

# MEMORANDUM

Agenda Item No. 7(B)

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

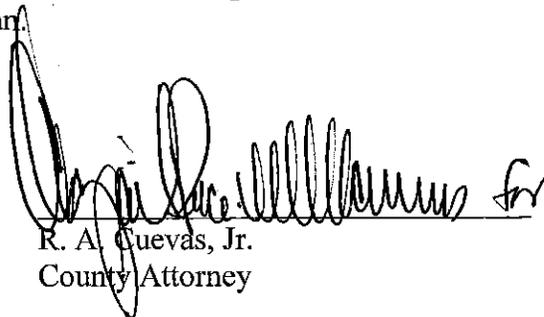
**DATE:** September 16, 2015

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

**SUBJECT:** Ordinance pertaining to Small Business Enterprise Program; creating Section 2-8.1.1.1.2 of the Code to create a Goods-Only Program based upon certification tiers, provide definitions and program criteria, 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

**The item was amended at the 6-11-15 Economic Prosperity Committee to provide that (i) the applied bid preferences shall be implemented no later than 60 days from the effective date of the ordinance, and (ii) Small Business Development shall prepare and report to the Board after one year as to the impact of the ordinance.**

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



R. A. Cuevas, Jr.  
County Attorney

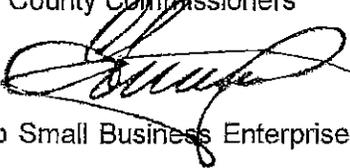
RAC/smm

# Memorandum



Date: September 16, 2015

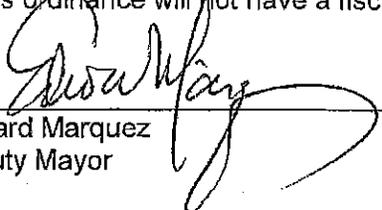
To: Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

From: Carlos A. Gimenez  
Mayor 

Subject: Ordinance Pertaining to Small Business Enterprise Program; Creating A Goods-Only Program

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The proposed Ordinance pertaining to the Small Business Enterprise Program creating Section 2-8.1.1.1.2 of the Code, implements a goods-only program based upon certification tiers. Implementation of this ordinance will not have a fiscal impact to the County.

  
Edward Marquez  
Deputy Mayor

Fis05715



# MEMORANDUM

(Revised)

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

**DATE:** September 16, 2015

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

**SUBJECT:** Agenda Item No. 7(B)

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(B)  
9-16-15

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

ORDINANCE PERTAINING TO SMALL BUSINESS ENTERPRISE PROGRAM; CREATING SECTION 2-8.1.1.1.2 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO CREATE A GOODS-ONLY PROGRAM BASED UPON CERTIFICATION TIERS, PROVIDE DEFINITIONS AND PROGRAM CRITERIA, 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 separate the existing goods and services programs into two different programs; and

**WHEREAS**, the Board wishes to align the requirements of all of the County's 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 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 2-8.1.1.1.2 of the Code of Miami-Dade County, is hereby created as follows:<sup>1</sup>

>>**Sec. 2-8.1.1.1.2. Small Business Enterprise Goods Program.**

(1) *Title.* This section shall be referred to as the Small Business Enterprise Goods 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 under a contract, by having:

a. Reasonably estimated, uncommitted capacity;

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<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.

- b. all necessary licenses, permits, registrations and certifications, including Small Business Enterprise (“SBE”) certification to provide the type of goods 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 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. 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. Acting as an authorized representative of a manufacturer as is normal industry practice is considered a commercially useful function. Commercially useful function shall

also include a distributor authorized by a manufacturer to distribute the manufacturer's products locally. Acting as a broker is not considered a commercially useful function.

8. Contract means an agreement for the purchase of goods. Contract does not mean: an agreement to purchase, lease, or rent real property; or a grant, license, permit, franchise or a concession.
9. Goods mean any tangible product, material or supply that is not a service.
10. Graduation means the SBE 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.
11. 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.
12. 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.
13. Management and Technical Assistance ("MTA") means a program designed to provide direct and indirect assistance for small business enterprise development.
14. Mentor-Protégé Program is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging SBEs in order for the latter to benefit from the knowledge and experience of the established Mentor firms
15. Prompt Payment is the intent of the Board that all firms, including SBEs providing goods to the county, receive payments promptly as specified herein.

