

MEMORANDUM

Agenda Item No. 7(C)


TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners


DATE: (Second Reading 10-6-20)
July 8, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to debarment of contractors for violations of Small Business Enterprise Program or responsible wage or living wage requirements; amending section 10-38 of the Code; allowing Small Business Development Division to initiate debarment proceedings for certain violations; amending sections 2-8.1.1.1.1, 2-8.1.1.1.2, 2-8.9, 2-10.4.01, 2-11.16, and 10-33.02 of the Code; allowing for debarment of contractors with certain goal deficits, unapproved utilization plan deviations, or wage underpayment violations within a certain period or failure to comply with a certain make-up plan; amending definitions, list of debarred contractors, causes for debarment, debarment procedures, and period of debarment; making conforming changes

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



Abigail Price-Williams
County Attorney 

APW/smm

Memorandum



Date: October 6, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Subject: Fiscal Impact Statement for Ordinance Relating to Debarment of Contractors for Violation of Small Business Enterprise Program or Responsible Wage or Living Wage Requirements

The implementation of this ordinance will not have a fiscal impact to Miami-Dade County as the proposed changes will not require additional staffing resources nor generate additional operational expenses. Once a vendor is debarred for violations related to this ordinance, other vendors that qualify will be contacted to provide the service.

A handwritten signature in blue ink, appearing to read "Edward Marquez". The signature is cursive and includes a large, sweeping flourish that extends to the right.

Edward Marquez
Deputy Mayor

FIS05620 201109

Memorandum



Date: October 6, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez".

Subject: Social Equity Statement for Ordinance Relating to Debarment of Contractors for Violation of Small Business Enterprise Program or Responsible Wage or Living Wage Requirements

The implementation of the proposed ordinance could provide a social benefit by ensuring that any established small business enterprise goals that are placed on contracts are met and employees receive responsible and living wages as applicable per contracts issued.

A handwritten signature in blue ink, appearing to read "Edward Marquez".

Edward Marquez
Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 6, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(C)

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
- Statement of social equity 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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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(C)
10-6-20

ORDINANCE NO. _____

ORDINANCE RELATING TO DEBARMENT OF CONTRACTORS FOR VIOLATIONS OF SMALL BUSINESS ENTERPRISE PROGRAM OR RESPONSIBLE WAGE OR LIVING WAGE REQUIREMENTS; AMENDING SECTION 10-38 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; ALLOWING SMALL BUSINESS DEVELOPMENT DIVISION TO INITIATE DEBARMENT PROCEEDINGS FOR CERTAIN VIOLATIONS; AMENDING SECTIONS 2-8.1.1.1.1, 2-8.1.1.1.2, 2-8.9, 2-10.4.01, 2-11.16, AND 10-33.02 OF THE CODE; ALLOWING FOR DEBARMENT OF CONTRACTORS WITH CERTAIN GOAL DEFICITS, UNAPPROVED UTILIZATION PLAN DEVIATIONS, OR WAGE UNDERPAYMENT VIOLATIONS WITHIN A CERTAIN PERIOD OR FAILURE TO COMPLY WITH A CERTAIN MAKE-UP PLAN; AMENDING DEFINITIONS, LIST OF DEBARRED CONTRACTORS, CAUSES FOR DEBARMENT, DEBARMENT PROCEDURES, AND PERIOD OF DEBARMENT; MAKING CONFORMING CHANGES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Miami-Dade County is a multi-ethnic community; and

WHEREAS, the County is committed to ensuring that all members of the community have an equal opportunity in being awarded County contracts; and

WHEREAS, the County's Small Business Development ("SBD") provides business opportunities and technical assistance to aid small businesses in their growth and contribution to the County and South Florida economy; and

WHEREAS, section 10-38 of the Code of Miami-Dade County provides the mechanism for the debarment of contractors from County work, when it is in the public interest for the County's protection; and

WHEREAS, SBD monitors contractor compliance with small business program requirements, goals and measures on certain County contracts; and

WHEREAS, to maximize the effect and impact of the County’s small business enterprise programs, it is imperative that the County address when contractors continue to not comply with their contractually mandated small business program requirements; and

WHEREAS, the County will benefit from the ability to debar contractors which have (i) four or more goal deficits or unapproved utilization plan deviations, or (ii) four or more wage underpayments, within a three year period,

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

Section 1. Section 10-38 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 10-38. Debarment of contractors from County work.

* * *

(b) *Definitions:*

* * *

(5) *Debarment* ~~[[*mean*]]~~*>>means*<< action taken by the Debarment Committee to exclude a contractor from County contracting and County-approved subcontracting for a reasonable, specified period as provided in subsection (j) below; a contractor so excluded is debarred.

