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

MEMORANDUM Agenda Item No. 7(B)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: May 3, 2011

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

SUBJECT: Ordinance pertaining to the Small Business Enterprise ("SBE") Program for the purchase of goods and services amending Section 2-8.1.1.1.1 of the Code

Ordinance No.11-23

This ordinance was amended at the Internal Management and Fiscal Responsibility Committee to change the sentence dealing with a fourth violation and finding of noncompliance, from "*may* be the cause for suspension....", to "shall be the cause for suspension...."

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.

R. A. Cuevas, Jr.
County Attorney

RAC/up

Memorandum

MIAMI-DADE COUNTY

Date: May 3, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Alina T. Hudak
County Manager

Subject: Ordinance Amending Section 2-8.1.1.1.1 of the Code of Miami-Dade County, Relating to the Small Business Enterprise Program for the Purchase of Goods and Services

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This item differs from the original in that the requirement for a firm to be in business for one (1) year prior to certification remains. The substitute also includes language allowing for adjustments to size standards based on the local Consumer Price Index for All Urban Consumers (CPI-U) or other appropriate inflation measures as may be applied across all industries. In addition, the Appeals section has been changed to provide for a Hearing Officer to make findings and recommendations, and the Mayor to make a final decision, which is appealable to Circuit Court. This change makes the appellate remedy the same, irrespective of the party appealing the final decision. Finally, this substitute modifies the Administrative Penalties Section to include all penalties for violations of or noncompliance with this section and its implementing order, proposals(s), and/or competitive selection documents, which had been improperly included under the Appeals Section. Additionally, this item was amended during the Internal Management and Fiscal Responsibility Committee meeting of April 12, 2011 to indicate that a fouth violation and finding of noncompliance shall be cause for suspension or termination and debarment.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached ordinance amending Section 2-8.1.1.1.1 of the Code of Miami-Dade County, relating to the Small Business Enterprise Program (SBE) for the purchase of goods and services.

Scope

The impact of the proposed ordinance is countywide in nature.

Fiscal Impact/Funding Source

The accompanying ordinance will have an estimated fiscal impact of $2,000 annually attributed to the cost of appeal hearings of certification denial, decertification or non-compliance with program requirements. This fiscal impact may be off-set by recovery of administrative cost from unsuccessful appellants. Upon appeal, firms are required to submit a non-refundable filing fee of $250 and if unsuccessful, incur the costs of the appeal. Prior Board legislation established the utilization of Hearing Officers for appeal of certification denial, decertification and determinations of non-compliance with the Community Small Business Enterprise (CSBE) program.

Track Record/Monitor
The Department of Small Business Development (SBD) is responsible for administering this program.

Background
In December 2009, certification functions for the County's Small and Disadvantaged Business Programs were transferred from the Department of Small Business Development (SBD) to the Department of Procurement Management (DPM). These include the Small Business Enterprise, Community Small Business Enterprise, Community Business Enterprise, Disadvantaged Business Enterprise, and Local Developing Business programs. Increases in the volume of both new applications and recertifications have created a backlog. DPM and SBD have conducted extensive reviews of each of these programs, in consultation with stakeholders and certified firms, resulting in legislative amendments to improve the certification process and customer service, streamline operational processes, enhance opportunities to local small businesses, and allow for overall effectiveness with reduced resources. Subsequently, in October 2010 the certification functions transferred back to SBD.

The proposed amendments have been reviewed with members of the Board of County Commissioners and/or their staffs, Small Business Advisory Boards, and other small business programs stakeholders. Specific amendments recommended in the proposed Ordinance are as follows:

Certification Amendments

1. Authorizes the County Mayor or designee to establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners.

2. Clarifies that acting as a broker is not considered a commercially useful function for purposes of certification eligibility.

3. Authorizes the Mayor or designee to adjust the SBE/Micro-SBE size limits every five (5) years 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.

