Memorandum

MIAMI-DADE COUNTY

Date: February 15, 2013

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

From: Carlos A. Gimenez
Mayor

Subject: Response to Resolution No. R-437-12: Construction Bonding Task Force Report

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The attached report is being provided pursuant to Resolution No. R-437-12, adopted by the Board of County Commissioners (Board) on May 15, 2012. The resolution created the Construction Bonding Task Force to consist of members of the Community Small Business Enterprise (CSBE) Advisory Board. The CSBE Advisory Board is staffed by Small Business Development (SBD) under Business Affairs, a division of the Department of Regulatory and Economic Resources (RER).

The task force was charged with the following responsibilities:

- Review the processes by which community small businesses obtain construction bonding;
- Identify any actual or potential obstacles in obtaining such bonding;
- Study the best practices of other jurisdictions around the Country in addressing these issues;
- Prepare and submit to the Board written recommendations setting forth any proposed legislation that will enable community small businesses to obtain adequate construction bonding or otherwise perform County construction projects; and
- Solicit and study proposals from groups affected by bonding opportunities in the County and bring such proposals before the Board for consideration and approval.

The attached report contains a review of the County's requirement for construction payment and performance bonds, processes and requirements for small businesses to obtain bonding, along with obstacles and impediments to successfully being approved for bonding. Best practices from around the country were compiled by SBD staff for the Task Force's review and discussion. Task Force recommendations are outlined to enable Community Small Business Enterprise (CSBE) firms to obtain adequate construction bonding or otherwise perform Construction projects and include the following:

- Utilize the tools made available in the original CSBE Ordinance, regarding Management and Technical Assistance, Financial Assistance, Mentor Protégé and Bonding Assistance. Fund the program at the level adopted in the original CSBE Ordinance.
- Identify specific funding sources for a bonding program.
- Ensure enforcement of the bond waiver requirement adopted by the Board with Resolution No. R-1386-09 by adding penalties for non-compliance and inclusion in contract language.
- Support Florida House Bill 1041 and Florida Senate Bill 1872 which will increase the bond waiver requirement to contracts over $500,000.
- Investigate the CSBE population to determine the demand for bonding and the level of assistance needed. Based on results, implement a pilot Bond Training and Referral Program by which CSBE firms interested in bonding must attend all components: training; referral to targeted surety bond professionals and CPAs to assess bonding ability; referral to accounting service for necessary financial documents; referral back to surety bond professionals for bonding evaluation.
- Explore the feasibility of the County partnering with bonding companies to guarantee bonds to small businesses.

- Study bonding programs in New York, Ohio, Virginia, and the Tripartite Escrow Agreement as implemented by the Louisiana Procurement Technical Assistance Center, and the Florida Department of Transportation Program for possible retrofit for Miami-Dade County.
- Study the implementation of the United States Surety Bond Waiver Program and identify the applicability and feasibility for similar implementation under Florida Law.

The complete report of the Construction Bonding Task Force is attached. The Task Force is recommending that the Board extend oversight of any directives resulting from this report to the County's CSBE Advisory Board. Should you have any further questions, please do not hesitate to contact me or Mario Goderich, Assistant Director, Business Affairs, RER.

Attachment

c: Jack Osterholt, Deputy Mayor/Director, RER
Mario Goderich, Assistant Director, Business Affairs, RER
Veronica Clark, Assistant to Director, SBD/RER

Report to the Miami-Dade County Board of County Commissioners

BONDING TASK FORCE

January 2013

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TASK FORCE MEMBERS AND PARTICIPANTS

Members:

