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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(36)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: May 3, 2011

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

SUBJECT: Resolution rescinding Administrative Order 3-32 and authorizing Implementing Order 3-32: Community Business Enterprise ("CBE-A/E") Program for the purchase of professional architectural, landscape architectural, engineering, or surveying and mapping services

Resolution No. R-387-11

This resolution was amended at the Internal Management and Fiscal Responsibility Committee to change the sentence dealing with a fourth violation and finding of noncompliance, from "*may* be the cause for suspension....", to "<u>shall</u> be the cause for suspension...."

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.

R. A. Cuevas, Jr.
County Attorney

RAC/up

Memorandum

MIAMI-DADE COUNTY

Date: May 3, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Alina T. Hudak
County Manager

Subject: Resolution Rescinding Administrative Order 3-32 and Authorizing Implementing Order 3-32: Community Business Enterprise Program for the Purchase of Professional Architectural, Landscape Architectural, Engineering, or Surveying and Mapping Services

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This item differs from the original in that it includes language allowing for adjustments to size standards based on the local Consumer Price Index for All Urban Consumers (CPI-U) or other appropriate inflation measures as may be applied across all industries. In addition, the Appeals section has been changed to provide for a Hearing Officer to make findings and recommendations, and the Mayor to make a final decision, which is appealable to Circuit Court. This change makes the appellate remedy the same, irrespective of the party appealing the final decision. Finally, this substitute modifies the Administrative Penalties Section to include all penalties for violations of or noncompliance with this section and its implementing order, proposals(s), and/or competitive selection documents, which had been improperly included in the Appeals Section. Additionally, this item was amended during the Internal Management and Fiscal Responsibility Committee meeting of April 12, 2011 to indicate that a fouth violation and finding of noncompliance shall be cause for suspension or termination and debarment.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution rescinding Administrative Order 3-32 and authorizing Implementing Order 3-32: Community Business Enterprise (CBE–A/E) Program for the Purchase of Professional Architectural, Landscape Architectural, Engineering, or Surveying and Mapping Services.

Scope

The impact of this agenda item is countywide in nature.

Fiscal Impact/Funding Source

The accompanying resolution will have an estimated fiscal impact of $2,000 annually attributed to the cost of appeal hearings of certification denial, decertification and determinations of non-compliance with program requirements. This fiscal impact may be off-set by recovery of administrative cost from unsuccessful appellants. Upon appeal, firms are required to submit a non-refundable filing fee of $250 and if unsuccessful, incur the costs of the appeal. Prior Board legislation established the utilization of Hearing Officers for appeal of certification denial, decertification and determinations of non-compliance with the Community Small Business Enterprise (CSBE) program.

Track Record/Monitor
The Department of Small Business Development (SBD) is responsible for administering this program.

Background
In December 2009, certification functions for the County's Small and Disadvantaged Business Programs were transferred from the Department of Small Business Development (SBD) to the Department of Procurement Management (DPM). These include the Small Business Enterprise, Community Small Business Enterprise, Community Business Enterprise, Disadvantaged Business Enterprise, and Local Developing Business programs. Increases in the volume of both new applications and recertifications have created a backlog. DPM and SBD have conducted extensive reviews of each of these programs, in consultation with stakeholders and certified firms, resulting in legislative amendments to improve the certification process and customer service; streamline operational processes; enhance opportunities to local small businesses; and allow for overall effectiveness with reduced resources. Subsequently, in October 2010 the certification functions transferred back to SBD.

The proposed amendments have been reviewed with members of the Board of County Commissioners and/or their staffs, Small Business Advisory Boards, and other small business programs stakeholders. Specific amendments recommended in the proposed Implementing Order (IO) are as follows:

Certification Amendments

1. Provides for a three (3) year certification renewal period

   Currently, certifications are valid for one (1) year with annual expiration dates which potentially negatively impact firms' small business status due to issues beyond their control. Based on this potential impact, a significant backlog in applications and staff reductions, it is recommended that firms' certification expire every three years. Within that three-year period, firms would be required to annually submit an "Affidavit for Continuing Eligibility" and minimal documentation. This will result in a more customer friendly, streamlined process that eliminates the negative impact of administrative backlogs.

2. Changes the measure utilized to adjust the CBE/AE size limits from the Consumer Price Index to the local Consumer Price Index for All Urban Consumers (CPI-U) or other appropriate inflation measures as may be applied across all industries.

3. Amends the timeframe allowed for application of certification

Firms denied certification may reapply for certification 12 months from the time of denial of certification; Graduated firms may reapply for certification after filing and submitting their most recent corporate tax returns subsequent to the notice of graduation.

4. Allows CBE-A/E firms to be certified in other technical categories

   CBE firms that have received Technical Certification pursuant to Section 2-10.4 of the Code of Miami-Dade County and State of Florida licensing requirements through a non-owner qualifier may be certified in other technical categories. Currently, the applicant qualifier of a certified CBE-A/E firm must own at least 25% of the certified firm's issued stock or have at least a 25% ownership interest in the certified firm. The proposed amendment will allow CBE-A/Es to be certified in all technical categories approved with Miami-Dade County and in compliance with the State of Florida licensing requirements.

5. Simplifies and clarifies the definition of affiliated businesses.

Program Amendments

1. Changes the name of the Department of Business Development to the Department of Small Business Development.

2. Establishes Tier 1 and Tier 2 Set-Asides

   Currently set-asides are reserved 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.

   It is proposed that Tier 1 and Tier 2 CBE-A/E set-asides be established. Tier 1 set-asides shall be reserved for competition solely among Tier 1 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants on a County agreement for architectural, landscape architectural, engineering, or surveying and mapping services where the estimated cost of professional service fees are $1,000,000 or less. Tier 2 set-asides shall be reserved for competition solely among Tier 2 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants on a prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping services where the estimated cost of professional service fees are $1,000,001 or greater. Tier 1 CBE-A/E primes may bid (up) on Tier 2 projects; however, Tier 2 CBE-A/E primes are prohibited from bidding (down) on Tier 1 projects.

3. Clarifies the CBE-A/E Size Limits

   Currently, CBE-A/E means a firm providing architectural, landscape architectural, engineering, or surveying and mapping professional services, including a design-build firm, whose three year average annual gross revenues do not exceed two million dollars ($2,000,000) for all first tier CBE-A/Es, four million five hundred thousand ($4,500,000.00) for second tier CBE-A/Es in the case of architectural services, or six million ($6,000,000.00)

for second tier CBE-A/Es in the case of landscape architectural services, engineering, and surveying and mapping services.

To eliminate ambiguity, it is proposed that the CBE-A/E definition be amended to further clarify the contracting participation levels for first and second tier CBE-A/Es as follows:

a. Tier 1 CBE-A/Es in the case of architectural, landscape architectural, engineering, or surveying and mapping services – 3 year average annual gross revenues of $0 to $2,000,000
b. Tier 2 CBE-A/Es in the case of architectural services – 3 year average annual gross revenues of $2,000,001 to $4,500,000
c. Tier 2 CBE-A/Es in the case of landscape architectural, engineering, or surveying and mapping services – 3 year average annual gross revenues of $2,000,001 to $6,000,000

4. Currently, only 2nd Tier CBE-A/E Prime firms may fulfill 100% of sub-consultant goals with their own forces. It is proposed that all CBE-A/E Prime firms be allowed to fulfill up to 100% of sub-consultant goals with their own forces

5. Streamlines the Review Committee Process

   It is proposed that the existing Review Committee process be amended to model the Expedited Review Committee process established to review projects under the Economic Stimulus Plan (ESP). Currently, the Review Committee meets bi-weekly to review all projects that have been analyzed by SBD for the application of contract measures. The proposed process will establish a standing Review Committee that will only meet to review contracts where disagreements exist regarding the appropriate contract measure between SBD and the contracting departments and when public input requires deliberation regarding the measure/goal recommendations.

6. Modifies the Appeal Process for Certification Denial, Decertification and Noncompliance Determinations

   Prior Board action replaced the Review Committee with certified Administrative Hearing Officers as the responsible body for hearing appeals of certification denials, decertification and non-compliance with the Community Small Business Enterprise (CSBE) Program. To establish consistency among the small business programs it is proposed that the appeals process be amended to reflect that any firm that is denied certification, decertified or issued a determination of non-compliance with the requirements of the CBE-A/E Ordinance or its Implementing Order appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee of $250 within 30 days of issuance of the notice. All appeals of certification denial, decertification or non-compliance determinations shall be heard by administrative hearing officers that 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 will be acquainted with Implementing Order 3-32 and the provisions of Section 2-10.4.01, Miami-Dade County Code, as amended, applicable to the particular violations to be heard.

