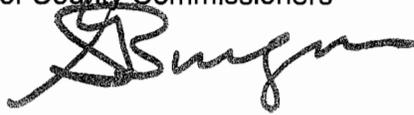


Date: June 3, 2008

To: Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

Agenda Item No. 7(E)

From: George M. Burgess  
County Manager



Ordinance No. 08-70

Subject: Ordinance Amending Section 2-10.4.01 of the Miami-Dade County Code Relating to the Community Business Enterprise Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services

**This item was amended by the Budget and Finance Committee on May 13, 2008 to provide that the County Mayor or his designee may increase the CBE-A/E size limits every five years to reflect increases in the Consumer Price Index for the preceding five-year period, and advising the Board of any such increase.**

**Recommendation**

It is recommended that the Board of County Commissioners approve amendments to Section 2-10.4.01 of the Miami-Dade County Code relating to the Community Business Enterprise Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services (CBE-A/E). The amendments will 1) increase the size limits for second tier CBE-A/Es in the case of architectural, engineering, and surveying and mapping services, 2) consolidate the Schedule of Participation and Letter of Intent replacing both with a Letter of Agreement, 3) allow proposers to cure defects on the Letter of Agreement within 48 hours upon notification by the Department of Small Business Development (SBD), and 4) substitute SBD for the Department of Business Development updating the Miami-Dade County Code.

**Scope**

This ordinance applies to all architectural, landscape architectural, engineering, and surveying and mapping professional services funded in whole or in part with County funds.

**Fiscal Impact/Funding Source**

There is no fiscal impact to the County.

**Track Record/Monitor**

SBD is responsible for implementing and monitoring the CBE-A/E program.

**Background**

On June 5, 2001, the Board adopted Section 2-10.4.01 of the Miami-Dade County Code which established the CBE-A/E Program. This program applies to architectural, engineering, landscape architectural, and surveying and mapping professional services. The CBE-A/E objective states that not less than ten percent (10%) of the County's total annual expenditures for the aforementioned professional services are expended with certified CBE-A/Es, for project specific and multiple project contracts.

**CBE-A/E Size Limits**

When first adopted by the Board on June 5, 2001, the initial size limit for the CBE-A/E program was \$2,000,000 based on three year average annual gross revenues for all CBE-A/Es. Subsequently, on June 8, 2004 the Board adopted an amendment that created a two-tiered CBE-A/E program. The size limits, based on three year average annual gross revenues are \$2,000,000 for first tier CBE-A/Es, \$4,000,000 for second tier CBE-A/Es in the case of architectural,

engineering, and surveying and mapping services, and \$6,000,000 for second tier CBE-A/Es in the case of landscape architectural services. Set-Asides may only be established for first tier CBE-A/Es and sub-consultant goals may be established for first and second tier CBE-A/Es. Currently, the second tier size limit for landscape architectural services is larger than the second tier size limit established for architectural, engineering, and surveying and mapping services which necessitated revisiting the CBE-A/E size limits.

When the CBE-A/E size limits were analyzed for possible amendments, the focus was to achieve greater equity and fairness across the categories. Also, based on further discussion and industry feed back, including with CBE-A/Es, it was important to consider the distinct nature of the categories within the program, particularly architectural and engineering services. Typically, the proportion of work on design projects is significantly lower for architectural services than for engineering services. In addition, it was found that architects have progressed to the second tier or graduated from the program more slowly than engineers. Conversely, engineers tend to progress to the second tier or graduate from the program sooner than architects. These factors were considered in the proposed amendments to the CBE-A/E size limits.

It is proposed that the second tier CBE-A/E size limit be increased from \$4,000,000 to \$4,500,000, in the case of architectural services and to \$6,000,000 in the case of engineering, and surveying and mapping services. The current second tier size limit for landscape architectural services will remain at \$6,000,000. The proposed amendment will achieve greater equity, while ensuring that smaller first tier CBE-A/Es remain sheltered and second tier CBE-A/Es continue to develop and grow within the program.