- **Rick Derrer, CSBE Advisory Board Member**
  South Florida Chapter of the Associated General Contractors of America
- **Ismailia Rashid, CSBE Advisory Board Member**
  Certified CSBE
- **Samuel Lee, CSBE Advisory Board Member**
  Allied Minority Contractors Association, Inc.
- **John Siegle, CSBE Advisory Board Member**
  Construction Association of Florida, Inc.
- **Bob Baer, CSBE Advisory Board Member**
  Engineering Contractor's Association of South Florida, Inc.
- **Kurt D. Dyer, CSBE Advisory Board Member**
  Latin Builders Association
- **Jason K. Barket, CSBE Advisory Board Member**
  Underground Contractors' Association of South Florida, Inc.
- **Linda Forest, CSBE Advisory Board Member**
  Contractor's Resource Center
- **Charles Nielson, CSBE Advisory Board Member**
  Local Bonding Industry
- **Courtney Cunningham, CSBE Advisory Board Member**
  Miami-Dade Chamber of Commerce
- **Adrian Foster, CSBE Advisory Board Member**
  National Association of Black Women in Construction
- **Jessie B. Houston, CSBE Advisory Board Member**
  BAC Funding Corporation
- **Dorothy Brown-Alfaro, CSBE Advisory Board Member**
  CSBE Association

Participants:

- **David Hope, County Attorney**
  County Attorney's Office
- **Charles Parkinson, County Staff**
  Miami-Dade County Finance Department
- **Gladys Keith, Bond Agent/Broker**
  Name of Company

Staff:

- **Mario Goderich, Business Affairs/Regulatory and Economic Resources**
  Department of Regulatory & Economic Resources
- **Veronica Clark, SBD - Business Affairs/Regulatory and Economic Resources**
  Department of Regulatory & Economic Resources
- **Sheri McGriff, SBD - Business Affairs/Regulatory and Economic Resources**
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- **Laurie Johnson, SBD - Business Affairs/Regulatory and Economic Resources**
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  Department of Regulatory & Economic Resources
- **Harold Goldson, SBD - Business Affairs/Regulatory and Economic Resources**
  Department of Regulatory & Economic Resources

INTRODUCTION

On May 15, 2012, the Board of County Commissioners (BCC) adopted resolution number R-437-12, creating a Construction Bonding Task Force and assigning to the Task Force the members of the CSBE Advisory Board with the powers and responsibilities outlined. Representatives of the bonding community, disbursement agent industry, banking or finance industry and the Miami-Dade County Finance Department were to be invited to provide guidance and assistance. The Bonding Task Force was staffed by the County Mayor or designee, County Attorney and County Clerk.

The task force was charged with the following responsibilities:

- Review the processes by which community small businesses obtain construction bonding;
- Identify any actual or potential obstacles in obtaining such bonding;
- Study the best practices of other jurisdictions around the Country in addressing these issues;
- Prepare and submit to this Board written recommendations setting forth any proposed legislation that will enable community small businesses to obtain adequate construction bonding or otherwise perform County construction projects; and
- Solicit and study proposals from groups affected by bonding opportunities in the County and bring such proposals before the Board for consideration and approval

Small Business Development under Business Assistance, a Division of the Department of Regulatory and Economic Resources convened the Task Force and commenced its meetings on July 16, 2012. After initial discussions regarding the charge, subsequent meetings were held on July 30, 2012 and August 6, 2012 to discuss and outline recommendations. The findings and recommendations of the Task Force are summarized in the Executive Summary, and fully set forth in this report to the BCC.

EXECUTIVE SUMMARY

The Bonding Task Force discussed the County's requirement for construction payment and performance bonds, processes and requirements for small businesses to obtain bonding, along with obstacles and impediments to successfully being approved for bonding. Best practices from around the country were compiled by Small Business Development staff for the Task Force's review and discussion. Finally, the Bonding Task Force made recommendations to enable Community Small Business Enterprise (CSBE) firms to obtain adequate construction bonding or otherwise perform Construction projects.

The Bonding Task Force underscored that a Performance and Payment Bond is a credit instrument with all of the organizational and financial responsibilities associated with the terms and conditions of that obligation. Unfortunately, not all contractors have the organizational or financial ability to qualify for surety bond credit. However, many CSBE contractors could qualify for surety bond credit commensurate with their experience and financial standing if packaged properly. The Bonding Task Force would recommend that the County adopt the mission to facilitate the provision of bond guarantees for qualified small businesses in partnership with surety companies and their agents.

Bonding requirements and impediments were enumerated and discussed. While workshops, seminars and other educational tools impart the bonding requirements and other valuable information to small businesses seeking bonding, that approach alone does not ensure bonding. One recommendation listed in this report was proffered by the CSBE Advisory Board bonding professional that maintains that over 90% of those seeking bonding can obtain some level of bonding by sitting down with a bonding professional and accountant to fully vet financials and package as needed for consideration. A program of education and bond readiness could result in increasing the number of firms obtaining bonding. This and other recommendations are included in this report.

