

MEMORANDUM

Agenda Item No. 7(C)

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

DATE: March 17, 2015

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 to create certification
tiers based upon three year
average gross revenues

Pursuant to the Board's Rules of Procedure, differences between an original ordinance and a substitute ordinance should be uniquely identified in the substitute ordinance by double underlining and double strike-through, or where such approach would not clearly show the differences or are not practical, by providing footnotes or comments on the item. Such distinguishing identifiers are not used in this substitute, as they would be confusing and impractical and would not clearly indicate the differences between the original and the substitute ordinances.

The substitute item heard at committee differs from the original ordinance in that it: (i) removed the new Tier 4; (ii) provided a ten percent (10%) bid preference on contracts of \$100,000 or less for any SBE when there is no set-aside; and (iii) changed the set-aside for Tier 1 SBEs to contracts from \$100,000 to \$750,000. The item was amended in committee to provide that wholesalers and manufactures that should immediately graduate the program due to exceeding the three (3) year average gross revenues size limits imposed upon enactment of the ordinance, would instead graduate six (6) months from April 1, 2015.

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



R. A. Cuevas, Jr.
County Attorney

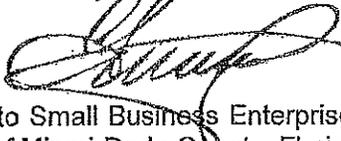
RAC/smm

Memorandum



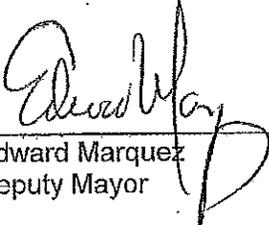
Date: March 17, 2015

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

From: Carlos A. Gimenez
Mayor 

Subject: Ordinance Pertaining to Small Business Enterprise Program that Amends Section 2-8.1.1.1.1 of the Code of Miami-Dade County, Florida

The Ordinance referenced above proposes various changes to the Small Business Enterprise Program, including the creation of certification tiers, certification criteria and a requirement for quarterly reporting of contracts to certified firms by the Public Health Trust. There is no fiscal impact associated with this ordinance.


Edward Marquez
Deputy Mayor



MEMORANDUM

(Revised)

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

DATE: March 17, 2015

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

SUBJECT: Agenda Item No. 7(C)

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. 7(C)
3-17-15

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 CERTIFICATION TIERS BASED UPON THREE YEAR AVERAGE GROSS REVENUES, REMOVE CERTIFICATION FOR WHOLESALERS AND MANUFACTURERS BASED UPON NUMBER OF EMPLOYEES, PROVIDE VIRTUAL OFFICE DEFINITION, REQUIRE ONE YEAR DOING BUSINESS IN MIAMI-DADE COUNTY PRIOR TO CERTIFICATION, 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 facilitate fair and equitable competition for small business enterprise goods and services firms, by establishing tiering criteria consistent with the County's other small business programs; 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:¹

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

* * *

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

* * *

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.

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 Enterprise (SBE) ~~[[or Micro Enterprise]]~~ 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 ~~[[Micro Enterprise 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.

* * *

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.

* * *

15. ~~[[Micro Enterprise means a business entity certified by SBD, 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 two million dollars (\$2,000,000.00), or a manufacturer with fifty (50) employees or less, or a wholesaler with fifteen (15) employees or less whose actual place of business is in Miami-Dade County.~~

16. ~~]]~~*Prompt Payment* is the intent of the Board that all firms, including SBEs ~~[[and Micro Enterprises]]~~ providing goods and services to the county, receive payments promptly as specified herein.
- 1[[7]]>>6<<. *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 department have not established consensus and when public input requires deliberation regarding the measure >>s<</goal>>s<< recommendation>>s<<. The RC will make recommendations to the Mayor or designee >>as needed<<.
- 1[[8]]>>7<<. *SBD* means ~~[[the Department of]]~~ Small Business Development.
- 1[[9]]>>8<<. *Schedule of Intent Affidavit (SOI)* means a form contained in the bid documents of an SBE contract set-aside or a contract with subcontractor goals in which bidders list at the time of bid submission all SBEs to be used to meet the set-aside or the goal, and the scope of work each will perform, including the goods or services to be provided, and the percentage value of such work.
- [[20]]>>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.
- 2[[1]]>>0<<. *Small Business Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise and Community Business Enterprise Programs.

2[[2]]>>1<<. *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) employees or less or wholesaler with fifty (50) employees or less without regard to gross revenues whose actual place of business is located in Miami-Dade County]]>>the following contracting participation levels:

- (i) Tier 1 – \$0 to \$750,000;
- (ii) Tier 2 – \$750,000.01 to \$2,000,000; or
- (iii) Tier 3 – \$2,000,000.01 to \$5,000,000.

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 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 a business entity’s average gross revenues>>, 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]]~~ 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.

2[[3]]>>2<<. *Service* means work offered for public or private consumption that does not consist primarily of goods.

2[[4]]>>3<<. *Set-aside* means the designation of a given contract for competition among SBEs.

