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

MEMORANDUM

Agenda Item No. 7(B)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	(Second Reading 9-7-16) June 7, 2016
FROM:	Abigail Price-Williams County Attorney	**SUBJECT:**	Ordinance pertaining to Small Business Enterprise Construction Services Program; amending section 10-33.02 of the Code to provide for increased penalties to be paid by contractors and sub-contractors upon failure to meet goal requirements, and penalties for schedule of intent violations

Ordinance No. 16-83

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

Abigail Price-Williams for
County Attorney

APW/smm

Memorandum

MIAMI-DADE COUNTY

Date: September 7, 2016

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

From: Carlos A. Gimenez
Mayor

Subject: Fiscal Impact Statement for Ordinance Pertaining to Small Business Enterprise Construction Services Program

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The proposed ordinance amends 10-33.02 of the Code of Miami-Dade County to provide for increased penalties to be paid by contractors and sub-contractors upon failure to meet goal requirements.

The Internal Services Department, Small Business Development Division, is already responsible for assigning goals/measures to County contracts, and, it is expected that this existing staff will be able to manage those contracts meeting the criteria of this proposed ordinance. Increased penalties may have a positive fiscal impact on the County, however, it is difficult to make an estimate at this point.

Edward Marquez
Deputy Mayor

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Memorandum

MIAMI-DADE COUNTY

Date: September 7, 2016

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

From: Carlos A. Gimenez
Mayor

Subject: Social Equity Statement for Ordinance pertaining to Small Business Enterprise Construction Program; amending section 10-33.02 of the Code of Miami-Dade County, Florida to provide for increased penalties to be paid by contractors and sub-contractors upon failure to meet goal requirements

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The proposed Ordinance amends the Small Business Enterprise Construction Program Section 10-33.02 of the Code of Miami-Dade County, Florida to provide for increased penalties to be paid by contractors and sub-contractors upon failure to meet goal requirements.

Increasing the penalties on applicable contracts will provide for stronger accountability to small business measures during the duration of the contract. In addition, this amendment will assist all parties involved to resolve any issues in meeting small business measures.

Edward Marquez
Deputy Mayor

Attachments

MEMORANDUM

(Revised)

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

DATE: September 7, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(B)

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Statement of social equity required**

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

_____ **No committee review**

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

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(B)
9-7-16

ORDINANCE NO. 16-83

ORDINANCE PERTAINING TO SMALL BUSINESS ENTERPRISE CONSTRUCTION SERVICES PROGRAM; AMENDING SECTION 10-33.02 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO PROVIDE FOR INCREASED PENALTIES TO BE PAID BY CONTRACTORS AND SUB-CONTRACTORS UPON FAILURE TO MEET GOAL REQUIREMENTS, AND PENALTIES FOR SCHEDULE OF INTENT VIOLATIONS; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

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

Sec. 10-33.02. Small Business Enterprise Construction Services Program.

* * *

(6) *Administrative penalties.* For violation of or noncompliance with this ordinance or its implementing orders, bid, and competitive selection documents, the County Mayor or designee may impose penalties that include, but are not limited to, the following:

* * *

[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.

1. The loss of eligibility to be certified as a CSBE for a specified period of time, not to exceed three (3) years, for an applicant or a CSBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.

2. 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 to exceed three (3) years.

3. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to [[~~10~~]]>>20<<% of the amount thereof; for the second deficit, a penalty in an amount equal to [[~~20~~]]>>40<<% thereof; for the third and successive deficits, a penalty in an amount equal to [[~~30~~]]>>60<<% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 10-33.02 of the Code of Miami-Dade County.

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

(7) >>*Penalties for Schedule of Intent violations.* If on three (3) separate occasions, a subcontractor executed a Schedule of Intent ("SOI") Affidavit and subsequently becomes unavailable to perform or complete the work for the prime contractor during the contract period, SBD shall suspend said subcontractor from certification for one (1) year. If SBD suspends the same subcontractor three (3) times due to its failure to perform pursuant to an SOI as stated above, SBD shall suspend the subcontractor for a minimum of five (5) years, or until such time as the subcontractor can show SBD that it is ready, willing and able to perform if five (5) years has elapsed.<<

([[(~~7~~]]>>8<<) *Appeals.*

A. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, and fix a time for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of Sections 2-10.2, or 3-11.1, or otherwise.

* * *

([[~~8~~]]>>9<<) *County responsibilities.* The Department of Small Business Development (or other County department designated by the County Mayor or designee) shall:

1. Administer, or provide oversight for, the CSBE program and incentives outlined in this section;

* * *

([[~~9~~]]>>10<<) Notwithstanding the requirements of this Section, the Mayor or his designee is hereby expressly authorized and directed to establish an expedited process for the creation, review and approval of measures relating to Economic Stimulus Projects subject to Section 2-8.2.7 of this Code. Such process shall be set forth in an administrative order.

* * *

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

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

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

PASSED AND ADOPTED: September 7, 2016

Approved by County Attorney as
to form and legal sufficiency: GPK for

Prepared by: dsh

David Stephen Hope

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