7. Allows for Penalties/Sanctions for Measure Non-compliance

It is proposed that language be added that allows penalties and sanctions to be imposed by the County Mayor or designee upon contractors that fail to comply with approved small business measures. In the case of a goal deficit, the County Mayor or designee may 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% of the amount thereof; for the second deficit, a penalty in an amount equal to 20% thereof; for the third and successive deficits, a penalty in an amount equal to 30% 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 the program.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: May 3, 2011

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

SUBJECT: Agenda Item No. 11(A)(36)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(36)
5-3-11

RESOLUTION NO. R-387-11

RESOLUTION RESCINDING ADMINISTRATIVE ORDER 3-32 AND AUTHORIZING IMPLEMENTING ORDER 3-32: COMMUNITY BUSINESS ENTERPRISE ("CBE-A/E") PROGRAM FOR THE PURCHASE OF PROFESSIONAL ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, OR SURVEYING AND MAPPING SERVICES

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA that this Board rescinds Administrative Order 3-32 and authorizes Implementing Order 3-32, Community Business Enterprise (CBE-A/E) Program for the Purchase of Professional Architectural, Landscape Architectural, Engineering, or Surveying and Mapping Services.

The Prime Sponsor of the foregoing resolution is Commissioner Barbara J. Jordan. It was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman **aye**
Audrey M. Edmonson, Vice Chairwoman **aye**

Bruno A. Barreiro	**aye**	Lynda Bell	**aye**
Jose "Pepe" Diaz	**absent**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Jean Monestime	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of May, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: DIANE COLLINS
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

dsh

David Stephen Hope

~~A~~I.O. No..: 3-32[1]
Ordered:
Effective:

MIAMI-DADE COUNTY
~~ADMINISTRATIVE~~ IMPLEMENTING ORDER

COMMUNITY BUSINESS ENTERPRISE (CBE-A/E) PROGRAM FOR THE PURCHASE OF PROFESSIONAL ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, OR SURVEYING AND MAPPING SERVICES

AUTHORITY:

Sections ~~4.02~~ 1.01, 2.02 and 5.02 of the Miami-Dade County Home Rule Amendment and Charter; Sections 2-10.4.01,~~2-8.1, 2-8.5, 2-10.4, 2-11(c), 2-11(d), 10-33.02~~ 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 ~~Administrative~~ 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 ~~Administrative~~ Implementing Order.

I. DEFINITIONS

[1] The differences between this item and the original item are indicated as follows: words stricken through shall be deleted, words underscored constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

This ~~Administrative~~ 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 ~~Administrative~~ Implementing Order, are listed below:

A. "Agreement" means an agreement proposed by the County, or Public Health Trust staff, or approved by the County Commission or Public Health Trust for architectural, landscape architectural, engineering, or surveying and mapping professional services.

B. "Available" or "Availability" means to have, prior to proposal submission, the ability to provide professional services under an agreement or sub consultant agreement by having:

reasonably estimated, uncommitted capacity and expertise; all licenses, permits, registrations, insurances and certifications; that are reasonably required to perform the agreement or subconsultant agreement consistent with normal industry practice; and the ability to otherwise meet all the proposal specifications.

C. "Bonding Assistance" may include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes.

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

E. "Calendar Day" means a twenty-four (24) hour period covering all days of the week (Monday through Sunday including all holidays), starting at 12:00 a.m. and finishing at 11:59 p.m.

F. "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. "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 ~~first~~ T~~t~~ier 1 CBE-A/Es, four million five hundred thousand ~~($4,000,000)~~ ($4,500,0000) dollars for ~~second~~ T~~t~~ier 2 CBE-A/Es in the case of architectural~~, engineering or surveying and mapping~~ services, or six million ($6,000,000) dollars for ~~second~~ T~~t~~ier 2 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 ~~second~~ T~~t~~ier 2 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.

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

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

The County Mayor or designee shall be authorized to adjust the CBE-A/E size limits every five (5) years at his/her discretion based on the local Consumer Price Index for All Urban Consumers (CPI-U) calculated by the U.S. Department of Commerce or other appropriate tool of inflation measures as applied to Miami-Dade County for the preceding five (5) years. The first indexing adjustment shall occur for the 2013-2014 calendar year using 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.

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

I. "Continuing Contract" shall have the definition provided at Sec. 2-10.4(1)(f), Code of Miami-Dade County.

J. "CBE-A/E Program" is the Community Business Enterprise Program for the Architectural, Engineering, Landscape Architectural, Surveying and Mapping Professionals.

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

M. "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. "DBD" means Miami-Dade County Department of Business Development, or successor agency.~~

N~~O~~. "DPM" means Miami-Dade County Department of Procurement Management.

O~~P~~. "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~~Q~~. "Graduation" means the CBE-A/E has exceeded the specific size limits stated for the Program and thus ~~will~~ may no longer be eligible for participation in the Program.

Q~~R~~. "Joint Venture" means an association of two or more CBE-A/Es. Joint ventures shall be subject to the size limitations set forth in this ordinance; such size limitations include affiliates as set forth in Appendix A of this ordinance.

R~~S~~. "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 Sec. 2-10.4(1)(e)(1) and (2), Code of Miami-Dade County.

~~T. "Net Worth" for the purposes of the size limits established in this Ordinance is defined as total assets minus total liabilities, of owners.~~

S~~U~~. "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~~V~~. "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~~W~~. "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~~X~~. "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. The Department of Small Business Development may investigate reported instances of late payments to CBE-A/Es.

3. The County May~~ornager~~ or designee shall establish an administrative procedure for the resolution of written complaints pertaining to underpayment of professional services.

W~~Y~~. "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~~Z~~. "Proposer" means any firm that submits a proposal to provide professional services.

Y~~AA~~. "Qualifier" means the individual who qualified the firm license holder as required by Florida Statute.

~~ZBB~~. "Review Committee" or "RC" means the committee established by the County ~~Manager~~ Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus.

~~CC. "Review Committee Process" the County Manager or his designee shall establish an administrative procedure for the review of each proposed County agreement to which this ordinance applies, including the establishment of a committee to recommend whether -A/E measures provided in this ordinance should be applied~~.

AA. "SBD" means Miami-Dade County Department of Small Business Development.

BB~~EE.~~"Subconsultant Goal" means a proportion of a prime agreement value stated as a percentage to be subconsulted to ~~first~~ Tier 1 and ~~second~~ Ttier 2 CBE-A/Es to perform a commercially useful function.

CC~~FF.~~"Suspension" means temporary debarment for a period not to exceed two (2) years.

DD. "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 or less. Tier 2 CBE-A/Es may not compete for Tier 1 CBE-A/E Set-asides as prime consultants.

~~DD. "Set-aside" means reservation for competition solely among first tier CBE-A/Es of a given prime County contracts for architectural, landscape architectural, engineering, or surveying and mapping professional services.~~

EE. "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. Tier 1 CBE-A/Es may compete for Tier 2 CBE-A/E set-asides as prime consultants.

FF~~GG.~~"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 ~~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.

II. CERTIFICATION

RESPONSIBILITY OF ~~DBD~~ Department of Small Business Development (SBD)

1. S~~D~~BD is the County agency responsible for certifying applicants, decertifying and recertifying CBE-A/Es~~, and maintaining the Certification List~~. ~~DBD~~ SBD shall maintain and publish at least monthly 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.

2. SDBD shall collect, assemble and verify all information needed to establish the eligibility of an applicant and continued eligibility of a CBE-A/E.

   ~~DBD shall attempt to make a certification decision within thirty calendar days, of receipt of a completed application.~~

3. ~~Where DBD knows or has reason to know,~~ SDBD shall not certify an applicant, shall not grant continuing eligibility to ~~shall not recertify~~ a CBE-A/E, and shall decertify a CBE-A/E that fails to comply with the criteria or procedures of the CBE-A/E Ordinance as amended, in this ~~Administrative~~ Implementing Order and/or participation provisions. SDBD shall have authority to suspend the certification of a CBE-A/E during any appeal of a decertification decision.