Program Amendments

1. Changes the name of the Department of Business Development to the Department of Small Business Development.

2. Streamline the Review Committee Process

It is proposed that the Review Committee definition and process be amended to model the Expedited Review Committee definition and process established to review projects under the Economic Stimulus Plan (ESP). Currently, the Review Committee meets bi-weekly to review all projects that have been analyzed by SBD for the application of contract measures. The proposed process will establish a standing Review Committee that will only meet to review contracts where disagreements exist regarding the appropriate contract measure between SBD and the contracting departments and when public input requires deliberation regarding the measure/goal recommendations.

3. Schedule of Intent Affidavit

   Currently, when a SBE measure is applied to a contract bidders/proposers are required to submit a subcontract agreement at the time of bid submission. The subcontract agreement identifies all SBEs that will be utilized to the meet the goal and bidders/proposers are allowed up to 48 hours after bid submission to cure correctable defects on the subcontract agreement.

   It is proposed that a Schedule of Intent Affidavit replace the subcontract agreement at bid submission and bidders/proposers be allowed to cure correctable defects on the Schedule of Intent Affidavit within 48 hours upon notification by SBD. Upon award successful bidders/proposers will be required to enter into subcontract agreements with SBEs fulfilling goals. Requiring the subcontract agreement after award is consistent with standard industry practice and the other small business programs. This policy establishes consistency among the programs.

4. Appeal of Certification Denial, Decertification and Noncompliance Determinations

   Prior Board action replaced the Review Committee with certified Administrative Hearing Officers as the responsible body for hearing appeals of certification denials, decertification and non-compliance with the Community Small Business Enterprise (CSBE) Program. To establish consistency among the small business programs it is proposed that the appeals process be amended to reflect that any firm that is denied certification, decertified or issued a determination of non-compliance with the requirements of the SBE Ordinance or its Implementing Order 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 of $250 within 30 days of issuance of the notice. All appeals of certification denial, decertification or non-compliance determinations shall be heard by administrative hearing officers that include retired judges who are licensed and admitted to practice law in the State of Florida, or arbitrators or mediators certified by the Eleventh Judicial Circuit or State Bar Association. Appointees will be acquainted with Implementing Order 3-41 and the provisions of Section 2-8.1.1.1.1, Miami-Dade County Code, as amended, applicable to the particular violations to be heard.

5. It is proposed that language be added that allows penalties and sanctions to be imposed by the County Mayor or designee upon contractors that fail to comply with approved small business measures. In the case of a goal deficit, the County Mayor or designee may 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% of the amount

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

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: May 3, 2011

FROM: R. A. Cuevas, Jr.
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**

_____ **Ordinance creating a new board requires detailed County Manager'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)

5-3-11

ORDINANCE NO. 11-23

ORDINANCE PERTAINING TO THE SMALL BUSINESS ENTERPRISE ("SBE") PROGRAM FOR THE PURCHASE OF GOODS AND SERVICES; AMENDING SECTION 2-8.1.1.1.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, PROVIDING SERVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

Section 1. Sec. 2-8.1.1.1.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows[1]:

Sec. 2-8.1.1.1.1 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

[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.

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. *DBD* means the Department of Business Development.~~]]

>>9.<<[[~~10.~~]] *Goods* mean any tangible product, material or supply that is not a service.

>>10.<<[[~~11.~~]] *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.<<[[~~12.~~]] *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.<<[[~~13.~~]] *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.<<[[~~14.~~]] *Management and Technical Assistance (MTA)* means a program designed to provide direct and indirect assistance for small business enterprise development.

>>14.<<[[~~15.~~]] *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.<<[[~~16.~~]] *Micro Enterprise* means a business entity certified by >>S<<[[~~D~~]]BD, 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 $2 million, 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<<[[~~17~~]]. *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 a 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.<<[[~~18.~~]] *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.<<[[~~19.~~]] *Small Business Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise >>and Community Business Enterprise<< Program>>s<<.

>>22.<<[[~~20.~~]] *Small Business Enterprise (SBE)* means a business entity certified by >>S<<[[~~D~~]]BD, 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 $5 million. 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.<<[[~~21.~~]] *Service* means work offered for public or private consumption that does not consist primarily of goods.

>>24.<<[[~~22.~~]] *Set-aside* means the designation of a given contract for competition among SBEs.

