

# MEMORANDUM

Agenda Item No. 11(A)(13)

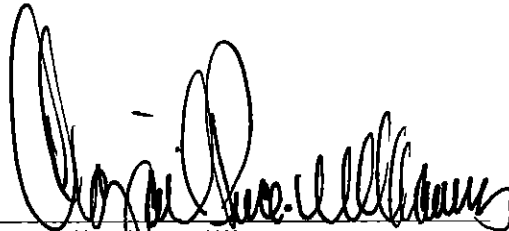
**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** May 1, 2018

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution related to Small Business Enterprise Programs; approving amendments to Implementing Order Nos. 3-22, 3-24, and 3-32; updating titles, definitions, and other relevant sections including the structure and requirements for joint venture participation and mentor-protégé program, and requiring use of Miami-Dade County's web-based system for County Contracts

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Audrey M. Edmonson.



Abigail Price-Williams  
County Attorney


APW/lmp



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

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Abigail Price-Williams  
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**SUBJECT:** Agenda Item No. 11(A)(13)

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
- Statement of social equity 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

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Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(13)  
5-1-18

RESOLUTION NO. \_\_\_\_\_

RESOLUTION RELATED TO SMALL BUSINESS ENTERPRISE PROGRAMS; APPROVING AMENDMENTS TO IMPLEMENTING ORDER NOS. 3-22, 3-24, AND 3-32; UPDATING TITLES, DEFINITIONS, AND OTHER RELEVANT SECTIONS INCLUDING THE STRUCTURE AND REQUIREMENTS FOR JOINT VENTURE PARTICIPATION AND MENTOR-PROTÉGÉ PROGRAM, AND REQUIRING USE OF MIAMI-DADE COUNTY'S WEB-BASED SYSTEM FOR COUNTY CONTRACTS

**WHEREAS**, this Board desires to conform the requirements of Implementing Order Nos. 3-22, 3-24, and 3-32 to previous and proposed changes in the applicable sections of the Code of Miami-Dade County, Fla. (the "Code"); and

**WHEREAS**, this Board wishes to update references to non-existent County department and make the contents of the underlying Implementing Orders consistent with Code requirements; and

**WHEREAS**, the adoption of the attached Implementing Orders will provide greater clarity and consistency to County policies, practices and procedures,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board hereby approves the attached amended and restated Implementing Order Nos. 3-22, 3-24 and 3-32 related to the Small Business Enterprise Programs for Construction Services, Architecture and Engineering, and Responsible Wages and Benefits for County Construction Contracts.

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The Prime Sponsor of the foregoing resolution is Vice Chairwoman Audrey M. Edmonson. It was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Esteban L. Bovo, Jr., Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Daniella Levine Cava	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
District 5 - Vacant	

The Chairperson thereupon declared the resolution duly passed and adopted this 1<sup>st</sup> day of May, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

dsh

David Stephen Hope

I.O. No.: 3-22  
Ordered: 5/3/2011  
Effective: 5/13/2011

**MIAMI-DADE COUNTY  
IMPLEMENTING ORDER**

**[[COMMUNITY]] SMALL BUSINESS [[("CSBE")]] >> ENTERPRISE CONSTRUCTION SERVICES << PROGRAM >> ("CSBE") << [[ FOR THE PURCHASE OF CONSTRUCTION SERVICES]]<sup>1</sup>**

**AUTHORITY:**

Section 1.01, 2.02 and 5.02 of the Miami-Dade County Home Rule Amendment and Charter; and Sections 10-33.02 and 10-38 of the Code of Miami-Dade.

**SUPERSEDES:**

This Implementing Order supersedes previous Administrative Order 3-22, ordered November 30, 2004, and effective December 10, 2004.

**POLICY:**

- A. Except where Federal or State laws or regulations mandate to the contrary, this Implementing Order governs construction services (including design build, alteration, installation, painting, maintaining or repairing a public improvement), funded in whole or in part by County funds for all Miami-Dade County departments and agencies.
- B. This Implementing Order applies to all construction projects regardless of project or contract size.
- C. **APPLICABILITY TO THE PUBLIC HEALTH TRUST:**  
The application of contract measures to construction services purchased by the Public Health Trust shall be governed by this Implementing Order.

**I. DEFINITIONS:**

This Implementing Order incorporates completely the definitions listed in the CSBE Ordinance, as amended. Those definitions, as well as additional terms necessary for the understanding of this Implementing Order, are listed below:

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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.

1. Advisory Board means the >>Community Small Business Enterprise Board (“<<CSBE >>Advisory <<Board>>”) << created for the purpose of reviewing program activities and results, and for making recommendations to [[the Department of]] Small Business Development (>>“<<SBD>>”<<) and the Board of County Commissioners>> (“County Commission”) << on matters pertaining to the program.

\* \* \*

>>13. Certificate of Assurance means the departmental form submitted with bid documents whereby the Bidder acknowledges: (i) Small Business Enterprise (“SBE”) measures apply to the project; and (ii) Bidder will submit its list of certified SBEs to satisfy the measures via Miami-Dade County’s web-based system, within the specified time frame.<<

[[14.]]>>14.<< Certification List means a list maintained by SBD that contains the names and addresses of currently certified CSBEs, sorted by trade, service, Standard Industrial Classification (SIC) code or North American Industry Classification System (NAICS) code and Contracting Participation Level.

[[14.]]>>15.<< Commercially Useful Function means contractual responsibility for the execution of a distinct element of the work of a contract by a business enterprise 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 subcontracted; (2) normal industry practices; (3) the skills, qualifications, or expertise of the enterprise to perform the work; (4) whether the firm’s personnel performs, manages, and/or supervises the work involved; and (5) other relevant factors.

[[15.]] ~~Community Small Business Enterprise or CSBE means a construction related enterprise including a design-build firm, and any firm providing trades and/or services for the completion of a construction project, as defined in Chapter 10 of the Code of Miami-Dade County, which has an actual place of business in Miami-Dade County and whose average annual gross revenues for the last three (3) years do not exceed: \$10,000,000 for SIC 15 — Building Construction, General Contractors and Operative Builders \$6,000,000 for SIC 16 — Heavy Construction, other than Building Construction; or \$5,000,000 for SIC 17 — Specialty Trade Contractors. A CSBE shall be categorized by the type of construction it performs in accordance with SIC code, or NAICS code, of the Census applicable to such type of construction. A CSBE will graduate out of the program upon notification by SBD that it has exceeded these size limits based on its three-year average annual gross revenues. A certified CSBE that graduates out of the program shall continue to submit financial information as to cumulative gross revenue and bonding capacity to SBD annually for 3 years thereafter~~

~~in order to further the County's ability to assess the effectiveness of the program.~~

~~A CSBE must go through a certification process which will be used to determine which of the three Contracting Participation Levels the CSBE will be placed in based on the firm's average annual gross revenues for the last three (3) years. The Contracting Participation Levels are as follows:~~

- ~~1. Level I — 3 year average annual gross revenues of \$0 — \$2,000,000;~~
- ~~2. Level II — 3 year average annual gross revenues above \$2,000,000 but not exceeding \$5,000,000 or~~
- ~~3. Level III — 3 year average annual gross revenues above \$5,000,000 but not exceeding \$10,000,000.~~

~~A firm's eligibility to participate in the CSBE program and the Contracting Participation Level at which it will participate shall be determined based on the three year average gross revenues of the applicant firm in combination with that of all of the firm's affiliates. No firm shall be certified as a CSBE where the individual net worth of any of its owners is more than one million five hundred thousand dollars (\$1,500,000). Representations as to gross revenues and net worth of owners shall be subject to audit.~~

~~The County Mayor or designee shall be authorized to adjust the CSBE 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 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.~~

~~16. *Commitment Letter* means a letter signed by an officer or other authorized representative of a bidder or proposer for a County construction contract containing a second, third, or fourth tier subcontractor goal, which specifically commits the bidder or proposer to meet such subcontractor goal.]]~~

>>16. Compliance Audit is generated the month after payment is made from the County to the Successful Bidder/Proposer and requires the Successful Bidder/Proposer to report payments made to subcontractors, and for the subcontractors to confirm receipt of these payments, via the County's web-based system within the timeframe specified by SBD.<<

17. Compliance Monitor means the Director of SBD>>, designee from the Minority Affairs Division of the Miami-Dade Aviation Department<< or designee assigned to review and enforce compliance with >> Section 10-33.02 of the Code of Miami-Dade County<<[[Ordinance 97-52]],

as amended, and this Implementing Order.

18. *Construction* means the building, renovating, retrofitting, rehabbing, restoration, painting, installing, altering or repairing of a public improvement.
19. *Construction Manager-at-Risk ("CM-at-Risk")* replaces the general contractor and works for a fee with the County and the Architect through the design phase to contain the budget and schedule. The CM-at Risk provides a guaranteed maximum price ("GMP"), and bids the work out to local trade contractors. The CM-at-risk mobilizes to the site and manages the trade contractors for quality and schedule.
20. *Contract* means an agreement covered by this Implementing Order proposed by the County or Public Health Trust staff, or approved by the County Commission or Public Health Trust for construction.
21. *Contract Measure* means a contract set-aside, or a Trade Set-aside, or a subcontract goal, or a bid preference, or a selection factor, singly or in any combination.
22. *Contracting Officer* means the person assigned under a contract, usually a department director or his or her designee, who has primary responsibility to manage the contract and enforce contract requirements.
23. *Contracting Participation Level* refers to the level in which a CSBE firm is classified based on the average annual gross revenues of the firm over the last three (3) years. In addition, construction contracts of \$10,000,000 or less (which may be set-aside for limited competition among CSBEs). The three Contracting Participation Levels are:  
  
Level I – up to \$2,000,000.00  
Level II – above \$2,000,000.00 but not greater than \$5,000,000.00  
Level III – above \$5,000,000.00 but not greater than \$10,000,000.00  
Prime contracts with estimated project construction costs in excess of \$10,000,000 shall be "open market" contracts available for bidding by all firms.  
  
CSBEs certified in one contracting participation level e.g., those certified in Level III may not bid on a lower level prime County contract set-aside for CSBEs (e.g., a \$500,000 project which falls into Level I). However, lower level CSBEs may bid on higher-level contracts (e.g., a Level I CSBE may bid on a Level II or a Level III project).
24. *County* means Miami-Dade County, Florida, a political subdivision of the State of Florida.
25. *CSBE Objective* means the objective of assuring that not less than 10% of the



County's total annual expenditures for construction are expended with CSBEs. The foregoing CSBE objective may be increased by subsequent resolution of the Board of County Commissioners, adopted after recommendation for an increase by the CSBE Advisory Board. Forty percent (40%) of the foregoing objective may be accomplished through set-aside of smaller prime contracts and use of subcontractor goals on larger prime contracts falling within SIC 15; forty percent (40%) of the foregoing objective may be accomplished through set-aside of smaller prime contracts and use of subcontractor goals on larger prime contracts falling within SIC 16; and twenty percent (20%) of the foregoing objective may be accomplished in prime contracts falling within SIC 17. The percentage of the overall CSBE objective allocated to each SIC category may be adjusted by resolution of the Board of County Commissioners in direct correlation to CSBE availability.

26. *Construction Services* means construction, maintenance, painting, alteration, installation, or repair of a public improvement or any performance of work offered for public consumption that does not consist primarily of goods.
27. *Debar* means to exclude a contractor, its individual officers, its shareholders with significant interests, its qualifying agent, or its affiliated businesses from County contracting and subcontracting for a specified period of time, not to exceed five (5) years.
28. *Draw* means a request for payment submitted by the prime contractor to the County or County's designee. A scheduled draw occurs, according to the contract's payment schedule, when the prime contractor is allowed to submit its request for payment. The date(s) of a scheduled draw may be stated with specificity in the contract in the form of a payment schedule or may be stated as a reoccurring event taking place, for example, on the 30th of each month.

~~[[29. *DPM* means the Department of Procurement Management.]]~~

~~[[30]]>>29.<< *Disbursement Agent* means an escrow agent who receives and disburses County funds as an agent of the County and provides assurance that the contract funds for a given project are used for labor, materials, and overhead on that specific project.~~

~~[[34]]>>30.<< *Eligible CSBEs* means those community small business enterprises that have completed the prescribed management and technical assistance requirements.~~

~~[[32]]>>31.<< *Eligible Expenses* mean those funds expended for project materials, or items that are directly incorporated into the Project Work or are exclusively and directly expenses attributed to the Work without markup for the initial draw. Eligible Expenses include project payroll, project equipment rental, project materials, project bond, project insurance, and project permits.~~

[[33]]>>32.<< *Graduation* means the CSBE has exceeded >>either the personal net worth or<<the specific size limits stated for the program, based on the firm's three-year average annual gross revenues, and may no longer be eligible for participation in the Program.

[[34]]>>33.<< *Guaranteed Maximum Price* ("GMP") is the cost of the project that the CM- at-Risk guaranteed will not be exceeded.

>>34. *ISD* means the Internal Services Department.<<

35. *Joint Venture* means ~~[[an association of two or more CSBEs. Joint ventures shall be subject to the size limitations set forth in this Implementing Order; such size limitations include affiliates as set forth in Appendix A of Ordinance 97-52, as amended]]~~>>a business arrangement of two or more parties, in which at least one is a CSBE that agrees to pool its resources for the purpose of accomplishing a specific task<<.

36. *Joint Venture Agreement* means a document submitted to SBD by a joint venture that provides information regarding the nature of the joint venture.

>>37. *Make-up Plan* means a plan whereby a bidder submits via the County's web-based system its commitment that if awarded the contract, it will fulfill all or a portion of any pending Small Business Enterprise Construction Services makeup requirement and identify the certified CSBE firm(s) to be utilized to fulfill the make-up requirement that is in excess of any SBE goal(s) required on the project, and the percentage, dollar value and description of the work that needs to be made up within the time frame specified by SBD.<<

[[37.]]>>38.<<Management & Technical Assistance (MTA) means a program designed to provide direct and indirect assistance for small business enterprise development. Specific details of the program are provided in ~~[[Section XXI of]]~~ this Implementing Order.

>>39. *Mentor* means a firm with an established business which has applied for and been approved by SBD, in accordance with applicable procedures, for participation as a mentor in the Mentor-Protégé Program. A Mentor may not provide mentoring services to more than one (1) Protégé firm at any one time, but is allowed to serve as a Mentor for an unlimited number of times (pursuant to SBD approval).<<

[[38.]]>>40.<< *Mentor-Protégé Program* is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging small business enterprises in order for the latter to benefit from the knowledge and experience of the established mentor firms. Specific details of ~~[[the Mentor Protégé]]~~>>this program<< are >>provided<<[[shown]] in ~~[[Section XXIII of]]~~this Implementing Order.

>>41. Mentor-Protégé Program Coordinator means the Small Business Development staff designated as the individual(s) responsible for coordinating and administering the various activities of the Mentor-Protégé Program.

42. Mentor-Protégé Project Plan is a description of the type of training the Mentor will provide to the Protégé during the identified project. This document will be developed by the Mentor with the Protégé's input and submitted along with a signed Mentor-Protégé Development Agreement; all to be reviewed and approved by Small Business Development.

43. Mentor-Protégé Development Agreement a signed agreement between a Mentor (prime) and a certified CSBE firm (subcontractor/sub-consultants) Protégé.<<

[[39.]]>>44.<< *Miscellaneous Construction Contracts* are open contracts designed to consolidate an indeterminate number of individual small construction, repair or alteration activities which may be needed over a fixed period of time, or open contracts that are work order based where no specific item quantities have been determined prior to bid (unit price contracts).

[[40.]]~~— *Monthly Utilization Report (MUR)* means a report completed by the Successful Bidder on a contract that is set aside, or on a contract with Trade Set-asides or subcontractor goals, and submitted monthly, listing all work performed in the past month by the CSBE identified on the Schedule of Intent Affidavit and all expenditures paid to date to the identified CSBE.~~]]

[[41.]]>>45.<< *Net Worth* for the purposes of the size limits established in this Implementing Order is defined as total assets minus total liabilities.

[[42.]]>>46.<< *North American Industry Classification System (NAICS)* code is a code that was developed by the Federal Office of Management and Budget for use in the classification of establishments by type of activity in which they are engaged. The NAICS code replaces the SIC code.

[[43.]]>>47.<< *PM/Owner* means agent of >>the County<<[[MDG]] user Department.

[[44.]]>>48.<< *Pre-Qualification* is defined under the definition of CSBE above.

[[46.]]>>49.<< *Primary Trade Contractor* means those contractors who directly contract with the CM-at-Risk. This definition only applies to contracts for a Construction Manager-at-Risk with a guaranteed maximum price.

[[47.]]>>50.<< *Program Incentive* is an incentive that a firm can choose to use in a bid or proposal based on the firm's participation in certain programs. The incentive consists of either a bid preference or selection factor that will be used

in evaluating the firm's bid or proposal on a specific project. The Program incentives available are as follows:

- a. For participation in the Mentor-Protégé Program - up to 2% of bid price or up to 10% of the total evaluation points;~~[[and]]~~
- b. For participation in the Worker Training Program - up to 2% of bid price or up to 10% of the total evaluation points~~[[.]]>>~~; and<<
- >>c. For participation in a Joint Venture - up to 10% of bid price or up to 10% of the total evaluation points.<<

Specific details of the program incentive are ~~[[shown in Section XII of]]>>~~provided in<< this Implementing Order.

>>51. Protégé means a firm: (i) certified as a CSBE with SBD; (ii) actively conducting business for a minimum of two (2) years; (c) maintaining an actual place of business where it provides its products and services, in Miami-Dade County; (d) in good legal standing with the State of Florida, Miami-Dade County, and all other local jurisdictions; and (e) without any SBE violations within the preceding two (2) year period from its application to the MPP. Such participation cannot exceed two (2) years, and a firm may only be a Protégé one time. A Protégé agrees to follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD.<<

~~[[48.]]>>~~52.<< Qualifier means the individual who has qualified a contractor for its current, valid certificate of competency or eligibility as required by Subsection (a) of Section 10-3 of the Code of Miami-Dade County.

~~[[49.]]>>~~53.<< Registered CSBE means a business that has registered with the relevant County agencies to compete for County construction contracts and has declared, by registration for statistical purposes, to be a CSBE. If no registration system showing such declaration exists, this term means a business that has bid on a County construction contract and has declared to County staff or in a public document that it is a CSBE.

~~[[50.]]>>~~54.<< Review Committee (>>"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<<.

~~[[51.]]>>~~55.<< SBD means the ~~[[Miami-Dade County Department of]]>>~~Division of<< Small Business Development>>, or successor division or department<<.

~~[[52.]]>>~~ Schedule of Intent Affidavit (SOI) means a form contained in the bid documents of a CSBE contract set aside or a contract with Trade Set

~~asides or subcontractor goals in which bidders list at the time of bid submission all CSBEs 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.]]~~

[[53.]]>>56.<< *Selection Factor* means a percentage of total evaluation points added to the points scored by a proposer responding to a Request for Proposals (RFP) or a Request for Qualifications (RFQ) for a prime County construction contract which is not set-aside for competition solely among CSBEs.

[[54.]]>>57.<< *Set-Aside* means reservation for competition solely among CSBEs of a given prime County contract whose estimated cost is \$10,000,000.00 or less.

>>58. *Small Business Enterprise for Construction Services or CSBE* means a construction related enterprise including a design-build firm, and any firm providing trades and/or services for the completion of a construction project, as defined in Chapter 10 of the Code of Miami-Dade County, which has an actual place of business in Miami-Dade County and whose average annual gross revenues for the last three (3) years do not exceed: \$10,000,000 for SIC 15 - Building Construction, General Contractors and Operative Builders \$6,000,000 for SIC 16 - Heavy Construction, other than Building Construction; or \$5,000,000 for SIC 17 - Specialty Trade Contractors. A CSBE shall be categorized by the type of construction it performs in accordance with SIC code, or NAICS code, of the Census applicable to such type of construction. A CSBE will graduate out of the program upon notification by SBD that it has exceeded these size limits based on its three-year average annual gross revenues. A certified CSBE that graduates out of the program shall continue to submit financial information as to cumulative gross revenue and bonding capacity to SBD annually for 3 years thereafter in order to further the County's ability to assess the effectiveness of the program.

A CSBE must go through a certification process which will be used to determine which of the three Contracting Participation Levels the CSBE will be placed in based on the firm's average annual gross revenues for the last three (3) years. The Contracting Participation Levels are as follows:

1. Level I – 3 year average annual gross revenues of \$0 - \$2,000,000;
2. Level II – 3 year average annual gross revenues above \$2,000,000 but not exceeding \$5,000,000 or
3. Level III – 3 year average annual gross revenues above \$5,000,000 but not exceeding \$10,000,000.

A firm's eligibility to participate in the CSBE program and the Contracting

Participation Level at which it will participate shall be determined based on the three year average gross revenues of the applicant firm in combination with that of all of the firm's affiliates. No firm shall be certified as a CSBE where the individual net worth of any of its owners is more than one million five hundred thousand dollars (\$1,500,000). Representations as to gross revenues and net worth of owners shall be subject to audit.

