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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

MEMORANDUM

Agenda Item No. 5 (D)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE:

(Public Hearing 6-2-09)
April 7, 2009

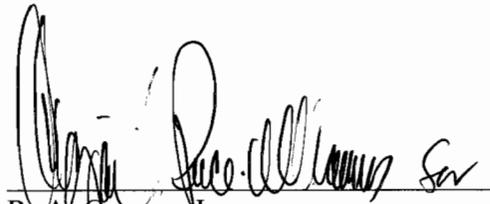
FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT:

Ordinance amending Section
10-33.02 of the Code
pertaining to the Community
Small Business Enterprise
(CSBE) Program

Ordinance No. 09-41

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Dorrin D. Rolle.



R. A. Cuevas, Jr.
County Attorney

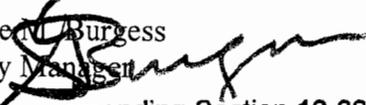
RAC/cp

Memorandum



Date: June 2, 2009

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager 

Subject: Ordinance amending Section 10-33.02 of the Code pertaining to the Community
Small Business Enterprise (CSBE) Program

The ordinance amending the Code relating to the Community Small Business Enterprise (CSBE) Program will not have a fiscal impact to Miami-Dade County.

A handwritten signature in black ink, appearing to be "D. [unclear]", written over a horizontal line.

Assistant County Manager

fs03009



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: June 2, 2009

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

SUBJECT: Agenda Item No. 5(D)

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Mayor's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 5 (D)
6-2-09

ORDINANCE NO. 09-41

ORDINANCE AMENDING SECTION 10-33.02 OF THE CODE OF MIAMI-DADE COUNTY; PERTAINING TO THE COMMUNITY SMALL BUSINESS ENTERPRISE (CSBE) PROGRAM; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR FAILURE TO SATISFY AN APPROVED CSBE MAKE-UP PLAN; 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. Community Small Business Enterprise Program.

* * *

(5) ~~[[Sanctions for contractual violations]]~~>>Enforcement<<

* * *

v. The foregoing notwithstanding, the County Manager shall include language in all prospective contracts containing a CSBE measure which provides that, in addition to any other sanction for failure to fulfill the CSBE measure requirements, the contractor's eligibility to receive any future county contracts may be conditioned upon the contractor making up the deficit in CSBE participation in such future contracts by having CSBE(s) perform equal to double the dollar value of the deficiency in the CSBE measure in the prior contract. >>Contract language shall provide that in order to be eligible for future county contracts, a contractor who fails to meet an established CSBE goal shall submit a CSBE

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.

X

Make-up Plan for the approval of the Director. A Make-up Plan and a corresponding Schedule of Intent Affidavit must be submitted as part of any bid or proposal submitted for future contracts at the time of bid or proposal submittal. The Schedule of Intent Affidavit must identify all CSBEs to be utilized to meet the first tier subcontractor goal and the trade designation of work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to include the required Schedule of Intent Affidavit with bids or proposals for any future contracts shall result in the submittal being deemed nonresponsive. Any contractor subject to an approved Make-up Plan that fails to comply with any of the material terms of that Make-up plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a six (6) month period. A contractor that fails to comply with any of the material terms of a second Make-up plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a one (1) year period. A contractor that fails to comply with any of the material terms of a third Make-up plan, without good cause, may be subject to debarment and shall automatically be referred to the debarment committee. After serving a debarment for failure to satisfy a make-up plan for no good cause, the subject firm shall be deemed ineligible for bidding on county contracts with measures for 1 additional year unless the County Manager determines that an emergency exists justifying such participation, and the Board of County Commissioners approves such decision.<< The foregoing obligation shall be in addition to any CSBE measure otherwise applicable to the future contract.

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.

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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: **June 2, 2009**

Approved by County Attorney as
to form and legal sufficiency:

APW

Prepared by:

OR/ke

John McInnis

Prime Sponsor: Commissioner Dorrin D. Rolle

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**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 5(D)

File Number: 090769

Committee(s) of Reference: Board of County Commissioners

Date of Analysis: May 18, 2009

Type of Item: Code Amendment

Prime Sponsor: Commissioner Dorrin D. Rolle

Summary

This ordinance amends the Code of Miami-Dade County (Code) as it relates to the CSBE Program, providing for enforcement and penalties for failure to satisfy an approved CSBE Make-up Plan.

Background and Relevant Legislation

Current Code

Currently under § 10-33.02 of the Code, a contractor who is awarded a County contract, determined to be appropriate for CSBE participation, is required to fulfill CSBE goals as established by the County. Failure to achieve the CSBE participation goals may subject the contractor to a variety of sanctions including suspension, work stoppage, termination/cancellation of the contract, and debarment.

In addition, the existing Code states that contractors who fail to fulfill the participation goal may also be ineligible to receive future contracts unless they agree to make up the deficit by having the CSBE perform equal to double the dollar value of the deficiency (the Make-up Goal).

Policy Change and Implication

The proposed ordinance defines additional parameters for future contracts and the applied penalties for failing to meet an established CSBE goal. Also, failure to include the required Schedule of Intent Affidavit for any future contracts will result in the submittal of a bid or a proposal being deemed nonresponsive.

Goal Deficit Make-up Report

The February 29, 2009 SBD Goal Deficit Make-up Report lists 17 contractors who have open CSBE violations. Of the 17 contractors listed, only 2 firms have approved Make-up Plans (see table below).

Contractors Presently Required to Submit a Make-Up Plan with a Cumulative Deficit Dollar Balance Exceeding \$100,000 As of February 28, 2009		
Contractor	Date of Violation	Cumulative Deficit Balance
Adventure Environmental, Inc.	9/2007	\$198,583
American Earth Movers, Inc.*	11/2007 5/2008	\$756,500
Budget Construction Co.	6/2007 6/2008	\$993,891
DACA Environmental, Inc.	2//2003	\$171,283
Dato Electric, Inc.	10/2006	\$996,145
Development & Communication Group of FL, Inc.**	4/2005 12/2006	\$624,622
FCE Engineers, Inc.	1/2002	\$1,447,374
M. Villa & Associates, Inc.	8/2001	\$203,912
Petro Hydro, Inc.	6/2006 2/2007 4/2007	\$877,904
Pino Kaoba & Associates, Inc.	8/2007	\$1,162,075
Solo Construction Corp.	2/2008	\$2,598,742
Total		\$10,031,031
<p><i>*For the November 2007 violation, American Earth Movers has an approved Make-up Plan addressing \$56,892 of the \$337,836 make-up amount. The balance, \$280,944, of that make-up amount is included under the Cumulative Deficit Balance of this table.</i></p> <p><i>**For the April 2005 violation, Development & Communication Group of Florida, Inc. has an approved Make-up Plan addressing \$30,377 of the \$55,000 make-up amount. The balance, \$24,622 of that make-up amount is included under the Cumulative Deficit Balance of this table.</i></p>		

Source: SBD Goal Deficit Make-Up Report – February 28, 2009.

On March 10, 2009, the Office of the Commission Auditor (OCA) posed a similar request to SBD regarding the status of open violations of various companies totaling over \$100,000 each from the Violations Report dated March 6, 2009. Additional attempts were made on March 17 and April 1, 2009 to obtain this information. As of the printing of this analysis, SBD has not responded to this request.

Prepared by: Elizabeth N. Owens