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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 7(D)

(Second Reading 5-5-15)

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

DATE: March 3, 2015

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

SUBJECT: Ordinance pertaining to Small Business Enterprise Programs; amending Sections 2-8.1.1.1.1, 2-10.4.01, and 10-33.02 of the Code to create contractual violations for failure to have written contracts with all firms listed on schedule of intent affidavit or letter of agreement
Ordinance No. 15-29

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

R. A. Cuevas, Jr.
County Attorney

RAC/smm

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Memorandum

MIAMI-DADE COUNTY

Date: May 5, 2015

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

From: Carlos A. Gimenez
Mayor

Subject: Ordinance Pertaining to the Small Business Enterprise Programs Creating Contractual Violations for Failure to Have Written Contracts With All Firms

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The proposed Ordinance pertaining to the Small Business Enterprise Programs amends Sections 2-8.1.1.1.1, 2-10.4.01, and 10-33.02 of the Code to create contractual violations for failure to have written contracts with all firms listed on schedule of intent affidavit or letter of agreement.

The Internal Services Department, Small Business Development Division, is already responsible for monitoring all County contracts, and existing staff will manage the proposed changes to this Ordinance. There is no fiscal impact associated with this Ordinance.

Edward Marquez
Deputy Mayor

Fls04215

MEMORANDUM

(Revised)

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

DATE: May 5, 2015

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

SUBJECT: Agenda Item No. 7(D)

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 Mayor's report for public hearing**

_____ **No committee review**

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

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(D)
5-5-15

ORDINANCE NO. 15-29

ORDINANCE PERTAINING TO SMALL BUSINESS ENTERPRISE PROGRAMS; AMENDING SECTIONS 2-8.1.1.1.1, 2-10.4.01, AND 10-33.02 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO CREATE CONTRACTUAL VIOLATIONS FOR FAILURE TO HAVE WRITTEN CONTRACTS WITH ALL FIRMS LISTED ON SCHEDULE OF INTENT AFFIDAVIT OR LETTER OF AGREEMENT; AND PROVIDING SEVERABILITY, INCLUSION IN CODE AND EFFECTIVE DATE

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

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

Sec. 2-8.1.1.1.1. Small Business Enterprise Goods & Services Program.

* * *

(3) *Program.*

* * *

(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] 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.

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~~]]>>Mayor<<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 contact. >>The contractor's failure to enter into a written subcontract with a SBE or Micro Enterprise after listing the firm on its schedule of intent affidavit, may result in the imposition of one or more of the sanctions listed in Subsection (j) above.<<

* * *

Section 2. Section 2-10.4.01 of the Code of Miami-Dade County, is hereby amended as follows:

Sec. 2-10.4.01. Small Business Enterprise Architecture & Engineering Program.

* * *

(5) *Sanctions for contractual violations:* Proposal and agreement documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a

proposer's or subconsultant'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:

* * *

vi. In the event a proposer or CBE-A/E attempts to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Miami-Dade County Code, the County shall, whenever practicable, terminate the agreement or require the termination or cancellation of the subconsultant agreement for the agreement on which the proposer or CBE-A/E committed such acts. In addition, and as a further sanction, the County Manager or his or her designee may impose any of the above-stated sanctions on any other agreements or subconsultant agreements the proposer or CBE-A/E has on County projects. In each instance, the proposer or CBE-A/E shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The proposer or CBE-A/E may also be subject to debarment. Some of the violations that may result in the imposition of the sanctions listed in Section (5) above include, but are not limited to, the following:

* * *

11. [[~~Unjustified failure~~]]>>Failure<< to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a Letter of Agreement, or equivalent.

* * *

Section 3. Section 10-33.02 of the Code of Miami-Dade County, is hereby amended as follows:

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

* * *

(5) *Enforcement:* 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 ordinance or its implementing orders may result in the imposition of one (1) or more of the following sanctions:

* * *

v. The foregoing notwithstanding, the County Mayor or designee 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 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 Mayor or designee 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.

Some of the contractual violations that may result in the imposition of the sanctions listed in Subsection (5) above include, but are not limited to, the following:

* * *

11. [[~~Unjustified failure~~]]>>Failure<< to enter into a written first tier subcontract with a CSBE after listing the firm on a schedule of [[~~participation~~]]>>intent affidavit<<. [[~~Unjustified failure to enter into a written second, third or fourth tier subcontract with a CSBE utilized to meet a second, third or fourth tier subcontractor goal.~~]]

>>12. Failure to enter into a written second, third or fourth tier subcontract with a CSBE utilized to meet a second, third or fourth tier subcontractor goal.<<

* * *

Section 4. 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 5. 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 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 6. 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: May 5, 2015

Approved by County Attorney as
to form and legal sufficiency: _____

Prepared by: dsh

David Stephen Hope

Prime Sponsor: Commissioner Barbara J. Jordan
Co-Sponsor: Commissioner Audrey M. Edmonson