The County Mayor or designee shall be authorized to adjust the CSBE 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 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.<<

[[55-]]>>59.<< *Standard Industrial Classification (SIC)* or the equivalent NAICS code is a code that was developed by the Federal Office of Management and Budget for use in the classification of establishments by type of activity in which they are engaged. The NAICS code replaces the SIC code.

[[56-]]>>60.<< *Subcontract* for the purposes of Section 10-33.02 of the Code of Miami- Dade County, as amended, means an agreement between a prime construction contractor and a Primary Trade Contractor, or a first, second, third, or fourth tier subcontractor.

[[57-]]>>61.<< *Subcontractor Goal* means a proportion of a prime contract value stated as a percentage to be subcontracted at the first tier level, and another additional percentage to be subcontracted at the second, third, and/or fourth tier level, as outlined in this Implementing Order, to CSBEs to perform a commercially useful function. For County construction projects whose total estimated value is less than \$25,000,000 only expenditures to CSBEs made under written first tier subcontracts executed by both the prime contractor and the CSBE shall be counted towards meeting the CSBE subcontractor goal. For County construction projects whose total estimated value is equal to, or greater than, \$25,000,000 the Review Committee shall recommend that a specific percentage of the expenditures be made to CSBEs under written first tier subcontracts, and that another additional percentage of the expenditures be made to CSBEs under second, third and/or fourth tier subcontracts.

[[58-]]>>62.<< *Successful Bidder* means the bidder to which the contract is awarded.

[[59-]]>>63.<< *Trade Set-Aside* means that an entire Specialty Trade component(s) of a County contract or a miscellaneous construction contract

is reserved for first tier subcontracting among certified CSBEs (for example, the entire plumbing, roofing or electrical component of a specific contract is reserved for limited competition among certified CSBEs).

[[60.]]>>64.<< *Unavailability Certificate* means a document signed by a [[ CSBE]]>>prime Bidder<< stating that the CSBE >>subcontractor <<is not available to participate on a specific project at a specific time.

>>65. Utilization Plan means the plan whereby a Bidder submits via the County's web-based system its commitment that if awarded the contract, it will fulfill the SBE goal(s) required for the project and identify certified firms to fulfill goal(s) and percentages, dollar value, and description of the work to fulfill the SBE goal within the time frame specified by SBD. Subcontractor(s) listed will also be required to confirm their participation via the County's web-based system within the specified time frame. Bidders must enter into written subcontracts with the listed CSBE(s).

66. 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.<<

[[61.]]>>67.<< *Work* means the provision of goods or services for construction projects.

[[62.]]>>68.<< *Worker Training Program* is a qualified training program or technical school or other such construction industry related training program, as approved by the CSBE Advisory Board.

## II. CERTIFICATION:

### A. SBD RESPONSIBILITIES

SBD is the County agency responsible for certifying applicants, decertifying CSBEs and recertifying CSBEs. SBD shall maintain ~~[[and publish at least every other week-]]~~ an updated list of CSBEs, identifying each listed CSBE based on each SIC/NAICS category, and each Specialty Trade certification and noting the Contracting Participation Level classification.

\* \* \*

### B. TERMS OF CERTIFICATION

1. Certification for a CSBE firm is valid for a three (3) year period. Certification for CSBE firms is continuous within the three year period with the firm's submission of an Affidavit for Continuing Eligibility. SBD shall require that all CSBE firms,

in order to continue eligibility, submit an application for certification renewal on or before the Anniversary Date>> via the County's web-based system<<. The Affidavit for Continuing Eligibility shall include, at a minimum:

\* \* \*

### C. CERTIFICATION PROCESS

1. Interested parties ~~[[may]]>>~~shall complete an SBE<< ~~[[obtain—the]]~~ certification application >>via the County's web-based system~~[[from SBD and are encouraged to request an explanation of the certification process. A copy of the certification application and ]]~~>>. A<<~~[[a]]~~n explanation of the certification ~~[[process]]>>~~requirements<< is also available on SBD's Web Page ~~[[through—the—County's—Internet—Portal—at http://www.miamidade.gov/sba]]>>~~at www.miamidade.gov/smallbusiness<<.

\* \* \*

### D. ELIGIBILITY REQUIREMENTS

1. Applicants and CSBEs must be profit-motivated businesses. (Note: not-for-profit or non-profit corporations are not eligible for certification).
2. CSBEs must have an actual place of business in Miami-Dade County and may be registered as a vendor with ~~[[DPM]]>>~~ISD<<.

\* \* \*

## III. JOINT VENTURES:

### A. APPROVAL OF JOINT VENTURES

Only joint ventures ~~[[approved—by]]>>~~registered with<< SBD in accordance with this Implementing Order are eligible to participate as joint ventures in the CSBE program. Joint ventures must be lawfully established. ~~[[All]]>>~~At least one<< member~~[[s]]~~ of the joint venture must be certified as ~~[[a]]>>~~a<< CSBE~~[[s]]~~ before the joint venture can be approved. Joint ventures can participate under the CSBE program on contracts with CSBE Trade Set-asides, subcontractor goals, bid preferences and selection factors.

### >>B. PROGRAM REQUIREMENTS AND INCENTIVES

Joint Ventures must submit their joint venture agreements for approval by SBD, no later than thirty (30) calendar days prior to the date set for receipt of bids on an eligible project. SBD shall review the joint venture agreements for approval by considering the following factors:

- a. Allocation of profits and losses to each venture partner;
- b. allocation of the management and control; and
- c. capital investment from each venture partner.



As a Joint Venture under the SBE programs, a written joint venture agreement must be completed by all parties, lawfully established with the State of Florida, and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner. The agreement must state that the Joint Venture will continue for the duration of the project, at minimum.

A proposal/bid submitted by a Joint Venture that does not include a written joint venture agreement approved by SBD in accordance with the requirements of this IO, shall be deemed a non-qualified Joint Venture, and ineligible to participate in the CSBE Program. An eligible Joint Venture may bid on County projects. Upon the approval of the contracting department and SBD, all projects valued over \$5,000,000 shall require each bidder to be a Joint Venture, as long as availability exists.

Joint Ventures will receive a Bid Preference or Selection Factor based on the percentage ownership of the CSBE, as follows:

- a. Less than ten percent (10%) CSBE ownership will result in a 0% bid preference or 0% selection factor.
- b. Between ten percent (10%) to twenty percent (20%) CSBE ownership will result in a 3% bid preference or 3% selection factor.
- c. Between twenty-one (21%) to fifty percent (50%) CSBE ownership will result in a 5% bid preference or 5% selection factor.
- d. Fifty-one percent (51%) and greater CSBE ownership will result in a 10% bid preference or 10% selection factor.

The Joint Venture will receive credit towards any CSBE measures based on the percentage ownership of the SBE that is part of the joint venture. A Joint Venture that includes fifty-one percent (51%) or above CSBE ownership may also bid on set-aside contracts.<<

#### [[B.]]>>C.<< JOINT VENTURE RESPONSIBILITIES

Joint ventures must submit prior to bid submission a Joint Venture Agreement containing the following information:

1. A description of the financial contribution of each member;
2. A list of the personnel and equipment used by each member;
3. A detailed breakdown of the responsibility of each member and the work to be performed by each member;
4. An explanation of how the profits and/or losses will be distributed;
5. The bonding capacity of each member;
6. A description of any management or incentive fees for any of the members;
7. A statement of the percentage of the joint venture that is owned and controlled by the qualifying member(s) and the basis for claiming such percentage; and

8. A copy of any required State>> of Florida<< certificates or registrations.

~~[[G.]]>>~~D.<< SBD RESPONSIBILITIES

SBD shall collect, assemble and verify all information needed to determine if >>at least one<<~~[[all]]>> of the<< members of a joint venture ~~[[are]]>>is a<< CSBE~~[[s]]>>~~, and to approve the joint venture agreement and register said Joint Venture, as applicable<<. A Joint Venture Agreement is complete when it includes all required supporting information.~~~~

\* \* \*

**IV. DEPARTMENT/AGENCY RESPONSIBILITIES**

**A. ANNUAL NOTIFICATION OF ANTICIPATED PURCHASES**

Each County department and agency, in conjunction with the annual budget process, shall compile a list of its proposed capital projects, renovations, and major repairs for the fiscal year. Each department and agency shall forward the list by August 1>>st<< of each year to SBD for use in the formulation of the CSBE objectives.

**B. STATISTICAL REPORTING**

Each County department and agency, in conjunction with its contracting and purchasing activities, shall ~~[[ compile and maintain a list of]]>>ensure<< its contractors~~[[ ]]~~, subcontractors~~[[ ]]~~ and vendors~~[[ ]]~~ >>provide <<ownership demographics>> as required by the Code of Miami-Dade County<<.~~[[ These lists shall be updated at least quarterly and forwarded to SBD.]]~~ Bid documents shall require disclosure of the bidder's race, gender and ethnicity. Contract documents shall require that all requests for payment by the prime contractors include a list of all subcontractors who have performed work by race, gender and ethnicity, and shall contain the prompt payment provisions outlined in the CSBE ordinance.~~

**V. PROCEDURE FOR RECOMMENDATION OF CONTRACT SET-ASIDES, TRADE SET-ASIDES, AGGREGATE SET-ASIDES OR SUBCONTRACTOR GOALS**

A. Each individual construction contract, purchase or blanket purchase of services shall be reviewed for application of contract set-asides, Trade Set-asides, aggregate set-asides or subcontractor goals. The procedure for applying these contract set-asides, Trade Set-asides, aggregate set-asides or subcontractor goals on such purchases is as follows:

1. Each department or ~~[[DPM]]>>ISD<<, as applicable, shall review anticipated contracts for application of contract set-asides, Trade Set-asides, aggregate set-asides or subcontractor goals. Departments that make purchases through ~~[[DPM]]>>ISD<< shall not be responsible for reviewing anticipated purchases; ~~[[DPM]]>>ISD<< shall be~~~~~~

responsible for reviewing those purchases. To facilitate identification of contracting opportunities, contracts shall be reviewed after approximately seventy-five (75) percent of the contract documents, plans, and specifications have been completed.

2. Departments or ~~[[DPM]]>>ISD<<~~ shall work in conjunction with SBD in recommending whether contracts should be set-asides, or whether contracts should have Trade Set-asides, aggregate set-asides or subcontractor goals that shall be applied. The department or ~~[[DPM]]>>ISD<<~~ shall submit the appropriate items from the following to the Director of SBD:

\* \* \*

## VII. APPLICATION TO CONSTRUCTION MANAGER-AT-RISK CONTRACTS

- A. *Construction management services portion.* For Construction Manager-at-Risk contracts, the County Commission may establish, where appropriate and upon the recommendation of SBD~~[[or the Review Committee, as applicable]]~~, first tier CSBE subcontractor goals applicable to the construction management portion thereof. Such goal shall not be applicable to the procurement of trade packages on the actual construction project. Bidders for CM-at-Risk contracts to which a first tier CSBE subcontractor goal has been established for construction management services under this paragraph shall submit the ~~[[Schedule of Intent Affidavit]]>>~~Certificate of Assurance<< and follow the procedures and timing therefore applicable to contracts in general under section VI C above.
- B. *Actual construction portion of the work.* For CM-at-Risk contracts, subcontractor goals for the actual construction portion of the work may be established where appropriate by the County Mayor or designee for 1st, 2nd, 3rd or 4th tier subcontractors upon the recommendation and consensus between the User Department and SBD~~[[or the Review Committee, as applicable]]~~, based on estimates made prior to advertisement of the bid package of the quality, quantity and type of subcontracting opportunities provided by the bid package and of the availability of CSBEs to afford effective subcontracting therefore.
  1. *Overall subcontracting goal.* Where an overall CSBE subcontracting goal has been established for the actual construction portion of the work, the CM-at-Risk shall submit the ~~[[Schedule of Intent Affidavit]]>>~~Utilization Plan<< to the County at the time the Final Guaranteed Maximum Price is due identifying all CSBEs utilized to meet the overall goal, and the trade designation of work and percentage of the Final Guaranteed Maximum Price each will perform.
  2. *First tier subcontractor goal.* Where a first tier CSBE subcontracting goal has been established, bidders to the CM-at-Risk for contracts as Primary Trade Contractors shall submit at the time of bid submission to the CM-at-Risk ~~[[the Schedule of Intent Affidavit]]>>~~a Certificate of Assurance on the bid submittal due date and a Utilization Plan within the time period

specified by SBD<< identifying all CSBEs to be utilized to meet such goal, the trade designation of the work and the percentage of the bid each identified CSBE will perform. Failure to submit the required ~~[[Schedule of Intent Affidavit]]~~>>Certificate of Assurance and Utilization Plan<< within the required time frame may render the bid>>der<< non-~~[[responsive]]~~>>compliant<<, or subject to sanctions or penalties as outlined in the contract or this Implementing Order. The use of CSBEs at the Primary Trade Contractor level and at the level of contractors that directly contract with the Primary Trade Contractors shall count towards meeting the first-tier CSBE subcontractor goal on the contract. In addition, if the CM-at-Risk exceeds the first-tier CSBE subcontractor goal, the amount by which the first-tier CSBE subcontractor goal is exceeded shall count towards fulfillment of the second, third and fourth tier subcontractor goal on that contract. However, if the CM-at-Risk exceeds the second, third and fourth tier subcontractor goal, the amount that the second, third and fourth tier subcontractor goal is exceeded shall not count towards fulfillment of the first-tier subcontractor goal.

3. *Second, third and fourth tier subcontractor goals.* Where a second, third or fourth tier subcontractor goal has been established for the actual construction portion of the work under a CM-at-Risk contract, the Construction Manager-at-Risk awarded the contract shall notify SBD in writing, prior to initiating the process to select lower tier CSBEs whose participation will be utilized to meet such goal, of the name, address and tier level of the subcontractor who will award the lower tier subcontract to a CSBE, the scope of work for such lower tier subcontract and the bid submission date therefore. The Construction Manager-at-Risk awarded the contract shall obtain SBD's approval prior to the award of any lower tier subcontract that will be utilized to meet a lower tier subcontract goal.
- C. *Reduction in established subcontractor goal and periodic reporting to the Commission.* After bid advertisement, or other formal public notice, the established subcontractor goal on a CM-at-Risk contract for construction management services may be reduced only with the approval of the County Commission or Public Health Trust. After bid advertisement or other formal notice, the established subcontractor goal applicable to the actual construction portion of the work may be reduced only with the approval of the County Mayor or designee. The County Mayor or designee shall periodically report to the Board of County Commissioners on all goals on Construction Manager-at-Risk contracts.
- D. *Compliance responsibilities.* The Construction Manager-at-Risk shall comply with the requirements of this subsection regarding any CSBE subcontractor goal that has been applied to any portion of the work of the CM-at-Risk contract.

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### XIII. CONTRACT ADMINISTRATION - CONTRACT SET-ASIDES:

- A. County construction contracts that are set-aside under the CSBE program are for bidding solely among CSBEs. In order to bid on a set-aside contract the bidder must be certified as a CSBE prior to bid submission date. A CSBE awarded a set-aside contract shall not transfer to a non-CSBE through subcontracting or otherwise any part of the actual work of the contract unless bid documents expressly and specifically permit such transfer as consistent with normal industry practice or the CSBE requests and receives prior to bid award an approval letter from SBD [for example, a CSBE general contractor needs to rent a particularly expensive piece of equipment with labor support to perform a specific task in the contract and requests approval from SBD].
- B. CSBEs certified in one Contracting Participation Level (e.g., those in Contracting Participation Level III) may not bid on a lower level prime County contract set-aside for CSBEs (e.g., a \$500,000 project which falls into Level I). However, lower level CSBEs may bid on higher-level contracts (e.g., a Level I CSBE may bid on a Level II or a Level III project).
- C. A CSBE that performs the work of the set-aside contract with its own forces may count such work towards reducing the CSBE goal applied to the contract by a maximum of one hundred (100) percent.
- D. Either the department that oversees a contract, or ~~[[DPM]]>>ISD<<[[, or OG,]]~~ or SBD, ~~[[, or the RC,]]~~ as appropriate, shall recommend that bonding requirements for a set-aside contract be limited or waived whenever practicable. Such recommendation shall only be made on set-aside contracts less than or equal to two hundred thousand dollars (\$200,000) and as authorized by Section 255.05, Florida Statutes. This recommendation shall accompany the set-aside recommendation.
- E. Bidder's Responsibilities for Contract Set-Asides
1. Bidders on contract set-asides must submit a completed ~~[[“Schedule of Intent Affidavit”]]>>~~ Certificate of Assurance on the bid submittal due date ~~<<~~. Bidders who fail to submit the ~~[[“Schedule of Intent Affidavit”]]>>~~ Certificate of Assurance ~~<<~~ at the time of submission shall render the bidder non-~~[[responsive]]>>~~ compliant ~~<<~~; and
  2. Bidders must submit ~~[[“Schedule of Intent Affidavit”]]>>~~ a Certificate of Assurance ~~<<~~ to the person or office to whom the bid was submitted on the bid submission due date. ~~>>~~ Upon request, bidders must submit a Utilization Plan via the County's web-based system within the time frame specified by SBD. ~~<<~~ ~~[[Defective Schedule of Intent Affidavits]]>>~~ A Certificate of Assurance or Utilization Plan ~~<<~~ that ~~[[are]]>>~~ is ~~<<~~ incomplete or inaccurate shall constitute non-compliance. ~~[[Examples of defects include, but are not limited to, improperly executed “Schedule of Intent Affidavit”, the listing of non-certified CSBE and percentage miscalculations that are not mere clerical errors apparent on the face of the Schedule of Intent Affidavit]].~~ Bidders who fail to submit the ~~[[“Schedule of Intent Affidavit”]]>>~~ Certificate of Assurance or Utilization Plan within the time frame specified by SBD ~~<<~~ shall be considered non-~~[[responsive]]>>~~ compliant ~~<<~~.

F. The following shall constitute a violation of this Implementing Order as they relate to a contract that is set-aside:

1. Submission of a ~~[[“Schedule of Intent Affidavit”]]>>Utilization Plan<<~~ of CSBE subcontractors that the bidder knew or should have known is incomplete or inaccurate;
2. After bid submission due date, deviation~~[[s]]~~ from the ~~[[“Schedule of Intent Affidavit”]]>>Utilization Plan<<~~ without ~~[[the written]]>>prior<<~~ approval of ~~[[the Compliance Monitor]]>>SBD<<~~;
3. The utilization of a non-certified CSBE>>, or a prime contractor not meeting CSBE Program trade set-aside requirement;~~[[Top of Form]]~~
4. A CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE but which is being performed by a non-CSBE firm;
5. Not obtaining or retaining CSBE certification while performing work designated for CSBE firms;
6. Failure ~~[[to submit monthly utilization reports]]>>~~of the prime contractor to report payments to subcontractors via the County’s web-based system upon notification of payment by the County, or failure of subcontractors to confirm payments upon notification by the prime contractor, within the specified time frame<<;
7. Failure to maintain certification >>as a CSBE<<;
8. Failure to comply with CSBE certification requirements including not maintaining a>>n<< actual place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
9. Modifications to the terms and/or prices of payment to a CSBE without prior approval from SBD>>i<<;
10. ~~[[Unjustified f]]>>~~E<< failure to enter into a written subcontract with a CSBE after listing the firm on a ~~[[“Schedule of Intent Affidavit”]]>>Utilization Plan<<~~~~[[.]]~~
11. Termination of the CSBE’s contract without prior approval from SBD; or
12. Reduction of the CSBE’s scope of work without prior approval of SBD.<<

\* \* \*

## **XV. CONTRACT ADMINISTRATION - SUBCONTRACTOR GOALS OR TRADE SET-ASIDES**

### **A. SUBCONTRACTOR GOALS**

The purpose of a subcontractor goal is to have portions of the work under the prime contract performed by available subcontractors that are certified CSBEs for contract values totaling not less than the percentage of the prime contract value set out in the bid form. Subcontractor goals may be applied to a contract when estimates made prior to bid advertisement identify the quality; quantity and type of opportunities in the contract and CSBEs are available to afford effective competition in providing a percentage of these identified services.

Only expenditures to CSBEs made under a written first tier subcontract executed by both the prime contractor and the CSBE shall be counted towards meeting a first tier subcontractor goal.

Only expenditures made under a written second, third or fourth tier subcontract executed by both the next tier level subcontractor and the lower tier CSBE subcontractor shall be counted towards meeting a second, third or fourth tier subcontracting goal.

After a bid is advertised or other formal public notice, the established subcontractor goal may be reduced only with the approval of the County Commission or the Public Health Trust. Bid documents shall include documentation demonstrating the basis for the subcontractor goal established in the contract.

Either the department that oversees a contract, or ~~[[DPM]]~~ ISD, ~~[[or OCI]]~~ or SBD, ~~[[or the RC]]~~ as appropriate, shall recommend that bonding requirements for a contract with subcontractor goals be limited or waived whenever practicable. Such recommendation shall only be made on contracts less than or equal to two hundred thousand dollars (\$200,000) and as authorized by Section 255.05, Florida Statutes. This recommendation for waiver of bonding requirements shall accompany the recommendation for subcontractor goals.

