

**Sec. 2-8.1.1.1.1. - Small Business Enterprise Program.**

- (1) *Title.* This section shall be referred to as the Small Business Enterprise Program.
- (2) *Definitions.* The following definitions shall apply in this section.
  1. *Agreement* is a duly executed legally binding contract.
  2. *Available* or *availability* means to have prior to bid submission, the ability to provide goods or services under a contract, by having:
    - a. Reasonably estimated, uncommitted capacity;
    - b. All necessary licenses, permits, registrations and certifications, including Small Business Enterprise (SBE) or Micro Enterprise certification to provide the type of goods or services being purchased under the contract;
    - c. The ability to obtain financing/insurance that is reasonably required and consistent with normal industry practice; and
    - d. The ability to otherwise meet bid specifications.
  3. *Bid* means a quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letter of interest or offer for a contract.
  4. *Bid preference* means an amount deducted from the total bid price in order to calculate the bid price to be used to evaluate the bid submitted by a Micro Enterprise or SBE on a competitively bid contract to be awarded on the basis of price (as opposed to an RFP, RFI or RFQ) which is not set aside.
  5. *Bidder* or *Proposer* means any person, partnership, corporation or other business entity that submits a bid or proposal.
  6. *Board* means the Board of County Commissioners of Miami-Dade County, Florida.
  7. *Commercially useful function* means contractual responsibility for the execution of a distinct element of the work of a contract by a SBE and the carrying out of its contractual responsibilities by actually performing, managing, and supervising the work involved. The determination of whether an activity is a commercially useful function shall include the evaluation of the amount of work subcontracted; normal industry practices; the skills, qualifications, or expertise of the enterprise to perform the work; whether the business owner performs, manages, and/or supervises the work involved; and other relevant factors. Acting as an authorized representative of a manufacturer as is normal industry practice is considered a commercially useful function. Commercially useful function shall also include a distributor authorized by a manufacturer to distribute the manufacturer's products locally. Acting as a broker is not considered a commercially useful function.
  8. *Contract* means an agreement for the purchase of goods or services, including professional

services. Professional services as used in this section includes but is not limited to accounting, legal, health care, consulting and management services. Contract does not mean an agreement to purchase, lease, or rent real property; a grant, license, permit, franchise or a concession; an agreement to acquire professional architectural, engineering, landscape architectural or land surveying and mapping services; or a contract for construction or construction management services.

9. *Goods* mean any tangible product, material or supply that is not a service.

10. *Graduation* means the SBE or Micro Enterprise has exceeded the specific size limits stated for the program and may no longer be eligible to participate in the program.

11. *Gross Revenue* is defined to include all revenue in whatever form received or accrued from whatever source, including sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns and allowances. However, proceeds from sales of capital assets, and investments, proceeds from transaction between a firm and its domestic and foreign affiliates are excluded.

12. *Joint venture* means an association of two or more persons, partnerships, corporations or other business entities under a contractual agreement to conduct a specific business enterprise for a specified period with both sharing profits and losses.

13. *Management and Technical Assistance (MTA)* means a program designed to provide direct and indirect assistance for small business enterprise development.

14. *Mentor-Protege Program* is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging SBEs and Micro Enterprises in order for the latter to benefit from the knowledge and experience of the established Mentor firms.

15. *Micro Enterprise* means a business entity certified by SBD, providing goods or services, which has an actual place of business in Miami-Dade County and whose three year average gross revenues does not exceed two million dollars (\$2,000,000.00), or a manufacturer with fifty (50) employees or less, or a wholesaler with fifteen (15) employees or less whose actual place of business is in Miami-Dade County.

16. *Prompt Payment* is the intent of the Board that all firms, including SBEs and Micro Enterprises providing goods and services to the county, receive payments promptly as specified herein.

17. *Review Committee* or *RC* means the committee established by the 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 measure/goal recommendation. The RC will make recommendations to the Mayor or designee.

18. *SBD* means the Department of Small Business Development.