COMMUNITY SMALL BUSINESS ENTERPRISE FIRMS
BONDING REQUIREMENTS

Miami-Dade County requires a payment and performance bond on all construction projects over $200,000. A bond may also be required at the discretion of the department, when deemed necessary for projects under $200,000. Resolution 1386-09, approved by the Board of County Commissioners in December of 2009, requires that payment and performance bonds not be required for subcontracts of $200,000 and below unless approved by Miami-Dade County prior to subcontract. When considering a contractor for bonding, the surety is concerned with guaranteeing a contractor's performance of the contract and the payment of bills. As a result, the surety wants as much information as possible to be assured of the contractor's ability to perform and to pay. Requirements include the following:

1. Resumes
2. Track Record
3. Trade References
4. Organizational Chart
5. Continuity Plan
6. Financial Statements
7. Cash Flow Projections
8. Contracts In Process Schedules
9. Credit References
10. Bank Line of Credit
11. Personal Indemnification

The process of obtaining bonding includes the following:

1. Contractor's submittal of a fully executed bond applications with all supporting documents as listed above to Bond Agent;
2. Bond Agent reviews application package and determines if the application is acceptable to forward to a Bond Underwriter;
3. If the Bond Agents determines the application package is acceptable with a strong probability for bond approval, the Agent forwards the application to the Bond Underwriter;
4. If the Bond Agents determines that the application package is not acceptable, the agent reviews the areas of weakness in the application with the Contractor and offers suggestions on how the contractor can improve the application;
5. The Bond Underwriter receives the application from the bond agent, reviews the application and either accepts or denies the application;
6. If accepted, contractor receives bond credit.

Finding an agent experienced in writing surety bonds specific for the industry and the individual's needs is important when seeking bonding. Applicants are encouraged to meet with the bond agent to discuss their business and business plans. Understanding the level of surety coverage needed and the financial capacity of the firm will assist the agent in determining what surety underwriters can best suit the small business unique situation. The bond application review process in many situations can be complex and requires the applicant's full participation and assistance to ensure that the agent is passing on accurate information about the company to the surety bond underwriter. The underwriter will examine the documentation submitted, like financial statements, history of paying bills on time and banking relationships, to make a judgment call as to whether or not the applicant can complete the project they will be bonding.

OBSTACLES TO BONDING

The economic climate has exasperated bonding and increased the obstacles to bonding. Common belief is that past performance and project history determine bonding ability, but it's also about the value of your assets. When construction was flourishing, there were few defaults and more bond approvals. But with the economic downturn and slow recovery, the surety industry has determined that this season is a greater risk to them; and as a result, are very conservative in their requirements for bonds. Some project owners are also insisting that general contractors require their subcontractors to obtain surety bonds. Obstacles to bonding include the following:

1. Poor Credit
2. Improper financial statements and/or weak financial statements
3. Insufficient working capital and/or equity
4. Lack of experience

A surety bond is a guarantee, in which the surety guarantees that the contractor will perform the "obligation" stated in the bond. For example, the "obligation" stated in a bid bond is that the principal will honor its bid; the "obligation" in a performance bond is that the principal will complete the project; and the "obligation" in a payment bond is that the principal will properly pay subcontractors and suppliers. Bonds frequently state, as a "condition," that if the principal fully performs the stated obligation, then the bond is void; otherwise the bond remains in full force and effect. If the principal fails to perform the obligation stated in the bond, both the principal and the surety are liable on the bond, and their liability is "joint and several." That is, either the principal or surety or both may be sued on the bond, and the entire liability may be collected from either the principal or the surety.