>> A Small Business Enterprise Goods Program and Small Business Enterprise Services Program goal(s) may be applied to any project with an estimated value over \$700,000.00. A CSBE firm may fulfill a subcontractor goal in only one goal type per contract.<<

#### 1. BIDDER RESPONSIBILITIES FOR SUBCONTRACTOR GOALS

With the exception of contracts for a Construction Manager-at-Risk as noted below, where a first tier subcontractor goal has been imposed, bidders must submit a completed ~~[[Schedule of Intent Affidavit (SOI)]]~~ >>Certificate of Assurance<< on the bid submittal due date, >>and a Utilization Plan via the County's web-based system within the time frame specified by SBD.<<~~[[identifying all CSBEs to be utilized to meet the first tier subcontractor goal and the trade designation of work each will perform.]]~~ The ~~[[Schedule of Intent Affidavit]]~~ >>Utilization Plan<< constitutes a written representation by the bidder that, to the best of the bidder's knowledge, the first tier CSBEs listed are qualified and available to perform as specified. The ~~[[Schedule of Intent Affidavit]]~~ >>Certificate of Assurance<< is a commitment by the bidder that, if awarded the contract, it will enter into written subcontracts with the identified first tier CSBEs for the scope of work at the price >>or percentages <<set forth in the ~~[[Schedule of Intent Affidavit]]~~ >>Utilization Plan<<. Where a second, third and fourth tier subcontractor goal has

been imposed, >>the bid documents shall require <<bidders >>to include a commitment of the bidder to meet such goals in the in the aforementioned Certificate of Assurance.<<[[~~must submit a commitment letter committing the bidder to meet such goal. Upon notification by the Department of Small Business Development, bidders may cure correctable defects that exist on the Schedule of Intent Affidavit within forty-eight (48) hours. Correctable defects may include: percentage of work not identified for subcontractor on SOI signed by subcontractor, no signature of subcontractor on the SOI and no signature of prime contractor on the SOI. Noncorrectable defects may include: blank SOI (not listing the subcontractor's name and scope of work and percentage of work to be performed and listing a non-certified subcontractor).~~]]>> Failure to submit the Certificate of Assurance or a Utilization Plan upon request within the time frame specified by SBD shall render the bidder non-compliant.<<

The bidder shall be responsible for administering and implementing the requirements of Section 10-33.02 of the Code of Miami-Dade County, as amended, and this Implementing Order on the contract. This includes the following>>\_<< but is not limited to:

- a. All such subcontracts shall be in writing and shall be executed by the prime contractor and the first, second, third, and/or fourth tier CSBE subcontractor utilized to meet a first, second, third or fourth tier subcontract goal.
- b. Bidders who fail to submit the required ~~[[Schedule of Intent Affidavit]]~~<<Certificate of Assurance<< at the time of bid submission >>or a Utilization Plan within the time frame specified by SBD<< shall be considered non-~~[[responsive]]~~>>compliant<<.
- c. Bids that contain a defective ~~[[Schedule of Intent Affidavit]]~~>>Certificate of Assurance or Utilization Plan<< may be voidable. ~~[[Examples of defects include, but are not limited to, an incomplete Schedule, the listing of non-certified CSBE, and percentage miscalculations that are not mere clerical errors apparent on the face of the Schedule.]]~~
- d. A successful prime bidder that is a CSBE or a CSBE joint venture may perform up to fifty percent (50%) of a CSBE subcontractor goal with its own forces. The remaining subcontractor goal work shall be performed by other CSBEs.

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## 2. CONSTRUCTION MANAGER-AT-RISK RESPONSIBILITIES FOR SUBCONTRACTOR GOALS ON A CONSTRUCTION MANAGER-AT-RISK CONTRACT

Where a first tier subcontractor goal has been imposed, bidders must submit a ~~[[Schedule of Intent Affidavit]]~~>>Certificate of Assurance<<, on the bid



submittal due date, >>and a Utilization Plan via the County's web-based system within the time frame specified by SBD, identifying all CSBEs to be utilized to meet the first tier subcontractor goal, the trade designation of work and the percentage of the bid each identified CSBE<<[[each]] will perform. On contracts where a second, third and fourth tier subcontractor goal has been imposed, bidders must also [[submit]]>>include<< a commitment >>of the bidder<<[[letter at the time of bid submission committing the bidder]] to meet such goal>>(s) in the aforementioned Certificate of Assurance<<[[Bidders may correct defects that exist on the Schedule of Intent Affidavit within forty eight (48) hours after notification by SBD]]. Failure to submit the required [[Schedule of Intent Affidavit]]>>Certificate of Assurance and Utilization Plan<< within the specified time shall render the bid non-[[responsive]]>>compliant<<. Failure to submit [[the]]>>any<< required commitment [[letter]]>>to meet such subcontractor goals<< at the time of bid submission shall render the bid non-[[responsive]]>>compliant<<. [[Submission of a defective form shall render the bid voidable. Expenditures]]>>Commitments<< to first tier CSBEs on a [[Schedule of Intent Affidavit]]>>Certificate of Assurance<< that are not confirmed by [[a]]>>subcontractors in the Utilization Plan via the County's web-based system within the time frame specified by SBD<<[ [properly executed Schedule of Intent]] shall not count toward the goal.

For contracts for a Construction Manager-at-Risk with a guaranteed maximum price, the Primary Trade Contractors shall submit the list of first-tier CSBE subcontractors at the time of bid submission to the CM- at-Risk. All Primary Trade Contractors shall submit [[Schedule of Intent Affidavits]]>>a Certificate of Assurance on the bid submittal due date, and a Utilization Plan within the time frame specified by SBD<< for all subcontractors listed on the list of first-tier CSBE subcontractors at the time of bid submittal to the CM-at-Risk. Failure to submit the required documents within the required time frames may render the bid>>der<< non-[[responsive]]>>compliant<< or be subject to sanctions or penalties as outlined in the contract or in this Implementing Order.

For contracts for a Construction Manager-at-Risk with a guaranteed maximum price, the use of CSBEs at the Primary Trade Contractor level and at the level of contractors that directly contract with the Primary Trade Contractors, count towards the first-tier CSBE subcontractor goal on the contract. In addition, if the CM-at-Risk exceeds the first-tier CSBE subcontractor goal, the amount by which the first-tier CSBE subcontractor goal is exceeded counts towards fulfillment of the second, third and fourth tier subcontractor goal on that contract. However, if the CM-at-Risk exceeds the second, third and fourth tier subcontractor goal, the amount that the second, third and fourth tier subcontractor goal is exceeded by shall not count towards fulfillment of the first-tier subcontractor goal.

For contracts for a Construction Manager-at-Risk, the Construction Manager-at-Risk shall be responsible for administering and implementing the requirements of Section 10-33.02 of the Code of Miami-Dade County, and this Implementing Order, on the contract. This includes the following>>\_<< but is not limited to:

- a. All such subcontracts shall be in writing and shall be executed by the prime contractor and the first, second, third, and/or fourth tier CSBE subcontractor utilized to meet a first, second, third or fourth tier subcontract goal.
- b. Bidders who fail to submit the required ~~[[Schedule of Intent Affidavit]]~~>>Certificate of Assurance<< at the time of bid submission shall be considered non-~~[[responsive]]~~>>compliant<<.
- c. Bids that contain a defective ~~[[Schedule of Intent Affidavit]]~~>> Certificate of Assurance or Utilization Plan<< may be voidable.~~[[Examples of defects include, but are not limited to, an incomplete Schedule, the listing of an unidentifiable CSBE, and percentage miscalculations that are not mere clerical errors apparent on the face of the Schedule.]]~~
- d. A successful prime bidder that is a CSBE or a CSBE joint venture may perform up to fifty percent (50%) of a CSBE subcontractor goal with its own forces. The remaining subcontractor goal work shall be performed by other CSBEs.
- e. Expenditures to subcontracting CSBEs shall be counted toward meeting specified goals as follows:
  1. One hundred percent (100%) of the expenditures to a CSBE that performs a commercially useful function in the supply of services required for the fulfillment of the contract;
  2. One hundred percent (100%) of the expenditures to CSBEs that subcontract work further to non-CSBEs, only if bid documents expressly and specifically permit such subcontracting as consistent with normal industry practice, or if the bidder or CSBE requests and receives prior to bid award an approval letter from SBD;
  3. One hundred percent (100%) of the expenditures to CSBEs that perform actual work with their own forces;
  4. None of the expenditures to a CSBE that acts essentially as a conduit to transfer funds to a non-CSBE unless bid documents expressly and specifically permit such transfers as consistent with normal industry practice or the bidder or CSBE requests and receives prior to bid award an approval letter from SBD; and
  5. Only expenditures to CSBEs made under a written first tier subcontract executed by both the prime contractor and the CSBE shall be counted towards meeting a first tier subcontractor goal. Only expenditures made under a written second, third or fourth tier subcontract executed by both the next tier level subcontractor and the lower tier CSBE subcontractor shall be counted towards meeting a second, third or fourth tier subcontracting goal.

- f. In order to assure at the time of bid submission, agreement upon the above information between the bidder and the first tier CSBE subcontractor so identified, bidders must submit ~~[[Schedule of Intent Affidavits signed by the first tier CSBE subcontractors]]>>a Utilization Plan and the listed subcontractors must confirm participation via the County's web-based system within the time frame specified by SBD<<~~[[signed by the identified first tier CSBE subcontractors to the Contracting Officer by no later than 4:00 p.m. on the second business day following the bid submission date. Upon notification by the Department of Small Business Development, bidders may correct defects that exist on the Schedule of Intent Affidavit within forty eight (48) hours after notification by SBD. Submission of a defective form uncorrected within the required time frame shall render the bid voidable.]]>> Failure to submit a Utilization Plan confirmed by the listed CSBEs within the specified time frame shall render the bidder non-compliant, and their bid voidable.<<~~~~
- g. Bidders whose bids do not meet the specified goal, in order to remain eligible, must submit to the Contracting Officer on the bid submission due date, evidence proving the lack of available CSBEs to afford effective competition to provide the services to meet the goal. To prove lack of availability, bidders must submit the following:
1. Unavailability Certificates either completed and signed by all of the CSBEs available to perform the scopes of work are completed and signed by the bidder explaining the contacts with all of the CSBEs available to perform the scopes of work, statements or actions of the CSBEs showing unavailability, and the reason(s) why the CSBEs' signature could not be obtained;
  2. A listing of any bids received from a CSBE, the scope of work and price of each bid, and the bidder's reasons for rejecting each bid;
  3. A statement of the bidder's contacts with SBD for assistance in determining available CSBEs;
  4. A description of the bidder's process for soliciting and evaluating bids from CSBEs, including copies of telephone logs detailing time, date and name of contacts with potential subcontractors;
  5. Bidders may establish a CSBE as unavailable if its bid is not reasonably competitive with comparable bids of non-CSBEs for the same scope of work. To establish a CSBE as unavailable if its bid is not considered reasonably competitive, the prime bidder must furnish SBD with copies of all bids received from all firms, both CSBEs and non-CSBEs, for each specific scope of work for which they are claiming that the bid is not reasonably competitive. A CSBE's bid will be considered reasonably competitive if its bid, for the same scope of work, is within 25% of the bid of comparably sized non-CSBE firms;
  6. The bidder who is awarded a contract having a second, third or fourth tier subcontractor goal shall notify SBD, in writing, at least one week

prior to initiating the process to select lower tier CSBEs whose participation will be utilized to meet such goal, of the name, address and tier level of the subcontractor who will award the lower tier subcontract to a CSBE, the scope of work for such lower tier subcontract and the bid submission date for such lower tier subcontract. The prime contractor shall obtain SBD's approval prior to the award of any lower tier subcontract that will be utilized to meet a lower tier subcontractor goal; and

7. On contracts in excess of \$25 million which have subcontractor goals, the prime contractor shall be required during the term of the contract to make a quarterly presentation to the CSBE Advisory Board on his or her performance in meeting such goal.
- h. In order to ensure CSBE compliance at every tier, the CM-at-Risk contractor should monitor CSBE participation at the second, third and fourth tier levels.
- i. The CM-at-Risk contractor is responsible for compliance with the requirements of any CSBE subcontractor goal that has been applied to any portion of work on the CM-at-Risk contract.
- j. The following shall constitute ~~[[ non-compliance with the]]~~ >>a violation of this << Implementing Order as they relate to a contract, which has a CSBE subcontractor goal:
  1. The utilization of a non-certified CSBE;
  2. >>A << CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE >>, << but which is being performed by a non- CSBE firm;
  3. A prime contractor not meeting CSBE subcontractor goal requirements;
  4. Not obtaining or retaining CSBE certification while performing work designated for CSBE firms;
  5. Failure ~~[[to submit monthly utilization reports]]~~ >>of the prime contractor to report payments to subcontractors via the County's web-based system upon notification of payment by the County, or failure of subcontractors to confirm payments upon notification by the prime contractor, within the specified time frame <<.
  6. Deviation[s] from the ~~[[ "Schedule of Intent Affidavit" ]]~~ >>Utilization Plan << or listing of first tier subcontractors as required on a CM-at-Risk contract without prior approval from SBD;
  7. Termination of the CSBE's contract without prior approval from SBD;
  8. Reduction of the scope of work of a first tier CSBE subcontractor without prior approval from SBD. Reduction of the scope of work of a second, third or fourth tier CSBE subcontract utilized to meet a second, third or fourth tier subcontractor goal without prior approval of SBD;
  9. Modifications to the terms and/or prices of payment to a CSBE without prior approval from ~~[[D]]SBD;[-of]~~
  10. ~~[[Unjustified-f]]~~ Failure to enter into a written first tier subcontract with a

CSBE after listing the firm on a ~~[[Schedule of Intent Affidavit]]>>Utilization Plan<<~~ or on a list of first tier subcontractors as required on a CM-at-Risk contract. ~~[Unjustified-f]Failure to enter into a written second, third or fourth tier subcontract with a CSBE utilized to meet a second, third or fourth tier subcontractor goal[-]>>~~;

11. Failure to comply with CSBE certification requirements including not maintaining an actual place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations; or

12. Failure to maintain certification as a CSBE.<<

## B. TRADE SET-ASIDES

The purpose of a Trade Set-aside is to have the entire Specialty Trade component(s) of a County contract or a miscellaneous construction contract to be performed by available first tier subcontractors that are certified CSBEs. Trade Set-asides may be applied to a miscellaneous construction contract as individual work orders are processed through SBD.

Either the department that oversees a contract, or ~~[[ DPM]]>>ISD<<~~, ~~[[ of OCI,]]~~ or SBD may recommend that bonding requirements for a contract with Trade Set- asides be limited or waived, whenever practicable. Such recommendation shall only be made on contracts less than or equal to two hundred thousand dollars (\$200,000) and as authorized by Section 255.05, Florida Statutes. This recommendation shall accompany the recommendation for Trade Set-asides.

### 1. BIDDER RESPONSIBILITIES ON TRADE SET-ASIDES

- a. Bidders on contracts to which a Trade Set-aside has been applied must submit a completed ~~[[Schedule of Intent]]>>Certificate of Assurance on the bid submittal date<<~~ ~~[[at the time of bid submission]]>>~~ and a Utilization Plan via the County's web-based system within the time frame specified by SBD<<. The ~~[[Schedule of Intent Affidavit]]>>Utilization Plan<<~~ constitutes a~~[[—written]]~~ representation by the bidder that, to the best of the bidder's knowledge, the CSBEs listed are qualified and available to perform as specified. The ~~[[Schedule of Intent Affidavit]]>>Certificate of Assurance<<~~ is a commitment by the bidder that, if awarded the contract, it will enter into written subcontracts with the identified CSBEs for the scope of work at the price >>or percentages<< set forth in the ~~[[Schedule of Intent Affidavit]]>>Utilization Plan<<~~.
- b. All bidders must submit ~~[Schedule of Intent Affidavits]]>>~~ a Certificate of Assurance<< to the Contracting Officer by the bid submittal due date. Failure to submit ~~[[Schedule of Intent Affidavits]]>>~~ a Certificate of Assurance or Utilization Plan<< within the specified time shall render the bid non-~~[[responsive]]>>~~ compliant<<. Submission of a defective form shall render

the bid voidable.

- c. In contracts with Trade Set-asides for CSBEs, a CSBE shall be counted toward meeting the goal for one Contracting Participation Level only. The prime bidder shall declare at bid submission toward which Trade Set-aside the CSBE business enterprise shall count.
- d. All such subcontracts shall be in writing and shall be executed by the prime contractor and the first tier CSBE subcontractor.
- e. Bidders who fail to submit the ~~[[Schedule of Intent Affidavit]]~~ >>required Certificate of Assurance at the time of bid submission or a Utilization Plan within the time frame specified by SBD<< shall be considered non-~~[[responsive]]~~ >>compliant<<.
- f. Bids that contain a defective ~~[[Schedule of Intent Affidavit]]~~ >>Certificate of Assurance or Utilization Plan>> may be voidable.~~[[Examples of defects include, but are not limited to, an incomplete Schedule, the listing of an unidentifiable CSBE, and percentage miscalculations that are not mere clerical errors apparent on the face of the Schedule]].~~
- g. A successful prime bidder that is a CSBE or a CSBE joint venture may perform up to fifty percent (50%) of a CSBE Trade Set-aside with its own forces.
- h. The following shall constitute ~~[[non-compliance with]]~~ >>a violation of<< this Implementing Order as they relate to a contract with a Trade Set-aside:
  1. Submission of a ~~[[Schedule of Intent Affidavit]]~~ >>Utilization Plan<< of CSBE subcontractors that the bidder knew or should have known is incomplete or inaccurate;
  2. After bid submission due date, deviation from the ~~[[Schedule of Intent Affidavit]]~~ >>Utilization Plan<< without the ~~[[written]]~~ >>prior<< approval of ~~[[the Compliance Monitor]]~~ >>SBD<<;
  3. The utilization of a non-certified CSBE for the Trade Set-aside;
  4. A CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE but which is being performed by a non-CSBE firm;
  5. A prime contractor not meeting CSBE program Trade Set-aside requirements;
  6. Failure ~~[[to submit monthly utilization reports]]~~ >>of the prime contractor to report payments to subcontractors via the County's web-based system upon notification of payment by the County, or failure of subcontractors to confirm payments upon notification by the prime contractor, within the specified time frame<<;
  7. Failure~~[[of the CSBE]]~~ >>as a CSBE, or not obtaining or retaining CSBE certification while performing work designated for CSBE firms<<;
  8. Deviation[s] from the ~~[[Schedule of Intent Affidavit]]~~ >>Utilization Plan<< without prior approval from SBD;

9. Termination of the CSBE's contract without prior approval from SBD;
10. Reduction of the scope of work of a first tier CSBE subcontractor without prior approval from SBD;
11. Modifications to the terms and/or prices of payment to a CSBE without prior approval from SBD; or
12. ~~[[Unjustified-f]]~~ Failure to enter into a written first tier subcontract with a CSBE after listing the firm on a ~~[[Schedule of Intent Affidavit]]~~ Utilization Plan.

C. COUNTY RESPONSIBILITIES

1. After considering the quality, quantity and type of opportunities provided by the contract, and the availability of CSBEs to afford effective competition in providing the services required under the contract, each department or ~~[[DPM]]~~ ISD will recommend to SBD the type and level of contract set-aside, Trade Set-aside or subcontractor goal that could be applied.
2. SBD shall review the ~~[[Schedule of Intent Affidavit]]~~ Certificate of Assurance and Utilization Plan, commitment letters, Unavailability Certificates, and listing of first tier subcontractors as required on a CM-at-Risk contract to determine compliance with the contract set-aside, Trade Set-aside or subcontractor goal stated in the bid documents. The Compliance Monitor may meet with a bidder before recommending that the Contracting Officer determine noncompliance. This written recommendation shall be forwarded to the bidder and the Contracting Officer.
3. In the event the Contracting Officer receives a recommendation of non-compliance from the Compliance Monitor, he or she may conduct a meeting or hearing at which the bidder shall be afforded an opportunity to present data supporting its compliance with the goal. The Contracting Officer shall consider the evidence and make a determination as to compliance.

\* \* \*

**XIX. CONTRACT ADMINISTRATION - COMPLIANCE AND MONITORING:**

A. COMPLIANCE REVIEW

1. The Compliance Monitor shall review bidder's submission for compliance with this Implementing Order on every contract to which a CSBE contract set-aside, Trade Set-aside, aggregate set-aside or subcontractor goal has been applied. The purpose of this review shall be for the Compliance Monitor to consider whether to recommend the Bidder's bid is determined to be in compliance or non-compliance with the requirements of this Implementing Order. The Compliance Monitor may consider relevant information from any person in making this decision. The Compliance Monitor may require the Bidder to produce information deemed pertinent and appropriate and may obtain further information from whatever sources the Compliance Monitor deems appropriate.
2. The Compliance Monitor shall notify the bidder in writing stating the facts

and the reasons on which the non-compliance is based. The bidder may request a meeting within five (5) business days from the date of the notification of non-compliance. The bidder shall supply further relevant information as required by the Compliance Monitor. No new altered ~~[[Schedule of Intent Affidavit]]~~>>Utilization Plan<< will be accepted.