19. *Schedule of Intent Affidavit (SOI)* means a form contained in the bid documents of an SBE contract set-aside or a contract with subcontractor goals in which bidders list at the time of bid submission all SBEs to be used to meet the set-aside or the goal, and the scope of work each will

perform, including the goods or services to be provided, and the percentage value of such work.

20. *Selection factor* means a factor considered in evaluating the response submitted to an RFP, RFQ or RFI by a bidder that is:

A SBE,

A joint venture with one or more SBEs.

21. *Small Business Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise and Community Business Enterprise Programs.

22. *Small Business Enterprise (SBE)* means a business entity certified by SBD, providing goods or services, which has an actual place of business in Miami-Dade County and whose three-year average gross revenues does not exceed five million dollars (\$5,000,000.00). The term Small Business Enterprise shall also include a manufacturer with one hundred (100) employees or less or wholesaler with fifty (50) employees or less without regard to gross revenues whose actual place of business is located in Miami-Dade County. Representations as to a business entity's average gross revenues and payroll shall be subject to audit.

The County Mayor or designee shall be authorized to adjust the SBE/Micro-SBE size limits every five (5) years at his/her discretion based on the 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.

23. *Service* means work offered for public or private consumption that does not consist primarily of goods.

24. *Set-aside* means the designation of a given contract for competition among SBEs.

25. *Subcontractor goal* means a proportion of a total contract value stated as a percentage to be subcontracted to SBE(s) to perform a commercially useful function.

26. *Work* means the provision of goods or services, as defined herein.

(3) *Program.*

(a) *Application.* Except where federal or state laws or regulations mandate to the contrary, the provisions of this section shall be applicable to Miami-Dade and Public Health Trust contracts (as defined in this section) funded in whole or in part by County funds. The County Mayor or designee shall prepare implementing orders, bid and contract documents implementing the provisions of this section. The County Mayor or designee by implementing order may exclude classes of contracts, or parts thereof, from application of this section. The words County Mayor or designee in this section shall mean the County Mayor or designee.

(b) *Contracts of \$100,000 or less.*

1. Within the fiscal year, it is required that County departments expend with SBEs one hundred (100) percent of the total value of contracts less than one hundred thousand dollars

(\$100,000.00) for goods and/or services. The departmental requirement shall be complied with unless SBD determines that there is either not enough capacity, or the contract(s) can only be handled by a non-SBE firm(s).

2. Bids or quotes submitted by Micro Enterprises shall automatically receive a ten (10) percent bid preference. The departments shall deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation.

3. Annually, SBD shall provide a report of awards to Micro Enterprises and SBEs to the Board.

(c) *Contracts Greater than \$100,000.* The following SBE measures may be applied to contracts greater than one hundred thousand dollars (\$100,000.00):

1. *Set-asides:*

a. Competitive bidding requirements may be waived (by the County Manager or County Commission depending on whether the amount of the contract is above or below the minimum amount established by ordinance for competitive bidding) for a contract and the contract set-aside for bidding solely by SBEs where prior to bid advertisement, there are at least three (3) available SBEs to perform the contract, and where such set-aside is in the best interest of the County.

b. Transferring to a non-SBE through subcontracting or otherwise all or part of the actual work of a set-aside contract to a non-SBE is prohibited unless such transfer receives prior approval from SBD.

2. *Subcontractor goals:*

a. Subcontractor goals may be applied to a contract based on estimates made prior to bid advertisement of the quality, quantity and type of subcontracting opportunities provided by the contract and the availability of SBEs to perform such work. Bid documents for contracts to which a SBE subcontract goal is applied shall provide that only SBEs certified to provide the type of goods or services for which a goal is imposed shall be counted towards meeting a goal. The bid documents shall further provide that a bidder must be found in compliance with the requirements of subsections b and c below in order to be eligible for award of the contract.

b. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that bidders must submit with its bid a completed Schedule of Intent Affidavit with those SBE subcontractors the bidder proposes to utilize in order for such proposed participation to be eligible to be counted towards meeting the goal. Each Schedule of Intent Affidavit shall be in writing, shall be executed by the bidder and the SBE, and shall specify the type of goods or services the SBE is to provide and the percentage of work the SBE is to perform therefore. The solicitation documents for any competitive selection involving a separate evaluation of sealed price envelopes shall require that the technical submission contain a document duly executed by the proposer and any SBE proposed to be used in satisfaction of a goal which states the percentage that the amount of the SBE's contract bears to the overall contract amount. Copies of the Schedule of Intent Affidavits reflecting the amounts constituting the stated percentages shall be included together with the pricing proposal. Each Schedule of Intent Affidavit

shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Program. Upon notification from SBD, bidders are allowed up to 48 hours to cure correctable defects on the Schedule of Intent Affidavit. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a SBE may itself meet the goal to the extent it is certified to provide the type of goods or services that are the subject of the contract. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a joint venture one or more of whose venturers is an SBE must submit with its bid a copy of the joint venture agreement in order for such venturer(s)'s participation to be eligible to be counted towards meeting the goal. The joint venture agreement shall be in writing, signed by all venturers, and shall specify the ownership, control, profits and financial risk assumed by each venturer, including the SBE venturer(s). The joint venture agreement shall also specify the portion of the contract work (i.e., the goods or services to be provided) to be performed by the SBE venturer(s) in detail separately from the work to be performed by the non-SBE member. The bidder shall receive credit towards meeting the goal to the extent that the combined dollar value of the SBE's participation as shown in the joint venture agreement submitted in conformity with and meeting the requirements of this paragraph bears to the total contract price bid by the bidder.

c. A bidder that is a SBE may meet up to 100% of the subcontractor goal with its own forces. A bidder that is a joint venture having one or more SBEs venturers may comply with the goal based on the percentage participation of the SBE joint venturer(s) in the ownership, control and profits of the joint venture, and in the performance of the contract work.

d. Bid documents shall provide only expenditures to SBEs for performing a commercially useful function. These expenditures shall be counted toward meeting a subcontractor goal, expenditures to SBEs who subcontract work further to non-SBEs shall not be counted toward meeting a specified goal unless such subcontracting receives prior approval from SBD.

e. Successful bidder shall submit to the Contracting Officer, for approval, a written subcontract agreement corresponding in all respects to the Successful Bidder's Schedule of Intent Affidavit to include the type of goods and services the SBE is to provide and the percentage and/or price. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Program.

3. *Bid Preference:*

a. A bid preference shall apply to all contracts which are to be awarded on the basis of price (as opposed to RFPs, RFIs and RFQs) and are not set-aside. The preference shall be used only to evaluate a bid and shall not affect the contract price.

b. The preference accorded on contracts \$1 million or less shall be ten (10) percent of the price bid. The preference accorded on contracts greater than \$1 million shall be 5% of the price bid.

Preferences shall be applied to the bid price of bidders that:

I. Are SBEs/Micro Enterprises;

II. Are joint ventures with at least one SBE/Micro Enterprises;

4. *SBE Selection Factor.*

a. Any bidder that is an SBE, a joint venture with an SBE, shall be accorded a selection factor on all RFPs, RFQs and RFIs for contracts greater than \$50,000 that are not set aside for bidding solely by SBEs.

b. RFPs, RFQs and RFIs that assign weights to evaluation or selection criteria, shall provide that a bidder entitled to a selection factor shall receive an additional ten (10%) percent of the evaluation points scored on the technical portion of such bidder's proposal. RFPs, RFQs and RFIs that do not assign weights to evaluation or selection criteria, shall provide that whenever there are two best ranked proposals that are substantially equal and only one of the two so ranked is submitted by a bidder entitled to a selection factor, the selection factor shall be the deciding factor for award.

(d) *Review Committee.* The County Mayor or designee shall establish an administrative procedure for the review of each proposed County contract greater than fifty thousand dollars (\$50,000.00) to which this section applies.

(e) *Management & Technical Assistance.* The Department of Small Business Development (SBD) will provide Management and Technical Assistance and community outreach to business entities certified as SBEs or Micro Enterprises with Miami-Dade County.