(6) *Debarment* ~~[[*committee*]]~~*>>Committee*<< means a group of two (2) County department directors or

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.

assistant directors and one (1) member from ~~[[private industry selected by DBD from a Standing Pool of Committee members]]~~ >>the hearing officers appointed pursuant to section 8CC-2 of the Code. The Debarment Committee shall be << appointed by the County ~~[[Manager]]~~ >>Mayor <<, to evaluate and, if warranted, to impose debarment. At least one (1) member of the Debarment Committee shall have working knowledge of the affected area. All Debarment Committee members appointed to a specific Debarment Committee shall be subject to restrictions similar to those in the Cone of Silence Ordinance >>No. << 98-106 in that they are prohibited from having any communication with any of the parties involved in the specific debarment, or their representatives. Violation of this policy could lead to >>removal from the Debarment Committee << ~~[[termination]]~~.

(7) *Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

>>(8) *Make-up Plan* means a plan whereby a proposer submits via the County's web-based system its commitment that if awarded the contract, it will fulfill all or a portion of any pending Small Business Enterprise ("SBE") program makeup requirement, identifying the certified SBE firm(s) to be utilized to fulfill the make-up requirement that is in excess of any SBE goal(s) required on the project, and the percentage, dollar value and description of the work that needs to be made-up within the time frame specified by Small Business Development ("SBD"). <<

(>>9<<[[8]]) *Legal proceeding* means any civil judicial proceeding to which the >>County << ~~[[county]]~~ is a party or any criminal proceeding. The term includes appeals from such proceedings.

(>>10<<[[9]]) *List of debarred contractors* means a list compiled, maintained and distributed by >>SBD or successor division or department << ~~[[the Department of Business Development ("DBD")]]~~ of Miami-Dade

County, containing the names of contractors debarred under the procedures of this ordinance.

(~~>>11<<[[10]]~~) *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

>>(12) Utilization Plan means the plan whereby a bidder submits via the County's web-based system its commitment that if awarded the contract, it will fulfill the SBE goal(s) required for the project identifying certified firms to fulfill goal(s), percentages and/or dollar value of work and description of work within the time frame specified by SBD. Subcontractor(s) listed will also be required to confirm their participation via the County's web-based system. Bidders must enter into written subcontracts with the listed SBE(s).<<

(c) *List of debarred contractors:*

(1) >>SBD<<[[~~DBD~~]], as the agency charged with the implementation of this ordinance shall:

(i) Compile and maintain a current, consolidated list ("~~>>Debarred Contractors<< List~~") of all contractors debarred by County departments. Such list shall be public record and shall be available >>online<< for public inspection and dissemination; >>and<<

(ii) [[~~Periodically — revise~~]]>>Revise<< and distribute the >>Debarred Contractors List<<[[~~list~~]] and issue >>update<< supplements, [[~~if~~]]>>as<< necessary, to all >>County<< departments, [[~~to~~]] the office of the County >>Mayor<<[[~~Manager~~]], >>and<<[[~~to~~]] the Board of County Commissioners>>.<<[[~~and~~

(iii) ~~Include in the list the name and telephone number of the official responsible for its maintenance and distribution.]~~

(2) The >>Debarred Contractors List<<[[list]] shall indicate:

- (i) The names and addresses of all contractors >>(including individuals)<< debarred, in alphabetical order;
- (ii) The name of the >>County<< department>>, or entity<< that >>recommended<< [[recommends]] initiation of the debarment action;
- (iii) The cause for the debarment action, as is further described herein, or other statutory or regulatory authority;
- (iv) The effect of the debarment action;
- (v) The termination date for each listing;
- (vi) The contractor's certificate of competency or license number >>at the time of the debarment<<, when applicable;
- (vii) The qualifier of the contractor >>at the time of the debarment<<, when applicable;
- (viii) The name and telephone number of the point of contact in the >>County<< department>>, or entity<< recommending the debarment action[[.]]>>; and
- (iv) The name and telephone number of the SBD staffer responsible for the maintenance and distribution of the list.<<

(3) >>SBD<<[[DBD]] shall:

- (i) In accordance with internal retention procedures, maintain records relating to each debarment;
- (ii) Establish procedures to provide for the effective use of the list, including internal distribution thereof, to ensure that

departments do not solicit offers from, award contracts to, or consent to subcontracts with contractors on the list; and

- (iii) Respond to inquiries concerning listed contractors and coordinate such responses with the department that recommended the action.

(d) *Effects of debarment:*

- (1) Debarred contractors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the >>County<<[[~~county~~]] >>Mayor<<[[~~Manager~~]] determines that an emergency exists justifying such action, and obtains approval from the Board of County Commissioners. Debarred contractors are also excluded from conducting business with the County as agents, representatives, subcontractors or partners of other contractors.
- (2) Debarred contractors are excluded from acting as individual sureties.

(e) *Continuation of current contracts:*

- (1) Commencing on the effective date of this ordinance, all proposed County contracts for construction, or for procurement of goods and services, including professional services, shall incorporate this ordinance and specify that debarment may constitute grounds for termination of any existing County contract.
- (2) The debarment shall take effect in accordance with the notice provided by the County >>Mayor<<[[~~Manager~~]] pursuant to subsection (i)(9) below, except that if a department continues contracts or subcontracts in existence at the time the contractor was debarred, the debarment period shall commence upon the conclusion of the contract, and in the interim the debarred contractor shall not enter into any >>new County<<[[~~county~~]] contracts.