3. The Compliance Monitor shall make a written recommendation to the Contracting Officer, which shall include a statement of the facts and reasons for which the non-compliance is based.
4. Following receipt of a recommendation of non-compliance from the Compliance Monitor, the Contracting Officer shall review the Compliance Monitor's recommendation of bidder's non-compliance with this Implementing Order. The Contracting Officer shall notify the bidder of such non-compliance. The bidder may request a meeting within five (5) business days from the date of notification of non-compliance with the Contracting Officer if the Contracting Officer was not present at the first meeting referenced in Subsection XVIII (A)(2). The bidder shall supply further relevant information as required by the Compliance Monitor. No new altered ~~[[Schedule of Intent Affidavit]]~~>>Utilization Plan<< will be accepted.

\* \* \*

## B. POST-AWARD COMPLIANCE AND MONITORING

### 1. Approval of Subcontracts

The Successful Bidder shall submit to the Contracting Officer, for approval, written subcontracts corresponding in all respects to the Successful Bidder's ~~[[Schedule of Intent Affidavit]]~~>>Utilization Plan<< or Set-Aside List of Subcontractors or listing of first tier subcontractors as required on a CM-at-Risk contract. The Successful Bidder shall enter into a written subcontract with each listed first tier CSBE subcontractor and shall thereafter neither terminate any such subcontract, nor reduce the scope of work to be performed by, or decrease the price to be paid to the first tier CSBEs thereunder, without in each instance obtaining prior written approval of the Contracting Officer. On contracts where a second, third or fourth tier subcontractor goal has been imposed, the Successful Bidder shall submit to the Contracting Officer, for approval, written subcontracts executed by both the next tier level subcontractor and the lower tier CSBE subcontractor corresponding to the information provided to SBD in Section XIV (2)(b) above. The Contracting Officer shall not give a final written determination without a recommendation from SBD.

\* \* \*

### 4. ~~[[Monthly/Quarterly]]~~>>Utilization<< Reporting

The Successful Bidder on a project that is a CSBE contract set-aside or on a project with CSBE Trade Set-asides, aggregate set-asides or subcontractor goals shall >>complete all required Compliance



Audits <<[[ ~~submit monthly a Utilization Report to the Compliance Monitor through the Contracting Officer on or before the tenth working day following the end of the month the report covers. The Compliance Monitor shall give standard reporting forms to the Successful Bidder. The Utilization Report is to be completed by the Successful Bidder.~~]]]. Where a first tier subcontractor goal has been imposed, the Utilization Report shall include information on CSBEs utilized to meet such first tier subcontractor goal. Where a second, third and fourth tier subcontractor goal has been imposed, the Utilization Report shall also include information on CSBEs utilized to meet such goal. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County. In addition to the above requirements, on County contracts in excess of \$25 million which have subcontractor goals, the prime contractor shall be required, during the term of the contract, to make a quarterly presentation to the CSBE Advisory Board on his or her performance in meeting such goal.

2. Deviations from the ~~[[Schedule of Intent Affidavit]]~~ >> Utilization Plan <<
  - a. In the event that during the performance of a contract a first tier CSBE is not able to provide the services specified on the ~~[[Schedule of Intent Affidavit]]~~ >> Utilization Plan << or the listing of first tier subcontractors required on a CM-at-Risk contract, the Successful Bidder must locate a CSBE to substitute for the unavailable first tier CSBE unless the bidder can prove the lack of an available CSBE to provide the services to be provided by the prior CSBE. The Successful Bidder must receive approval for substitution from SBD by submitting a request ~~[[in writing addressed to the Director of SBD through the Contracting Officer]]~~ >> via the County's web-based system <<. The request must include a revised ~~[[Schedule of Intent Affidavit]]~~ >> Utilization Plan << of first tier subcontractors as required on a CM-at-Risk contract to include the substitute first tier CSBE and a ~~[[Schedule of Intent Affidavit]]~~ >> Utilization Plan << from the substitute first tier CSBE. The Compliance Monitor will review the request and make a recommendation regarding the substitution to the Contracting Officer. A Successful Bidder that cannot secure a substitute first tier CSBE must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, and telephone numbers of all CSBEs contacted, and the date of contact for each CSBE. All certified CSBEs certified in the appropriate specialty trade area in SIC 17 must be contacted in order to prove lack of an available CSBE.

In the event that during the performance of a contract where a second, third or fourth tier subcontractor goal has been imposed a second, third or fourth tier CSBE that is not able to provide the services specified to SBD in Section XIV (A)(2)(b) above, the Successful Bidder must locate a CSBE to substitute for the unavailable second, third or fourth tier CSBE unless the bidder can prove the lack of an

available CSBE to provide the services to be provided by the prior CSBE. The Successful Bidder must receive approval for substitution from SBD by submitting a request ~~[[in writing addressed to the Director of SBD through the Contracting Officer]]~~>>via the County's web-based system<<. The Compliance Monitor will review the request and make a recommendation regarding the substitution to the Contracting Officer. A Successful Bidder that cannot secure a substitute second, third or fourth tier CSBE must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, and telephone numbers of all CSBEs contacted, and the date of contact for each CSBE. All certified CSBEs certified in the appropriate specialty trade area in SIC 17 must be contacted in order to prove lack of an available CSBE.

- b. The Compliance Monitor shall be responsible for monitoring the performance of the Successful Bidder regarding compliance with contract set-asides, Trade Set-asides, aggregate set-asides or subcontractor goals applied to the contract. The Compliance Monitor may, at his or her discretion, investigate deviations in the utilization of first tier CSBEs from that described on the ~~[[Schedule of Intent Affidavit]]~~>>Utilization Plan<< or on the listing of first tier subcontractors as required on a CM-at-Risk contract, or deviations in the utilization of second, third or fourth tier subcontractors from the information provided to SBD in Section XIV(A)(2)(B)(6) above on contracts where a second, third or fourth tier subcontractor goal has been imposed, and make recommendations regarding compliance to the Contracting Officer. The Contracting Officer shall not make a final determination without a recommendation regarding compliance from SBD. Deviations from the goal stated in the contract that shall be monitored include, but are not limited to:
1. Termination of a CSBE's subcontract;
  2. Reduction in the scope of work to be performed by a first tier CSBE or reduction in the scope of work to be performed by a second, third or fourth tier CSBE utilized to meet a second, third or fourth tier subcontractor goal;
  3. Modifications to the terms of payment or price to be paid to a CSBE;  
or
  4. Failure to enter into a contract with a CSBE being utilized to meet a first, second, third or fourth tier subcontractor goal.

\* \* \*

f. Alternative Subcontracts:

If the Successful Bidder is excused from entering into a subcontract or rightfully terminates a subcontract under this Implementing Order and without such subcontract the Successful Bidder will not achieve the level of CSBE participation upon which the contract was awarded, the

Successful Bidder shall make every reasonable effort to propose and enter into an alternative subcontract or subcontracts for the same work to be performed by another available CSBE as appropriate, for a subcontract price or prices totaling not less than the subcontract price under the excused or terminated subcontract, less all amounts previously paid thereunder. The Successful Bidder must submit to the Compliance Officer a revised ~~[[Schedule of Intent Affidavit]]~~>>Utilization Plan<< of first tier subcontractors as required on a CM-at-Risk contract and ~~[[Schedule of Intent Affidavit]]~~>>Utilization Plan<< to include the substitute first tier CSBE. For contracts where the Successful Bidder is requesting substitution of a second, third or fourth tier CSBE subcontractor, the Successful Bidder must submit to the Compliance Officer a revised list of the second, third or fourth tier subcontractors being utilized to meet the goal. A Successful Bidder that cannot secure a substitute CSBE must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, telephone numbers, and the date of contact for each CSBE. All CSBEs certified within the appropriate SIC/NAICS code or trade category must be contacted.

\* \* \*

## **XX. SANCTIONS FOR CONTRACTUAL VIOLATIONS:**

Bid and contract documents for all agreements, including CM-at-Risk, shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's violation of or failure to comply with this>>CSBE<< ordinance or this Implementing Order may result in the imposition of one or more of the following sanctions:

- a. The suspension of any payment of part thereof until such time as the issues concerning compliance are resolved; and/or
- b. Work stoppage; and/or
- c. Termination, suspension, or cancellation of the contract in whole or part; and/or
- d. If after award, a CSBE firm meeting a goal is substituted due to unavailability on five (5) different occurrences during a calendar year, the CSBE firm will be decertified.
- e. In the event a bidder or CSBE attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Code of Miami-Dade County, the County shall, whenever practicable, terminate the contract or require the termination or cancellation of the subcontract for the project on which the bidder or CSBE committed such acts. In addition, and as a further sanction, the County Mayor designee may impose any of the above-stated sanctions on any other contracts or subcontracts the bidder or CSBE has on County projects. In each instance, the bidder or CSBE shall be responsible for all direct and indirect costs

associated with such termination or cancellation including attorney's fees and costs. The bidder or CSBE may also be subject to debarment.

- f. In the event that a bidder fails to achieve the CSBE measures after contract completion, the bidder's eligibility to receive any future county contracts will be conditioned upon the bidder making up the deficit in CSBE participation in such future contracts by having CSBEs perform equal to double the dollar value of the deficiency in the CSBE measure in the prior contract. The procedures for making up the CSBE deficit are as follows:
1. Upon completion of a contract or after final payment on a contract SBD shall review the final ~~[[Monthly Utilization Report]]~~>>Compliance Audit<< and other project documents to include final payments and make a determination as to whether the bidder met the CSBE measure. If the bidder has not met the CSBE measure, SBD will notify the bidder in writing of the deficit and corresponding make-up penalty.
  2. If the bidder is found in non-compliance with the CSBE measures, the Compliance Officer may issue a letter of non-compliance requesting that the bidder make up the CSBE deficit on an existing or future County contract for double the amount of the deficit on the contract in question. The bidder will also be required to submit a >>Make-up Plan<<[[plan]] indicating any current or future County contracts in which the CSBE deficit will be remedied.
  3. The bidder must respond to SBD in writing within ten business days from the date of the non-compliance letter. The bidder must acknowledge receipt of the noncompliance letter and provide a plan to make up the CSBE measure.
  4. The compliance monitor will review the plan for approval.
  5. When a contract is identified in which the CSBE measure deficit will be remedied, the bidder will provide a ~~[[Schedule of Intent Affidavit]]~~>>Utilization Plan<<, or a listing of first tier subcontractors as required on a CM-at-Risk contract, and ~~[[Schedule of Intent Affidavit]]~~ for the CSBE firm(s) that will be utilized in making up the deficit.
  6. For any future contracts, a ~~[[Schedule of Intent Affidavit]]~~>>Make-up Plan<< must be submitted as part of >>the Utilization Plan for<< any bid or proposal at the time of bid or proposal submittal. The ~~[[Schedule of Intent Affidavit]]~~>>Utilization Plan<< must identify all CSBEs to be utilized to meet the first tier subcontractor goal and the trade designation of work each firm will perform in satisfaction of the make-up, in addition to any other goals that may be applicable. Failure to include the required ~~[[Schedule of Intent Affidavit]]~~>>Make-up Plan<< with bids or proposals for any future contracts shall result in the submittal being deemed non~~[[responsive]]~~>>compliant<<.
  7. Any contractor subject to an approved ~~[[make-up plan]]~~>>Make-up Plan<< that fails to comply with any of the material terms of that ~~[[make-up plan]]~~>>Make-up Plan<<, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a six (6) month period.

8. A contractor that fails to comply with any of the materials terms of a second ~~[[make-up plan]]~~>>Make-up Plan<<, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a one (1) year period.
9. A contractor that fails to comply with any of the material terms of a third ~~[[make-up plan]]~~>>Make-up Plan<<, without good[[s]] cause, may be subject to debarment and shall automatically be evaluated for debarment. After serving a debarment for failure to satisfy a ~~[[make-up plan]]~~>>Make-up Plan<< for no good cause, the subject firm shall be deemed ineligible for bidding on county contracts with measures for one (1) additional year unless the County Mayor or designee determines that an emergency exists justifying such participation, and the Board of County Commissioners approves such decision.
10. The bidder will remain in a non-compliance status until the CSBE make-up goal has been achieved.
11. Failure of the bidder to make up the CSBE measure when opportunities are available on existing or future County Contracts will result in the imposition of other penalties or sanctions as referenced in Sections XIX and XX.

Some of the contractual violations that may result in the imposition of the sanctions listed in Section XIX above include, but are not limited to, the following:

1. A CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE but which is being performed by a non- CSBE firm;
2. A prime contractor not meeting CSBE Program Trade Set-aside or subcontractor goal requirements;
3. Not obtaining or retaining CSBE certification while performing work designated for CSBE firms;
4. Failure ~~[[to submit monthly utilization reports]]~~>>of the prime contractor to report payments to subcontractors via the County's web-based system upon notification of payment by the County, or failure of subcontractors to confirm payments upon notification by the prime contractor, within the specified time frame<<;
5. Failure to comply with CSBE certification requirements, including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
6. Failure to maintain certification>>as a CSBE<<;
7. Deviations from the ~~[[Schedule of Intent Affidavit]]~~>>Utilization Plan<< or listing of first tier subcontractors as required on a CM-at-Risk contract without prior approval from SBD;
8. Termination of the CSBE's contract without prior approval from SBD;
9. Reduction of the scope of work of a first tier CSBE subcontract without prior approval from SBD or reduction of the scope of work of a second, third or fourth tier subcontract utilized to meet a second, third or fourth tier subcontractor goal without prior approval of SBD;
10. Modifications to the terms and/or prices of payment to a CSBE

without prior approval from SBD; or

11. ~~[[Unjustified-f]]~~ Failure to enter into a written first tier subcontract with a CSBE after listing the firm on a ~~[[Schedule of Intent Affidavit]]~~ >> Utilization Plan << or a listing of first tier subcontractors as required on a CM-at-Risk contract. ~~[[Unjustified f]]~~ Failure to enter into a written second, third or fourth tier subcontract with a CSBE utilized to meet a second, third or fourth tier subcontractor goal.

\* \* \*

### XXIII. MENTOR-PROTÉGÉ PROGRAM:

#### 1. Program Mission

Miami-Dade County seeks to build effective working relationships between leaders of mature established companies and emerging small business enterprises ~~[[in order]]~~ for the latter to benefit from the knowledge and experience of the established Mentor firms. ~~[[Working together in regular meetings, the]]~~ Mentors will ~~[[focus on and]]~~ assist with the development of the Protégé's business plan by identifying the most critical needs to achieve the plan, and implementing the actions to obtain the >> desired << results.

The Mentor-Protégé Program >> ("MPP") << is a community-based effort, involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The >> MPP was created to assist in overcoming << ~~[[Program is a deliberate effort to overcome]]~~ barriers that typically inhibit or restrict the success of small businesses. The ~~[[P]]~~ >> p << rogram is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. ~~[[It is expected that as a result of the Mentor-Protégé Program]]~~ >> As a result of the MPP <<, Protégés will experience a greater than industry average success rate and realize the growth and profitability objectives of their business plans, as well as long range stability. By implementing the ~~[[Mentor-Protégé Program as a component of its CSBE program]]~~ >> MPP <, Miami-Dade County will provide a community benefit by strengthening emerging businesses and providing them with >> the tools to benefit from << ~~[[previously denied]]~~ opportunities ~~[[for growth, expansion and increased participation-]]~~ in Miami-Dade County's economic development.

#### ~~[[2.]]~~ Definitions

- A. ~~SBD~~ The Miami-Dade County department that sponsors and provides direct support and overall management to the Mentor-Protégé Program component of the CSBE Program.

- ~~B. Mentor Program Coordinator – The SBD staff member designated as the individual responsible for coordinating and administering the various activities of the Mentor Protégé Program.~~
- ~~C. Mentor – A firm with an actual functioning place of business in Miami-Dade or Broward County which is deemed by SBD as productive and successful, and which has applied for and has been approved by SBD, in accordance with applicable procedures, for participation as a mentor in the Mentor Protégé Program. Although a Mentor may not provide mentoring services to more than three (3) Protégé firms at any one time, it is allowed to serve as a Mentor for an unlimited number of times (pursuant to SBD approval).~~
- ~~D. Protégé – A certified CSBE firm, which has applied for and has been approved, in accordance with applicable procedures, for participation as a protégé in the Mentor Protégé Program. Such participation cannot exceed two (2) years and a firm may have only one (1) term of participation as a protégé.]]~~

~~3. Individual Goals~~

- ~~A. The primary goals of Miami-Dade County's CSBE Mentor Protégé Program are:
  - ~~1. To develop and strengthen Protégé firms through coaching and counseling from Mentors.~~
  - ~~2. To expand business opportunities for Protégé firms.~~
  - ~~3. To enable Protégés to become competent and viable well managed businesses.~~
  - ~~4. To assist mentoring companies in carrying out their civic and corporate responsibilities by furnishing opportunities to provide developmental assistance to other emerging Miami-Dade County firms.~~
  - ~~5. To enhance Miami-Dade County's overall business and economical environments.~~~~

~~4. Measurable Objectives~~

~~An important facet of the Miami-Dade County Mentor Protégé Program is the ability to conduct ongoing monitoring and assessment of the results of implementation of the Programs through the use of measurable program objectives. The primary measurable objectives to be considered in the evaluation of the effectiveness of the Mentor Protégé Program are:~~

~~A. Specific Protégé Objectives:~~

- ~~1. Increase in Protégé's business capital.~~
- ~~2. Increase in Protégé firm's capacity to perform as depicted in equipment owned or leased, size of payroll, materials purchased, overhead costs.~~
- ~~3. Increase in Protégé's bonding capacity.~~
- ~~4. Increase in Protégé's gross earnings.~~
- ~~5. Increase in Protégé's net earnings and profit margin.~~
- ~~6. Increase in Protégé's credit rating.~~

- ~~7. Increase in value of Protégé's current and future work.~~
- ~~8. Increase in Protégé firm's longevity and viability during and after concluding Mentor Protégé participation.~~
- ~~9. Achievement of goals outlined in the strategic business plan.~~

~~From various financial, operating, personnel, and other reports received from the Protégé, the above objectives are determined, monitored and evaluated at the beginning stage of the Protégé's participation in the Mentor Protégé Program, at various intervals (monthly, quarterly and annually) throughout the duration of the Protégé's participation in the Program, at the conclusion of the two year mentoring period, and through follow up annual review from one to five years after the Protégé has completed the Mentor Protégé Program. This provides a means of determining whether mentoring procedures need to be revised or refocused either within individual Mentor Protégé teams or with the entire Program, and helps to track the long range impact of participation in the Mentor Protégé Program.~~

~~B. General Program Objectives:~~

- ~~1. Increase in number of actual or requested Mentor Protégé Program Mentors.~~
- ~~2. Increase in number of actual or requested Mentor Protégé Program Protégés.~~
- ~~3. Increase in repeat Mentor Protégé Program participation by Mentors.~~
- ~~4. Increase in successful graduates.]]~~

>>2. General Objectives

The primary objectives of Miami-Dade County's CSBE MPP are

- a. To develop and strengthen Protégé firms through coaching and counseling from Mentors.
- b. To expand business opportunities for Protégé firms.
- c. To enable Protégés to become competent and viable well managed businesses subsequent to graduation.
- d. To assist mentoring companies in carrying out their civic and corporate responsibilities by furnishing opportunities to provide development[[a]] assistance to other emerging Miami-Dade County firms.
- e. To enhance Miami-Dade County's overall business and economic environments.



f. Incentives – In addition to the benefits provided in the Program Mission section above, Mentors can be compensated for their participation in the MPP for one year (the “Commitment Period”), and will be eligible for an incentive on bidding on Miami-Dade County contracts for one year after completion of the Commitment Period. This incentive shall consist of either a (i) two percent (2%) bid preference or (ii) ten percent (10%) selection factor, for bid/proposal evaluation purposes only. The incentive may only be used for one contract award per Commitment Period, and must be utilized within one (1) year from the end of the Commitment Period. A Mentor claiming an incentive on bidding on Miami-Dade County contracts based on the MPP must continue to meet the eligibility requirements in this Implementing Order.