Best Practices Of Other Jurisdictions To Address Bonding

Name of Program	Locality	Program Description	Program Requirements	Comments
New York State Bond Assistance Program	State of New York	Program provides credit assistance for bonds on contracts with the State of New York. Provides Irrevocable Letter of Credit up to 30% of the contract value in cases where the surety requires the contractor to provide collateral or credit support. The State of New York reviews the contractor's application for credit assistance and also reviews the determination from the Surety before making the final decision to provide the ILOC. Maximum government contract size is limited to $2 million. For qualified contractors who are not bond ready, the program provides training and technical assistance. The program has $10 million dollars in funding for 5 years	1. Must be a NY State small business or MWBE firm for at least 2 years. 2. Contract cannot exceed $2 million 3. Minimum sales of $400,000 for last 2 years not to exceed $5 million for most recent year 4. Minimum credit score of 600 5. Prior work history for similar work.	If the County has the funding, this program is worth considering for Miami Dade County. For firms that do not meet the minimum requirements for bonding, the ILOC would provide the required collateral and allow these firms to gain bond approval and begin to establish bond credit.
Bond Waiver for pre qualified contractors.	State of Virginia	House Bill was passed in 2011 for the State of Virginia that raises the minimum contract amount required for bonds from $100,000 to $500,000. For contracts between $100,000 and $500,000 the bond requirements would be waived for prequalified contractors.	Contractors must be pre-qualified to be eligible for the waiver.	This would require a change of Florida statutes which currently has a threshold of $200,000. Would need an independent party manage to the pre-qualification process.
City of San Antonio Mentor-Protégé and Bonding Assistance Program	San Antonio Texas	Provides training in various subjects to improve business practices in the areas of business and financial planning, bonding basics, accounting and credit repair.	Certified firms must complete a Bonding Assistance Application to participate in the training courses	Completion of these courses contributes to bond readiness but the program does not offer any guarantee of obtaining a bond.

Florida A&M University-Florida Department of Transportation(FAMU/ FDOT) Construction Management Development Program	State of Florida	Comprehensive training program for DBE certified firms to develop construction and management skills to increase their ability to bond and qualify for FDOT contract opportunities. Courses include Professional Development (bonding, marketing and business management), Accounting, Construction Project Management and Construction Law. The next class begins in January, 2013 and ends in April, 2013. Classes are held 2 nights a week. Technical support is also offered through partnering relationships. Upon completion of the training, participants receive a certificate which qualifies the firm for guaranteed bonds as follows: 1. 90% for bonds up to $250,000 2. 80% for bonds up to $500,000.	Minority owned firms who are DBE certified.	The bond guarantee is limited to FDOT contracts and only for DBE certified firms. The program is limited to $2 million in bond guarantee funding. We have referred our firms to this program.
Memorandum of Understanding between the US Department of Transportation and the Surety and Fidelity Association of America – Bonding Assistance Program (BAP)	Nationwide	A partnership between the US Dept of Transportation Office of Small and Disadvantaged Business Utilization and the Surety and Fidelity Association of America to educate minority owned firms in order to enhance their access to bonding and increase their bonding capacity. The program provides training on bonding and related topics. Presentations are given by bonding, legal, accounting, and construction representatives in six, four hour sessions. Topics include, bonding, access to capital, project management, estimating, accounting and construction law.	DBE Certified firms.	SBD provides similar training through various workshops throughout the year. We can consider a partnership with US DOT to provide training for our firms. Some of our firms have gone through this program that was held in June of 2011. This is a nationwide program and we do not know when it will be offered again in South Florida.