- (3) Departments may not renew or otherwise extend the duration of current contracts, or consent to subcontracts with debarred contractors, unless the County >>Mayor<<[[Manager]] determines that an emergency exists justifying the renewal or extension or for an approved extension due to delay or time extension for reasons beyond the contractors control, and such action is approved by the Board of County Commissioners.
- (4) No further work shall be awarded to a debarred contractor in connection with a continuing or miscellaneous construction contract, or a continuing or miscellaneous contract for goods or services, including professional services, or similar contract, where the work is divided into separate discrete groups and the >>County's<<[[county's]] refusal or denial of further work under the contract will not result in a breach of such contract.

(f) *Restrictions on subcontracting:*

- (1) When a debarred contractor is proposed as a subcontractor for any subcontract subject to County approval, the department shall not consent to subcontracts with such contractors unless the County >>Mayor<<[[Manager]] determines that an emergency exists justifying such consent, and the Board of County Commissioners approves such decision.
- (2) The County shall not be responsible for any increases in project costs or other expenses incurred by a contractor as a result of rejection of proposed subcontractors pursuant to subsection (f)(1) above, provided the subcontractor was debarred prior to bid opening or opening of proposals.

(g) *Debarment:*

- (1) The Debarment Committee may, in the public interest, debar a contractor for any of the causes listed in this ordinance, using the procedures outlined below. The existence of a cause for debarment, however, does not necessarily require that the

contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

- (2) Debarment constitutes debarment of all officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of the debarred contractor, unless the debarred decision is limited by its terms to specific divisions, organizational elements, or commodities. The Debarment Committee's decision includes any existing affiliates of the contractor, if they are (i) specifically named and (ii) given written notice of the proposed debarment and an opportunity to respond. Future affiliates of the contractor are subject to the pre-existing Debarment Committee's decision.
- (3) A contractor's debarment shall be effective throughout >>County<<[[~~county~~]] government.

(h) *Causes for debarment:*

* * *

- (2) The >>Debarment Committee<<[[~~committee~~]] may debar a contractor, based upon a preponderance of the evidence, for:
 - (i) Violation of the terms of a County contract or subcontract, or a contract or subcontract funded in whole or in part by County funds, such as willful failure to perform in accordance with the terms of one (1) or more contracts; or the failure to perform, or unsatisfactory performance of one (1) or more contracts.
 - (ii) Violation of a County ordinance or >>implementing order or<< administrative order which lists debarment as a potential penalty.

- (iii) Any other cause of so serious or compelling a nature that it affects the responsibility of a >>County<<[[county]] contractor or subcontractor in performing County work.

- (3) The >>Debarment Committee<< [[debarment committee]] may debar a >>SBE firm<<[[CSBE]] based upon a preponderance of evidence that the [[CSBE]]>>SBE<< has forfeited a bond or has defaulted on financial assistance, either of which was provided under the [[C]]SBE program; or if any individual or corporation, partnership or other entity, or any individual officer, shareholder with a significant interests, director or partner of such entity, or affiliated business of such entity attempts to comply with the provisions of >>the SBE programs<<[[this—Ordinance]] through fraud, misrepresentation, or material misstatement.

- >>(4) The Debarment Committee may debar a contractor, based upon a preponderance of evidence, that the contractor has (i) four or more goal deficits or unapproved Utilization Plan deviations in the SBE goods, services, construction services or architecture and engineering programs within a three year period, (ii) four or more wage underpayments in the responsible wages and benefits or living wages programs within a three year period, or (iii) failed to comply with any of the material terms of a third Make-up Plan without good cause, as codified in sections 2-8.1.1.1.1, 2-8.1.1.1.2, 2-8.9, 2-10.4.01, 2-11.16, and 10-33.02 of the Code.<<
 - (i) *Debarment procedures:*
 - (1) Investigation and referral. Departments shall promptly investigate and prepare written reports concerning a proposed debarment, and prepare written requests to >>SBD<<[[DBD]] for the debarment of contractors the department believes is subject to any of the causes listed above. The County >>Mayor<<[[Manager]] (or his or her designee), and the Office of the Inspector General, may investigate, prepare written reports on, and prepare written requests for, debarment of contractors or

subcontractors. >>SBD shall investigate, prepare written reports on, and initiate written requests for debarment of contractors or subcontractors: (i) with four or more goal deficits or unapproved Utilization Plan deviations or wage underpayments within a three year period; or (ii) who failed to comply with a third Make-up Plan without good cause.<<