4. SDBD shall certify each CBE-A/E by the type of professional service it performs in accordance with the applicable ~~two-digit~~ SIC and/or ~~six-digit~~ NAICS Code(s) and the Technical Certification Categories for which the CBE-A/E is licensed. A CBE-A/E can be certified in an unlimited number of applicable SIC/NAICS Codes and Technical Certification Categories.

5. SDBD shall provide written procedures and/or forms for continuing eligibility to certified CBE-A/Es not later than thirty (30) calendar days prior to their anniversary~~certification expiration~~ date.

6. To decertify a CBE-A/E, SDBD shall either:

   a. give notice to the CBE-A/E that the decertification decision will be effective at the completion of any appeal under this ~~Administrative~~ Implementing Order; or

   b. suspend the certification of the CBE-A/E during any appeal of the decertification decision.

7. SDBD shall give written notice, including the reasons for its decision, to applicants who are denied certification and to CBE-A/Es who are decertified, ~~or~~ denied recertification or who have graduated.

8. SDBD 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, and/or workforce as to race, national origin, gender, and gross annual sales receipts.

A. CERTIFICATION PROCESS

1. Interested parties may obtain the certification application from SDBD and are encouraged to request an explanation of the certification process. A copy of the certification application and an explanation of the certification process is also available on SDBD's Web Page through the County's Internet Portal at ~~dbdwww.co.miami-dade.fl.us.dbd~~ http://www.miamidade.gov/sba.

2. The applicant shall complete the certification application and submit it with all requested documentation to SDBD.

3. All applicants, including CBE-A/Es seeking continuing eligibility ~~recertification~~, shall attend, if requested by SDBD staff, an Eligibility Review Meeting (ERM) to clarify information that was submitted in the application and accompanying documents or to gain additional information regarding the applicant's eligibility for certification.

4. All applicants, including CBE-A/Es seeking continuing eligibility ~~recertification~~, shall allow site visits by SDBD staff to gain additional information regarding compliance with eligibility requirements.

B. TERMS OF CERTIFICATION

1. Certification is valid for a ~~one (1)~~ 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. The Affidavit for Continuing Eligibility shall include:

   a. Most recent, signed, complete business tax return(s) or extension(s) for the firm and all affiliates.

   b. Current business, professional license, Local Business Tax Receipt issued by Miami-Dade County and certifications.

   c. Current lease agreement or warrantee deed for the firm's actual place of business.

   d. Notarized, sworn affiliation affidavit.

2. Additional supporting documentation may be required by SBD to verify eligibility.

3. SBD will take the following action if a CBE-A/E firm's Affidavit for Continuing Eligibility is not received on or before the Anniversary Date:

   a. SBD shall prepare a Notice of Certification Removal.

   b. SBD shall mail the Notice of Certification Removal to the CBE-A/E firm.

   c. SBD shall allow the CBE-A/E firm (15) days from the date of the notice to provide the Affidavit for Continuing Eligibility and supporting documentation.

   d. If the CBE-A/E firm does not provide the Affidavit for Continuing Eligibility and supporting documentation within the timeframe stipulated above, SBD shall decertify the firm and notify the firm in writing of the decertification.

   e. The "Notice of Certification Removal" will be dated the day following the deadline established pursuant to "c." above.

4~~2~~. A CBE-A/E firm, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses that has been denied recertification, ~~or~~ that has been decertified is not eligible to apply for certification for ~~up to~~ twelve (12) months from the time of the denial, ~~or~~ decertification, or graduation. Graduating firms may be eligible to reapply for certification, after filing and submitting their most recent corporate tax return subsequent to graduation, if and only if, said tax return was not previously considered. ~~The reapplication waiting period is dependent on the severity of the cause of denial or decertification.~~

~~3. A CBE-A/E must be certified in accordance with Section II A (5) above.~~

5~~4~~. A business owner, alone or as a member of a group, shall own or control only one CBE-A//E at a time. A business owner, alone or as a member of a group, and any CBE-A/E, may not hold more than a ten (10) percent equity ownership in any other CBE-A/E in the same or similar line of business. If a non-CBE-A/E in the same or similar line of business as a CBE-A/E has an equity ownership of such CBE-A/E that exceeds ten (10) percent, the CBE-A/E shall not be certified or recertified.

6~~5~~. Certified CBE-A/Es shall provide written notice to S~~D~~BD of any changes that affect their eligibility as CBE-A/Es. CBE-A/Es shall submit a Change Request Form and supporting documentation describing the nature of the change, the effective date of the change(s) to SBD within thirty (30) calendar days of the effective date of the change(s). This form must be completed and returned to SBD in order for the change to be processed by SBD. ~~CBEs shall submit a written statement describing the nature and stating the effective date of the change(s) to DBD within thirty (30) calendar days of the effective date of the change(s).~~

7~~6~~. A CBE-A/E must have a valid certification in effect at time of proposal submittal. For successful proposers, certification must be maintained ~~from the time of proposal submittal,~~ throughout the selection process and contract award ~~duration of the agreement~~. With the exception of provisions described in CBE-A/E Ordinance for graduation from the CBE-A/E program, loss of CBE-A/E certification may lead to removal of the firm from continued participation in the CBE-A/E program. CBE-A/Es shall allow site visits by S~~D~~BD staff to determine continuing compliance with certification requirements.

~~7. Applicants for CBE certification shall, as part of their application, disclose the information specified in Subsection (d)(1) and (2) of Section 2-8.1 of the Code of Miami-Dade County.~~

~~8. Applicants and certified CBEs must be properly licensed to conduct business in Miami-Dade County, must perform a commercially useful function with n actual place of business in Miami-Dade County, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified.~~

~~9. The qualifier of the certified CBE must own at least twenty-five percent (25%) of the certified firm's issued stock.~~

~~10. Certification shall be renewed annually, and must be in effect at the time of proposal submittal. CBEs experiencing changes in ownership shall notify DBD within thirty (30) days of the effective date of such changes.~~

B. 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.

   a. When determining whether the applicant has an actual place of business in Miami-Dade County, S~~D~~BD shall consider evidence such as, but not limited to:

      ~~(1) The existence of a Miami-Dade County telephone number in the 's name or the name with which the is doing business;~~

      (1) The firm's address as recorded on the Miami-Dade County Local Business Tax Receipt.

      (2) ~~Logs of telephone activity at the Miami-Dade County telephone number;~~The existence of a Miami-Dade County telephone number in the name of the CBE-A/E or the name with which the CBE-A/E is doing business;

      (3) Offices, premises related to business, or other facilities within the geographic boundaries of Miami-Dade County at which the ~~goods or~~ services to be provided are produced or performed;

      (4) The existence and location of secretarial or other administrative staff;

      (5) The existence of other offices or premises at which the same business is conducted; and

      (6) The possession of professional licenses and/or competency certificates required to conduct the business in Miami-Dade County.

3. An individual, alone or as a member of a group, shall own or control only one (1) CBE-A/E firm ~~at a time~~.

4. A firm's eligibility to participate in the CBE-A/E program shall be determined based on the average annual adjusted gross revenues for the last three (3) years, in combination with that of all of the

firm's affiliates, if any. Representations as to gross revenues shall be subject to audit.

5. Applicants and certified CBE-A/Es must be properly licensed to conduct business in the State of Florida and in Miami-Dade County, and must perform a commercially useful function with an actual place of business in Miami-Dade County, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified.

6. The applicant qualifier of the firm must own at least twenty-five percent (25%) of the certified firm's issued stock or have at least a twenty-five (25) percent ownership interest in the certified firm. A CBE-A/E firm may be certified in other technical categories for which the firm has received Technical Certification in accordance with Section 2-10.4 of the Code of Miami-Dade County through a non-owner qualifier.

7~~5~~. Nothing shall prohibit CBE-A/Es from competing for contracts under the Federal Disadvantaged Business Enterprise (DBE) program or any other business assistance program if the CBE-A/E is also certified for the programs under this ~~Administrative~~ Implementing Order by S~~D~~BD or certified by any other agency or organization.

8~~6~~. When investigating the ownership and control of an applicant or a CBE-A/E, S~~DBD~~ shall consider factors including, but not be limited to the following:

a. All securities constituting ownership and/or control of a business for purposes of establishing the business as a CBE-A/E shall be held directly by the owners. No securities held in trust shall be considered.

b. The contributions of capital and expertise by the qualifying agent to acquire interest in the business shall be real and substantial. Examples of insufficient contributions may include, but are not limited to, a note payable to the business or to those of its part owners, or the mere participation of the qualifier as an employee, rather than as a manager.