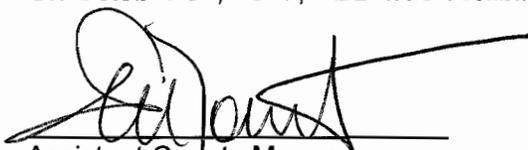
***Letter of Agreement***

Currently, when a CBE-A/E measure is applied to a contract, proposal documents require proposers to submit a completed Schedule of Participation (SOP) at proposal submission, identifying all first and second tier CBE-A/Es to be utilized to meet the sub-consultant goal, the scope of work each will perform, and the percentage of such work. Proposers are also required to include a Letter of Intent (LOI) by 4:00 p.m. on the second business day following proposal submission, indicating agreement between the proposer and its sub-consultants. If a form is omitted or a defective form is submitted a proposal may be rejected as not in compliance or non-responsive.

This requirement does not allow a remedy for compliance-related defects. In order to reduce the number of non-compliant/non-responsive proposals and to reduce the time needed for a determination of compliance, it is proposed that the SOP and LOI be consolidated, creating a Letter of Agreement. SBD would notify proposers of defects on the Letter of Agreement and allow up to 48 hours after SBD notification to cure defects. This proposed amendment will decrease the number of proposals deemed ineligible for award due to compliance and responsive issues.

***Update to the Miami-Dade County Code***

On October 30, 2007, SBD was established and this amendment updates the Code, accordingly.

  
Assistant County Manager



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

**DATE:** June 3, 2008

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

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

Please note any items checked.

- \_\_\_\_\_ "4-Day Rule" ("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
- \_\_\_\_\_ Bid waiver requiring County Manager's written recommendation
- \_\_\_\_\_ Ordinance creating a new board requires detailed County Manager's report for public hearing
- \_\_\_\_\_ Housekeeping item (no policy decision required)
- \_\_\_\_\_ No committee review

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

Agenda Item No. 7(E)  
6-3-08

ORDINANCE NO. 08-70

ORDINANCE AMENDING SECTION 2-10.4.01 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO THE COMMUNITY BUSINESS ENTERPRISE PROGRAM FOR ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, AND SURVEYING AND MAPPING PROFESSIONAL SERVICES (CBE-A/E); CONSOLIDATING THE SCHEDULE OF PARTICIPATION AND LETTER OF INTENT; REPLACING BOTH WITH A LETTER OF AGREEMENT, ALLOWING PROPOSERS TO CURE DEFECTS ON THE LETTER OF AGREEMENT WITHIN FORTY-EIGHT HOURS OF NOTIFICATION, INCREASING THE SIZE LIMITS FOR SECOND TIER CBE-A/E'S IN THE CASE OF ARCHITECTURAL, ENGINEERING, AND SURVEYING AND MAPPING SERVICES; AND SUBSTITUTING THE DEPARTMENT OF SMALL BUSINESS DEVELOPMENT (SBD) FOR THE DEPARTMENT OF BUSINESS DEVELOPMENT (DBD); PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

**Section 1.** Section 2-10.4.01 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 2-10.4.01. Community Business Enterprise Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services.**

\* \* \*

(2) Definitions

\* \* \*

G. *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 an actual place of business in Miami-Dade County and whose three (3) year average annual gross revenues do not exceed two million (\$2,000,000) dollars for >>all<< first tier CBE-A/Es, four million >>five-hundred thousand<< ~~[[(\$4,000,000)]]~~ >>(\$4,500,000)<< dollars for second tier CBE-A/Es in the case of architectural >>services<<, ~~[[engineering or surveying and mapping services]]~~, or six million (\$6,000,000) dollars for second tier CBE-A/Es in the case of landscape architectural services>>, engineering, and surveying and mapping services<<. A CBE-A/E will graduate out of the program once it has exceeded these second tier CBE-A/E size limits based on its three-year average annual gross revenues. As part of the certification process, CBE-A/Es must go through a technical certification process, which will be used to determine which of the technical certification categories the CBE-A/E will be placed in. A firm's eligibility to participate in the CBE-A/E program shall be determined based on the cumulative adjusted gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A. Representations as to gross revenues shall be subject to audit.