3. Measurable Objectives

- a. To create an environment that promotes a firm’s ability to increase its capital, net earnings and profit margins; therefore, increasing its bonding capacity and credit rating.
- b. Increase in Protégé firm's capacity to perform as depicted in equipment owned or leased, size of payroll, materials purchased, and overhead costs.
- c. Identify tools to increase the volume and value of Protégé’s current and future work.
- d. Increase in Protégé’s longevity and viability during and after concluding MPP participation.
- e. Achievement of goals outlined in the Protégé’s business plan.<<

[[5.]]>>4.<<[[Program]]>>MPP<< Eligibility [[and Participation]]>>Requirements<<

A. Mentor Eligibility Requirements

- 1. The ~~[[potential-]]~~ Mentor shall be a company which is successful and productive in its area of work or services with a minimum of five (5) years of experience in its principal industry and which agrees to provide development~~[[at]]~~ assistance through the ~~[[Mentor Protégé Program]]>>MPP<<~~.
- ~~[[2. The Mentor firm must have and maintain an actual place of business where it provides its actual products and services in Miami-Dade County throughout the duration of its mentorship.]]~~

~~[[3.]]>>2.<< The Mentor ~~[[firm-]]~~ must be, and remain in good legal business standing with the State of Florida, Miami-Dade County and all other local jurisdictions. Mentors must be solvent and licensed ~~[[businesses]]~~>>to do business in Miami-Dade County<<.~~

~~[[4.]]>>3.<< The ~~[[potential-]]~~Mentor shall ~~[[agree to-]]~~follow all ~~[[Mentor-Protégé-Program]]~~>>MPP<< guidelines and devote the necessary time, staff and ~~[[other-]]~~resources to fulfill its responsibility~~[[y]]~~>>ies<< as a Mentor, including attending all meetings scheduled with Protégé and/or SBD.>> Additionally, Mentors shall not have any SBE violations within the preceding two (2) years from its application to the MPP.<<~~

>>B. Protégé Eligibility Requirements

1. The Protégé shall: (a) be a company certified as a CSBE with SBD; (b) have been actively conducting business for a minimum of two (2) years; (c) be ready for expansion; and (d) agree to participate fully in the MPP.
2. The Protégé must maintain an actual place of business where it provides its products and services, in Miami-Dade County throughout the duration of its MPP participation.
3. The Protégé firm must be and remain in good legal standing with the State of Florida, Miami-Dade County, and all other local jurisdictions. Protégés must be solvent and licensed businesses when applicable.
4. The Protégé agrees to follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD. Additionally, Protégés shall not have any SBE violations within the preceding two (2) years from its application to the MPP.<<

~~[[B. Mentor Application Process~~

- ~~1. The potential Mentor shall apply with SBD on the appropriate application form to be considered for program participation as a Mentor. Documentation such as company brochures, occupational licenses and other licenses may be required to ensure basic eligibility requirements are met.~~
- ~~2. In some instances it may be necessary for SBD to contact the owner or managers of the prospective Mentor by telephone or to visit the offices to determine whether an applicant firm is eligible to be a Mentor.~~

- ~~3. SBD shall review the application and inform the applicant whether it has been approved as a Mentor within ten (10) business days of receipt of the completed Mentor application.~~
- ~~4. SBD will assign Protégés to Mentors (either one or two Mentors per Protégé, as available or appropriate) subject to approval by the CSBE Advisory Board and both parties must sign an agreement to formalize their commitment to the Program. Pairing Mentors with Protégés, which have a working relationship with each other, will be strongly discouraged since one of the objectives of the Mentor Protégé Program is to establish new productive relationships in the construction industry.]]~~

>>C. Mentor Application Process

1. The Mentor shall complete the application process to participate in the MPP. SBD may request additional documentation to ensure that eligibility requirements are met.
2. All documentation and information provided by the Mentor throughout the application process is subject to verification by SBD.
3. SBD will assign one Protégé to one Mentor. Both parties must sign a Mentor-Protégé Development Agreement to formalize their commitment to the MPP. Pairing Mentors with Protégés with a current or previous working relationship with each other, will be strongly discouraged since an objective of the MPP is to establish new productive relationships in the architecture and engineering industry.

D. Protégé Application Process

1. The Protégé shall apply with SBD on the appropriate application form to be considered for program participation as a Protégé. Accompanying the application should be a completed business plan and all required documentation, which may be pertinent to the Protégé's current financial standing, bonding level, capacity, staffing, workload, and other key business indicators. SBD may request additional documentation to determine MPP eligibility requirements are met.
2. All documentation and information provided by the Protégé throughout the application process is subject to verification by SBD.
3. SBD will assign one Protégé to one Mentor and both parties must sign a Mentor-Protégé Development Agreement to formalize their commitment to the MPP.<<

~~[[C.]]~~ >> E. << Mentor Responsibilities

1. Meetings - The ~~[[approved]]~~ Mentor shall conduct monthly face-to-face coaching and counseling meetings with the Protégé >> and assigned SBD staff, << to review the Protégé's strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings >> shall be conducted in Miami-Dade County, << ~~[[will be held at a time and place mutually agreed upon by the Mentor and Protégé; however, such meetings should occur no less than once every 30 calendar days between the first and 10th day of each month and should be at least two (2) hours in duration (more time should be allotted for these meetings as deemed necessary). The agenda for the meetings should be established in advance and should consist of items relevant to the Protégé's previously identified problem areas and his/her changing needs as well as the current experiences of both the Mentor and Protégé.]]~~ The Protégé will also be expected to provide reports >> using SBD's approved format << on ~~[[his/her]]~~ >> its << efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s) >>. << ~~[[and b]]~~ >> B << oth parties should establish target dates for any further improvements or enhancements. ~~[[The Mentor and Protégé shall alternate in preparing a report of the results of the monthly meeting using the form and format provided and submitting a copy of the report to the other party as well as to the SBD Mentor Protégé Program Coordinator and the CSBE Advisory Board within five (5) business days of the meeting. The Mentor Protégé Program Coordinator or a representative shall attend the monthly meetings between Mentor Protégé teams at least every other month.]]~~
2. Informal Contacts - The Mentor ~~[[should also]]~~ >> is encouraged to << routinely communicate with the Protégé ~~[[on the telephone]]~~ to discuss daily problems and situations encountered by the Protégé and to provide periodic review.
3. Introduction to Resources - The Mentor shall ~~[[, as frequently as possible, introduce the Protégé to various business resources in which he/she consults, including representatives]]~~ >> facilitate networking opportunities << in the banking, bonding, management, and business industries ~~[[as a means of providing access and breaking down previously existing barriers which may have hindered small businesses in the past]]~~.
4. Independence - The Mentor must not assume managerial or administrative control of the Protégé during or following the mentorship period.
- ~~[[5. Reporting Problems to SBD - The Mentor will discuss progress, issues or problems encountered with the Mentor Protégé~~

~~arrangement with SBD Mentor-Protégé Program coordinating staff as soon as possible after concerns are identified.]]~~

~~[[6.]]>>5.<<Working Relationships - Nothing in Mentor-Protégé Program regulations shall prohibit Mentors and Protégés from working together on joint ventures or in contractor-subcontractor arrangements on construction>>, construction services, << or other projects provided that control of the Protégé firm remains with the Protégé itself. [[These—]]Protégés may be used to meet subcontractor goals on which the Mentor bids.~~

~~[[7. Incentives — In addition to the benefits provided in the section immediately above, Mentors can be compensated for their involvement in the Mentor Protégé Program by the award of an incentive on bidding on Miami Dade County contracts. This incentive may consist of either 2% of the bid price, or up to 10% of the total evaluation points, for bid evaluation purposes only. A Mentor claiming an incentive in bidding on Miami Dade County contracts based on involvement in the Mentor Protégé Program must meet the eligibility criteria shown in Section XV of this Implementing Order.~~

#### ~~D. Protégé Eligibility Requirements~~

- ~~1. The prospective Protégé shall be a company certified as a CSBE with SBD, must have been actively conducting business for a minimum of two (2) years, must be considered as ready for expansion, and must agree to participate fully in the Mentor Protégé Program.~~
- ~~2. The prospective Protégé firm must have and maintain an actual place of business where it provides its actual products and services in Miami Dade County throughout the duration of its Mentor Protégé Program participation.~~
- ~~3. The prospective Protégé firm must be and remain in good legal business standing with the State of Florida, Miami Dade County and all other local jurisdictions. Protégés must be solvent and licensed businesses.~~
- ~~4. The prospective Protégé shall agree to follow all Mentor Protégé Program guidelines and devote the necessary time, staff and other resources in order to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD.~~

#### ~~E. Protégé Application Process~~

- ~~1. The prospective Protégé shall apply with SBD on the appropriate application form to be considered for program participation as a Protégé. Accompanying the application should be a completed strategic business plan and the documentation requested providing various information concerning the prospective Protégé's current financial standing, bonding level, capacity, staffing, workload, and other key business indicators. Additional documentation such as company brochures, occupational licenses and other licenses may~~

~~be required to determine Mentor Protégé Program eligibility requirements.~~

- ~~2. SBD shall review the application and inform the applicant whether it has been approved as a Protégé within ten (10) business days of receipt of the completed Protégé application.~~
- ~~3. SBD will assign Protégés to Mentors as deemed appropriate and/or as available and both parties must sign an agreement to formalize their commitment to the Program.]]~~

F. Protégé Responsibilities

~~[[1. Strategic Business Plan The Protégé shall prepare and strive to achieve goals outlined in a strategic business plan. SBD's Management and Technical Assistance Program (MTA), as described in Section XIV of this Implementing Order, should be used by the Protégé as a resource in developing this business plan if such assistance is needed. This business plan shall serve as a guideline and benchmark for evaluating the Protégé's progress in the Mentor Protégé Program.~~

- ~~2. Meetings The approved and assigned Protégé must make him/herself available for the monthly face to face coaching and counseling conferences with the Mentor and must be consistently prepared to review progress made in achieving the desired outcome outlined in their strategic business plan. In the meeting the Protégé must make the Mentor aware of all problems affecting the timely and efficient completion of projects and effective management of the firm. These conferences will be held at a time and place mutually agreed upon by the Mentor and Protégé; however, such meetings should occur no less than once every 30 calendar days between the first and 10th day of each month and 65 should be at least two (2) hours in duration (more time should be allotted for these meetings as deemed necessary). The topics for the meetings should consist of items relevant to the Protégé's previously identified problem areas and his/her changing needs as well as the current experiences of both the Mentor and Protégé. The Protégé will also be expected to provide reports on his/her efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s) and both parties should establish target dates for any further improvements or enhancements. The Mentor and Protégé shall alternate in preparing a report of the results of the monthly meeting and submitting a copy of the report to the other party as well as to the SBD Mentor Protégé Program Coordinator and CSBE Advisory Board.~~
- ~~3. Informal Contacts The Protégé should also routinely converse with the Mentor on the telephone and attempt to make other informal contact or correspond on a routine basis (such as every other day) to discuss daily problems and situations encountered by the Protégé and to obtain periodic counseling and guidance as needed.~~

- ~~4. Use of Training Resources — In an effort to enhance its business and industry knowledge and effectiveness, the Protégé may be required to attend, at its own expense if necessary, training conferences, coursework, or workshops on a routine basis as recommended by the Mentor or Mentor-Protégé Program Coordinator. These conferences are expected to cover various aspects of general business management as well as training sessions addressing specific industry topics. Attendance at these events must be recorded and made a part of the progress report for the appropriate period of attendance.~~
- ~~5. Use of MTA Program — In an effort to enhance its business and industry knowledge and effectiveness, the Protégé may be required to make routine use of the technical assistance component of the CSBE Program by seeking, scheduling and attending various services professionals as provided by the MTA Program. A listing of these resources are available through SBD and participation in the MTA Program must be recorded and made a part of the progress report for the appropriate period of participation.~~
- ~~6. Independence — The Protégé is not permitted to relinquish managerial or administrative control to the Mentor.~~
- ~~7. Reporting Problems — The Protégé will discuss poor progress or problems encountered with the Mentor-Protégé arrangement with SBD Mentor-Protégé Program coordinating staff as soon as possible after concerns are identified.]]~~
1. Goals and Objectives - The Protégé shall prepare and strive to achieve targeted goals and objectives, which shall serve as a guideline and benchmark for evaluating the Protégé's progress in the MPP.
2. Meetings - The Protégé shall take part in monthly face to face coaching and counseling meetings with the Mentor and assigned SBD staff to review its strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings shall be conducted in Miami-Dade County. The Protégé will also be expected to provide reports using SBD's approved format on its efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s). Both parties should establish target dates for any further improvements or enhancements.
3. Informal Contacts - The Protégé is encouraged to routinely communicate with the Mentor to discuss daily problems and situations encountered by the Protégé and to obtain periodic counseling and guidance as needed.

4. Use of Training Resources - In an effort to enhance its business and industry knowledge and effectiveness, the Protégé is encouraged to attend training conferences, coursework, or workshops that will assist them in reaching targeted goals and objectives.
5. Independence - The Protégé is not permitted to relinquish managerial or administrative control to the Mentor.

[[6-]]>>G.<< Program Coordination

[[A-]]>>1.<< SBD is responsible for the overall coordination and administration of the CSBE ~~[[Mentor-Protégé Program]]~~>>MPP<<. SBD's duties will include:

[[1]]>>a<<. Advertising and promoting the ~~[[Mentor-Protégé Program]]~~>>MPP<<.

[[2]]>>b<<. Organizing related business events.

[[3]]>>c<<. Identifying and approving ~~[[potential]]~~Mentors.

[[4]]>>d<<. Identifying and certifying ~~[[potential-]]~~Protégés.

[[5]]>>e<<. Assigning Mentors to Protégés as available.

[[6]]>>f<<. Informing and reminding Mentors and Protégés of their roles and responsibilities.

[[7]]>>g<<. Attending Mentor-Protégé meetings to promote effective cooperation and participation.

[[8]]>>h<<. Reviewing meeting and progress status reports.

[[9]]>>i<<. Maintaining program records.

~~[[10. Contracting for the management, accounting and other professional services that Protégés will need.~~

~~11. Identifying the necessary sources of program funding.]~~

[[12]]>>j<<. Attracting the support of larger corporate sponsors.

\* \* \*

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

[[Alina T. Hudak]]  
County ~~[[Manager]]~~>>Mayor<<



I.O. No.: 3-24  
Ordered: 01/21/2010  
Effective: 01/31/2010

**MIAMI-DADE COUNTY  
IMPLEMENTING ORDER**

**RESPONSIBLE WAGES AND BENEFITS FOR COUNTY CONSTRUCTION  
CONTRACTS**

**AUTHORITY:**

Section 4.02 of the Miami-Dade County Home Rule Amendment and Charter and Section 2-11.16 of the Code of Miami-Dade County.

**SUPERSEDES:**

This Implementing Order (IO) supersedes AO 3-24, ordered July 6, 2006 and effective July 16, 2006.

**POLICY:**

It is the policy of Miami-Dade County that in order to be a responsible bidder for a competitively bid construction contract in excess of one hundred thousand dollars (\$100,000) a bidder must pay laborers and mechanics performing work on the project no less than the hourly rates specified in accordance with Section 2-11.16 of the Code of Miami-Dade County. It is also the policy of Miami-Dade County that in all leases of County-owned land which provide for privately funded construction improvements thereon whose construction costs are greater than or equal to \$1 million dollars, any portion of which are financed by any federal, state or local governmental entity or by bonds issued by such entities, including the Industrial Development Authority (IDA), shall include the requirements of this IO, including requiring the lessee to require any contractor constructing such improvements to pay responsible wages as provided under Sec. 2-11.16 to the same extent as if such improvements were County construction. A lessee must pay the County the monitoring fee(s) for the project. In those cases where the lessee(s) and their contractor(s) agree to pay responsible wages throughout the construction phase of the agreement, an irrevocable letter of credit or escrow amount equal to 20% of the construction cost will not be required, rather the processes noted herein for County construction projects will be applicable, including payment of monitoring fees by the lessee.

**PURPOSE:**

This IO implements the responsible bidder ordinance and establishes an administrative procedure for resolution of complaints regarding underpayment of required hourly wages, as well as failure to comply with requirements of lessees on County-owned land involving privately funded construction. The ~~[[Department of]]~~ Small Business Development (SBD)

>>Division of the Internal Services Department<< is responsible for implementing this IO.<sup>1</sup>

**EXCEPTION:**

This IO does not apply to County construction contracts less than or equal to one hundred thousand dollars (\$100,000) or blanket County contracts designed to consolidate an indeterminate number of individual smaller construction contracts, repair or alteration activities which may be needed over a fixed period of time, provided the overall blanket contract ceiling does not exceed five hundred thousand dollars (\$500,000) and further provided that no individual work order issued under such blanket contract shall exceed twenty five thousand dollars (\$25,000) per craft. Furthermore, this IO shall not apply to those privately funded projects on County-owned land for construction or alteration of public buildings or public works which are financed solely through private sources, without one dollar (\$1) or more of financing provided through any federal, state, county or local government entity or bond sources including IDA bonds or similar type bond funding.

The foregoing notwithstanding, those leases of County-owned land providing for privately funded construction or alteration of public buildings or public works whose construction costs are greater than or equal to \$1 million dollars, any portion of which are financed with the use of IDA and have also received other State and/or local financed incentives based on job creation shall not be required to provide for payment of responsible wages for such construction. The lease shall however provide that in the event such a lessee does not fulfill the job creation requirements of the public financing or incentive, such lessee shall pay the County an additional lease payment of up to 20% of the construction cost of the improvements. The amount of such additional lease payment will depend on the percentage of the job creation requirements met as noted in the lease agreement with Miami-Dade County. Said additional lease payment shall be paid to Miami-Dade County for deposit in SBD's Compliance Trust Fund to support monitoring services for enforcement of this Ordinance (99-158).

**DEFINITIONS:**

The following definitions, as well as additional terms necessary for the understanding of this IO, shall apply:

- A. Administrative hearing officer means a person designated by the County ~~[[Manager]]~~>>Mayor<< to hold administrative hearings on complaints of practices prohibited by this IO.

\* \* \*

- H. Debar means to exclude a contractor, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses from County contracting and subcontracting for a specified period of time~~[[, not to exceed three (3) years]]~~.

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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.

\* \* \*

>>L. SBD means the Division of Small Business Development or successor division or department.<<

\* \* \*

**RESPONSIBILITY OF DEPARTMENTS LEASING COUNTY-OWNED LAND FOR CONSTRUCTION OF PRIVATELY FUNDED IMPROVEMENTS THEREON**

\* \* \*

B. Any department that negotiates the lease of County-owned land which provides for construction of improvements thereon whose construction costs are equal to or greater than \$1 million, any portion of which are financed with the use of IDA financing and have also received other State and /or local incentives based on job creation does not have to provide for payment of responsible wages for such construction. Such leases however, shall provide that the lessee will either:

a. Maintain in escrow an initial amount equal to 20% of the construction costs of the privately funded improvements; or

b. Maintain an irrevocable letter of credit equal initially to 20% of said construction costs. The lessee under such lease will provide the County with the irrevocable letter of credit or escrow amount prior to receiving the notice to proceed for construction of such improvements and shall be kept in place as provided herein until all jobs required to be created in return for public financing or other incentives received by the lessee have been satisfied. The escrow funds or irrevocable letter of credit will be returned to the lessee after all of the required jobs have been created to the County's satisfaction. In the event jobs are not created by the time designated in the lease agreement between the lessee and Miami-Dade County, the escrow funds shall revert to Miami-Dade County, for deposit in SBD's Compliance Trust Fund to support monitoring services required by Sec. 2-11.16 of the Code. In the case of an irrevocable letter of credit, the County shall draw on such letter of credit if the incentives are not met in an amount equal to the penalty imposed. The penalty of up to 20% will be assessed based on the percentage of the job creation requirement met. The job creation commitment will be monitored by ~~[[the Office of Community and Economic Development (OCED)]]~~>>SBD or other designated division or department<<. ~~[[OCED]]~~>>SBD<< will require a yearly status report from the lessee as to compliance with the job creation requirement and will conduct a yearly site visit to confirm the lessee's report. This yearly status report will be provided to the BCC by ~~[[OCED]]~~>>SBD<<. The amount in the escrow account or that is covered by the irrevocable letter of credit may be reduced as the jobs are phased in. Penalties for non-

compliance for those leases that include job creation requirements will be deposited in SBD's Compliance Trust Fund. The proceeds from penalties will be used to defray compliance monitoring costs.

#### **RESPONSIBILITY OF COMPLIANCE OFFICER:**

The County ~~[[Manager]]~~>>Mayor<< or his or her designee as the compliance officer shall, in cooperation with other agencies of the County government which are affected by the provisions of Section 2-11.16 of the Code of Miami-Dade County, be jointly responsible for implementing this section of the Code. Primary responsibilities of the compliance officer include the following:

- A. Prepare, update and disseminate general conditions or other material for supplementing the bid specifications (including wages and benefits schedules) for inclusion with applicable specification and contract documents;
- B. Prepare and update contract provisions pertaining to Section 2-11.16 of the Code of Miami-Dade County;
- C. Provide an overview of the monitoring process; and
- D. Administer investigation of complaints and assessment of penalties.

In addition, the compliance officer will be responsible for performing other appropriate duties and tasks as necessary to assure the proper management of this program and the required coordination with the Office of the County ~~[[Manager]]~~>>Mayor<< and with other offices, departments and agencies of the County government and the Public Health Trust.