9~~7~~. A CBE-A/E shall not be subject to any formal or informal restrictions that limit the customary discretion of the owner.

10~~8~~. An applicant that has undergone a recent change in ownership, control or reported income level will be carefully scrutinized.

Factors such as, but not limited to, the following shall be considered:

a. The reasons for the timing of the change in ownership of the business relative to the time that the contracts in the applicant's trade, Standard Industry Classification/North American Industry Classification System (SIC/NAICS), or service area are advertised;

b. Whether an individual identified as an owner who had a previous or continuing employee-employer relationship with present owners has actual management responsibilities and capabilities;

c. The participation of one or more of the owners of the applicant firm in another firm in the same trade, SIC/NAICS, or service area;

d. Whether reported income levels indicate a severe decline to possibly attempt to qualify the firm for CBE-A/E certification; and

e. Whether affiliation as described herein ~~in CBE-A/E Ordinance~~ exists or once existed between the applicant firm and a non-CBE-A/E firm.

D. SIZE ELIGIBILITY AND AFFILIATION DETERMINATION

A. General: Only small firms that meet size limits of ~~first~~ Ttier 1 and ~~second~~ Ttier 2 CBE-A/Es as to average annual adjusted gross revenues for the last three years may be certified ~~codified~~ as CBE-A/Es. Size determinations for ~~first~~ Tier 1 and ~~second~~ Ttier 2 CBE-A/Es certification eligibility shall take into account the combined gross revenues of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included.

B. Affiliation: Firms are considered affiliates of each other when either directly or indirectly:

1. One concern controls or has the power to control the other, or

2. A third party or parties controls or has the power to control both, or

3. An identity of interest between or among parties exists such that affiliation may be found.

C. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, common facilities, related business lines or related scopes of work, and contractual relationships. Examples of affiliation include:~~Variations of these factors are examined more closely below:~~

1. Nature of control in determining affiliation.

~~a.~~ Every firm is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

~~b. Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.~~

~~c. Control can arise through management positions where a firm's vote stock is so widely distributed that no effective control can be established.~~

2. Identity of interest between and among persons as an affiliation determinant.

Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one firm. In determining who controls or has the power to control firm, persons with an identity of interest may be treated as though they were one person.

3. Affiliation through stock ownership.

~~a. A person is presumed to control or have the power to control a firm if he or she owns or controls or has the power to control fifty (50) percent or more of its voting stock.~~

~~b. A person is presumed to control or have the power to control a firm even though he or she owns, controls or has the power to control less than fifty (50) percent of the firm's voting stock, if the block of stock he or she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.~~

~~c. If each of two or more persons owns, controls or has the power to control less than fifty (50) percent of the voting stock of a firm; such minority holdings are equal or approximately equal in size; and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each such person individually controls or has the power to control the firm; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.~~

~~4. Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the firm. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held there under had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another firm before it actually does so.~~

~~5. Affiliation under voting trusts.~~

~~a. If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a firm in order that such firm or another firm may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction. However, if a voting trust is primarily entered into for a legitimate purpose other than that described above, and it is recognized within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination.~~

~~b. Agreements to divest (including agreements in principle) are not considered to have a present effect on the power to control the firm.~~

4~~6~~. Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another firm.

5~~7~~. Affiliation through common facilities. Affiliation generally arises where one firm shares office space and/or employees and/or other facilities with another firm, particularly where such firms are in the

same or related industry or field of operations, or where such firms were formerly affiliated.

6~~8~~. Affiliation with a newly organized firm. Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one firm organize a new firm in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the firm is furnishing or will furnish the other firm with subconsulting agreements, financial or technical assistance, proposal or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.

7~~9~~. Affiliation through contractual relationships. Affiliation generally arises where one firm is dependent upon another firm for consulting agreements and business to such a degree that its economic viability would be in jeopardy without such agreements/business.

8~~10~~. Affiliation under joint venture arrangements.

~~a. A joint venture for size determination purposes is an association of firms and/or individuals, with interests in any degree or proportion, formed by agreement, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.~~

~~b. For the purpose of financial assistance to a joint venture, the parties thereto are considered to be affiliated with each other. Where the financial assistance, however, is to a firm for its own use, outside the joint venture, an affiliation determination shall not automatically arise from the existence of the joint venture arrangement. In this latter situation, the existence of affiliation shall be determined under these regulations.~~

~~c. Firms proposing on a particular agreement as joint ventures are affiliated with each other with regard to performance of the agreement. This determination of affiliation does not extend to other contracts or business outside the joint venture arrangement.~~

~~d. An ostensible subconsultant which performs or is to perform primary or vital requirements of an agreement may have such a controlling role that it must be considered a joint venture affiliated on the agreement with the prime consultant. In determining whether subconsulting arises to the level of affiliation as a joint venture, DBD considers whether the prime consultant has unusual reliance on the subconsultant.~~

~~e. Even though a firm might not be an affiliate of its joint ventures for the purpose of operations apart from the joint venture, it nevertheless must include its proportionate share of the joint venture receipts or employees in determining its eligibility under the size standards.~~

~~11. Affiliation under franchise and license agreements. In determining whether the franchiser controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints, relating to standardized quality, advertising, accounting format and other provisions, imposed on a franchisee by its franchise agreement shall generally not be considered, provided that the franchise has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though the franchiser by virtue of such provisions may not control a franchisee in the franchise agreement, control and, thus, affiliation could arise through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.~~

D. Gross Annual Revenues.

1. In size determinations, size eligibility requires that the firm may not exceed the three year average gross annual revenues in the applicable standard.

2. Definitions. For the purpose of determining annual gross revenues of a firm:

a. "Accrual Basis" means a method of accounting in which accounts and notes receivable are recorded in the regular books of account for the period in which the firm first has a claim of right to them.

b. "Claim of Right" has the meaning attributed to it by the U.S. Internal Revenue Service (IRS).

c. "Gross Revenues" is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term revenues excludes proceeds from sales of capital assets and investments, proceeds from transactions between a firm and its domestic and foreign affiliates, amounts collected for another by a travel agent or real estate agent, and taxes collected for remittance to a taxing authority.

d. "Regular Books of Account" means the general ledger or other book of final entry and, if used, the journals or other books of original entry.

e. "Completed Fiscal Year" means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.

f. Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

3. Period of measurement.

a. Annual Gross Revenues of a firm which has been in business for three (3) or more completed fiscal years means the arithmetic annual average revenue of the firm over its last three (3) completed fiscal years (total revenue compiled over the entire three (3) year period would be divided by three).

b. Annual Gross Revenues of a firm which has been in business for less than three (3) fiscal years means the arithmetic annual average revenue over the time period the firm has been in business (total revenues compiled over the period the firm has been in business, divided by the number of weeks, including fractions of a week, the firm has been in business, multiplied by (52).

c. Annual Gross Revenues of a firm which has been in business three or more years but has a short year in the last three years will be the arithmetic annual average revenue over the two full years and the short

year. The short period may appear at the beginning, middle or end of the three year calculation period.

4. Method of determining annual gross revenues.

   a. Revenue may be taken from the regular books of account of the firm. If the firm so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the firm, then revenues shown on the federal income tax return of the firm may be used in determining annual gross revenues. Revenue shown on the regular books of account or the Federal Income tax return on a basis other than accrual must be restated to show revenue on an accrual basis for all fiscal years.

   b. Where the federal income tax return of a firm shows its annual gross revenues to be less than seventy-five (75) percent of the applicable size standard, the firm need not restate its revenue to an accrual basis prior to determining annual revenues.

   c. Where a short period is included in the firm's most recent three (3) years, annual gross revenues are calculated by dividing the sum of the revenues of the short year and the revenues of the two (2) full fiscal years by the sum of the number of weeks in the short fiscal year and the number of weeks in the two full fiscal years, and multiplying that figure (the weekly average revenues) by fifty-two (52).