>>25.<<[[~~23.~~]] *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.<<[[~~24.~~]] *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 [[~~Manager~~]] >>Mayor or designee<< shall prepare [[~~administrative~~]] >>implementing<< orders, bid and contract documents implementing the provisions of this section. The County [[~~Manager~~]] >>Mayor or designee<< by [[~~administrative~~]] >>Implementing<< order may exclude classes of contracts, or parts thereof, from application of this section. The words County [[~~Manager~~]] >>Mayor or designee<< in this section shall mean the County [[~~Manager~~]] >>Mayor<< or [[~~his or her~~]] designee.

(b) *Contracts of $50,000 or less.*

* * *

3. Annually, >>S<<[[~~D~~]]BD shall provide a report of awards to Micro Enterprises and SBEs to the Board.

(c) *Contracts Greater than $50,000.* The following SBE measures may be applied to contracts greater than $50,000:

* * *

1. *Set-asides:*

* * *

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 >>S<<[[~~D~~]]BD.

2. *Subcontractor goals:*

* * *

b. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that [[~~a~~]]bidder>>s<< must submit with its bid a [[~~copy of~~]]>>completed Schedule of Intent Affidavit<< [[~~subcontract agreements~~]] 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<< [[~~agreement~~]] 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<< [[~~price~~]] the SBE is to >>perform<< [[~~be paid~~]] 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<< [[~~subcontract agreements~~]] reflecting the amounts constituting the stated percentages shall be included together with the pricing proposal. Each >>Schedule of Intent Affidavit<< [[~~agreement~~]] 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.

* * *

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 [[~~the~~]] >>S<<[[~~D~~]]BD.

>>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.<<

* * *

(d) *Review Committee* The County [[~~Manager~~]] >>Mayor or designee<< shall establish an administrative procedure for the review of each proposed County contract greater than $50,000 to which this section applies.

(e) *Management & Technical Assistance.* The Department of >>Small<< Business Development (>>S<<[[~~D~~]]BD) 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.* >>S<<[[~~D~~]]BD 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<< Program >>s<<.

* * *

8. >>S<<[[~~D~~]]BD shall provide appropriate staff support.

* * *

(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.

* * *

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. >>S<<[[D]]BD 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 [[shall be renewed annually, and]] 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 >>S<<[[D]]BD within thirty (30) days of the effective date of such changes.

6. Applicants and certified SBEs or Micro Enterprises must have a[[n]] >>Miami-Dade County local business tax receipt,<< [[occupational license]] 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.

* * *

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.*

* * *

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 >>S<<[[D]]BD, 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.

* * *

(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 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 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% of the amount thereof; for the second deficit, a penalty in an amount equal to 20% thereof; for the third and successive deficits, a penalty in an amount equal to 30% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and<< [[~~may~~]][2]>>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 there from, the non-complying 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. Appeals of decisions other than contractual violations, made under this section by the Department of Business Development or other designees of the County Manager, shall be made to the County Manager.~~]]

>>1<<[[~~2. Decisions by the County Manager under this section shall be final unless the County Commission agrees in its sole discretion to review any such decision.~~]] >>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

[2] Committee amendments are indicated as follows: words double stricken through and/or [[double bracketed]] shall be deleted, words double underlined and/or >>double arrowed<< constitute the amendment proposed.

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.<< [[~~render a final decision, in writing, addressing all matters before him or her, including, where appropriate, a determination of the sanction to be imposed; provided, however, the Mayor or designee may appeal the hearing officer's decision to the Board of County Commissioners.~~]] >>The<< [[~~decision~~]] >>determination of the<<[[~~hearing officer or the Board of County Commissioners~~]] >>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.<<

[[~~3. 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 exceed three (3) years.~~

~~4. 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% of the amount thereof; for the second deficit, a penalty in an amount equal to 20% thereof; for the third and successive deficits, a penalty in an amount equal to 30% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and may 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.~~

~~5. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal there from, the non-complying 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.~~

~~3. The County Manager shall designate procedures for the investigation, presentation and hearing of appeals.~~]]

* * *

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, or if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED: May 3, 2011

Approved by County Attorney as to form and legal sufficiency.

Prepared by: dsh

David Stephen Hope

Prime Sponsor: Commissioner Barbara J. Jordan