- (2) Upon receipt of a request for debarment, >>SBD<<[[~~DBD~~]] shall >>coordinate the creation of<<[[~~create~~]] a Debarment Committee[[, ~~from the Standing Pool of Committee members~~]] appointed by the County >>Mayor<<[[~~Manager~~]], none of whose members shall include a representative from the department making the debarment request. >>SBD<<[[~~DBD~~]] shall act as staff to the Debarment Committee. The department requesting debarment shall present evidence and argument to the Debarment Committee. In the event that the requesting department requests the assistance of the County Attorney's Office, the County Attorney's Office shall provide as counsel to the requesting department a representative of the office independent from any designated to advise the Debarment Committee in the proceedings.
- (3) Notice of proposal to debar. >>SBD<<[[~~DBD~~]], on behalf of the Debarment Committee, shall issue a notice of proposed debarment advising the contractor and any specifically named affiliates, by certified mail, return receipt requested, or personal service, >>of the following<<[[~~that~~]]:
- (i) Debarment is being considered>>.<<[[;]]
 - (ii) [[~~Of the~~]]>>The<< reasons and causes for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based>>.<<[[;]]
 - (iii) [[~~That a~~]]>>A<< hearing shall be conducted before the Debarment Committee on a date and time not less than twenty (20) days after service of the notice. The [[~~notice shall also~~

~~advise the~~] contractor ~~[[that it]]~~ may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine evidence and testimony presented against it.

(iv) ~~[[The notice shall also describe]]~~
>>Describe<< the effect of the issuance of the notice of proposed debarment, and of the potential effect of an actual debarment.

- (4) No later than seven (7) calendar days prior to the scheduled hearing date, the contractor must furnish >>SBD<<~~[[DBD]]~~ a list of the defenses, and the documents and records supporting those defenses, the contractor intends to present at the hearing. If the contractor fails to submit the list of defenses, in writing, and the documents and records supporting those defenses, at least seven (7) calendar days prior to the hearing, or fails to seek an extension of time, in writing, at least seven (7) calendar days prior to the hearing, within which to do so, the contractor shall have waived the opportunity to be heard at the hearing. Failure to request an extension at least seven (7) calendar days prior to the hearing shall constitute an absolute waiver to present defenses and to be heard before the Debarment Committee. The Debarment Committee Chair (or the Director of >>SBD<<~~[[DBD]]~~, or his or her designee) has the right to grant or deny an extension of time so long as the request for an extension of time is made at least seven (7) calendar days prior to the hearing, and ~~[[{}}]]~~his or her decision may only be reviewed upon an abuse of discretion standard.
- (5) Discovery. The process of discovery, including the subpoenaing of witnesses, the taking of depositions, the submission of interrogatories, and requests for documents, is not permitted under this ordinance. However, any party may make a public records request under Chapter 119 of the Florida Statutes.
- (6) Hearsay evidence shall be admissible at the hearing but shall not form the sole basis for initiating a debarment procedure nor the sole basis of any

determination of debarment. The hearing shall be transcribed, taped or otherwise recorded by use of a court reporter, at the election of the committee and at the expense of the >>County<<[[county]]. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party.

- (7) Debarment Committee's decision. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the Debarment Committee shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submissions made by the contractor. Where actions are based on disputed evidence, the Debarment Committee shall decide what weight to attach to evidence of record, judge the credibility of witnesses, and base its decision on the preponderance of the evidence standard. In the event that the contractor fails to appear at the debarment hearing or to present competent proof under affirmation or oath through persons with direct knowledge of the contractor's performance, the contractor shall be presumed to be not responsible and subject to debarment. The Debarment Committee's decision shall be based on a majority of the members of the Committee. The Debarment Committee shall be the sole trier of fact. The committee's decision shall be made within twenty (20) working days after conclusion of the hearing, unless the Debarment Committee extends this period for good cause.
- (8) The committee's decision shall be in writing and shall include the committee's factual findings, the principal causes of debarment as enumerated in this Ordinance, identification of the contractor and all affiliates affected by the decision, and the specific term, including duration, of the debarment imposed.
- (9) Notice of Debarment Committee's decision.
 - (i) If the Debarment Committee decides to impose debarment, and the Debarment Committee's decision is not overridden by the

County >>Mayor<<[[Manager]], the >>County Mayor<<[[~~county manager~~]] shall give the contractor and any affiliates involved written notice by certified mail, return receipt requested, or hand delivery, within twenty (20) working days of the decision, specifying the reasons for debarment and including a copy of the committee's written decision; stating the period of debarment, including effective dates; and advising that the debarment is effective throughout the >>County<< [[~~county~~]] departments.

(ii) If debarment is not imposed by the Debarment Committee, and the Debarment Committee's decision is not overridden by the County >>Mayor<<[[Manager]], the >>County Mayor<<[[~~county manager~~]] shall notify the contractor and any affiliates involved, by certified mail, return receipt requested, or personal service, within twenty (20) working days of the decision.