(f) *SBE Financial Assistance.* SBD will develop a program to identify methods of financial assistance to SBE/Micro Enterprise vendors on Miami-Dade County contracts.

(g) *Small Business Advisory Board.* There is hereby created a Miami-Dade County Advisory Board for the SBE and CBE Programs.

1. The Advisory Board will operate as a focal point for the public and with the assistance of the County Manager, will collect, input and disseminate information related to economic opportunities within Miami-Dade County government for small business owners.

2. The Board shall consist of 15 members, as follows:

- a. One member to be appointed by the Mayor.
- b. One member to be appointed by each County Commissioner.
- c. One member to be appointed by the County Manager.

3. The term of the mayoral appointee and that of each commissioner shall be coterminous with the term of the appointing Mayor and commissioner.

4. The terms of each County Manager appointed member shall be at the will and discretion of the County Manager.

5. In no event shall a Board member serve more than four (4) consecutive years.

6. Members shall serve without compensation.

7. The Board may submit interim reports as it deems appropriate.

8. SBD shall provide appropriate staff support.

9. Sections 2-11.1(c) and (d) of the Conflict of Interest and Code of Ethics Ordinance of Miami-Dade County are waived for Advisory Board members for transactions arising from the exercise of those powers given the Advisory Board by this section.

(h) *Certification.*

1. The Department of Small Business Development shall implement eligibility criteria and administrative procedures for entities to be certified as SBEs/Micro Enterprises.

2. Any SBE/Micro Enterprise that exceeds the size limits shall immediately be graduated from the program after formal written notification. Such SBE/Micro Enterprises shall be allowed to remain through the contract period on awarded contracts and any options to renew on the contract. The graduated firm shall not be eligible for any new contracts under the SBE program under the existing certification. With exception of provisions described in the ordinance for graduation from the SBE/Micro Enterprise program, loss of certification may lead to removal of the firm from continued participation in the Small Business Enterprise program.

3. The Department of Small Business Development shall maintain an updated list of firms that identifies each listed SBE and Micro Enterprise based on the nature of the goods and/or services the SBE and Micro Enterprise shall be certified to provide.

4. The Department of Small Business Development shall not certify an applicant, shall not recertify an SBE or Micro Enterprise, and shall decertify an SBE or Micro Enterprise that fails to comply with the criteria or procedures for obtaining or maintaining certification. SBD shall have authority to suspend the certification of a SBE or Micro Enterprise during any appeal of a decertification decision.

5. The County Mayor or designee shall establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners. Certification must be in effect at the time of bid submission; at bid award, and throughout the duration of the contract. SBEs and Micro Enterprises experiencing changes in address or ownership shall notify SBD within thirty (30) days of the effective date of such changes.

6. Applicants and certified SBEs or Micro Enterprises must have a Miami-Dade County local business tax receipt, and an actual place of business in Miami-Dade County at which they perform a commercially useful function in the provision of the applicable type of goods or services for which certification is sought in order to be eligible for certification or remain certified.

7. A business entity shall be eligible to be certified as an SBE or Micro Enterprise only if the owner holding at least ten (10) percent shares or ownership in the business entity personally possesses any regulatory licenses and satisfies the qualifying requirements required in order to engage in the business of providing the type of goods or services for which certification is sought.

8. A business owner alone or as a member of a group, shall own or control only one SBE or Micro Enterprise at a time and shall not own and control another separate business

certified under the Small Business Enterprise Program.

9. The Department of Small Business Development may require applicants and SBEs or Micro Enterprises to submit information regarding their business operations in order to determine eligibility for certification.

(i) *Prompt Payment.*

1. All firms, including SBEs and Micro Enterprises providing goods and services to the County, shall receive payments promptly in order to maintain sufficient cash flow.

2. The County or Public Health Trust shall establish administrative procedures requiring that billings from SBE/Micro Enterprise prime vendors on contracts shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within thirty (30) calendar days of receipt of such billing by the County or Trust.