2[[5]]>>4<<. *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. *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.*

- (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.<< 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]]~~>>any SBE<< shall automatically receive a ten (10) percent bid preference>> when not set-aside for SBEs<<. 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.

(c) *Contracts Greater than \$100,000.* The following SBE measures may be applied to contracts greater than one hundred thousand dollars (\$100,000.00):

1. *Set-asides:*
 - a. Competitive bidding requirements may be waived (by the County ~~[[Manager]]~~>>Mayor<< 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 interest of the County.

>>Where applicable: (i) contracts from \$100,000 to \$750,000 shall be set-aside for Tier 1 SBEs; contracts from \$750,000.01 to \$2 million shall be set-aside for Tier 2 SBEs; and (iii) contracts from \$2,000,000.01 to \$5 million shall be set-aside for Tier 3 SBEs.

b. In the event there is no availability in the designated SBE tier, SBD may assign a set-aside to the next level tier which will retain a set-aside recommendation. Lower tier SBE firms may bid on higher tier set asides.<<

[[b]]>>c<<. 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 SBD.

* * *

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]]>>excluding<< 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>> for Tier 1 SBEs, five (5) percent for Tier 2 SBEs, and five (5) percent for Tier 3 SBEs<<. The preference accorded on contracts greater than \$1 million shall be 5% of the price bid>> for all tiers<<.

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

- I. Are SBEs~~[[/Micro Enterprises]]~~; >> or <<
- II. Are joint ventures with at least one SBE~~[[/Micro Enterprises]]~~; >> <<

* * *

(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 (~~[[50,000.00]]~~ >> 100,000.00 <<) to which this section applies.

* * *

(h) Certification.

* * *

- 1. ~~[[The Department of]]~~ Small Business Development shall implement eligibility criteria and administrative procedures for entities to be certified as SBEs~~[[/Micro Enterprises]]~~.
- 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. >>Any wholesaler or manufacturer which should immediately graduate from the program because it exceeds the size limits pursuant to this section, shall graduate six (6) months from April 1, 2015.<<²

3. ~~[[The Department of]]~~Small Business Development shall maintain an updated list of firms that identifies each listed SBE ~~[[and Micro Enterprise]]~~based on the nature of the goods and/or services the SBE ~~[[and Micro Enterprise]]~~shall be certified to provide.
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.<<
5. The County Mayor or designee shall establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners. Certification must be in effect at the time of bid submission; at bid award, and throughout the duration of the contract. SBEs ~~[[and Micro Enterprises]]~~experiencing changes in address or ownership shall notify SBD

² Committee amendments are indicated as follows: Words double stricken through and/or ~~[[double bracketed]]~~ are deleted, words double underlined and/or >>double arrowed<< are added.

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.<<

7. A business entity shall be eligible to be certified as an SBE ~~[[or Micro Enterprise]]~~ only if the owner holding at least ten (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 Micro Enterprise]]~~ at a time and shall not own and control another separate business certified under the Small Business Enterprise Program.

9. ~~[[The Department of]]~~ Small Business Development may require applicants and SBEs ~~[[or Micro Enterprises]]~~ to submit information regarding their business operations in order to determine eligibility for certification.

- (i) *Prompt Payment.*

1. All firms, including SBEs ~~[[and Micro-Enterprises]]~~ providing goods and services to the County, shall receive payments promptly in order to maintain sufficient cash flow.
2. The County or Public Health Trust shall establish administrative procedures requiring that billings from SBE ~~[[/Micro-Enterprise]]~~ prime vendors on contracts shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within thirty (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 an 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 ~~[[/Micro-Enterprise]]~~ on a contract with SBE measures must notify the SBE ~~[[/Micro-Enterprise]]~~ and SBD, in writing, of those amounts billed by the SBE ~~[[/Micro-Enterprise]]~~ 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 by 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 ~~[[/Micro-Enterprise]]~~ 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.

5. An SBE ~~[[Micro-Enterprise]]~~ 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:

* * *

4. In the event a bidder, SBE ~~[[or-Micro-Enterprise]]~~ attempts to comply with the provisions of this section 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-Micro-Enterprise]]~~ 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-Micro-Enterprise]]~~ has on County projects. In each instance, the bidder, SBE~~[[or-Micro-Enterprise]]~~ 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]]~~>>Mayor<< 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]]~~>>Mayor<< 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 an SBE ~~[[or Micro-Enterprise]]~~ for a specified period of time, not to exceed three (3) years, for an applicant or a SBE~~[[or Micro-Enterprise]]~~, its individual officers, its shareholders with significant interests, and its affiliated businesses.
3. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, and SBE ~~[[or Micro-Enterprise]]~~ certification for a specified period of time, not to exceed 5 years.
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 section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, subcontracting, and SBE ~~[[or Micro-Enterprise]]~~ certification, for a specified period of time, not to exceed five (5) years.

* * *

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:



dsh

Prepared by:

David Stephen Hope

Prime Sponsor: Commissioner Audrey M. Edmonson
Co-Sponsor: Commissioner Barbara J. Jordan