(10) All decisions of the Debarment Committee shall be final and shall be effective on the date the notice is signed by the >>County Mayor<<[[~~county manager~~]] unless overridden by the County >>Mayor<<[[Manager]] within twenty (20) working days of the date of the Debarment Committee's written decision. If the County >>Mayor<< [[~~Manager~~]] overrides the decision of the Debarment Committee, the County >>Mayor<<[[Manager]] shall state in writing the reasons for his or her override of the Debarment Committee's decision. If the County >>Mayor<<[[Manager]] does not override the Debarment Committee's decision within twenty (20) working days of the date of the Debarment Committee's written decision, and does not sign the notice to the contractor as stated in Section (i)(9) above, the Debarment Committee's decision is final, and becomes effective on the twenty-first (21st) working day after the date of the Debarment Committee's written decision. The Director of >>SBD<<[[~~DBD~~]] or his or her designee

shall then issue the notice to the contractor as required in Section (i)(9) above. Decisions of the Debarment Committee may be appealed to the Appellate Division of the Circuit Court within thirty (30) calendar days of the date the notice is signed by the County >>Mayor<<[[Manager]] >>or issued by the Director of SBD if the County Mayor does not sign the notice<<. Decisions of the Debarment Committee shall not be overturned absent a finding of abuse of discretion. A debarred contractor may seek a stay of the debarment decision in accordance with the Florida Rules of Appellate Procedure.

(j) *Period of debarment:*

(1) The period of debarment imposed shall be within the sole discretion of the Debarment Committee. Debarment shall be for a period commensurate with the seriousness of the cause(s), and, where applicable, within the guidelines set forth below, but in no event shall exceed ten (10) years for a Contractor which is not an individual. Officers, directors, shareholders, partners, agents, employees, or other individual associated with a Contractor or Contractor who is an individual may be permanently debarred as set forth below.

(2) The following guidelines in the period of debarment shall apply except where mitigating or aggravating circumstances justify deviation:

* * *

>>(viii) For commission of an offense as described in subsections (h)(3) or (h)(4): one to three years.

(ix)<<[[~~(viii)~~]] Notwithstanding the foregoing, in the event that the Debarment Committee finds that an individual (i.e., officers, directors, shareholders, partners, agents, employees, or other persons associated with a Contractor or a Contractor who is a person) has knowingly and willfully committed an offence described in subsection (h) such

individual may be permanently debarred upon a unanimous vote of the Debarment Committee.

- (3) The Debarment Committee may, in its sole discretion, reduce the period of debarment, upon the contractor's written request, for reasons such as:
 - (i) Newly discovered material evidence;
 - (ii) Reversal of the conviction or civil judgment upon which the debarment was based;
 - (iii) Bona fide change in ownership or management;
 - (iv) Elimination of other causes for which the debarment was imposed; or
 - (v) Other reasons the Debarment Committee deems appropriate.

- (4) The debarred contractor's written request shall contain the reasons for requesting a reduction in the debarment period. >>SBD<<[[DBD]], with the assistance of the affected department, shall have thirty (30) days from receipt of such request to submit a written response thereto. The decision of the [[Department]]>>Debarment<< Committee regarding a request made under this subsection is final and non-appealable.

* * *

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

Sec. 2-8.1.1.1.1. Small Business Enterprise 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 >>or<< administrative orders>>, or bid and competitive selection documents<< 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[[;]] >>or<< SBE 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[[;]] >>or<< SBE 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[[;]] >>or<< SBE has on County projects. In each instance, the bidder[[;]] >>or<< SBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. >>The bidder or SBE may also be subject to debarment.<<

The foregoing notwithstanding, the County Mayor >>or designee<< 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. Contract language shall provide that in order to be eligible for future >>County<<[[county]] contracts, a contractor who fails to meet an established SBE goal shall submit a SBE Make-up Plan for the approval of the >>SBD<< Director. A Make-up Plan must be submitted as part of any bid or proposal for future contracts as part of the Utilization Plan submitted via the County's web-based system. The Make-up Plan must identify all SBEs to meet the subcontractor goal and the work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to submit the required Make-up Plan with the Utilization Plan for any future contracts shall result in the submittal being deemed non-compliant. 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 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 year period. A contractor that fails to comply with any of the material terms of a third Make-up Plan, without good cause, >>shall<<[[may]] be subject to debarment >>to be initiated by SBD in accordance with the debarment procedures of the County<<[[and shall automatically be referred to the debarment committee]]. After serving a debarment for failure to satisfy a >>third Make-up Plan<<[[make-up plan]] for no good cause, the subject firm shall be deemed ineligible for bidding on County contracts with measures for one 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 SBE measure otherwise applicable to the future contract. >>A Make-up Plan requirement may not be satisfied on a contract with a 100 percent SBE set-aside measure.<<

* * *

(k) *Administrative Penalties.* The County Mayor >>or designee<< 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 >>or<< administrative orders>>, or<<[[and]] bid >>and competitive selection<< documents:

* * *

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 >>County<< 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 >>or deviation from the Utilization Plan without prior approval from the SBD Director (the "Unapproved Deviation")<<, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit >>or Unapproved

Deviation<<, a penalty in an amount equal to 20% of the >>deficit or value of the work performed by the subcontractor that performed the work under the Unapproved Deviation<<[[~~amount—thereof~~]]; for the second deficit >>or Unapproved Deviation<<, a penalty in an amount equal to 40% thereof; >>and<<for the third and successive deficits >>or Unapproved Deviations<<, a penalty in an amount equal to 60% thereof. >>A fourth deficit or Unapproved Deviation within a three year period shall subject the contractor to debarment to be initiated by SBD in accordance with the debarment procedures of the County.<< A fourth >>deficit or Unapproved Deviation<<[[~~violation—and finding of noncompliance~~]], shall >>also<< 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 County's SBE program<<[[~~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 >>(i) date by which a request for administrative appeal of a notice of violation was due and either not filed or not filed timely, or (ii)<< 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.