16. 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 measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed.
17. SBD means the Division of Small Business Development or successor division or department.
18. 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 to be provided, and the percentage value of such work.
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.
20. Small Business Advisory Board is the board established for the purpose of supporting and promoting the Small Business Enterprise Program(s).
21. Small Business Enterprise ("SBE") means a business entity certified by SBD, providing goods, 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 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.

The term Small Business Enterprise shall also include a (x) manufacturer with one hundred (100) employees or less, or (y) wholesaler with fifty (50) employees or less, without regard to gross revenues. A wholesaler or manufacturer must comply with all other requirements of this section to be a certified SBE.

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 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.

- 22. *Set-aside* means the designation of a given contract for competition among SBEs.
- 23. *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.
- 24. *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.

25. Work means the provision of goods, 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. 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. 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 any SBE shall automatically receive a ten (10) percent bid preference when not set-aside for SBEs. When set-aside, the preference shall be: ten (10) percent for Tier 1 SBEs; five (5) percent for Tier 2 SBEs; and zero (0) percent for Tier 3 SBEs, wholesalers, and manufacturers. 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 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 Mayor or Board 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, wholesalers, and manufacturers.

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.

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.

d. When set-aside, the bid preference shall be: ten (10) percent for Tier 1 SBEs; five (5) percent for Tier 2 SBEs; and zero (0) percent for Tier 3 SBEs, wholesalers, and manufacturers. 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.<< >>The County Mayor or the County Mayor's designee shall implement this subsection no later than 60 days from the effective date of this ordinance.<<<sup>2</sup>

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 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 bidders must submit with its bid a completed Schedule of Intent Affidavit with those SBE subcontractors the bidder proposes to utilize in order for such

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<sup>2</sup> 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.

proposed participation to be eligible to be counted towards meeting the goal. Each Schedule of Intent Affidavit shall be in writing, shall be executed by the bidder and the SBE, and shall specify the type of goods the SBE is to provide and the percentage of work the SBE is to perform therefore. The solicitation documents for any competitive selection involving a separate evaluation of sealed price envelopes shall require that the technical submission contain a document duly executed by the proposer and any SBE proposed to be used in satisfaction of a goal which states the percentage that the amount of the SBE's contract bears to the overall contract amount. Copies of the Schedule of Intent Affidavits reflecting the amounts constituting the stated percentages shall be included together with the pricing proposal. Each Schedule of Intent Affidavit shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Goods Program. Upon notification from SBD, bidders are allowed up to 48 hours to cure correctable defects on the Schedule of Intent Affidavit. 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 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 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 only expenditures to SBEs for performing a commercially useful function. These expenditures shall be counted toward meeting a subcontractor goal, 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 SBD.
- e. Successful bidder shall submit to the Contracting Officer, for approval, a written subcontract agreement corresponding in all respects to the Successful Bidder's Schedule of Intent Affidavit to include the type of goods and services the SBE is to provide and the percentage and/or price. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Goods Program.

3. Bid Preference:

- a. A bid preference shall apply to all contracts which are to be awarded on the basis of price (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 all tiers, wholesalers, and manufacturers. The preference accorded on contracts greater than \$1 million shall be five percent (5%) of the price bid for all tiers, wholesalers, and manufacturers.

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

- I. are SBEs; or
- II. are joint ventures with at least one SBE.

>>c. The County Mayor or the County Mayor's designee shall implement this subsection no later than 60 days from the effective date of this ordinance.<<

(d) Administrative Procedure. The County Mayor or designee shall establish an administrative procedure for the review of each proposed County contract greater than one hundred thousand dollars (\$100,000.00) to which this section applies.

(e) Management & Technical Assistance. SBD will provide management and technical assistance and community outreach to business entities certified as SBEs with Miami-Dade County.

