixed capital study or planning activity.

V. *Prompt Payment.* It is the intent of the County that all firms, including CBE-A/Es providing professional services to the County, shall receive payments promptly in order to maintain sufficient cash flow.

1. Contracts with CBE-A/E set-asides, or subconsultant goals shall require that billings from consultants under prime professional services agreements with Miami-Dade County, or the Public Health Trust that are a CBE-A/E contract set-aside or which contain a set-aside or subconsultant goal shall be promptly reviewed and payment made by the County or Trust on those amounts not in

dispute within fourteen (14) calendar days of receipt of such billing by the County, or the Trust.

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

W. *Proposal* means a proposal, letter of interest, letter of participation or offer by any proposer in response to any kind of invitation, request or public announcement to submit such proposal, letters of interest, letter of participation or offer to perform the agreement.

X. *Proposer* means any firm that submits a proposal to provide professional services.

Y. *Qualifier* means the individual who qualifies the firm professional license holder as required by Florida Statute.

Z. *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 the contracting department have not established consensus and when public input requires deliberation regarding the measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed.

AA. *SBD* means[[~~the Department of~~]] Small Business Development.

>>BB. *Small Business Enterprise Architecture & Engineering (CBE-A/E)* means a firm providing architectural, landscape architectural, engineering, or surveying and mapping professional services, including a design-build firm, 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 (3) year average annual gross revenues do not exceed $500,000.00 for all Tier 1 CBE-A/Es, $2,000,000.00 for all Tier 2 CBE-A/Es, $4,500,000.00 for Tier 3 CBE-A/Es in the case of architectural services, or $6,000,000.00 for Tier 3 CBE-A/Es in the case of landscape architectural services, engineering, and surveying and mapping services. A CBE-A/E will graduate out of the program once it has exceeded the Tier CBE-A/E size limits based on its three-year average annual gross revenues. As part of the certification process, CBE-A/Es must go through a technical certification process, which will be used to determine which of the technical certification categories the CBE-A/E will be placed in. A firm's eligibility to participate in the CBE-A/E program shall be determined based on the cumulative adjusted gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A. No firm shall be certified as a CBE-A/E where the personal net worth of any of its owners is more than $1,500,000.00, exclusive of: (a) the value of the primary residence for which there is a homestead exemption; (b) the value of the business; and (c) funds invested in an individual retirement account ("IRA"), 401k, pension, or other official retirement account. The 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. The Contracting Participation Levels are as follows:

i. Tier 1 CBE-A/Es in the case of architectural, landscape architectural, engineering, or surveying and mapping services-3-year average annual gross revenues of $0 to $500,000.00.

ii. Tier 2 CBE-A/Es in the case of architectural, landscape architectural, engineering, or

surveying and mapping services-3-year average annual gross revenues of $500,000.01 to $2,000,000.00.

iii. Tier 3 CBE-A/Es in the case of architectural services—3-year average annual gross revenues of $2,000,000.01 to $4,500,000.00.

iv. Tier 3 CBE-A/Es in the case of landscape architectural services, engineering, or surveying and mapping services—3-year average annual gross revenues of $2,000,000.01 to $6,000,000.00.

The County Mayor or designee shall be authorized to adjust the CBE-A/E 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 Consumer Price Index 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.<<

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

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

[[~~DD~~]]>>EE<<. *Technical certification* means a certification approved by the Miami-Dade County Technical Certification Committee to allow a firm to submit proposals on, and receive award of, County agreements for architectural, engineering,

landscape architecture, or surveying and mapping services. Firms may be certified in several different technical certification categories.

[[~~EE~~]]>>FF<<. *Tier 1 Set-Aside* means reservation for competition solely among Tier 1 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees is [[~~one million dollars ($1,000,000)~~]]>>$500,000.00<< or less. Tier 2 CBE-A/Es may not compete for Tier 1 CBE-A/E set-asides as prime consultants >>, unless Tier 1 CBE-A/E prime consultant unavailability exists<<.

[[~~FF~~]]>>GG<<. *Tier 2 Set-Aside* means reservation for competition solely among Tier 1 and/or Tier 2 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees are >>between $500,00.01 and $1,000,000.00<<[[~~one million one dollars ($1,000,001.00) or greater~~]]. Tier 1 CBE-A/Es may compete for Tier 2 CBE-A/E set-asides as prime consultants. >>Tier 3 CBE-A/Es may not compete for Tier 2 CBE-A/E set-asides as prime consultants, unless Tier 1 and Tier 2 CBE-A/E prime consultant unavailability exists.<<

>>HH. *Tier 3 Set-Aside* means reservation for competition solely among Tier 1, Tier 2 and/or Tier 3 CBE-A/E prime consultants and Tier 1, Tier 2 and/or Tier 3 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees $1,000,000.01 or greater. Tier 1 and Tier 2 CBE-A/Es may compete for Tier 3 CBE-A/E set-asides as prime consultants.<<

[[~~HHH~~]]>>II<<. *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.

(3) *Program Components:*

* * *

>>C. A/E Advisory Board. There is hereby created a Miami-Dade County Advisory Board for the Small Business Enterprise Architecture & Engineering Program.

1. The A/E Advisory Board will operate as a focal point for the public and with the assistance of the County Mayor or designee, will collect, input, and disseminate information related to economic opportunities within Miami-Dade County government for CBE-A/E business owners.

2. The A/E Advisory Board shall consists of fifteen (15) members, as follows:

   a. Two (2) members to be appointed by the Mayor.

   b. One (1) member to be appointed by each County Commissioner.

3. The term of the mayoral appointees and that of each commissioner shall be coterminous with the term of the appointing Mayor and commissioner, respectively.

4. In no event shall an A/E Advisory Board member serve more than four (4) consecutive years.

5. Members shall serve without compensation.

6. The A/E Advisory Board may submit interim reports as it deems appropriate.

7. SBD shall provide appropriate staff support.

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

9. The County Mayor shall prepare a report with respect to the A/E Advisory Board pursuant to Section 2-11.37 of the Code of Miami-Dade County.<<

* * *

Section 2. Section 2-8.1.1.1.1, Code of Miami-Dade County, is hereby amended as follows:

Sec. 2-8.1.1.1.1. Small Business Enterprise Goods & Services Program.

* * *

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

* * *

21. *Small Business Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise >>Goods & Services<< [[~~and Community Business Enterprise~~]] Program[[s]].

* * *

(3) *Program.*

* * *

(g) *Small Business Advisory Board.* There is hereby created a Miami-Dade County Advisory Board for the SBE >>Goods & Services<< [[~~and CBE~~]] Program[[s]].

* * *

Section 3. 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 4. 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 5. 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
Co-Sponsor: Commissioner Audrey M. Edmonson