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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Amended
Agenda Item No. 7(D)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: July 1, 2014

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

SUBJECT: Ordinance pertaining to Community Small Business Enterprise Program; amending Section 10-33.02 of the Code
Ordinance No. 14-60

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

R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum

MIAMI-DADE COUNTY

Date: July 1, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Substitute - Ordinance Amending 10-33.02 of Miami-Dade County Code Pertaining to the Community Small Business Enterprise Program (Legistar 141037)

The proposed substitute Ordinance amends section 10-33.02 of the code and proposes various changes to the Community Small Enterprise Program, including certification criteria, graduation criteria, and a bid preference for SBE certified manufacturers and wholesalers. The substitute item removes the reinstatement of the monthly review committee meetings and excludes funds invested in an IRA, 401k, pension or other retirement account from the owner's personal net worth. Therefore, the revised proposed ordinance has no fiscal impact.

Edward Marquez
Deputy Mayor

Fis4514

MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: July 1, 2014

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

SUBJECT: Amended Agenda Item No. 7(D)

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

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

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

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 7(D)
7-1-14

ORDINANCE NO. 14-60

ORDINANCE PERTAINING TO COMMUNITY SMALL BUSINESS ENTERPRISE PROGRAM; AMENDING SECTION 10-33.02 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO CREATE GRADUATION CRITERIA BASED ON PERSONAL NET WORTH, PROVIDE VIRTUAL OFFICE DEFINITION, REQUIRE ONE YEAR DOING BUSINESS IN MIAMI-DADE COUNTY PRIOR TO CERTIFICATION, ALLOW APPLICATION FOR RECERTIFICATION AFTER SUBMITTAL OF REQUIRED DOCUMENTS, AND CONTRIBUTION TO ECONOMIC DEVELOPMENT AND WELL-BEING OF MIAMI-DADE COUNTY; AND PROVIDING SEVERABILITY, INCLUSION IN CODE AND EFFECTIVE DATE

WHEREAS, the Community Small Business Enterprise Program provides opportunities for small business participation on Miami-Dade County contracts for procurement of construction and construction related trades and/or services; and

WHEREAS, the Board wishes to align the requirements of its three small business programs; and

WHEREAS, the Board wishes to include graduation provisions based on personal net worth to maintain the integrity of the small business programs, consistent with federal Disadvantaged Business Enterprise ("DBE") program guidelines; and

WHEREAS, the Board wishes to align its small business program requirements with the local preference requirements, including requiring participating firms to do business in Miami-Dade County for one year prior to certification and contribute to the economic development and well-being of the County; and

WHEREAS, the Board wishes to provide public input for the review and application of goal recommendations prior to advertisement; and

WHEREAS, the Board wishes to allow firms that have been decertified due to the non-submittal of required documents, to be able to immediately reapply for recertification once said documents have been submitted and verified, rather than waiting a year before doing so,

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

Section 1. Section 10-33.02, Code of Miami-Dade County, is hereby amended as follows[1]:

Sec. 10-33.02. Community Small Business Enterprise Program.

* * *

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

* * *

Community Small Business Enterprise (CSBE) means a construction related enterprise, including a design-build firm, and any firm providing trades and/or services for the completion of a construction project, as defined in Chapter 10 of the Code of Miami-Dade County, which has >>a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification,<<an actual place of business in Miami-Dade County>>, not a Virtual Office,<< and whose average annual gross revenues for the last three (3) years do not exceed: ten million dollars ($10,000,000.00) for SIC 15 - Building Construction, General Contractors and Operative Builders; six million dollars ($6,000,000.00) for SIC 16 - Heavy Construction, other than Building Construction; or five million dollars ($5,000,000.00) for SIC 17 - Specialty Trade Contractors. CSBEs shall be categorized by the type of construction they perform in accordance with the two-digit Standard Industrial Classification (SIC) code, or the six-digit North American Industry Classification System (NAICS), of the Census applicable to such type of construction. A CSBE will graduate out of the program upon notification by SBD that it has exceeded these size limits based on its three-year average annual gross revenues. A certified CSBE that graduates out of the program shall continue to submit financial information as to cumulative gross revenue and bonding capacity to SBD annually for >>three (3)<< years thereafter in order to further the County's ability to assess the effectiveness of the program.

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[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

The County Mayor or designee shall be authorized to adjust the CSBE-size limits every five (5) years at his/her discretion based on the 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 the figures provided for the calendar year ended December 31, 2012, and every five (5) years thereafter. The County Mayor or designee shall advise the Board of any such adjustment.