>>The County Mayor or his designee shall be authorized to increase 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 his designee shall advise the Board of any such increase.<<

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

1. Contracts with CBE-A/E set-asides, or subconsultant goals shall require that billings from consultants under prime professional services agreements with Miami-Dade County, or the Public Health Trust that are a CBE-A/E contract set-aside or which contain a Set-aside or subconsultant goal shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute with fourteen (14) calendar days of receipt of such billing by the County, or the Trust.
2. The Department of >>Small<< Business Development may investigate reported instances of late payments to CBE-A/Es. The County Manager shall establish an administrative procedure for the resolution of written complaints pertaining to underpayment of professional services.

\* \* \*

>>DD. SBD means the Department of Small Business Development, or successor agency.<<

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

>>FF<<[[EE]]. *Set-aside* means reservation for competition solely among first tier CBE-A/Es of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services.

>>GG<<[[FF]]. *Subconsultant goal* means a proportion of a prime agreement value stated as a percentage to be subconsulted to first and second tier CBE-A/Es to perform a commercially useful function.

>>HH<<[[GG]].

*Technical certification* means a certification approved by the Miami-Dade County Technical Certification Committee to allow a firm to submit proposals on, and receive award of, County agreements for architectural, engineering, landscape architecture, or surveying and mapping services. Firms may be certified in several different technical certification categories for a maximum of three (3) years.

\* \* \*

(3) Program Components:

\* \* \*

B. Miami-Dade County Community Business Enterprise (CBE-A/E) Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services:

1. Agreement Set-Asides: The County Commission, or Public Health Trust may determine it is in its best interest to set-aside a prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when determined, prior to proposal advertisement, that there are at least three (3) first tier CBE-A/Es available. On a set aside agreement, the successful proposer must be a certified first tier CBE-A/E; one hundred (100) percent of the total estimated value of professional services of the agreement must be performed by either the successful proposer, or the successful proposer and other certified first tier CBE-A/Es.

Transferring to, or substitution of, a non-first tier CBE-A/E through subconsulting or otherwise all or part of the actual work of a set-aside agreement is prohibited unless such transfer receives prior approval from the Department of >>Small<< Business Development as consistent with normal industry practice except as allowed under (commercially useful function) above.

\* \* \*

2. Subconsultant goals: The County Commission, or Public Health Trust may establish subconsultant goals to be applied to a particular agreement based on estimates made prior to proposal advertisement of the quality, quantity and type of subconsulting opportunities provided by the agreement, and of the availability of CBE-A/Es to afford effective subconsulting competition therefor. After proposal advertisement, or other formal public notice, the established subconsultant goal may be reduced only with the approval of the County Commission or Public Health Trust.

~~[[Proposal documents shall require proposers to submit a Schedule of Participation form, or equivalent, at the time of proposal submission identifying all first and second tier CBE A/Es to be utilized to meet the subconsultant goal, the scope of work each will perform, and the percentage of such work.]]~~  
>>Proposal documents shall require proposers to submit a Letter of Agreement, or equivalent, for each subconsultant to be utilized in satisfaction of a subconsultant goal. 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 ~~[[Schedule of Participation]]~~ >>Letter of Agreement<< ~~[[form,]]~~ or equivalent, at the time of proposal submission shall render the proposal non-responsive. ~~[[A Letter of Intent form shall also be required by proposers, no later than two (2) business days after proposal submission due date confirming the information on the schedule of participation through signed documents from the CBE A/E involved. Submission of a defective Schedule of Participation and/or Letter of Intent form, or equivalent, shall render the proposal voidable.]]~~

>>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. 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.<<

Proposal documents shall include documentation demonstrating the basis for the subconsultant goal established in the contract. Any proposer may challenge or protest the goal by submitting to >>S<<[[D]]BD or the Contracting Officer no later than ten (10) business days prior to the scheduled proposal submission date the reasons for such a challenge or protest in writing. Challenges or protests to a CBE-A/E goal by proposers after that time, or based on reasons not provided in writing within the time frame stated above, shall not be considered by the County Commission. A successful prime proposer or joint venture certified as a second tier CBE-A/E may perform up to 100 percent of a CBE-A/E subconsultant goal with its own forces provided that the ~~[[Schedule of Participation form]]~~ >>Letter of Agreement<<, or equivalent, as filed with the proposal submission identifies such prime proposer or joint venture as performing such work.