3. A prime vendor on a contract with SBE measures shall include in its billings to the County or Trust copies of undisputed billings from SBE subcontractors within 14 calendar days of receipt of such billings, or by the next scheduled billing whichever comes first. The prime vendor shall pay those amounts not in dispute to subcontracting SBEs within 2 days of receipt of payment from the County. If the prime vendor fails to submit undisputed billings from an SBE to the County as specified herein or chooses not to submit any billing to the County pursuant to the billing schedule, the prime vendor must pay the full amount of the received SBE billings by the next billing cycle or 40 calendar days from receipt, whichever is less.

4. The County or prime vendor in direct privity with a SBE/Micro Enterprise on a contract with SBE measures must notify the SBE/Micro Enterprise and SBD, in writing, of those amounts billed by the SBE/Micro Enterprise which are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing, or by the next scheduled billing whichever comes first. Failure by the County or prime vendor to comply with the applicable requirements of this subsection shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE/Micro Enterprise and payment shall be forthcoming from the County or prime vendor as appropriate by the next billing date or 40 calendar days from receipt of billing, whichever is less.

5. An SBE/Micro Enterprise may invoice the County or prime vendor, as appropriate, 1% interest per month for any undisputed amount that is not promptly paid.

(j) *Sanctions.* Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's violation of or failure to comply with this section or its implementing administrative orders may result in the imposition of one or more of the following sanctions:

1. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
2. Work stoppage;
3. Termination, suspension, or cancellation of the contract in whole or part;
4. In the event a bidder, SBE or Micro Enterprise attempts to comply with the provisions of



this section through fraud, misrepresentation, or material misstatement, the County shall, whenever practicable, terminate the contract or require the termination or cancellation of the subcontract for the project on which the bidder, SBE or Micro Enterprise committed such acts. In addition, and as a further sanction, the County may impose any of the above-stated sanctions on any other contracts or subcontracts the bidder, SBE or Micro Enterprise has on County projects. In each instance, the bidder, SBE or Micro Enterprise shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs.

The foregoing notwithstanding, the County Manager shall include language in all prospective contracts containing a SBE subcontractor goal which provides that, in addition to any other sanction for failure to fulfill the SBE subcontractor goal requirements for such contract, the contractor's eligibility to receive any future County contract shall be conditioned upon the contractor making up the deficit in SBE participation in such future contract by having SBEs perform work equal to double the dollar value of the deficiency in the SBE subcontractor goal in the prior contract. The foregoing obligation shall be in addition to any SBE subcontractor goal otherwise applicable to the future contract.

(k) *Administrative Penalties.* The County Manager may impose, notwithstanding any other provision of this section, one or more of the following penalties for violation of or noncompliance with this section or its implementing administrative orders and bid documents:

1. The exclusion from county contracting and subcontracting for a specified period of time, not to exceed three (3) years, of a contractor, its individual officers, its shareholders with significant interests, and its affiliated businesses.
2. The loss of eligibility to be certified as an SBE or Micro Enterprise for a specified period of time, not to exceed three (3) years, for an applicant or a SBE or Micro Enterprise, its individual officers, its shareholders with significant interests, and its affiliated businesses.
3. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, and SBE or Micro Enterprise certification for a specified period of time, not to exceed 5 years.
4. If any individual or corporation, partnership or other entity, or any individual officer, shareholder with significant interests, director or partner of such entity or affiliated business of such entity participates in an attempt to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, subcontracting, and SBE or Micro Enterprise certification, for a specified period of time, not to exceed five (5) years.
5. 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 noncomplying 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.

6. 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 percent of the amount thereof; for the second deficit, a penalty in an amount equal to 20 percent thereof; for the third and successive deficits, a penalty in an amount equal to 30 percent 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.

7. 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.

(l) *Appeals.*

1. 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 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.

Upon completion of the administrative hearing, the hearing officer shall transmit his/her findings of facts, 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.

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.

(Ord. No. 05-29, § 1, 2-1-05; Ord. No. 07-179, § 1, 12-4-07; Ord. No. 10-82, § 1, 12-7-10; Ord. No. 11-23, § 1, 5-3-11; Ord. No. 12-13, § 1, 3-6-12)