#### **RESPONSIBILITY OF CONTRACTING OFFICER:**

The contracting officer for each agency of County government issuing competitively bid County construction contracts or administering a lease of County-owned land on which privately funded construction subject to Section 2-11.16 of the Code and this IO, in cooperation with the compliance officer, shall:

- A. Insert the appropriate notifications to bidders, lessees and contractors, and the applicable wages and benefits schedule in bid specifications, leases or contracts. The specifications for such contracts shall:
  - 1. Include a sum certain in dollars and cents as an initial overall per hour wage rate for each craft or type of employee in accordance with this IO;
  - 2. Mandate the contractor to whom the contract is awarded, and any of its subcontractors performing any of the contract work, pay not less than the specified overall per hour rate adjusted over the term of the contract as

provided in subsection (i) of the County Code 2-11.16 or applicable Davis-Bacon Act rate, whichever rate is greater;

3. Provide that the contractor, and any of its subcontractors, may fulfill the obligation to pay such specified overall per hour rate by payment to the employee of the hourly wage rate listed in the negotiated contracts (or, if applicable, under subsection (i) of the County Code 2-11.16, the "basic hourly rate of pay" as defined in 29 CFR 5.24 contained in the Secretary of Labor's wage determination for such crafts or type of employee plus either: (i) payment on the employees behalf of the cost (on an hourly basis) of the hospitalization, medical, pension and life insurance benefits specified for such crafts or type of employee; or (ii) payment to the employee (in addition to the listed hourly wage rate, or "basic hourly rate of pay if applicable) of an amount equal to the hospitalization, medical, pension and life insurance benefits (on an hourly basis) contractors are required to provide under the negotiated contracts (or, if applicable, under the subsection (i) of the County Code 2-11.16, an amount equal to the fringe benefit payments on an hourly basis for hospitalization, medical, pension and life insurance benefits contained in the Secretary of Labor's wage determination) for such craft or type of employee. Payments to employees shall be counted towards fulfillment of the above obligation only to the extent that such payments are made by check or money order;
4. Provide that the contractor, and any of its subcontractors shall post in a visible place on the site where such contract work is performed (1) the schedule of the specified overall per hour rate and benefits for each applicable classification specified by such negotiated contracts; (2) the amount of liquidated damages for any failure to pay such specified overall per hour rate and benefits, and (3) the name and address of the responsible official in Miami-Dade County to whom complaints should be given;
5. Provide that the County may withhold from the County contractor or require the lessee to withhold from the lessee's contractor so much of accrued payments as may be considered necessary to pay employees of the contractor or any subcontractor under them for the performance of the contract work, the difference between the overall per hour and benefits required to be paid by the contractor to the employees on the work and the amounts received by such employee and where violations have been found, the contractor or their agents shall not be entitled to refunds of the amount withheld;
6. Require the contractor and each subcontractor to keep, or cause to be kept, accurate written records signed under oath as true and correct showing:
  - a. the names, Social Security numbers, and craft classifications of all employees performing work on said contract;
  - b. the hours and fractions of hours for every type of work performed by each employee;

- c. the combined dollar amount of all wages, any contributions to benefit plans, and payment made to each employee of the overall per hour rate required by this Section and further require the contractor to submit to the County;
- d. a list of all subcontractors and the names and social security numbers of all employees thereof who performed work each day on the contract, and further require each subcontractor to also submit to the County; and
- e. a list of names and Social Security numbers of its employees who performed work each day on the contract.
- >>f. The contractor and each subcontractor shall, by the 10th of each month, submit to the County (or if requested, within the requested time frame) certified payroll showing the employer's payroll records for work performed in the previous month via the County's web-based system. Upon request by the County, the covered employer shall produce for inspection and copying its payroll records for any or all of its covered employees for the prior three-year period.<<

7. Provide that no contractor or subcontractors may terminate an employee performing work on the contract and/or retaliate against an employee for filing a complaint regarding payment of required overall per hour rates.

\* \* \*

**RESPONSIBILITY OF SUCCESSFUL AWARDEE:**

The successful awardee and any subcontractor(s) under them of a competitively bid construction contract or privately funded contract on County-owned land subject to the requirements of Section 2-11.16 of the Code and this IO, shall:

- A. Pay their employees not less than the specified combined hourly wage rates and benefits applicable to the employee classification in which such employees are working on the project. Such payment obligations may be fulfilled by payment of wages, contributions to employees' benefit plans, payments made by check or money order, or any combinations thereof;
- B. Post in a visible place or the worksite (1) the schedule of the specified combined overall hourly wage rate and benefits for each applicable classification specified by the negotiated contract; (2) the amount of liquidated damages for any failure to pay such rates; (3) the name and address of the responsible County official to whom complaints of practices prohibited by this IO should be given; (4) make information available to the County on any and all wage and benefits documentation and information for review by the County including, but not limited to, canceled checks, bank statements and sufficient information to determine the cost of the plan for each employee in terms of actual benefits to the employee;
- C. Keep or cause to be kept, accurate written records signed under oath as true and correct showing the names, Social Security numbers, and craft classifications of all employees performing work on the contract, the combined dollar amount of all

wages, any cost of contributions to benefits plans and any cash payments paid to each employee;

D. Submit to the County a list of all subcontractors and the names and Social Security numbers of all employees thereof who performed work each day on the contract;

>> E. Submit to the County by the 10th of each month (or if requested, within the requested time frame), certified payroll showing the employer's payroll records for work performed in the previous month via the County's web-based system. Upon request by the County, the covered employer shall produce for inspection and copying its payroll records for any or all of its covered employees for the prior three-year period.<<

~~[[E.]]~~>> F.<< Refrain from terminating, or otherwise retaliating, against an employee performing work on the contract even though a complaint of practices prohibited by this IO has been filed by the employee; and

~~[[F.]]~~>> G.<< Allow compliance officer ready access to documents and employees for interviews without interference.

\* \* \*

## **PROCEDURES FOR RESOLUTION OF COMPLAINTS OF PRACTICES PROHIBITED BY THIS IO:**

The compliance officer will administer the complaint process. This procedure shall include the following steps:

- A. Review complaints, supporting material and conduct investigation(s); SBD may conduct investigations of compliance with the requirements of this section and issue written notices to a contractor (or subcontractor under the contractor) when it determines based on such investigations that the contractor (or subcontractor under the contractor) has not complied herewith;
- B. The subcontractor shall respond in writing to the notice of noncompliance;
- C. Coordinate the examination of appropriate records and analyze the information obtained from the investigation with the contracting officer responsible for managing the construction contract; Based on the response, SBD may determine to rescind the notice of noncompliance or to conduct a compliance meeting with the affected contractor or subcontractor at which any additional evidence may be presented;
- D. Coordinate, mediate and encourage resolution of the complaint between the contracting officer, the contractor and/or subcontractor, and the complainant; SBD shall make a written compliance determination following any Compliance Meeting.

A determination that the contractor or subcontractor has not complied with the requirements of this Section shall state the basis therefore and shall advise the contractor or subcontractor of its right to file a written request >>along with a \$250 nonrefundable filing fee <<with the County ~~[[Manager]]~~>>Mayor<< within 30 calendar days to reschedule an administrative hearing before a hearing officer to appeal the determination as provided below;

- E. Maintain a file of complaints and any resolution thereof; A contractor or subcontractor who fails to respond to a notice of noncompliance, fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by SBD after a Compliance Meeting shall be deemed not have complied with the requirements of this IO as stated in the notice of determination of noncompliance and, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the employee and the contractor or subcontractor shall be fined the applicable penalty for such underpayment as provided under Penalties and Sanctions for County Contracts of this IO. A contractor or subcontractor who does not make the required payment of the underpaid wages or who does not pay any fine imposed hereunder shall not be deemed responsible to perform subsequent County construction contracts and shall be ineligible to be awarded such contracts for so long as the identified underpayment or any penalties imposed therefore remain outstanding, not to exceed three years;
- F. Request the County ~~[[Manager]]~~>>Mayor<< or his or her designee to appoint an administrative hearing officer within ten (10) days of the time at which other means to resolve the complaint have been exhausted (See D) and set a time for an administrative hearing; and
- G. Coordinate the imposition of any penalties including, but not limited to, withholding of current accrued payments, liquidated damages, and/or debarment which may be imposed by the County ~~[[Manager]]~~>>Mayor<< or his or her designee.

**PROCEDURES FOR ADMINISTRATIVE HEARING:**

The procedure for administrative hearings shall include the following steps:

- A. Upon timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of non-compliance, ~~[[Professional-Support Services Division will schedule a hearing date]]~~>>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 Section 2-10.2, or 3-11.1 or otherwise<<.



- B. ~~[[Professional Support Services Division]]~~>>SBD<< shall serve upon the contractor (or subcontractor) and/or lessee a notice of hearing together with a copy of SBD's determination of non-compliance within five (5) working days of the appointment of the administrative hearing officer. Such notice shall include:
1. A copy of the written complaint, including reasons and causes for the proposed administrative hearing outlining alleged prohibited practices upon which it is based;
  2. Which administrative penalties are being considered;
  3. That an administrative hearing shall be conducted before an administrative hearing officer on a date and time not to exceed twenty (20) days after service of the notice. The notice shall also advise the contractor that they may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them; and
  4. A description of the effect of the issuance of the notice of the proposed administrative hearing and the potential effect(s) of this administrative hearing.
- C. The compliance officer shall, with the assistance of the contracting officer, present evidence and arguments to the administrative hearing officer.
- D. No later than seven (7) calendar days prior to the scheduled hearing date, the contractor and/or lessee must furnish the compliance officer a list of the defenses the contractor intends to present at the administrative hearing. If the contractor and/or lessee fails to submit the list, in writing, at least forty-eight hours prior to the administrative hearing, or fails to seek an extension of time within which to do so, the contractor and/or lessee shall be deemed to have waived the opportunity to be heard at the administrative hearing. The administrative hearing officer shall have the right to grant or deny an extension of time, and the decision may only be reviewed upon an abuse of discretion.
- E. Hearsay evidence shall be admissible at the administrative hearing, but shall not form the sole basis for initiating an administrative hearing procedure or form the sole basis of any determination of penalties. The administrative hearing shall be transcribed, taped or otherwise recorded by a court reporter, at the election of the administrative hearing officer and at the expense of the County. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party.
- >> F. 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.

G. 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.<<

#### **QUALIFICATIONS OF HEARING OFFICERS:**

- A. Administrative hearing officers shall be residents of Miami-Dade County who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the County ~~[[Manager]]~~ >> Mayor << or his or her designee. Qualifications for administrative hearing officers should include retired judges who are licensed and admitted to practice law in the State of Florida, or arbitrators or mediators certified by the Eleventh Judicial Circuit or State Bar Association. Appointees should become acquainted with the relevant Implementing Order and Ordinance governing the particular violation(s) to be heard. Additional qualifications include, but are not limited to, experience in equal opportunity, anti-discrimination, contracting, procurement, bonding or financial services activities. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk. The Clerk shall submit an annual report to the Board on the number of women who have served as administrative hearing officers.
- B. The County Mayor or his or her designee shall appoint as many administrative hearing officers as are deemed necessary. Every effort will be made to ensure that the appointment of hearing officers reflect the diversity of the demographics of Miami-Dade County. Appointments shall be made for a term of one (1) year. Any administrative hearing officers may be reappointed at the discretion of the County Mayor, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual administrative hearing officers ; provided, however, that a determination as to reappointment must be made for each administrative hearing officers at the end of his or her one-year term. The County Mayor shall have the authority to remove administrative hearing officers at any time. Appointments to fill a vacancy shall be for the remainder of the unexpired term.
- C. Administrative hearing officers shall not be County employees but shall be compensated at a rate to be determined by IO.
- C. The >>Miami-<<Dade County Attorney's Office shall serve as general counsel to the administrative hearing officers.

#### **PENALTIES AND SANCTIONS FOR COUNTY CONTRACTS:**

The County ~~[[Manager]]~~>>Mayor<< or his or her designee will administer the penalty and sanction process. This procedure shall include the following steps:

- A. Upon completion of the administrative hearing, the administrative hearing officers shall submit written findings and recommendations together with a transcript of the administrative hearing to the County Mayor or his or her designee within fifteen (15) days. If the determination of the County Mayor or his/her designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor may order that the contract work be suspended or terminated, and that the non-complying 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. In addition, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the affected employees and the contractor or subcontractor shall be fined the penalties provided below.
- B. If the determination of the County Mayor or his or her 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 may, in the case of underpayment of the required overall per hour rate, order an amount equal to the amount of such underpayment be withheld from the contractor and remitted to the employee(s) and also fine the contractor or subcontractor for such noncompliance as follows: for the first underpayment, a penalty in an amount equal to ~~[[40%]]~~>>20%<< of the amount thereof; for the second underpayment, a penalty in an amount equal to ~~[[20%]]~~>>40%<< thereof; for the third and successive underpayments, a penalty in an amount equal to ~~[[30%]]~~>>60%<< thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and may 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 2-11.16 of the Code of Miami-Dade County.
- C. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal there from, the non-complying 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.

>>D. Any employee of a contractor or subcontractor who performed work on a contract subject to this section, may instead of adhering to the County administrative procedure set forth in this section but not in addition to such procedure, bring an action by filing suit against the contractor or subcontractor in any court of competent

jurisdiction to enforce the provisions of Section 2-11.16 of the Code of Miami-Dade County, and may be awarded back pay, benefits, attorney fees, costs. The applicable statute of limitations of such a claim will be two (2) years as provided in Section 95.11(4)(c), Florida Statutes, in an action for payment of wages. The court may also impose sanctions on the employer, including those persons or entities aiding or abetting the employer, to include wage restitution to the affected employee and damages payable to the covered employee in the sum of up to five hundred dollars (\$500.00) for each week each employer is found to have violated Section 2-11.16 of the Code of Miami-Dade County.<<

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

County ~~[[Manager]]~~>>Mayor<<

I.O. No.: 3-32  
Ordered: 5/3/2011  
Effective: 5/13/2011

**MIAMI-DADE COUNTY  
IMPLEMENTING ORDER**

~~[[COMMUNITY]]>>SMALL<< BUSINESS ENTERPRISE [[(CBE-A/E)]]>>ARCHITECTURE AND ENGINEERING<< PROGRAM >>["CBE-A/E"]<<[[FOR THE PURCHASE OF PROFESSIONAL ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, OR SURVEYING AND MAPPING SERVICES]]<sup>1</sup>~~

**AUTHORITY:**

Sections 1.01, 2.02 and 5.02 of the Miami-Dade County Home Rule Amendment and Charter; Sections 2-10.4.01, and 10-38 of the Code of Miami-Dade County.

**SUPERSEDES:**

This Implementing Order supersedes previous Administrative Order 3-32, ordered November 30, 2004 and effective December 10, 2004.

**POLICY:**

- A. It is the policy of Miami-Dade County that not less than 10% of the County's total annual expenditures of all project specific contracts for professional architectural, landscape architectural, engineering, and surveying and mapping services, shall be expended with CBE-A/Es certified under the CBE-A/E ordinance.
- B. Except where federal or state laws or regulations mandate to the contrary, this Implementing Order applies to all project specific awards, and multiple project contracts as mandated in the CBE-A/E ordinance.
- C. **APPLICABILITY TO THE PUBLIC HEALTH TRUST:**  
The application of contract measures to professional architectural, landscape architectural, engineering, or surveying and mapping services purchased by the Public Health Trust shall be governed by this Implementing Order.

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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.

## I. DEFINITIONS

This Implementing Order incorporates completely the definitions listed in the CBE-A/E Ordinance. Those definitions, as well as additional terms necessary for the understanding of this Implementing Order, are listed below:

\* \* \*

>>F. “Certificate of Assurance” means the departmental form submitted with bid documents whereby the Bidder acknowledges: (i) Small Business Enterprise (“SBE”) measures apply to the project; and (ii) Bidder will submit its list of certified SBEs to satisfy the measures via Miami-Dade County’s web-based system, within the specified time frame.<<

~~[[F.]]>>G.<< “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:~~

the evaluation of the amount of work contracted to subconsultants; normal industry practices; the skills, qualifications, or expertise of the firm to perform the work; whether the firm's own personnel perform, manage, and/or supervise the work involved; and other relevant factors.

~~[[G.]]>>H.<< “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 >>\$500,000.00 for all Tier 1 CBE-A/Es, <<two million (\$2,000,000) dollars for>>\_all<< Tier [[4]]>>2<< CBE-A/Es, four million five hundred thousand (\$4,500,000) dollars for Tier [[2]]>>3<< CBE-A/Es in the case of architectural services, or six million (\$6,000,000) dollars for Tier [[2]]>>3<< CBE-A/Es in the case of landscape architectural, engineering or surveying and mapping services. A CBE-A/E will graduate out of the Program once it has exceeded these Tier [[2]]>>3<< 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 Section II E. Representations as to gross revenues 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 professional services – 3 year average annual gross revenues of \$0 to [[(\$2,000,000)]>>\$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 [[(\$2,000,001 to \$4,5000,000)]>>\$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.<<

[[iii.]>>iv.<< Tier [[2]]>>3<< CBE>>\_<<A/Es in the case of landscape architectural services, engineering, or surveying and mapping professional services – 3 year average annual gross revenues of [[(\$2,000,004)]>>\$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 based on the Consumer Price Index calculated by the U.S. Department of Commerce 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.

>>i. “Compliance Audit” is generated the month after payment is made from the County to the Successful Bidder/Proposer and requires the Successful Bidder/Proposer to report payments made to subcontractors, and for the subcontractors to confirm receipt of these payments, via the County’s web-based system within the timeframe specified by SBD.<<

[[H.]>>J.<< “Construction” means the building, renovating, retrofitting, rehabbing, restoration, painting, altering, or repairing of a public improvement.

[[I.]>>K.<< “Continuing Contract” shall have the definition provided at Sec. 2-10.4(1)(f), Code of Miami-Dade County.

[[J.]>>L.<< “CBE-A/E Program” is the [[Community]]>>Small<< Business Enterprise >>Architecture and Engineering <<Program[[— for the Architectural, Engineering, Landscape Architectural, Surveying and Mapping Professionals]].

~~[[K.]]~~>>M<< "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.

~~[[L.]]~~>>N.<< "Design-build contract" means a single contract with a design-build firm for the design and construction of a public construction project.

a. "Design-build Firm" means a partnership, corporation, or other legal entity with the following characteristics:

1. A 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 481.219 to practice architecture; or certified under Section 481.319 to practice landscape architecture.

2. An individual or corporation 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 to practice architecture; or certified under Section 481.319 to practice landscape architecture.

~~[[N. "DPM" means Miami Dade County Department of Procurement Management.]]~~

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/or land surveying and mapping services.



- 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 CB-A/Es. Joint ventures shall be subject to the size limitations set forth in this ordinance; such size limitations include affiliates as set forth in Appendix A of this Ordinance.]]~~ >> "ISD" means the Internal Services Department. <<
- >>R. "Joint Venture" means a business arrangement of two or more parties, in which at least one is a CBE-A/E that agrees to pool its resources for the purpose of accomplishing a specific task.
- S. "Make-up Plan" means a plan whereby a bidder submits via the County's web-based system its commitment that if awarded the contract, it will fulfill all or a portion of any pending Small Business Enterprise Architecture and Engineering makeup requirement and identify the certified CBE-A/E firm(s) to be utilized to fulfill the make-up requirement that is in excess of any SBE goal(s) required on the project, and the percentage, dollar value and description of the work that needs to be made up within the time frame specified by SBD.
- T. "Mentor" means a firm with an established business which has applied for and been approved by SBD, in accordance with applicable procedures, for participation as a mentor in the Mentor-Protégé Program. A Mentor may not provide mentoring services to more than one (1) Protégé firm at any one time, but is allowed to serve as a Mentor for an unlimited number of times (pursuant to SBD approval).
- U. "Mentor-Protégé Program" means a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging small business enterprises in order for the latter to benefit from the knowledge and experience of the established mentor firms. Specific details of this program are provided in this Implementing Order.
- V. "Mentor-Protégé Program Coordinator" means the Small Business Development staff designated as the individual(s) responsible for coordinating and administering the various activities of the Mentor-Protégé Program.
- W. "Mentor-Protégé Project Plan" means a description of the type of training the Mentor will provide to the Protégé during the identified project. This document will be developed by the Mentor with the Protégé's input and submitted along with a signed Mentor-Protégé Development Agreement; all to be reviewed and approved by Small Business Development.

X. "Mentor-Protégé Development Agreement" means a signed agreement between a Mentor (prime) and a certified CBE-A/E firm (subcontractor/sub-consultants) Protégé.<<

~~[[R-]]>>~~Y.<< "Multiple Projects Contract" is a contract for a "project" which constitutes a grouping of minor or substantially similar study of activities or substantially similar construction, rehabilitation or renovation activities as defined in Section 2-10.4(1)(e)(1) and (2), Code of Miami-Dade County.

~~[[S]]>>~~Z.<< "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]]>>~~AA.<< "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]]>>~~BB.<< "Project Specific Awards" are contracts for professional services between Miami-Dade County and a firm whereby the firm provides professional services to the County agency for work of a specified nature for a fixed capital study or planning activity.

~~[[V]]>>~~CC.<< "Prompt Payment" – it is the intent of the County that all firms 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 with Miami-Dade County, Fire 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, Fire, or the Trust.
2. Small Business Development may investigate reported instances of late payments to CBE-A/Es.
3. The County Mayor or designee shall establish an administrative procedure for the resolution of written complaints pertaining to underpayment of professional services.

[[W]]>>DD.<< "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]]>>EE.<< "Proposer" means any firm that submits a proposal to provide professional services.