>>(1) Penalties for Utilization Plan violations. If on three separate occasions, a subcontractor executed a Utilization Plan and subsequently becomes unavailable to perform or complete the work for the prime contractor during the contract period, SBD shall suspend said subcontractor from certification for one year. If SBD suspends the same subcontractor three times due to its failure to perform pursuant to a Utilization Plan as stated above, SBD shall suspend the subcontractor for a minimum of five years, or until such time as the subcontractor can show SBD that it is ready, willing and able to perform if five years has elapsed.

A prime contractor shall be subject to the same penalties as specified above for either: (i) deviating from its Utilization Plan without the prior approval from the SBD Director, on three separate occasions during the contract period; or (ii) being suspended three times due to a failure to comply with its Utilization Plan. The prime contractor will not be subject to a Make-up Plan of double the dollar value of the work, if a SBE is utilized to perform the work.<<

([1])>>m<<) *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 pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, 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 >>or a recording of the hearing proceedings, and<< and all exhibits received by him/her, to the >>County<< 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 >>County<< 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.

Section 3. Section 2-8.1.1.1.2 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 2-8.1.1.1.2. Small Business Enterprise Goods 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 >>or<< administrative orders>>, or bid and competitive selection documents<< 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[[;]] >>or<< SBE 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[[;]] >>or<< SBE 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[[;]] >>or<< SBE has on County projects. In each instance, the bidder[[;]] >>or<< SBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. >>The bidder or SBE may also be subject to debarment.<<

The foregoing notwithstanding, the County Mayor >>or designee<< 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. Contract language shall provide that in order to be eligible for future >>County<<[[~~county~~]] contracts, a contractor who fails to meet an established SBE

goal shall submit a SBE Make-up Plan for the approval of the >>SBD<< Director. A Make-up Plan must be submitted as part of any bid or proposal for future contracts as part of the Utilization Plan submitted via the County's web-based system. The Make-up Plan must identify all SBEs to meet the subcontractor goal and the work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to submit the required Make-up Plan with the Utilization Plan for any future contracts shall result in the submittal being deemed non-compliant. 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 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 year period. A contractor that fails to comply with any of the material terms of a third Make-up Plan, without good cause, >>shall<<[[may]] be subject to debarment >>to be initiated by SBD in accordance with the debarment procedures of the County<<[[and—shall automatically be referred to the debarment committee]]. After serving a debarment for failure to satisfy a >>third Make-up Plan<<[[make-up plan]] for no good cause, the subject firm shall be deemed ineligible for bidding on County contracts with measures for one 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 SBE measure otherwise applicable to the future contract. >>A Make-up Plan requirement may not be satisfied on a contract with a 100 percent SBE set-aside measure.<<

* * *

(k) *Administrative Penalties.* The County Mayor >>or designee<< 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 >>or<< administrative orders>>, or<<[[and]] bid >>and competitive selection<< documents:

* * *

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 >>County<< 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 >>or deviation from the Utilization Plan without prior approval from the SBD Director (the "Unapproved Deviation")<<, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit >>or Unapproved Deviation<<, a penalty in an amount equal to 20% of the >>deficit or value of the work performed by the subcontractor that performed the work under the Unapproved Deviation<<[[amount—thereof]]; for the second deficit >>or Unapproved Deviation<<, a penalty in an amount equal to 40% thereof; >>and<<for the third and successive deficits >>or Unapproved

Deviations<<, a penalty in an amount equal to 60% thereof. >>A fourth deficit or Unapproved Deviation within a three year period shall subject the contractor to debarment to be initiated by SBD in accordance with the debarment procedures of the County.<< A fourth >>deficit or Unapproved Deviation<<[[~~violation and finding of noncompliance~~]], shall >>also<< 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 County's SBE program<<[[~~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 >>(i) date by which a request for administrative appeal of a notice of violation was due and either not filed or not filed timely, or (ii)<< 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.

>>(1) Penalties for Utilization Plan violations. If on three separate occasions, a subcontractor executed a Utilization Plan and subsequently becomes unavailable to perform or complete the work for the prime contractor during the contract period, SBD shall suspend said subcontractor from certification for one year. If SBD suspends the same

subcontractor three times due to its failure to perform pursuant to a Utilization Plan as stated above, SBD shall suspend the subcontractor for a minimum of five years, or until such time as the subcontractor can show SBD that it is ready, willing and able to perform if five years has elapsed.

A prime contractor shall be subject to the same penalties as specified above for either: (i) deviating from its Utilization Plan without the prior approval from the SBD Director, on three separate occasions during the contract period; or (ii) being suspended three times due to a failure to comply with its Utilization Plan. The prime contractor will not be subject to a Make-up Plan of double the dollar value of the work, if a SBE is utilized to perform the work.<<

([+])>>m<< 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 pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, 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 >>or a recording of the hearing proceedings, and<< and all exhibits received by him/her, to the >>County<< 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 >>County<< 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.