CSBEs must be certified by SIC or NAICS code, and classified into one (1) of the three (3) contracting participation levels. The lack of bonding capacity shall not preclude an applicant from being certified as a CSBE. As part of the certification process, CSBEs must go through a prequalification process which will be used to determine which of the three (3) contracting participation levels the CSBE will be placed in based on the firm's three (3) year average gross revenues. The contracting participation levels are as follows:

1. Level I – Three-year average gross revenues of $0.00-$2,000,000.00;
2. Level II – Three-year average gross revenues above $2,000,000.00 but not exceeding $5,000,000.00; or
3. Level III – Three-year average gross revenues above $5,000,000.00 but not exceeding $10,000,000.00.

A firm's eligibility to participate in the CSBE program and the contracting participation level at which it will participate shall be determined based on the three-year average gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A [which can be found in the County Clerk's office attached to Ordinance Number 97-52]. No firm shall be certified as a CSBE where the individual net worth of any of its owners is more than one million five hundred thousand dollars ($1,500,000.00) >>,exclusive of: (a) the value of the primary residence for which there is a homestead exemption; (b) the value of the business; and (c) funds invested in an individual retirement account ("IRA"), 401k, pension, or other official retirement account The owner MUST provide information about the terms and restrictions of the account(s) to SBD, and certify that the retirement account(s) is legitimate<<. Representations as to >>average<< gross revenues>>,<<[[~~and~~]]>>personal<< net worth of owners >>and payroll<< shall be subject to audit.

Notwithstanding any other provision of this Section 10-33.02, Level II and Level III CSBEs certified in SIC Code 17 - Specialty Trade Contractors, may bid on a specialty trade contract set aside for CSBEs whose estimated cost is above $50,000 and may participate in any specialty trade portion of the work of a contract subject to a CSBE subcontractor goal where the cost of the specialty trade portion of the contract work is above $50,000.

* * *

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

* * *

Review Committee or *RC* means the committee established by the County Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus >>and when public input requires deliberation regarding the measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed<<.

* * *

Trade set-aside means that an entire specialty trade component(s) of a County miscellaneous construction contract is reserved for first tier subcontracting amongst certified CSBEs (for example, the entire plumbing or roofing or electrical component of a specific contract is reserved for limited competition amongst certified CSBEs). All such subcontracts shall be in writing and shall be executed by the prime contractor and the first tier CSBE subcontractor.

>>*Virtual Office* means an agreement that provides a receptionist, mail and facsimile services, and similar services, that give the appearance of having a business presence at a location, but the business entity has no ongoing, full-time physical presence in the building. Virtual Offices are invalid for certification purposes.<<

* * *

(3) *Program components:*

* * *

B. *Miami-Dade County Community Small Business Enterprise (CSBE) Program.* The prompt payment provisions of this section shall take precedence over Section 2-8.1.4 of the Code ("Sherman S. Winn Prompt Payment Ordinance"), as to the contracts specified below:

* * *

10. *Graduation:* Upon review, any CSBE that exceeds the >>personal net worth or<< size limits, based on the firm's three-year average gross revenues, established by this section shall be graduated from the CSBE program upon notification by SBD and may no longer be eligible for participation in the CSBE Program. These firms shall be allowed to

complete any currently awarded contract and remain eligible to be awarded contracts as primes or subcontractors for bids submitted prior to notice of graduation. However, the graduated firm will not eligible to receive any new contracts under the CSBE program.

* * *

(4) *Certification requirements:* The County Mayor or designee shall implement eligibility criteria and procedures for entities to be certified as CSBEs based on regulations outlined in this section. Firms exceeding size limits established hereunder and under Appendix A [which can be found in the County Clerk's office attached to Ordinance Number 97-52] are not eligible for contract measures or participation in these programs.

1. [[~~The Department of~~]] Small Business Development shall maintain and publish at least every other week an updated list of CSBEs, identifying each listed CSBE based on each Standard Industry Classification (SIC) category or North American Industry Classification System (NAICS) code and each specialty trade the CSBE is certified in, and noting what contracting participation level the firm is classified in.

2. [[~~The Department of~~]] Small Business Development shall not certify an applicant, shall not recertify a CSBE, and shall decertify a CSBE that fails to comply with the criteria or procedures for obtaining or maintaining certification. [[~~The Department of~~]] Small Business Development shall have authority to suspend the certification of a CSBE during any appeal of a decertification decision. >>Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD.<<

3. Applicants and certified CSBEs must be properly licensed to conduct business in Miami-Dade County, >>must have a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification.<< 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. >>In addition, a firm shall not be certified unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to the retention and expansion of employment opportunities and the support and increase to the County's tax base.<<

* * *

8. [[~~The Department of~~]] Small Business Development may require applicants and CSBEs to submit information regarding their business operations,

including, but not limited to, a breakdown of the applicant's or CSBE's ownership, management, and/or workforce as to race, national origin, gender, and gross annual sales.

* * *

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

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

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

PASSED AND ADOPTED: July 1, 2014

Approved by County Attorney as to form and legal sufficiency:

Prepared by:

David Stephen Hope

Prime Sponsor: Commissioner Audrey M. Edmonson