>>FF. "Protégé" means a firm: (i) certified as a CBE-A/E with SBD; (ii) actively conducting business for a minimum of two (2) years; (c) maintaining an actual place of business where it provides its products and services, in Miami-Dade County; (d) in good legal standing with the State of Florida, Miami-Dade County, and all other local jurisdictions; and (e) without any SBE violations within the preceding two (2) year period from its application to the MPP. Such participation cannot exceed two (2) years, and a firm may only be a Protégé one time. A Protégé agrees to follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD.<<

[[Y]]>>GG.<< "Qualifier" means the individual who qualified the firm license holder as required by Florida Statute>>s<<.

[[Z]]>>HH.<< "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.

[[AA]]>>II.<< "SBD" means ~~[[Miami-Dade County Department of]]>>the Division of<< Small Business Development>> or successor division or department<<.~~

[[BB]]>>JJ.<< "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]]>>KK.<< "Suspension" means temporary debarment for a period not to exceed two (2) years.

[[DD]]>>LL.<< "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 fees are ~~[[\\$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.~~

~~[[EE]]~~>>MM.<< “Tier 2 Set-Aside” means reservation for competition solely among 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 ~~[[\\$1,000,001 or greater]]~~>>between \$500,000.01 and \$2,000,000.00<<. 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.

NN. “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 \$2,000,000.01 or greater. Tier 1 and Tier 2 CBE-A/Es may compete for Tier 3 CBE-A/E set-asides as prime consultants.<<

~~[[FF]]~~>>OO.<< “Technical Certification” means a certification approved by the Miami-Dade County Technical Certification Committee which establishes minimum qualifications of the firm to perform the specific services to be eligible 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.

>>PP. “Utilization Plan” means the plan whereby a Bidder submits via the County’s web-based system its commitment that if awarded the contract, it will fulfill the SBE goal(s) required for the project and identify certified firms to fulfill goal(s) and percentages, dollar value, and description of the work to fulfill the SBE goal within the time frame specified by SBD.

QQ. “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.<<

\* \* \*

## II. CERTIFICATION

~~[[RESPONSIBILITY OF Department of Small-Business Development (SBD)]]~~>>SBD Responsibilities<<

1. SBD is the County agency responsible for certifying applicants, decertifying and recertifying CBE-A/Es, SBD shall maintain ~~[[and publish at least every other week-]]~~ an updated list of CBE-A/Es, identifying each listed CBE-A/E based on each Standard Industry Classification/North American Industry Classification System (SIC/NAICS) category, and each Technical Certification Category.

\* \* \*

#### A. CERTIFICATION PROCESS

1. Interested parties ~~[[may]]~~ >>shall complete an SBE<< ~~[[obtain the]]~~ certification application >>via the County's web-based system~~[[from SBD and are encouraged to request an explanation of the certification process. A copy of the certification application and ]]~~ >>. A<<[[a]]n explanation of the certification ~~[[process]]~~ >>requirements<< is also available on SBD's Web Page ~~[[through the County's Internet Portal at http://www.miamidade.gov/sba]]~~ >>at [www.miamidade.gov/smallbusiness](http://www.miamidade.gov/smallbusiness)<<.

\* \* \*

#### B. TERMS OF CERTIFICATION

1. Certification is valid for a three (3) year period. Certification for CBE-A/E firms is continuous within the three year period with the firm's annual submission of an Affidavit for Continuing Eligibility. SBD shall require that all CBE-A/E firms, in order to continue eligibility, submit an Affidavit for Continuing Eligibility annually on or before the Anniversary Date >>via the County's web-based system<<. The Affidavit for Continuing Eligibility shall include:

\* \* \*

#### ~~[[B-]]~~ >>C.<< ELIGIBILITY REQUIREMENTS

1. Applicants and CBE-A/Es must be profit-motivated businesses. (Note: not-for-profit or non-profit corporations are not eligible for certification).
2. CBE-A/Es must have an actual place of business in Miami-Dade County and may be registered as a vendor with ~~[[DPM]]~~ >>[SD<<.

\* \* \*

### III. JOINT VENTURES

- A. Only joint ventures ~~[[approved by]]~~ >>registered with<< SBD in accordance with this Implementing Order are eligible to participate as joint ventures in the CBE-A/E program. Joint ventures must be lawfully established.

[[A#]]>>At least one<< member[[s]] of the joint venture must be certified as >>a<< CBE-A/E[[s]] before the joint venture can be approved. Joint ventures can participate under the CBE-A/E program on contracts with CBE-A/E set-asides>>, selection factors, << or subconsultant goals.

>>B. PROGRAM REQUIREMENTS AND INCENTIVES

Joint Ventures must submit their joint venture agreements for approval by SBD, no later than thirty (30) calendar days prior to the date set for receipt of bids on an eligible project. SBD shall review the joint venture agreements for approval by considering the following factors:

- a. Allocation of profits and losses to each venture partner;
- b. allocation of the management and control; and
- c. capital investment from each venture partner.

As a Joint Venture under the SBE programs, a written joint venture agreement must be completed by all parties, lawfully established with the State of Florida, and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner. The agreement must state that the Joint Venture will continue for the duration of the project, at minimum.

A proposal/bid submitted by a Joint Venture that does not include a written joint venture agreement approved by SBD in accordance with the requirements of this IO, shall be deemed a non-qualified Joint Venture, and ineligible to participate in the CBE-A/E Program. An eligible Joint Venture may bid on County projects. Upon the approval of the contracting department and SBD, all projects valued over \$5,000,000 shall require each bidder to be a Joint Venture, as long as availability exists.

Joint Ventures will receive a Bid Preference or Selection Factor based on the percentage ownership of the CBE-A/E, as follows:

- a. Less than ten percent (10%) CBE-A/E ownership will result in a 0% bid preference or 0% selection factor.
- b. Between ten percent (10%) to twenty percent (20%) CBE-A/E ownership will result in a 3% bid preference or 3% selection factor.
- c. Between twenty-one (21%) to fifty percent (50%) CBE-A/E ownership will result in a 5% bid preference or 5% selection factor.
- d. Fifty-one percent (51%) and greater CBE-A/E ownership will result in a 10% bid preference or 10% selection factor.

The Joint Venture will receive credit towards any CBE-A/E measures based on the percentage ownership of the SBE that is part of the joint venture. A Joint Venture that includes fifty-one percent (51%) or above CBE-A/E ownership may also bid on set-aside contracts.<<

>>C. JOINT VENTURE RESPONSIBILITIES<<

Joint ventures must submit, prior to proposal submission, a Joint Venture Agreement containing the following information:

1. A description of the financial contribution of each member;
2. A list of the personnel and equipment used by each member;
3. A detailed breakdown of the responsibility of each member and the work to be performed by each member;
4. An explanation of how the profits and/or losses will be distributed;
5. The bonding capacity of each member;
6. A description of any management or incentive fees for any of the members;
7. A statement of the percentage of the joint venture that is owned and controlled by the qualifying member(s) and the basis for claiming such percentage; and
8. A copy of any required State>> of Florida<< certificates or registrations.

>>D. SBD RESPONSIBILITIES<<

SBD shall collect, assemble and verify all information needed to determine if >>at least one<<[[all]]>> of the<< members of a joint venture [[are]]>>is a<< CBE-A/E[[s]]>>, and to approve the joint venture agreement and register said Joint Venture, as applicable<<. A Joint Venture Agreement is complete when it includes all required supporting information.

IV. DEPARTMENT/AGENCY RESPONSIBILITIES

- A. Each department and agency, in conjunction with the annual budget process, shall compile a list of its proposed capital projects, renovations, and major repairs for the fiscal year. Each department and agency shall forward the list by August 1>>st<< of each year to SBD for use in the formulation of the CBE-A/E objectives.
- B. Each department and agency, in conjunction with its contracting and

purchasing activities, shall ~~[[ compile and maintain a list of]]~~ ensure << its consultants[[?]] >> provide <<ownership demographics>> as required by the Code of Miami-Dade County <<[[ These lists shall be updated at least quarterly and forwarded to SBD.]] Contract documents shall require that all requests for payment by the prime consultants include a list of all subconsultants who have performed work, and shall contain the prompt payment provisions outlined in the CBE-A/E ordinance.

\* \* \*

## V. PROCEDURE FOR RECOMMENDATION OF AGREEMENT SET-ASIDES OR SUBCONSULTANTS

Each individual project specific award and multiple project contracts (if the multiple projects contract 10% utilization objective has not been met) as mandated by the CBE-A/E ordinance for the purchase of architectural, landscape architectural, engineering, or surveying and mapping services, shall be reviewed for application of Tier 1 CBE-A/E set-asides or subconsultant goals. The procedure for applying Tier 1 CBE-A/E set-asides or subconsultant goals on such services are as follows:

- A. Each department, as applicable, shall review anticipated agreements for application of Tier 1 >> Tier 2 << and/or Tier [[2]] >> 3 << CBE-A/E set-asides or subconsultant goals.
- B. Departments shall work in conjunction with SBD in recommending whether agreements should be set-aside for Tier 1 >> Tier 2 << and/or Tier [[2]] >> 3 << CBE-A/Es or have subconsultant goals applied. The department shall submit the appropriate items from the following to the Director of SBD:
  1. For each recommendation to have an agreement set-aside for Tier 1 >> Tier 2 << and/or Tier [[2]] >> 3 << CBE-A/Es or to have a subconsultant goal applied, a memorandum should be included providing an appropriate brief description as follows:
    - a) Project title and number;
    - b) A complete breakdown of all the required professional services, including identification by their respective technical certification categories;
    - c) Estimated percentage of work for each of the required professional services;
    - d) A history of previous purchases to include the sizes of the previously successful consultants as appropriate for the previous three (3) years; and



- e) The recommendation as to whether to set-aside the agreement or to place a subconsultant goal on the agreement.
2. An agreement may be set-aside for Tier 1 >>, Tier 2, << and/or Tier [[2]] >> 3 << CBE-A/Es or may have subconsultant goals applied to a given agreement when availability has been established for the Standard Industry Classification/North American Industry Classification System (SIC/NAICS) category in which the agreement is classified and the forecast of future expenditures by program area indicates that an agreement set-aside for Tier 1 >>, Tier 2, << and/or Tier [[2]] >> 3 << CBE-A/Es or a subconsultant goal will be appropriate.

A. GENERAL GUIDANCE

1. The selection of an agreement for Tier 1 set-aside and/or Tier 2 subconsultant goal shall include consideration of the following:
- \* \* \*

B. AGREEMENT SET-ASIDES

1. A recommendation of a set-aside is appropriate when:

- a. The estimated professional services fee is \$1 - \$[[1,000,000]] >> 500,000.00 << for Tier 1 CBE-A/Es >>, between \$500,000.01 and \$2,000,000.00 for Tier 2 CBE-A/Es, << and [[1,000,001]] >> \$2,000,000.01 <<< or greater for Tier [[2]] >> 3 << CBE-AEs for architectural, landscape architectural, engineering, or surveying and mapping professional services;
- b. The quality, quantity and type of opportunities provided by the agreement are appropriate for applying a Tier 1 >>, Tier 2, << and/or Tier [[2]] >> 3 << set-aside(s);
- c. Three (3) or more Tier 1 >>, Tier 2, << and/or Tier [[2]] >> 3 << CBE-A/Es as appropriate are available to provide the quality, quantity and type of opportunities afforded by the proposed agreement.
- \* \* \*

VIII. AGREEMENT ADMINISTRATION - AGREEMENT SET-ASIDES

- A. Solicitations for County professional services agreements that are set-aside under the CBE-A/E program shall consider proposals solely from CBE-A/Es. In order to submit a proposal on a set-aside agreement, the proposer must be certified as a CBE-A/E prior to proposal submission date. A CBE-A/E awarded a set-aside agreement shall not transfer to a non-CBE-A/E, through subconsulting or otherwise, any part of the actual work of the agreement unless the proposal documents expressly and specifically permit such

transfer as consistent with normal industry practice or the CBE-A/E requests and receives prior to agreement award, an approval letter from SBD.

B. A CBE-A/E that performs the work of a set-aside agreement with its own forces may count such work towards reducing the CBE-A/E goal applied to the agreement by a maximum of one hundred (100) percent.

C. Respondent's Responsibilities for CBE-A/E Set-Asides

1. Proposals documents shall require proposers to submit a ~~[[Letter of Agreement,]]~~ Certificate of Assurance ~~[[or equivalent for each subconsultant to be utilized]]~~ >>at time of proposal submission<< ~~[[in satisfaction of a set-aside]].~~ >>Upon request, proposers must submit a Utilization Plan via the County's web-based system within the time frame specified by SBD<<. ~~[[The Letter of Agreement, or equivalent, shall be signed by the prime and the subconsultant and shall at a minimum state the type of work that the subconsultant will perform, the technical certification category, and the percentage that the amount of the fees payable to the subconsultant bears to the overall fees payable under the contract.]]~~ Failure to submit the required ~~[[Letter of Agreement, or equivalent,]]~~>>Certificate of Assurance<< at the time of proposal submission >>or a Utilization Plan upon request within the time frame specified by SBD<< shall render the proposal non-~~[[responsive]]~~>>compliant<<.

~~[[2. Proposers may cure immaterial irregularities in the Letter of Agreement submitted not later than forty eight (48) hours following written notification by the Department of Small Business Development. Immaterial irregularities shall be those items which, in the County's sole discretion, do not affect either the assurance of agreement between the prime proposer and the subconsultant or the proposer's assurances to the County that the stated measure will be met. Examples include, but are not limited to improperly executed letters, the listing of unidentifiable CBE-A/Es and percentage miscalculations that are not mere clerical errors apparent on the face of the Letter of Agreement.~~

~~2. Failure of a proposer to cure the immaterial irregularities within the stated period following notification shall result in disqualification of the proposer for contract award.]]~~

D. The following shall constitute a violation of this Implementing Order as they relate to an agreement that is set-aside:

1. Submission of a ~~[[“Letter of Agreement”]]~~>>Utilization Plan<< of CBE-A/E subconsultants that the respondent knew or should have known is incomplete or inaccurate>>, or failure to maintain certification as a CBE-

A/E<<;

2. ~~[[After proposal submission due date, d]]>>D~~<<eviation~~[[s]]~~ from the ~~[[“Letter of Agreement”]]>>Utilization Plan~~<< without ~~[[the written]]>>prior~~<< approval of SBD;
3. The utilization of a non-certified CBE-A/E>>, or a prime successful proposer not meeting CBE-A/E Program set-aside requirements<<;
4. A CBE-A/E serving as a conduit for CBE-A/E work awarded to a firm as a CBE-A/E but which is being performed by a non-CBE-A/E firm;
5. Not obtaining or retaining CBE-A/E certification while performing work designated for CBE-A/E firms;
6. Failure to ~~[[submit monthly utilization reports]]>>report payments to subconsultants or subcontractors via the County’s web-based system, or failure of subcontractors or subconsultants to confirm payments upon notification by the prime contractor, within the specified time frame~~<<;
7. Failure to comply with CBE-A/E certification requirements including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
8. Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from SBD;~~[[of]]~~
9. ~~[[Unjustified f]]>>F~~<<ailure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a ~~[[“Letter of Agreement.”]]>>Utilization Plan;~~
10. Termination of the CBE-A/E’s agreement without prior written approval from SBD;
11. Reduction of the scope of work of a CBE-A/E subconsultant agreement without prior approval from SBD; or
12. Failure to pay subconsultants promptly and in accordance with Section 2-10.4.01 of the Code of Miami-Dade County.<<

## IX. AGREEMENT ADMINISTRATION - SUBCONSULTANT GOALS

### A. SUBCONSULTANT GOALS

The purpose of a subconsultant goal is to have portions of the work under

the prime consultant performed by available subconsultants that are certified CBE-A/Es for agreement values totaling not less than the percentage of the prime agreement value set out in the proposal form. Subconsultant goals may be applied to an agreement when estimates made prior to proposal advertisement identify the quality, quantity and type of opportunities in the agreement and CBE-A/Es are available to afford effective competition in providing a percentage of these identified services.

After a proposal is advertised or other formal public notice given, the established subconsultant goal may be reduced only with the approval of the County Commission or the Public Health Trust. Proposal documents shall include documentation demonstrating the basis for the subconsultant goal established in the agreement.

>>A Small Business Enterprise Goods Program and Small Business Enterprise Services Program goal(s) may be applied to any project with an estimated value over \$700,000.00.<<

#### 1. RESPONDENT RESPONSIBILITIES FOR SUBCONSULTANT GOALS

Respondents must submit a completed ~~[[“Letter—of Agreement”]]~~>>Certificate of Assurance<< at the time of proposal submission >>and a Utilization Plan via the County's web-based system within the time frame specified by SBD<<. ~~[[identifying all Tier 1 and/or Tier 2 CBE A/Es to be utilized to meet the subconsultant goal, the professional service designation of work each will perform, and the percentage of such work.]]~~ The ~~[[Letter of Agreement]]~~>>Utilization Plan<< constitutes a ~~[[written]]~~ representation by the respondent that, to the best of the respondent's knowledge, the CBE-A/Es listed are qualified and available to perform as specified. The ~~[[Letter—of Agreement]]~~>>Certificate of Assurance<< is a commitment by the respondent that, if awarded the agreement, it will enter into written subconsultant agreements with the identified CBE-A/Es for the scope of work at the >>price or<< percentage set forth in the >>Utilization Plan<<. Failure to submit the required documents within the required time frames may render the proposal ~~[[nonresponsive]]~~>>non-compliant<< or be subject to sanctions or penalties as outlined in the contract or in this Implementing Order.

- a. All such subconsultant agreements shall be in writing and shall be executed by the prime consultant and the CBE-A/E subconsultant utilized to meet the subconsultant goal.
- b. Respondents who fail to submit the required ~~[[Letter—of Agreement]]~~>>Certificate of Assurance<< at the time of

proposal submission >>or a Utilization Plan upon request within the time frame specified by SBD<< shall be considered non-~~[[responsive]]>>~~compliant.<<

- c. ~~[[Respondents]]>>~~Proposals<< that ~~[[submit]]>>~~include<< a defective ~~[[Letter of Agreement]]>>~~Certificate of Assurance or Utilization Plan>> may be voidable. Examples of defects include, but are not limited to, ~~[[an incomplete Letter of Agreement,]]~~ the listing of an unidentifiable CBE-A/E, and percentage miscalculations that are not mere clerical errors apparent on the face of the ~~[[Letter of Agreement]]>>~~Utilization Plan<<.
- d. A successful respondent that is a CBE-A/E or a CBE-A/E joint venture may perform up to one hundred percent (100%) of a CBE-A/E subconsultant goal with its own forces. The remaining subconsultant goal work shall be performed by other CBE-A/Es.

\* \* \*

- f. In order to assure at the time of proposal submission, agreement upon the above information between the prime consultant and the CBE-A/E subconsultant so identified, >>proposal documents shall require<<the prime consultants ~~[[must]]>>~~to<< submit a ~~[[Letter of Agreement,]]~~Certificate of Assurance >>acknowledging all Small business Enterprise goals assigned to the project and the submittal of a Utilization Plan via the County's web-based system within the time frame identified by SBD.<<~~[[or equivalent for each subconsultant to be utilized in satisfaction of a subconsultant goal.]]~~ The ~~[[Letter of Agreement, Certificate of Assurance or equivalent]]>>~~Utilization Plan<<, shall be ~~[[signed]]>>~~submitted<< by the prime and the subconsultant and shall at a minimum state the type of work that the subconsultant will perform, the technical certification category, and the percentage that the amount of the fees payable to the subconsultant bears to the overall fees payable under the contract. Failure to submit the required ~~[[Letter of Agreement, or equivalent,]]>>~~Certificate of Assurance<< at the time of proposal submission>>, and submit a Utilization Plan via the County's web-based system within the time frame specified by SBD.<< shall render the ~~[[proposal non-responsive]]>>~~proposer non-complaint. A CBE-A/E firm may fulfil a subconsultant goal in only one (1) goal type per contract.<<
- g. ~~[[Proposers may cure immaterial irregularities in the Letter of Agreement, Certificate of Assurance, or equivalent, submitted not later than forty eight (48) hours following written notification by the Department of Small Business Development. Immaterial irregularities shall be those items which, in the County's sole discretion, do not, affect either the assurance of agreement between the prime proposer~~

and the subconsultant or the proposer's assurances to the County that the stated measure will be met. Immaterial irregularities include those correctable items specifically identified in the form approved by the Director of Small Business Development for purposes of verifying compliance. Failure of a proposer to cure the immaterial irregularities within the stated period following notification shall result in disqualification of the proposer for contract award. ]To prove lack of availability, respondents must submit the following:

\* \* \*

The following shall constitute ~~[[non-compliance with]]~~ a violation of << this Implementing Order as it relates to an agreement which has a CBE-A/E subconsultant goal:

- (1) The utilization of a non-certified CBE-A/E ~~>>~~ , or failure to maintain certification as a CBE-A/E <<;
- (2) A CBE-A/E serving as a conduit for CBE-A/E work awarded to a firm as a CBE-A/E but which is being performed by a non-CBE-A/E firm;
- (3) A prime consultant not meeting CBE-A/E subconsultant goal requirements;
- (4) Not obtaining or retaining CBE-A/E certification while performing work designated for CBE-A/E firms;
- (5) Failure to ~~[[submit monthly utilization reports]]~~ >>report payments to subconsultants or subcontractors via the County's web-based system, or failure of subcontractors or subconsultants to confirm payments upon notification by the prime contractor, within the specified time frame <<;
- (6) Deviation~~[[s]]~~ from the ~~[[Letter of Agreement]]~~ >>Utilization Plan << without prior approval from SBD;
- (7) Termination of the CBE-A/E's agreement without prior approval from SBD;
- (8) Reduction of the scope of work of a CBE-A/E subconsultant without prior approval from SBD;
- (9) Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from SBD;~~[[or]]~~

(10) ~~Unjustified-f]~~ Failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a ~~Letter of Agreement]~~ Utilization Plan;

(11) Failure to comply with CBE-A/E certification requirements including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations; or

(12) Failure to pay subconsultants promptly and in accordance with Section 2-10.4.01 of the Code of Miami-Dade County

## B. COUNTY RESPONSIBILITIES

1. After considering the quality, quantity and type of opportunities provided by the agreement, and the availability of CBE-A/Es to afford effective competition in providing the professional services required under the agreement, each department or ~~DPM]~~ ISD will recommend to SBD the type and level of agreement set-aside, or subconsultant goal that could be applied.
2. SBD shall review the ~~Letters of Agreement,]~~ Certificates of Assurance or equivalents, and Unavailability Certificates to determine compliance with the agreement set-aside, or subconsultant goal stated in the proposal documents. The Compliance Monitor may meet with a respondent before recommending that the Contract Officer determine noncompliance. This written recommendation shall be forwarded to the respondent and the Contract Officer.
3. In the event that the Contracting Officer receives a recommendation of non-compliance from the Compliance Monitor, he or she may conduct a meeting or hearing at which the respondent shall be afforded an opportunity to present data supporting its compliance with the goal. The Contracting Officer shall consider the evidence and make a determination as to compliance.