Section 4. Section 2-8.9 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 2-8.9. Living Wage Ordinance for County service contracts and County employees.

* * *

Compliance and Enforcement.

- (D) *Sanctions against service contractors.* For violations of this Ordinance as determined pursuant to the procedures set forth by Administrative Order, the County may sanction a service

contractor for violations of this section by requiring the service contractor to pay wage restitution to the affected employee. The County may also sanction the service contractor for violations in at least one (1) of the following additional ways:

- (1) Penalties payable to the County in an amount equal to 20% of the amount of the underpayment of wages and/or benefits for the first instance of underpayment; 40% for the second instance; and for the third and successive instances 60% of the amount of underpayment. >>A fourth underpayment within a three year period shall subject the service contractor to debarment to be initiated by SBD in accordance with the debarment procedures of the County.<< A fourth >>underpayment<< violation shall >>also<< constitute a default of the contract where the underpayment occurred and >>shall<<[[~~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 to defray >>SBD's<< costs of administering the Living Wage provisions. >>If the required payment is not made within 30 days of the (i) date by which a request for administrative appeal of a notice of violation was due and either not filed or not filed timely, or (ii) administrative hearing or final resolution of any appeal therefrom, the noncomplying contractor or subcontractor and the principal owner(s) thereof shall be prohibited from bidding on or otherwise participating in County contracts for a period not to exceed three years.<<

* * *

Section 5. Section 2-10.4.01 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

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

* * *

(5) *Sanctions* ~~[[for contractual violations]]~~: Proposal and agreement documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a >>CBE-A/E's,<< proposer's or subconsultant's violation of or failure to comply with this section or its implementing >>or<< administrative orders>>, or bid and competitive selection documents<< may result in the imposition of one or more of the following sanctions:

- i. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
- ii. The issuance of fines upon prime consultants for violations of this section;
- iii. Work stoppage;
- ~~[[iv. The issuance of a make-up requirement up to two times the value of subconsultant goal;]]~~

~~[[v.]]~~>>iv.<< Termination, suspension, or cancellation of the agreement in whole or part;

~~[[vi.]]~~>>v.<< 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 Mayor 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.

- [[vii.]] The foregoing notwithstanding, the County Mayor >>or designee<< shall include language in all prospective contracts containing a CBE-A/E measure which provides that, in addition to any other sanction for failure to fulfill the CBE-A/E measure 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 CBE-A/E participation in such future contract by having CBE-A/Es perform work equal to double the dollar value of the deficiency in the CBE-A/E measure in the prior contract. Contract language shall provide that in order to be eligible for future >>County<<[[county]] contracts, a proposer who fails to meet an established CBE-A/E goal shall submit a CBE-A/E Make-up Plan for the approval of the >>SBD<< Director. A Make-up Plan must be submitted as part of any proposal for future contracts as part of the Utilization Plan submitted via the County's web-based system. The Make-up Plan must identify all CBE-A/Es to meet the subconsultant goal and the work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to submit the required Make-up Plan with the Utilization Plan for any future contracts shall result in the submittal being deemed non-compliant. Any proposer 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 proposing and/or otherwise participating on County contracts as a prime or subconsultant for a six (6) month period. A proposer 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

proposing and/or otherwise participating on County contracts as a prime or subconsultant for a one (1) year period. A proposer that fails to comply with any of the material terms of a third Make-up Plan, without good cause, >>shall<<[[may]] be subject to debarment >>to be initiated by SBD in accordance with the debarment procedures of the County<<[[and shall automatically be referred to the debarment committee]]. After serving a debarment for failure to satisfy a >>third Make-up Plan<<[[make-up plan]] for no good cause, the subject firm shall be deemed ineligible for proposing on County contracts with measures for one (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 CBE-A/E measure otherwise applicable to the future contract. >>A Make-up Plan requirement may not be satisfied on a contract with a 100 percent CBE-A/E set-aside measure.<<

* * *

(6) *Administrative penalties.* >>The County Mayor or designee may impose, notwithstanding any other provision of this section, one or more of the following penalties for<<[[For]] violation of or noncompliance with this section or its implementing [[order]]>>or administrative orders, or<<[[;]] proposal(s)[[;]] and[[/or]] competitive selection documents[[, the County Mayor or designee may impose penalties that include, but are not limited to, the following]]:

>>1. The exclusion from County contracting and subcontracting for a specified period of time, not to exceed three 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 a CBE-A/E for a specified period of time, not to exceed three (3) years, for an applicant or a CBE-A/E, 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 CBE-A/E certification for a specified period of time, not to exceed five 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 CBE-A/E certification, for a specified period of time, not to exceed five years.<<

[[2]]>>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 >>County<< 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.