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

(g) Small Business Advisory Board. The Small Business Advisory Board shall be the advisory board for the Small Business Enterprise Program(s), as codified in Section 2-8.1.1.1(3)(g) of the Code of Miami-Dade County Florida.

(h) Certification.

1. Small Business Development shall implement eligibility criteria and administrative procedures for entities to be certified as SBEs.

2. Any SBE that exceeds the personal net worth or size limits shall immediately be graduated from the program after formal written notification. Such SBE 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 program, loss of certification may lead to removal of the firm from continued participation in the Small Business Enterprise program.

3. Small Business Development shall maintain an updated list of firms that identifies each listed SBE based on the nature of the goods the SBE shall be certified to provide.
4. Small Business Development shall not certify an applicant, shall not recertify an SBE, and shall decertify an SBE 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 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 experiencing changes in address or ownership shall notify SBD within thirty (30) days of the effective date of such changes.
6. Applicants and certified SBEs must have 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, at which they perform a commercially useful function in the provision of the type of goods 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 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 for which certification is sought.
8. A business owner alone or as a member of a group, shall own or control only one SBE at a time and shall not own and control another separate business certified under the Small Business Enterprise Program.
9. Small Business Development may require applicants and SBEs to submit information regarding their business operations in order to determine eligibility for certification.

(i) Prompt Payment. The prompt payment provisions of this section shall take precedence over Section 2-8.1.4 of the Code ("Sherman S. Winn Prompt Payment Ordinance"), as to the contracts specified below:

1. All firms, including SBEs providing goods to the County, shall receive payments promptly in order to maintain sufficient cash flow. Billings from prime vendors under goods contracts with Miami-Dade County or the Public Health Trust, that are a SBE contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within 14 calendar days of receipt or such billings by the County, or Trust.
2. The County or Public Health Trust shall establish administrative procedures requiring that billings from SBE prime vendors on contracts 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 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 fourteen (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 two (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 forty (40) calendar days from receipt, whichever is less.

4. The County or prime vendor in direct privity with a SBE on a contract with SBE measures must notify the SBE and SBD, in writing, of those amounts billed by the SBE 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 and payment shall be forthcoming from the County or prime vendor as appropriate by the next billing date or forty (40) calendar days from receipt of billing, whichever is less.

5. An SBE may invoice the County or prime vendor, as appropriate, one percent (1%) interest per month for any undisputed amount that is not promptly paid.

(i) 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 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 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 has on County projects. In each instance, the bidder, SBE 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 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. The contractor's failure to enter into a written subcontract with a SBE after listing the firm in its schedule of intent affidavit, may result in the imposition of one or more of the sanctions listed in Subsection (j) above.

- (k) Administrative Penalties. The County 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 for a specified period of time, not to exceed three (3) years, for an applicant or a SBE, 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 certification for a specified period of time, not to exceed five (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 certification, for a specified period of time, not to exceed five (5) years.
5. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the noncomplying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.

6. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to ten (10) percent of the amount thereof; for the second deficit, a penalty in an amount equal to twenty (20) percent thereof; for the third and successive deficits, a penalty in an amount equal to thirty (30) percent thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 10-33.02 of the Code of Miami-Dade County.

7. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal therefrom, the noncomplying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.

(1) Appeals.

1. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within thirty (30) days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, and fix a time for an administrative hearing thereon. Such hearing

officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of Sections 2-10.2, or 3-11.1 or otherwise.

Upon completion of the administrative hearing, the hearing officer shall transmit his/her findings of facts, conclusions and recommendations together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the Mayor or designee, who (i) may sustain, reverse or modify the hearing officer's recommendations and (ii) shall render a final decision, in writing. The determination of the Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

2. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.<<

>>Section 2. Small Business Development shall prepare and report to the Board after 1 year as to the impact of the ordinance, and which report shall include success rates of certified firms, and competition among certified firms and between certified firms and non-certified larger firms competing for County contracts.<<

**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:

ADW

Prepared by:

dsh

David Stephen Hope

Prime Sponsor: Commissioner Audrey M. Edmonson  
Co-Sponsors: Commissioner Daniella Levine Cava  
Commissioner Barbara J. Jordan