5. Annual gross revenues of affiliates.

   a. If a firm has acquired an affiliate or been acquired as an affiliate during any portion of the applicable averaging period used to calculate ~~or before certification,~~ the annual gross revenues to ~~in~~ determine~~ing~~ size status (including~~e~~ before certification), the revenues of both the ~~applicant~~ firm and the affiliate(s)/acquirer will be aggregated to compute size. Such aggregation of revenues will occur for each entire fiscal year of both the applicant and the affiliate(s)/acquirer, irrespective of the length of time the affiliation existed during said fiscal year, as long as an affiliation existed at any point during that

fiscal year. ~~Furthermore, this aggregation of the revenues of both the applicant and its affiliates applies for the entire applicable averaging period used in computing size (usually the preceding three (3) complete fiscal years) rather than only for the period after the affiliation arose.~~

~~b. The annual gross revenues of a firm which had been an affiliate of the applicant during part of the period used in determining size (usually the preceding three complete fiscal years), but was not an affiliate at the time of certification, are not included within the computation of annual gross revenues in making size determinations. This exclusion of annual gross revenues of a former affiliate applies during the entire period used in computing size, rather than only for the period after which the affiliation ceased.~~

E. Annual gross revenues and adjusted gross revenues of affiliated.

1. The annual gross revenues and adjusted gross revenues of affiliates shall be included in determining size status of the applicant.

2. Payments to an affiliate that has been used as a subconsultant by the applicant shall not be counted as documented payment used to adjust the gross revenues of the applicant.

III. JOINT VENTURES

A. Only joint ventures approved by S~~D~~BD in accordance with this ~~Administrative~~ Implementing Order are eligible to participate as joint ventures in the CBE-A/E program. Joint ventures must be lawfully established. All members of the joint venture must be certified as CBE-A/Es 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 or subconsultant goals.

B. 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 certificates or registrations.

C. SBD shall collect, assemble and verify all information needed to determine if all members of a joint venture are CBE-A/Es. 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 of each year to ~~D~~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 its consultants' ownership demographics. These lists shall be updated at least quarterly and forwarded to ~~D~~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.

C. ~~D~~SBD shall prepare standard proposal participation provisions. Each issuing department including the Public Health Trust must use these standard proposal participation provision documents for all agreements with agreement set-asides or subconsultant goals unless ~~D~~SBD approves substitute proposal documents. When proposal documents for agreements with set-asides or

subconsultant goals are advertised, they shall include a ~~current~~ web link to the CBE-A/E Certification List.

D. ~~Departments shall submit recommendations to the Board of County Commissioners for approval.~~ ~~D~~SBD shall notify departments of the recommended agreement set-aside, or subconsultant goal.

E. Subsequent to a recommendation ~~by the RC~~ and prior to agreement advertisement, each department shall advise ~~D~~SBD of any change in the scope of work of an agreement. ~~D~~SBD shall review the change and recommend to the County Manager whether the agreement requires further review ~~by the RC~~ due to the change in the scope of work. Each department shall advise ~~D~~SBD of post-award changes in scope and all change orders that require Board of County Commissioners' approval shall be submitted to ~~D~~SBD. ~~D~~SBD shall review the changes and change orders and recommend to the County Manager whether the agreement requires further review ~~by the RC~~ due to the change in the scope of work, and report on the prime consultant's current status of CBE-A/E compliance.

F. Each department shall advise ~~D~~SBD of any agreement advertisement dates that are in excess of one hundred twenty (120) days of the initial ~~RC~~ recommendation to apply a set-aside or a goal in order to allow ~~D~~SBD to identify any changes in availability. Each department shall advise ~~D~~SBD of any agreement cancelled or not advertised within one hundred eighty (180) days after review ~~by the RC~~ and the agreement must be resubmitted to SBD ~~the RC~~ to re-establish availability.

V. PROCEDURE FOR RECOMMENDATION OF AGREEMENT SET-ASIDES OR SUBCONSULTANT GOALS

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 ~~first~~ T~~t~~ier 1 CBE-A/E set-asides or subconsultant goals. The procedure for applying ~~first~~ T~~t~~ier 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 ~~first~~ Tier 1 and/or T~~t~~ier 2 CBE-A/E set-asides or subconsultant goals.

B. Departments shall work in conjunction with ~~D~~SBD in recommending whether agreements should be set-aside for ~~first~~ Tier 1 and/or T~~t~~ier 2 CBE-A/Es or have subconsultant goals applied. The department shall submit the appropriate items from the following to the Director of ~~D~~SBD:

1. For each recommendation to have an agreement set-aside for ~~first~~ Tier 1 and/or T~~t~~ier 2 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 ~~first~~ Tier 1 and/or T~~t~~ier 2 CBE-A/Es or may have subconsultant goals applied to a given agreement when availability has been established ~~there is a CBE objective set~~ 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 ~~first~~ Tier 1 and/or T~~t~~ier 2 CBE-A/Es or a subconsultant goal will be appropriate.

   A. GENERAL GUIDANCE

      1. The selection of an agreement for ~~first~~ T~~t~~ier 1 set-aside and/or Tier 2 subconsultant goal shall include consideration of the following:

         a. The impact of the project as it relates to the CBE-A/E objective;

b. The previous agreements used in the particular SIC/NAICS category;

c. The relative impact of economic incentives;

d. The effects of other agreement set-asides or subconsultant goals taken or reasonably expected to be taken in the SIC/NAICS category and their expected effects during the life expectancy of the agreement;

e. The impact of the agreement set-aside or subconsultant goal on potential competitors; and

f. Consideration of selection among various programs as set forth by the Review Committee.

g. Availability of certified CBEs (3 or more) for each of the technical certification categories assigned to the project.

B. AGREEMENT SET-ASIDES

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

a. ~~The estimated project cost is $3,000,000 or less;~~ The estimated professional services fee is $1 - $1,000,000 for Tier 1 CBE-A/Es and $1,000,001 or greater for Tier 2 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 ~~first~~ T~~t~~ier 1 and/or Tier 2 set-aside(s);

c. Three (3) or more ~~first~~ Tier 1 and/or T~~t~~ier 2 CBE-A/Es as appropriate are available to provide the quality, quantity and type of

opportunities afforded by the proposed agreement.

2. Set-asides should be used to provide large economic incentives. ~~Set-asides are most effectively applied to relatively small agreements.~~ When possible, consideration should be given for splitting large agreements into smaller agreements to allow for greater program participation.

C. SUBCONSULTANT GOAL

1. A recommendation to apply a subconsultant goal to a particular agreement is appropriate when:

   a. The agreement has identifiable opportunities, which, according to normal industry practice, are appropriate for subconsulting in a specific professional service area within SIC/NAICS and technical certification category;

   b. The quality, quantity and types of opportunities provided are appropriate for applying a subconsultant goal.

2. Effective competition exists for setting a particular subcontractor goal in that three (3) or more CBE-A/Es certified within the applicable professional service area within SIC/NAICS and technical certification category are available.

3. A memorandum identifying and briefly describing all agreements or proposals, including justification for sole source, for which a recommendation is being made not to set aside the agreement or not to place a subconsultant goal on the agreement, and information to support such a recommendation.

D. REVIEW PROCESS ~~PROJECT REVIEW~~

1. SBD shall publish a list of projects under review daily on the department's webpage. ~~DBD shall review the proposed agreement and the departmental recommendations.~~ SBD shall review the proposed contracts and the departmental recommendations. Should SBD and the Department(s) not agree on

recommended measures or goals, then the contract will go through the Review Committee Process, as detailed below. Upon obtaining departmental concurrence with the recommended measure, SBD shall post projects and recommended goals daily on the SBD web page. ~~DBD shall review all submissions received prior to the published RC agenda deadline, develop a DBD recommendation, and shall place the submissions on the agenda of the appropriate RC meeting.~~

2. SBD shall consider public comments in writing on projects pre- and post measure or goal recommendations.

3. All projects with recommended measures shall contain language to allow for public comment to be submitted to SBD within 36 hours of posting via a designated email address or mail.

4. All advertised projects shall contain language to allow for public comments to be submitted to SBD within 36 hours of date of advertisement via a designated email address or mail. SBD and the contracting department shall review comments and make recommendations, as applicable, to the Mayor or designee.

5. Changes to goal recommendations, approved by the Mayor or designee, as a result of public comment shall require issuance of an addendum to the project advertisement.