Ohio Department of Development – Minority Business Bonding Program	State of Ohio	Pre-qualifies minority firms for bonding lines up to a maximum of $1 million. Bond premium is 2% of the face value. Bond applications are reviewed by an Advisory Board. If approved, the application is submitted to a State Controlling Board for approval. The bonds are issued directly from the Department. They do not use a Surety Company. The Department takes on the risk that would normally be assumed by the Surety.	1. Firms must be minority owned and certified in their minority business program 2. Applicant must not have defaulted on a previous bond issue 3. Applicant must have adequate insurance coverage. 4. Applicant must have a line of credit equal to 20% of bonded amount of sufficient financial resources. 5. Personal guarantees of the owner	The application may be overbearing for contractors particularly for firms seeking bonds for less than $500,000. There are 17 check list items. The line of credit requirement may prohibit many firms from qualifying. However, they do not require a CPA prepared financial statement but rely on business and personal tax returns to determine financial capability. The program has been in operation for about 7-10 years with no defaults.
Small and Minority Business Resources	Austin, Texas	A staff consultant provides technical assistance through one-on-one meetings to educate firms on bonding and assist them with their bonding needs	This service is available to firms certified in their program.	This is the same program that the SBD Unit offers to its certified firms.
Small Business Administration Bond Guarantee Program	Nationwide	SBA partners with the surety industry to help small businesses that would otherwise be unable to obtain bonding in the traditional commercial marketplace. Under the partnership, SBA provides a guarantee to the participating surety company of between 70 and 90 percent of the bond amount.	Contractors submit applications to the SBA Surety partner. The applications will vary depending on the Surety but the standard documents include, financial statements, work history, work in progress and credit history.	Firms that are borderline in meeting Surety underwriting requirements may qualify for bonding through the SBA program because Sureties are willing to take a higher risk because of the SBA Guarantee. However, these bonds will cost more. SBA charges .75% for the guarantee. A bond in the conventional market that costs 3% will cost 3.75 through the SBA program.

Tripartite Escrow Agreement	Federal	Contractor establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, subcontractors and suppliers; Government makes payments to the contractor's escrow account and the escrow agent distributes the payments in accordance with the agreement or triggers any dispute resolution procedures, if required.	For contract under $150K	

RECOMMENDATIONS

The Community Small Business Enterprise (CSBE) Program Ordinance was adopted by the Board of County Commissioners (BCC) on July 20, 1997. The recommended budget of $12 million was included to fund all components of the program. Although there have been reductions in the County budget and CSBE Program resources accordingly, County staff has maintained key areas of the Program's services such as bonding assistance. However, the Bonding Taskforce recommends the CSBE Program be funded at the level as recommended at adoption, with applicable adjustments to inflation. A specific funding source for the bonding component of program should also be identified. To strengthen the bond waiver requirement legislation (R-1386-09), penalties for non-compliance should be added to the current legislation. Additionally, specific language should be added to contracts outlining the bond waiver requirement and penalties for noncompliance.

Currently, Florida statute requires bonds on contracts valued at $200K and above. Discussions of future Florida House and Senate bills which will increase the bond requirement to contracts over $500K resulted in recommendations that the County offer support of such legislation. The remaining recommendations require the surveying of local small businesses for targeted needs, study and analysis of bonding programs around the country, and subsequent recommendations for possible County programs.

After extensive discussions of current legislation, bonding requirements, obstacles, samples of bonding initiatives nationwide and the needs of local small businesses, the following recommendations received consensus from the Bonding Task Force.

1. Utilize the tools made available in the original CSBE Ordinance, regarding Management and Technical Assistance, Financial Assistance, Mentor Protégé and Bonding Assistance. Use the $12 million budgeted in the Ordinance to fund these programs.
2. Identify specific funding sources for a bonding program.
3. Ensure enforcement of the bond waiver requirement adopted by the Board of County Commissioners (BCC) with resolution R-1386-09 by adding penalties for non-compliance and inclusion in contract language.
4. Support future Florida legislation which will increase the bond waiver requirement to contracts over $500,000.
5. Investigate the CSBE population to determine the demand for bonding and the level of assistance needed. Based on results, implement a pilot Bond Training and Referral Program by which CSBE firms interested in bonding must attend all components: training; referral to targeted surety bond professionals and CPAs to assess bonding ability; referral to accounting service for necessary financial documents; referral back to surety bond professionals for bonding evaluation.
6. Explore the feasibility of the County partnering with bonding companies to guarantee bonds to small businesses.
7. Study bonding Programs in New York, Ohio, Virginia, and the Tripartite Escrow Agreement as implemented by the Louisiana PTAC, and the FDOT Program for possible retrofit for Miami-Dade County.

8. Study the implementation of the United States Surety Bond Waiver Program and identify the applicability and feasibility for similar implementation under the Florida Law.

In conclusion, small businesses are among the County's largest employers; Miami-Dade would serve the County and its citizens by taking a proactive approach to improving small businesses ability to receive bonds and increasing bonding capacity. The Bonding Task Force is recommending the BCC extend oversight of any directives resulting from this report to the County's CSBE Advisory Board.