Proposers who believe that they will fail to meet the specified subconsultant goal due to lack of available first and second tier CBE-A/Es, in order to remain eligible for award of the agreement, must notify SBD in writing at least fourteen (14) calendar days prior to proposal submitted date, advising SBD of the lack of available first and second tier CBE-A/Es and providing full documentation of their efforts to obtain the services of first and second tier CBE-A/Es to meet the goal.

Proposal documents shall provide that::

\* \* \*

(ii) Expenditures to first and second tier CBE-A/Es for acting essentially as a conduit to transfer funds to a non-CBE-A/E shall not be counted toward meeting a subconsultant goal unless such conduct receives prior approval from the Department of Small Business Development as consistent with normal industry practice; and

(iii) Expenditures to first and second tier CBE-A/Es who subconsult work further to non-CBE-A/Es shall not be counted toward meeting a subconsultant goal unless such subconsulting receives prior approval from the Department of Small Business Development as consistent with industry practice.

\* \* \*

- (4) *Certification Requirements:* The County Manager or his or her designee shall implement eligibility criteria and procedures for firms to be certified as CBE-A/Es based on regulations outlined in this section. Firms exceeding size limits established hereunder and under Appendix A of the ordinance from which this section derives are not eligible for measures or participation in these programs.

1. The Department of >>Small<< Business Development shall maintain and publish at least monthly an updated list of CBE-A/Es.
2. The Department of >>Small<< Business Development shall not certify an applicant, shall not recertify a CBE-A/E, and shall decertify a CBE-A/E that fails to comply with the criteria or procedures for obtaining or maintaining certification. The Department of >>Small<< Business Development shall have authority to suspend the certification of a CBE-A/E during any appeal of a decertification decision.

\* \* \*

8. The Department of >>Small<< Business Development may require applicants and CBE-A/Es to submit information regarding their business operations, including but not limited to a breakdown of the applicant's or CBE-A/E's ownership, gross annual sales and/or workforce; however, the race, national origin, gender, shall not be used in the consideration.

- (5) *Sanctions for contractual violations:* Proposal and agreement documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a proposer's or subconsultant's violation of or failure to comply with this section or its implementing administrative orders may result in the imposition of one or more of the following sanctions:

\* \* \*

- vi. In the event a proposer or CBE-A/E attempts to comply with the provisions of this section 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 agreement on which the proposer or

CBE-A/E committed such acts. In addition, and as a further sanction, the County Manager or his or her designee may impose any of the above-stated sanctions on any other agreements or subconsultant agreements the proposer or CBE-A/E has on County projects. In each instance, the proposer 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 proposer or CBE-A/E may also be subject to debarment. Some of the violations that may result in the imposition of the sanctions listed in Section (5) above include, but are not limited to, the following:

\* \* \*

7. Deviation from the ~~[[Schedule of Participation form]]~~ >>Letter of Agreement<<, or equivalent, without prior approval from >>S<<[[~~D~~]]BD;
8. Termination of the CBE-A/E's agreement without prior approval from >>S<<[[~~D~~]]BD;
9. Reduction of the scope of work of a CBE-A/E subconsultant agreement without prior approval from >>S<<[[~~D~~]]BD;
10. Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from >>S<<[[~~D~~]]BD;
11. Unjustified failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a ~~[[Schedule of Participation form]]~~ >>Letter of Agreement<<, or equivalent.

\* \* \*

- (7) *County responsibilities.* The Department of >>Small<< Business Development (or other County department designated by the County Manager) shall:

\* \* \*

**Section 2.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 3.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

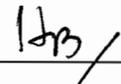
**Section 4.** This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon override by this Board.

PASSED AND ADOPTED: **June 3, 2008**

Approved by County Attorney  
as to form and legal sufficiency.

  
\_\_\_\_\_

Prepared by:  
Hugo Benitez

  
\_\_\_\_\_