VI. DOCUMENTATION TO ESTABLISH SET ASIDES OR SUBCONSULTANT GOALS~~REVIEW COMMITTEE~~

The County Mayor or designee shall establish a standing Review Committee (RC) to consider documentation for the establishment of set-asides or subconsultant goals where SBD and the contracting department have not established consensus. SBD shall consider the following when recommending a set-aside or subconsultant goal:~~present the following to the RC~~:

A. For each recommendation of an agreement set-aside or subconsultant goal, a copy of the department's recommendation; a memorandum briefly describing the analysis of the agreement and basis for providing a recommendation; verification of ability to submit a proposal for ~~first~~ Tier 1 or T~~t~~ier 2 set-aside agreements and a recommendation report that

includes a listing of all professional service areas on which availability was established and subconsultant goals were based.

B. A brief memorandum identifying all services for which a recommendation of no agreement set-aside or no subconsultant goal is being made and providing information to support the recommendation.

VII. REVIEW COMMITTEE PROCESS

SBD is responsible for recommending to the Mayor or designee whether to apply CBE-A/E set-asides, or subconsultant goals to a contract. The Mayor or designee may accept, reject, modify or otherwise alter SBD's or Review Committee's recommendation.

A. All recommendations shall be agreed upon between SBD and the contracting department, prior to final recommendation to the Mayor or designee.

B. The Mayor or designee shall establish a standing Review Committee (RC) to meet periodically, or as often as needed, to review when consensus is not reached between SBD and the contracting department. The RC will make recommendations to the Mayor or designee.

C. The RC shall conduct public deliberations and make recommendations whether to apply CBE-A/E, set-asides or subconsultant goals to a contract. The Mayor or designee may accept, reject, modify or otherwise alter SBD's or Review Committee's recommendation.

D. The standing members of the RC shall be: Director, Public Works Department; Director, Office of Capital Improvements; Director, Department of Procurement Management; a rotating Director of the County's capital departments or their designees; and a County Manager appointed Chairperson. A quorum of the RC shall be three (3) members. Staff support shall be provided to the Review Committee by SBD.

E. SBD shall staff the RC and make recommendations of measures to the RC and County Mayor or designee.

~~The RC is responsible for recommending to the County Manager whether to apply CBE agreement set-asides or subconsultant goals to an agreement~~.

~~A. The members of the RC shall be: Director, DBD; President, Public Health Trust; Director, GSA; Director, Public Works Department; Director, Aviation Department; and Director, Miami-Dade Water and Sewer or their designees; and four (4) individuals named by the County Manager. The County Manager~~

~~shall designate one member to be chairperson. A quorum of the RC shall be six (6) members. Staff assistance shall be provided by DBD~~.

F~~B~~. The RC shall meet ~~monthly or more frequently~~ as needed. SBD ~~It~~ shall timely publish ~~a schedule of~~ meetings, listing the meeting locations, dates and~~,~~ time.~~s~~ ~~and agenda deadlines for submission of departmental recommendations to DBD~~. All RC meetings are subject to Government-in-the-Sunshine requirements. The chair shall allow participation of the public at RC meetings consistent with accomplishing the agenda of the RC.

G. ~~C.~~ The RC shall have authority to promulgate rules of general application to carry out its responsibilities, which rules are subject to review and approval by the County Mayor or designee.

H. ~~D.~~ The RC may, after public deliberation and consideration of alternatives, accept, reject, modify or otherwise alter the staff recommendation. The County Mayor or designee may accept, reject, modify or otherwise alter SBD's recommendations. The Board of County Commissioners may accept, reject, modify or otherwise alter the County Manager's recommendations. The Mayor may accept or veto the Board of County Commissioners' recommendations. In accordance with the policy established by the Board of County Commissioners, the Board of County Commissioners may overrule the Mayor's veto.

~~E. The RC shall hear appeals as provided in Section XVI of this Administrative Order.~~

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 ~~D~~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. Respondents on set-aside agreements must submit a completed "Set-Aside List of Subconsultants" at the time of proposal submission. Respondents who fail to submit the Set-Aside List of Subconsultants shall be considered non-responsive.~~

~~2. Respondents must submit Letters of Intent to the person or office to whom the proposal was submitted by 4:00 p.m. on the second business day following proposal submission. Defective Letters of Intent that are incomplete or inaccurate shall constitute noncompliance. Examples of defects include, but are not limited to, improperly executed letters, the listing of an unidentifiable CBE and percentage miscalculations that are not mere clerical errors apparent on the face of the "Set-Aside List of Subconsultants." Respondents who fail to submit the Letter of Intent shall be considered non-responsive.~~

1. Proposals documents shall require proposers to submit a Letter of Agreement, Certificate of Assurance or equivalent for each subconsultant to be utilized in satisfaction of a set-aside. 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, at the time of proposal submission shall render the proposal non-responsive.

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.

3. 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 ~~Administrative~~ Implementing Order as they relate to an agreement that is set-aside:

1. Submission of a ~~"Set-Aside List of Subconsultants"~~ "Letter of Agreement" of CBE-A/E subconsultants that the respondent knew or should have known is incomplete or inaccurate;

2. After proposal submission due date, deviations from the ~~"Set-Aside List of Subconsultants"~~ "Letter of Agreement" without the written approval of SBD ~~the Compliance Monitor~~;

3. The utilization of a non-certified CBE-A/E;

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;

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 ~~D~~SBD; or

9. Unjustified failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a ~~"Set-Aside List of Subconsultants."~~ "Letter of Agreement."

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.

1. RESPONDENT RESPONSIBILITIES FOR SUBCONSULTANT GOALS

   Respondents must submit a completed ~~Schedule of Participation~~ Letter of Agreement ~~form~~ at the time of proposal submission identifying all ~~first~~ Tier 1 and/or ~~second~~ 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 ~~Schedule of Participation~~ Letter of Agreement 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 ~~Schedule of Participation~~ Letter of Agreement 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 percentage set forth in the ~~Schedule of Participation~~ Letter of Agreement. Failure to submit the required documents within the required time frames may render the proposal nonresponsive or be subject to sanctions or penalties as outlined in the contract or in this ~~Administrative~~ 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 ~~Schedule of Participation~~ Letter of Agreement at the time of proposal submission shall be considered non-responsive.

   c. Respondents that ~~contain~~ submit a defective ~~Schedule of Participation~~ Letter of Agreement may be voidable. Examples of defects include, but are not limited to, an incomplete ~~Schedule~~ 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 ~~Schedule~~ Letter of Agreement.

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.

e. Expenditures to subconsulting CBE-A/Es shall be counted toward meeting specified subconsultant goals as follows:

(1) One hundred percent (100%) of the expenditures to a CBE-A/E that performs a commercially useful function in the supply of services required for the fulfillment of the agreement;

(2) One hundred percent (100%) of the expenditures to CBE-A/Es that subconsult work further to non-CBE-A/Es, only if the proposal documents expressly and specifically permit such subconsulting as consistent with normal industry practice, or if the respondent or CBE-A/E requests and receives prior to agreement award an approval letter from ~~D~~SBD;

(3) One hundred percent (100%) of the expenditures to CBE-A/Es that perform actual work with their own forces;

(4) None of the expenditures to a CBE-A/E that acts essentially as a conduit to transfer funds to a non-CBE-A/E unless the proposal documents expressly and specifically permit such transfers as consistent with normal industry practice or the respondent or CBE-A/E requests and receives prior to agreement award an approval letter from ~~D~~SBD; and

(5) Only expenditures to CBE-A/Es made under a written subconsultant agreement executed by both the prime consultant and the CBE-A/E shall be counted towards meeting the subconsultant goal.