\* \* \*

## XII. AGREEMENT ADMINISTRATION - COMPLIANCE AND MONITORING

### A. Compliance Review

1. The Compliance Monitor shall review respondent's submission for compliance with this Implementing Order on every agreement to which

a CBE-A/E agreement set-aside, or subconsultant goal has been applied. The purpose of this review shall be for the Compliance Monitor to consider whether to recommend the respondent's proposal is determined to be in compliance or noncompliance with the requirements of this Implementing Order. The Compliance Monitor may consider relevant information from any person in making this decision. The Compliance Monitor may require the respondent to produce information deemed pertinent and appropriate and may obtain further information from whatever sources the Compliance Monitor deems appropriate.

2. The Compliance Monitor shall notify the respondent in writing stating the facts and the reasons on which the non-compliance is based. The respondent may request a meeting within five (5) business days from the date of the notification of non-compliance. The respondent shall supply further relevant information as required by the Compliance Monitor. No new altered [~~Letter of Agreement~~]>Utilization Plan< will be accepted.
3. The Compliance Monitor shall make a written recommendation to the Contracting Officer, which shall include a statement of the facts and reasons for which the non-compliance is based.
4. Following receipt of a recommendation of non-compliance from the Compliance Monitor, the Contracting Officer shall review the Compliance Monitor's recommendation of respondent's noncompliance with this Implementing Order. The Contracting Officer shall notify the respondent of such non-compliance. The respondent may request a meeting within five (5) business days from the date of notification of non-compliance with the Contracting Officer if the Contracting Officer was not present at the first meeting referenced in Subsection (A)(2) above. The respondent shall supply further relevant information as required by the Compliance Monitor. No new altered [~~Letter of Agreement~~]>Utilization Plan< will be accepted.

\* \* \*

## B. Post-Award Compliance and Monitoring

### 1. Approval of Subconsultant Agreements

The Successful Respondent shall submit to the Contracting Officer, for approval, written subconsultant agreements corresponding in all respects to the Successful Respondent's [~~Letter of Agreement~~]>Certificate of Assurance<. The Successful Respondent shall enter into a written subconsultant agreement with each listed CBE-A/E subconsultant and shall thereafter neither terminate any such subconsultant agreement, nor reduce the scope of work to be performed by, or decrease the price to



be paid to the CBE-A/Es thereunder, without in each instance obtaining prior written approval of the Contracting Officer. The Contracting Officer shall not give a final written determination without a recommendation from the Compliance Monitor.

\* \* \*

4. ~~[[Monthly/Quarterly]]>>Utilization<< Reporting~~

The successful respondent on a project that is a CBE-A/E agreement set-aside or on a project with CBE-A/E subconsultant goals shall ~~>>complete all required Compliance Audits<<[[submit monthly a Utilization Report to the Compliance Monitor through the Contracting Officer on or before the tenth working day following the end of the month the report covers. The Compliance Monitor shall give standard reporting forms to the successful respondent. The Utilization Report is to be completed by the successful respondent]]. Where a subconsultant goal has been imposed, the Utilization Report shall include information on CBE-A/Es utilized to meet such subconsultant goal. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County.~~

5. Deviations from the ~~[[Letter of Agreement]]>>Utilization Plan<<~~

a. In the event that, during the performance of an agreement, the CBE-A/E is not able to provide the services specified on the ~~[[Letter of Agreement]]>>Utilization Plan<<~~, the successful respondent must locate a CBE-A/E to substitute for the unavailable CBE-A/E, unless the respondent can prove the lack of an available CBE-A/E to provide the services to be provided by the prior CBE-A/E. The successful respondent must receive approval for substitution from SBD by submitting a request in writing addressed to the Director of SBD through the Contracting Officer. The request must include a revised ~~[[Letter of Agreement]]>>Utilization Plan<<~~ to include the substitute CBE-A/E. The Compliance Monitor will review the request and make a recommendation regarding the substitution to the Contracting Officer. A successful respondent that cannot secure a substitute CBE-A/E must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, and telephone numbers of all CBE-A/Es contacted, and the date of contact for each CBE-A/E. All certified CBE-A/Es certified in the appropriate professional service area under the technical certification categories must be contacted in order to prove lack of an available CBE-A/E.

b. The Compliance Monitor shall be responsible for monitoring the

performance of the successful respondent regarding compliance with agreement set-asides, or subconsultant goals applied to the agreements. The Compliance Monitor may, at his or her discretion, investigate deviations in the utilization of CBE-A/Es from that described on the ~~[[Letter of Agreement]]~~>>Utilization Plan<<, and make recommendations regarding compliance to the Contracting Officer. The Contracting Officer shall not make a final determination without a recommendation regarding compliance from the Compliance Monitor. Deviations from the goal stated in the agreement that shall be monitored include, but are not limited to:

\* \* \*

f. Alternative Subconsultant Agreements:

- 1) If the successful respondent is excused from entering into a subconsultant agreement or rightfully terminates a subconsultant agreement under this Implementing Order and without such subconsultant agreement, the Successful Respondent will not achieve the level of CBE-A/E participation upon which the agreement was awarded, the Successful Respondent shall make every reasonable effort to propose and enter into an alternative subconsultant agreement or subconsultant agreements for the same work to be performed by another available CBE-A/E as appropriate, for a subconsultant agreement price or prices totaling not less than the subconsultant agreement price under the excused or terminated subconsultant agreement less all amounts previously paid thereunder.
- 2) The Successful Respondent must submit to the Compliance Officer a revised ~~[[Letter of Agreement]]~~>>Utilization Plan<< to include the substitute CBE-A/E.

XIII. SANCTIONS FOR AGREEMENT VIOLATIONS

Proposal and agreement documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a respondent's violation of or failure to comply with ~~[[this ordinance]]~~>>Section 2-10.4.01 of the Code of Miami-Dade County<< or this Implementing Order may result in the imposition of one or more of the following sanctions:

- A. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
- B. Work stoppage;

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- C. Issuance of fines of up to two (2%) percent of the contract amount, said fines to be deducted from invoices;
- D. Termination, suspension, or cancellation of the agreement in whole or part;
- E. In the event a respondent or CBE-A/E attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Miami-Dade County Code, the County shall, whenever practicable, terminate the agreement or require the termination or cancellation of the subconsultant agreement for the project on which the respondent or CBE-A/E committed such acts. In addition, and as a further sanction, the County Mayor or his or her designee may impose any of the above-stated sanctions on any other agreements or subconsultant agreements the respondent or CBE-A/E has on County projects. In each instance, the respondent or CBE-A/E shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The respondent or CBE-A/E may also be subject to debarment.
- F. In the event that a respondent fails to achieve the CBE-A/E measures after the agreement completion, the respondent will be required to make up the CBE-A/E deficit for an amount equal to double the amount of the CBE-A/E measure deficiency. The procedures for making up the CBE-A/E deficit are as follows:
1. 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 ~~[[10%]]~~ >>20%<< of the amount thereof; for the second deficit, a penalty in an amount equal to ~~[[20%]]~~ >>40%<< thereof; for the third and successive deficits, a penalty in an amount equal to ~~[[30%]]~~ >>60%<< 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]]~~ >>2-10.4.01<< of the Code of Miami-Dade County.
  2. If the respondent has not met the CBE-A/E measures, the compliance officer will notify the respondent in writing of the CBE-A/E deficit.

3. If the respondent is found in non-compliance with the CBE-A/E measures, the compliance officer may issue a letter of noncompliance requesting that the respondent make up the CBE-A/E deficit on an existing or future County agreement for double the amount of the deficit on the agreement in question. The respondent will also be required to submit a >>Make-up Plan<<[[plan]] indicating any current or future County agreements in which the CBE-A/E deficit will be remedied.
4. The respondent must respond to SBD in writing within ten business days from the date of the non-compliance letter. The respondent must acknowledge receipt of the non-compliance letter and provide a plan to make up the CBE-A/E measure.
5. The compliance monitor will review the >>Make-up Plan<<[[plan]] for approval.
6. When an agreement is identified in which the CBE-A/E measure deficit will be remedied, the respondent will provide a Letter(s) of Agreement for the CBE-A/E firm(s) that will be utilized in making up the deficit.
- >>7. For any future contracts, a Make-up Plan must be submitted as part of the Utilization Plan for any proposal at the time of proposal submittal. The Utilization Plan must identify all CBE-A/Es to be utilized to meet the first tier subconsultant goal in satisfaction of the make-up, in addition to any other goals that may be applicable. Failure to include the required Make-up plan with proposals for any future contracts shall result in the submittal being deemed non-compliant.
8. Any respondent subject to an approved Make-up plan that fails to comply with any of the material terms of that Make-up plan, without good cause, shall be subject to an automatic suspension from proposing and/or otherwise participating on County contracts as a prime or subconsultant for a six (6) month period.
9. A respondent that fails to comply with any of the materials terms of a second Make-up plan, without good cause, shall be subject to an automatic suspension from proposing and/or otherwise participating on County contracts as a prime or subconsultant for a one (1) year period.
10. A respondent that fails to comply with any of the material terms of a third Make-up plan, without good cause, may be subject to debarment and shall automatically be evaluated for debarment. After serving a debarment for failure to satisfy a Make-up plan for no good cause, the subject firm shall be deemed ineligible for bidding on county contracts with measures for one (1) additional year unless the County Mayor or

designee determines that an emergency exists justifying such participation, and the Board of County Commissioners approves such decision.<<

[[7.]]>>11.<< The respondent will remain in a non-compliance status until the CBE-A/E make-up goal has been achieved.

[[8.]]>>12.<<Failure of the respondent to make up the CBE-A/E measure when opportunities are available on existing or future County agreements, will result in the sanctions or the imposition of other penalties, or as referenced in Sections XIII and XIV.

Some of the agreement violations that may result in the imposition of the sanctions listed in Section XIII above include, but are not limited to, the following:

- a. A CBE-A/E serving as a conduit for CBE-A/E work awarded to a firm as a CBE-A/E>>\_1<< but which is being performed by a non-CBE-A/E firm;
- b. A prime consultant not meeting CBE-A/E Program subconsultant goal requirements;
- c. Not obtaining or retaining CBE-A/E certification while performing work designated for CBE-A/E firms;
- d. Failure to ~~[[submit monthly utilization reports]]~~>>report payments to subconsultants or subcontractors via the County's web-based system, or failure of subcontractors or subconsultants to confirm payments upon notification by the prime contractor, within the specified time frame<<;
- e. Failure to comply with CBE-A/E certification requirements, including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
- f. Failure to maintain certification<<as a CBE-A/E<<;
- g. Deviation[[s]] from the ~~[[Letter of Agreement]]~~>>Utilization Plan<< without prior approval from SBD;
- h. Termination of the CBE-A/E's agreement without prior approval from SBD;
- i. Reduction of the scope of work of a CBE-A/E subconsultant agreement without prior approval from SBD;

- j. Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from SBD;[[-or]]
- k. ~~[[Unjustified—f]]~~>>F<<ailure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a [[Letter of Agreement]]>>Utilization Plan<< to meet a subconsultant goal>>; or
- l. Failure to pay subconsultants promptly and in accordance with the administrative procedures in Section 2-10.4.01 of the Code of Miami-Dade County<<.

\* \* \*

#### XIV. ADMINISTRATIVE PENALTIES

\* \* \*

#### D. MONETARY PENALTIES

1. 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 ~~[[40%]]~~>>20%<< of the amount thereof; for the second deficit, a penalty in an amount equal to ~~[[20%]]~~>>40%<< thereof; for the third and successive deficits, a penalty in an amount equal to ~~[[30%]]~~>>60%<< 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 ~~[[40-33.02]]~~>>2-10.4.01<< of the Code of Miami-Dade County.

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#### >>XVI. MENTOR-PROTÉGÉ PROGRAM:

##### 1. Program Mission

Miami-Dade County seeks to build effective working relationships between leaders of mature established companies and emerging small business enterprises for the latter to benefit from the knowledge and experience of the established Mentor firms. Mentors will assist with the development of

the Protégé's business plan by identifying the most critical needs to achieve the plan, and implementing the actions to obtain the desired results.

The Mentor-Protégé Program ("MPP") is a community-based effort, involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The MPP was created to assist in overcoming barriers that typically inhibit or restrict the success of small businesses. The program is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. As a result of the MPP, Protégés will experience a greater than industry average success rate and realize the growth and profitability objectives of their business plans, as well as long range stability. By implementing the MPP, Miami-Dade County will provide a community benefit by strengthening emerging businesses and providing them with the tools to benefit from opportunities in Miami-Dade County's economic development.

## 2. General Objectives

The primary objectives of Miami-Dade County's CBE-A/E MPP are

- a. To develop and strengthen Protégé firms through coaching and counseling from Mentors.
- b. To expand business opportunities for Protégé firms.
- c. To enable Protégés to become competent and viable well managed businesses subsequent to graduation.
- d. To assist mentoring companies in carrying out their civic and corporate responsibilities by furnishing opportunities to provide development assistance to other emerging Miami-Dade County firms.
- e. To enhance Miami-Dade County's overall business and economic environments.
- f. Incentives – In addition to the benefits provided in the Program Mission section above, Mentors can be compensated for their participation in the MPP for one year (the "Commitment Period"), and will be eligible for an incentive on bidding on Miami-Dade County contracts for one year after completion of the Commitment Period. This incentive shall consist of either a (i) two percent (2%) bid preference or (ii) ten percent (10%) selection factor, for bid/proposal evaluation purposes only. The incentive may only be used for one contract award per Commitment Period, and must be utilized within one (1) year from the end of the Commitment Period. A Mentor claiming an incentive on bidding on

Miami-Dade County contracts based on the MPP must continue to meet the eligibility requirements in this Implementing Order.

3. Measurable Objectives

- a. To create an environment that promotes a firm's ability to increase its capital, net earnings and profit margins; therefore, increasing its bonding capacity and credit rating.
- b. Increase in Protégé firm's capacity to perform as depicted in equipment owned or leased, size of payroll, materials purchased, and overhead costs.
- c. Identify tools to increase the volume and value of Protégé's current and future work.
- d. Increase in Protégé's longevity and viability during and after concluding MPP participation.
- e. Achievement of goals outlined in the Protégé's business plan.

4. MPP Eligibility Requirements

A. Mentor Eligibility Requirements

1. The Mentor shall be a company which is successful and productive in its area of work or services with a minimum of five (5) years of experience in its principal industry and which agrees to provide development assistance through the MPP.
2. The Mentor must be, and remain in good legal business standing with the State of Florida, Miami-Dade County and all other local jurisdictions. Mentors must be solvent and licensed to do business in Miami-Dade County.
3. The Mentor shall follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibilities as a Mentor, including attending all meetings scheduled with Protégé and/or SBD. Additionally, Mentors shall not have any SBE violations within the preceding two (2) years from its application to the MPP.

B. Protégé Eligibility Requirements

1. The Protégé shall: (a) be a company certified as a CBE-A/E with SBD; (b) have been actively conducting business for a minimum of



two (2) years; (c) be ready for expansion; and (d) agree to participate fully in the MPP.

2. The Protégé must maintain an actual place of business where it provides its products and services, in Miami-Dade County throughout the duration of its MPP participation.
3. The Protégé firm must be and remain in good legal standing with the State of Florida, Miami-Dade County, and all other local jurisdictions. Protégés must be solvent and licensed businesses when applicable.
4. The Protégé agrees to follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD. Additionally, Protégés shall not have any SBE violations within the preceding two (2) years from its application to the MPP.

#### C. Mentor Application Process

1. The Mentor shall complete the application process to participate in the MPP. SBD may request additional documentation to ensure that eligibility requirements are met.
2. All documentation and information provided by the Mentor throughout the application process is subject to verification by SBD.
3. SBD will assign one Protégé to one Mentor. Both parties must sign a Mentor-Protégé Development Agreement to formalize their commitment to the MPP. Pairing Mentors with Protégés with a current or previous working relationship with each other, will be strongly discouraged since an objective of the MPP is to establish new productive relationships in the architecture and engineering industry.

#### D. Protégé Application Process

1. The Protégé shall apply with SBD on the appropriate application form to be considered for program participation as a Protégé. Accompanying the application should be a completed business plan and all required documentation, which may be pertinent to the Protégé's current financial standing, bonding level, capacity, staffing, workload, and other key business indicators. SBD may request additional documentation to determine MPP eligibility requirements are met.

2. All documentation and information provided by the Protégé throughout the application process is subject to verification by SBD.
3. SBD will assign one Protégé to one Mentor and both parties must sign a Mentor-Protégé Development Agreement to formalize their commitment to the MPP.

#### E. Mentor Responsibilities

1. Meetings - The Mentor shall conduct monthly face-to-face coaching and counseling meetings with the Protégé and assigned SBD staff, to review the Protégé's strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings shall be conducted in Miami-Dade County. The Protégé will also be expected to provide reports using SBD's approved format on its efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s). Both parties should establish target dates for any further improvements or enhancements.
2. Informal Contacts - The Mentor is encouraged to routinely communicate with the Protégé to discuss daily problems and situations encountered by the Protégé and to provide periodic review.
3. Introduction to Resources - The Mentor shall facilitate networking opportunities in the banking, bonding, management, and business industries.
4. Independence - The Mentor must not assume managerial or administrative control of the Protégé during or following the mentorship period.
5. Working Relationships - Nothing in Mentor-Protégé Program regulations shall prohibit Mentors and Protégés from working together on joint ventures or in contractor-subcontractor arrangements on architecture, landscape architecture, engineering, surveying and mapping, or other projects provided that control of the Protégé firm remains with the Protégé itself. Protégés may be used to meet subcontractor goals on which the Mentor bids.

#### F. Protégé Responsibilities

1. Goals and Objectives - The Protégé shall prepare and strive to achieve targeted goals and objectives, which shall serve as a

guideline and benchmark for evaluating the Protégé's progress in the MPP.

2. Meetings - The Protégé shall take part in monthly face to face coaching and counseling meetings with the Mentor and assigned SBD staff to review its strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings shall be conducted in Miami-Dade County. The Protégé will also be expected to provide reports using SBD's approved format on its efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s). Both parties should establish target dates for any further improvements or enhancements.
3. Informal Contacts - The Protégé is encouraged to routinely communicate with the Mentor to discuss daily problems and situations encountered by the Protégé and to obtain periodic counseling and guidance as needed.
4. Use of Training Resources - In an effort to enhance its business and industry knowledge and effectiveness, the Protégé is encouraged to attend training conferences, coursework, or workshops that will assist them in reaching targeted goals and objectives.
5. Independence - The Protégé is not permitted to relinquish managerial or administrative control to the Mentor.

#### G. Program Coordination

1. SBD is responsible for the overall coordination and administration of the CBE-A/E MPP. SBD's duties will include:
  - a. Advertising and promoting the MPP.
  - b. Organizing related business events.
  - c. Identifying and approving Mentors.
  - d. Identifying and certifying Protégés.
  - e. Assigning Mentors to Protégés as available.
  - f. Informing and reminding Mentors and Protégés of their roles and responsibilities.

- g. Attending Mentor-Protégé meetings to promote effective cooperation and participation.
- h. Reviewing meeting and progress status reports.
- i. Maintaining program records.
- j. Attracting the support of larger corporate sponsors.<<

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

County [[Manager]]>>Mayor<<

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