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, the prime consultants must submit ~~Letters of Intent signed by the identified first and/or second tier /E subconsultants to the Contracting Officer no later than 4:00 p.m. on the second business day following proposal submission date. Failure to~~

~~submit Letters of Intent signed by the affected within the specified time shall render the proposal non-responsive. Submission of a defective form shall render the proposal voidable.~~ a Letter of Agreement, Certificate of Assurance or equivalent for each subconsultant to be utilized in satisfaction of a subconsultant goal. The Letter of Agreement, Certificate of Assurance 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, at the time of proposal submission shall render the proposal non-responsive.

g. ~~Respondents whose proposals do not meet the specified goal, in order to remain eligible, must submit to the Contracting Officer by no later than 4:00 p.m. on the second business day following proposal submission, evidence proving the lack of available s to afford effective competition to provide the services to meet the goal.~~ 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:

(1) Unavailability Certificates either completed and signed by all of the CBE-A/Es available to perform the scopes of work are completed and signed by the respondent explaining the contacts with all of the CBE-A/Es available to perform the scopes of work, statements or actions of the CBE-A/Es showing

unavailability, and the reason(s) why the CBE-A/Es' signature could not be obtained;

(2) A listing of any proposals received from a CBE-A/E, the scope of work and percentage of work, and the respondent's reasons for rejecting each proposal;

(3) A statement of the respondent's contacts with ~~D~~SBD for assistance in determining available CBE-A/Es;

(4) A description of the respondent's process for soliciting and evaluating proposals from CBE-A/Es, including copies of telephone logs detailing time, date and name of contacts with potential subconsultants;

(5) Respondents may establish a CBE-A/E as unavailable if its proposal is not reasonably competitive with comparable proposals of non-CBE-A/Es for the same scope of work. To establish a CBE-A/E as unavailable if its proposal is not considered reasonably competitive, the prime consultant must furnish ~~D~~SBD with copies of all proposals received from all firms, both CBE-A/Es and non-CBE-A/Es, for each specific scope of work for which they are claiming that the proposal is not reasonably competitive. A CBE-A/E's proposal will be considered reasonably competitive if its proposal, for the same scope of work, is within 25% of the proposal of comparably sized non-CBE-A/E firms;

Respondents whose proposals do not meet the specified goal, and who do not prove lack of availability as indicated in 1(g) above, are not in compliance with this ~~Administrative~~ Implementing Order.

The following shall constitute non-compliance with this ~~Administrative~~ 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;

(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;

(6) Deviations from the ~~Schedule of Participation~~ Letter of Agreement without prior approval from ~~D~~SBD;

(7) Termination of the CBE-A/E's agreement without prior approval from ~~D~~SBD;

(8) Reduction of the scope of work of a CBE-A/E subconsultant without prior approval from ~~D~~SBD;

(9) Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from ~~D~~SBD; or

(10) Unjustified failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a ~~Schedule of Participation~~ Letter of Agreement.

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 will recommend to ~~D~~SBD the type and level of agreement set-aside, or subconsultant goal that could be applied.

2. ~~D~~SBD shall review the Letters of Agreement, Certificates of Assurance or equivalents, ~~Schedules of Participation, Letters of Intent,~~ 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.

X. DESIGN-BUILD CONTRACTS

The design portion of the design-build contract is subject to the procedures outlined in this ~~Administrative~~ Implementing Order.

XI. PROMPT PAYMENT

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

A. PRIME CONSULTANT RESPONSIBILITIES

1. A prime consultant shall include in its billing to Miami-Dade County or the Public Health Trust copies of those portions of the billings from CBE-A/E subconsultants utilized to meet the subconsultant goal applicable to the agreement which the prime consultant approves and whose cost is included in the payment amount requested from Miami-Dade County or the Public Health Trust.

2. Prime consultant agreements to which a CBE-A/E subconsultant goal has been applied shall require that billings from CBE-A/Es be promptly reviewed and payment made to such CBE-A/Es on those amounts not in dispute within two (2) business days of receipt of payment therefore. The foregoing notwithstanding, the prime consultant shall pay billings from CBE-A/E subconsultants with whom they are in direct privity that are not in dispute within the timeframe and implemented by this ~~Administrative~~ Implementing Order.

3. The prime consultant on an agreement to which a CBE-A/E subconsultant goal has been applied shall inform ~~D~~SBD, the Contracting Officer, and the CBE-A/E subconsultant, in writing, of those amounts billed by the CBE-A/E which are in dispute, and the specific reasons why they are in dispute, within seven (7) calendar days of submittal of such billing by the CBE-A/E subconsultant to the prime consultant.

4. Failure of the prime consultant to comply with the applicable requirements of Section XI (A) (3) above shall result in the prime consultant's forfeiture of the right to use the dispute as justification

for not paying the CBE-A/E subconsultant and payment shall be forthcoming from the prime consultant.

B. COUNTY RESPONSIBILITIES

1. Proposal documents for agreements with CBE-A/E agreement set-asides, or subconsultant goals shall require that billings from subconsultants under prime consultant agreements with Miami-Dade County or the Public Health Trust that are a CBE-A/E agreement set-aside or which contain a subconsultant goal shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust.

2. ~~D~~SBD may investigate reported instances of late payment to CBE-A/Es.

C. FINANCE DEPARTMENT RESPONSIBILITIES

The Finance Department shall review billings from prime consultants under prime consultant agreements with Miami-Dade County or the Public Health Trust that are a CBE-A/E agreement set-aside or which contain a subconsultant goal and make payment on those amounts not in dispute within fourteen (14) calendar days of receipt of billing.

XII. AGREEMENT ADMINISTRATION - COMPLIANCE AND MONITORING

A. Compliance Review

1. The Compliance Monitor shall review respondent's submission for compliance with this ~~Administrative~~ 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 ~~Administrative~~ 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 ~~Schedule of Participation and Letter of Intent~~ Letter of Agreement 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 ~~Administrative~~ 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 ~~Schedule of Participation and Letter of Intent~~ Letter of Agreement will be accepted.

5. The Contracting Officer, in conjunction with the Compliance Monitor, may conduct an informal meeting with the respondent. Other parties may be invited to offer information relevant to the issue of the respondent's non-compliance.

6. The Contracting Officer shall provide a written determination of the respondent's compliance with this ~~Administrative~~ Implementing Order, along with a recommendation whether to award the agreement to the respondent, to the County Manager. A copy of such recommendation shall be sent to the respondent. Such recommendation shall not affect the power of the Board of County Commissioners to reject the respondent's bid for any other reason or to take such action on the recommendation of the Contracting Officer as the Board deems appropriate.

7. Consideration of other proposals. If the Contracting Officer or Compliance Monitor deems it advisable in the interest of expediting the award of the agreement, the procedures set forth in this subsection may be carried out with respect to the proposals of one or more additional respondents at the same or different time with each such proceeding to be separately conducted.

8. Failure of respondent to participate. The respondent will be bound by the proceedings under this subsection to which they have been given required notice without regard to their participation or lack of participation. A lack of participation upon receiving notices and requests pursuant to this ~~Administrative~~ Implementing Order shall not be grounds for reconsideration of any action taken in the proceedings.

9. Miami-Dade County shall not award an agreement to any respondent which, in its determination, fails to comply with the applicable requirements of this ~~Administrative~~ Implementing Order. Nothing herein shall relieve any respondent from any of the terms, conditions or requirements of the contract or modify Miami-Dade County's rights as reserved in the agreement document.

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 ~~Schedule of Participation or Set-Aside List of Subconsultants~~ Letter of Agreement. 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.

2. Access to Records

Successful respondents and CBE-A/Es shall permit the County to have access during normal business hours to books and records relating to the respondent's compliance with the agreement set-aside, or subconsultant goal applied to the agreement or relating to CBE-A/E compliance with certification requirements. Such books and records include but are not limited to corporate documents, charters, organizational filings, tax filings, registrations, licenses, stock registrations, partnership agreements, contracts, subcontracts, joint venture agreements, telephone logs, checking accounts, journals, ledgers, correspondence, pension and benefits documents, and documents and records between the respondent or the CBE-A/E and other entities. This right of access shall be

granted for one year after completion of the work or full payment of the agreement obligations, whichever comes last, or for one year after the expiration of CBE-A/E certification.

3. Access to Job Site

Successful respondents and CBE-A/Es shall permit the County to have access to project locations during normal business hours in order to conduct visual inspections and employee interviews.

4. Monthly/Quarterly 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 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 ~~Schedule of Participation or Set-Aside List of Subconsultants~~ Letter of Agreement

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 ~~Schedule of Participation~~ Letter of Agreement, 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 ~~D~~SBD by submitting a request in writing addressed to the Director of ~~D~~SBD through the Contracting Officer. The request must include a revised ~~Schedule of Participation~~ Letter of Agreement to include the substitute CBE-A/E ~~and a Letter of Intent from the substitute~~. 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 ~~Schedule of Participation~~ Letter of Agreement, 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:

(1) Termination of a CBE-A/E's subconsultant agreement;

(2) Reduction in the scope of work to be performed by a CBE-A/E;

(3) Modifications to the terms of payment or price to be paid to a CBE-A/E; or

(4) Failure to enter into a subconsultant agreement with a CBE-A/E being utilized to meet a subconsultant goal.

c. Excuse from entering into subconsultant agreements:

If, prior to execution of a subconsultant agreement required by this ~~Administrative~~ Implementing Order, the successful respondent submits a written request to the Contracting Officer demonstrating to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not reasonably have been aware until subsequent to the date of the award of the agreement, a CBE-A/E who is to enter into such subconsultant agreement has unreasonably refused to execute the subconsultant agreement, or is not available, the successful respondent shall be excused from executing such subconsultant agreement. The procedures of paragraphs (e) and (f) below shall apply to this paragraph.

d. Termination of Subconsultant Agreements:

If, after execution of a subcontract required by this ~~Administrative~~ Implementing Order, the successful respondent submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not be reasonably have been aware, until subsequent to the date of execution of such subconsultant agreement, a CBE-A/E, who entered into such subconsultant agreement has committed a material breach of the subconsultant agreement, the successful respondent shall be entitled to exercise such rights as may be available to him/her to terminate the subconsultant agreement. The procedures of paragraphs (e) and (f) below apply to this paragraph.

e. County's Determination of Respondent's Excuse or Termination:

If the successful respondent at any time submits a written request to the Contracting Officer under the prior two paragraphs, the Contracting Officer as soon as practicable, shall determine whether the Successful Respondent has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the successful respondent, upon notice, an opportunity to present pertinent information and arguments. The procedures of paragraph (f) below apply to this paragraph.

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 ~~Administrative~~ 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 ~~Schedule of Participation or Set-Aside List of Subconsultants and Letter of Intent~~ Letter of Agreement to include the substitute CBE-A/E.

3) 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, telephone numbers, and the date of contact for each CBE-A/E. All CBE-A/Es certified within the appropriate professional service area under the technical certification categories must be contacted.

4) The Compliance Monitor may require the successful respondent to produce such information as the Compliance Monitor deems appropriate and may obtain further information from other sources. The Compliance Monitor shall make his/her recommendation under this paragraph to the Contracting Officer and forward a copy to the respondent.

5) The Contracting Officer will consider objections to the Compliance Monitor's recommendation only if such written objections are received by the Contracting Officer within five calendar days from the successful respondent's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, and as he/she in his/her discretion may determine, will reply to the successful respondent's written objection within ten (10) days of receipt of these objections.

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 or this ~~Administrative~~ 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;

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 Manager 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. Upon completion of a County agreement with CBE-A/E measures, the compliance monitor for ~~D~~SBD, in accordance with County Code governing the CBE-A/E program, will obtain the final Monthly Utilization Report and determine if the respondent has met the CBE-A/E measures.

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 plan indicating any current or future County agreements in which the CBE-A/E deficit will be remedied.

4. The respondent must respond to ~~D~~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 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 ~~Schedule of Participation and Letter(s) of Intent~~ Letter(s) of Agreement for the CBE-A/E firm(s) that will be utilized in making up the deficit.

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

8. 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 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;

   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;

g. Deviations from the ~~Schedule of Participation~~ Letter of Agreement without prior approval from ~~D~~SBD;

h. Termination of the CBE-A/E's agreement without prior approval from ~~D~~SBD;

i. Reduction of the scope of work of a CBE-A/E subconsultant agreement without prior approval from ~~D~~SBD;

j. Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from ~~D~~SBD; or

k. Unjustified failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a ~~Schedule of Participation~~ Letter of Agreement to meet a subconsultant goal.

XIV. ADMINISTRATIVE PENALTIES

A. DEBARMENT

1. The County may debar a CBE-A/E or a non-CBE-A/E for violation of, or non-compliance with, the provisions of the County Code governing the program, this ~~Administrative~~ Implementing Order, or implementing proposal documents.

2. Causes for debarment are as noted in Section 10-38 of the Code. These include but are not limited to, a preponderance of evidence that the CBE-A/E has forfeited a bond or defaulted on financial assistance, either of which was provided under the CBE-A/E program; or if any individual or corporation, partnership or other entity, or any individual officer, shareholder with a significant interest, director or partner of such entity, qualifying agent or affiliated business of such entity attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement.

B. DECERTIFICATION

Violations of certification requirements are addressed in Section II of this ~~Administrative~~ Implementing Order.

C. SUSPENSION

If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the 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 exceed three (3) years.

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 10% of the amount thereof; for the second deficit, a penalty in an amount equal to 20% thereof; for the third and successive deficits, a penalty in an amount equal to 30% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and [[~~may~~]][2]>>shall<< be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 10-33.02 of the Code of Miami-Dade County.

2. 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.

XV. APPEALS PROCESS

[2] Committee amendments are indicated as follows: words double stricken through and/or [[double bracketed]] shall be deleted, words double underlined and/or >>double arrowed<< constitute the amendment proposed.

AB. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this Implementing Order and Section 2-10.4.01, Code of Miami-Dade County may appeal such action. The Compliance Monitor shall notify the affected party, in writing, setting forth the reasons for the determination and advising of this appeals process. The affected party may appeal the determination by filing a written appeal with the Director of SBD within thirty (30) days of receipt of the notice. This appeals process does not apply to appeals of decisions made pursuant to bid documents implementing the CBE-A/E program when such proposal documents provide procedures for appeals of such decisions.

B. Decisions by the County Mayor or designee shall be final ~~unless the County Commission agrees in its sole discretion upon request by the affected party to review the County Mayor or designee's decision~~.

~~C. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the 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 exceed three (3) years.~~

~~D. 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% of the amount thereof; for the second deficit, a penalty in an amount equal to 20% thereof; for the third and successive deficits, a penalty in an amount equal to 30% 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 10-33.02 of the Code of Miami-Dade County.~~

~~E. 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.~~

~~A. This appeals process does not apply to appeals of decisions made pursuant to proposal documents implementing the program when such proposal documents provide procedures for appeals of such decisions.~~

~~B. Upon a denial of certification, a decertification, a determination of noncompliance with the requirements of this Administrative Order, the provisions of the County Code governing the /AE program, or implementing proposal documents, which decision will be final unless appealed, the Compliance Monitor shall notify the affected party, in writing, setting forth the reasons for the determination and advising of this appeals process.~~

~~C. The affected party may appeal the determination by filing a written appeal with the Director of DBD within thirty (30) days of receipt of the notice.~~

~~D. DSBD shall forward all written appeals to the RC. The RC or a committee thereof appointed by the chairperson shall hear all appeals and forward recommendations regarding the appeal to the County Manager.~~

~~E. Decisions by the County Manager shall be final unless the County Commission agrees in its sole discretion upon request by the affected party to review the County Manager's decision.~~

C. PROCEDURES FOR ADMINISTRATIVE HEARING:

The procedure for administrative hearings shall provide that:

1. SBD will schedule a hearing date before a hearing officer, upon timely receipt of a request for an administrative hearing along with a $250 nonrefundable filing fee to appeal a determination of non-compliance with the requirements of this Implementing Order, section 2-10.4.01, Code of Miami-Dade County, as amended, or implementing bid documents.

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

3. SBD shall serve upon the firm, consultant (or subconsultant) and/or lessee a notice of hearing within five (5) working days of the appointment of the administrative hearing officer. Such notice shall include:

a. A copy of SBD's determination of non-compliance, outlining alleged prohibited practices upon which it is based;

b. A description of the administrative penalties being considered;

4. An administrative hearing shall be scheduled to be heard before an administrative hearing officer within twenty (20) days after service of the notice. The notice shall also advise the appellant that he or she 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.

5. Within five (5) days after completion of the administrative hearing, the administrative hearing officer shall transmit his/her findings of fact, 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.

D. QUALIFICATIONS OF HEARING OFFICERS:

1. 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 or his or her designee. The list of 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 this Implementing Order and the provisions of section 2-10.4.01, Code of Miami-Dade County, as amended, applicable to the particular violation(s) to be heard. Additional qualifications include, but are not limited to, experience in equal opportunity, anti-discrimination, contacting, 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.

2. The County Mayor or 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 officer 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 officer; provided, however, that a determination as to reappointment must be made for each administrative hearing officer 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.

3. Administrative hearing officers shall not be County employees but shall be compensated at a rate to be determined by IO.

3. The Miami-Dade County Attorney's Office shall serve as general counsel to the administrative hearing officer.

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

~~George M. Burgess~~
Alina T. Hudak
County Manager