[[3]]>>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 >>or deviation from the Utilization Plan without prior approval from the SBD Director (the "Unapproved Deviation")<<, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit >>or Unapproved

Deviation<<, a penalty in an amount equal to 20% of the >>deficit or value of the work performed by the subcontractor that performed the work under the Unapproved Deviation<<[[~~amount thereof~~]]; for the second deficit >>or Unapproved Deviation<<, a penalty in an amount equal to 40% thereof; >>and<< for the third and successive deficits >>or Unapproved Deviations<<, a penalty in an amount equal to 60% thereof. >>A fourth deficit or Unapproved Deviation within a three year period shall subject the contractor to debarment to be initiated by SBD in accordance with the debarment procedures of the County.<< A fourth >>deficit or Unapproved Deviation<<[[~~violation and finding of noncompliance~~]], shall >>also<< 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 County's CBE-A/E program<<[[~~Section 10-33.02 of the Code of Miami-Dade County~~]].

[[4]]>>7<<. If the required payment is not made within thirty (30) days of the >>(i) date by which a request for administrative appeal of a notice of violation was due and either not filed or not filed timely, or (ii)<< 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.

(7) *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 pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, 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.

2. 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 >>or a recording of the hearing proceedings, and<< and all exhibits received by him/her, to the >>County<< 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 >>County<< Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.
3. 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.

* * *

>>(10) Penalties for Utilization Plan violations. If on three separate occasions, a subcontractor executed a Utilization Plan and subsequently becomes unavailable to perform or complete the work for the prime contractor during the contract period, SBD shall suspend said subcontractor from certification for one year. If SBD suspends the same subcontractor three times due to its failure to perform pursuant to a Utilization Plan as stated above, SBD shall suspend the subcontractor for a minimum of five years, or until such time as the subcontractor can show SBD that it is ready, willing and able to perform if five years has elapsed.

A prime contractor shall be subject to the same penalties as specified above for either: (i) deviating from its Utilization Plan without the prior approval from the SBD Director, on three separate occasions during the contract period; or (ii) being suspended three times due to a failure to comply with its Utilization Plan. The prime contractor will not be subject to a Make-up Plan of double the dollar value of the work, if a CBE-A/E is utilized to perform the work.<<

Section 6. Section 2-11.16 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 2-11.16. County construction contracts.

* * *

(d) The County Mayor shall establish an administrative procedure for monitoring compliance with and enforcement of the requirements of this Section. Such procedure shall provide that:

* * *

(vi) Upon timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of noncompliance, the County Mayor or designee shall appoint a hearing officer pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, 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 >>or a recording of the hearing proceedings, and<< and all exhibits received by him/her, to the >>County<< 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 >>County<< Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

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.

- >>(vii) Administrative Penalties.<<[[A notice of hearing (together with a copy of SBD's determination of noncompliance) shall be served upon the contractor (or subcontractor). Upon completion of the hearing, the hearing officer shall submit proposed written findings and recommendations together with a transcript of the hearing to the County Mayor within a reasonable time. The County Mayor shall determine whether the contractor (or subcontractor) failed to comply with the requirements of this section.]] >>The County Mayor or designee 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 or administrative orders, or proposals and competitive selection documents.<< If the >>County<< Mayor['s] >>or designee's<< determination is that the contractor (or subcontractor) failed to comply, and that such failure was pervasive, the >>County<< Mayor >>or designee<< may order that the contract work be suspended or terminated, and that the noncomplying contractor (or subcontractor) and the principal owners thereof be prohibited from bidding on or otherwise participating in County contracts ~~[[for the construction, alteration and/or repair, including painting or decorating of public buildings or public works]]~~ for a period of up to three (3) years. In addition, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the affected employees and the contractor or subcontractor shall be fined the penalties provided below. If the Mayor['s] >>or

designee's<< determination 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 underpayment of the required overall per hour rate, order an amount equal to the amount of such underpayment be withheld from the contractor and remitted to the employee, and may also fine the contractor or subcontractor for such noncompliance as follows: for the first underpayment, a penalty in an amount equal to 20% of the amount thereof; for the second underpayment, a penalty in an amount equal to 40% thereof; for the third and successive underpayments, a penalty in an amount equal to 60% thereof. >>A fourth underpayment within a three year period shall subject the contractor to debarment to be initiated by SBD in accordance with the debarment procedures of the County.<< A fourth underpayment violation, shall >>also<< constitute a default of the subject contract and >>shall<<[[~~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 >>the County's responsible wages and benefits requirements<<[[~~this section~~]]. If the required payment is not made within >>30 days of the (i) date by which a request for administrative appeal of a notice of violation was due and either not filed or not filed timely, or (ii) administrative hearing or final resolution of any appeal therefrom<<[[~~a reasonable period of time~~]], the noncomplying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts for [[~~the construction, alteration, and/or repair, including painting or decorating of public buildings or public works for~~]] a period >>not to exceed<<[[~~of~~]] three (3) years.

* * *

Section 7. Section 10-33.02 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

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

* * *

- (5) ~~[[*Enforcement*]]~~>>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 ordinance or its implementing >>or administrative<< orders>>, or bid and competitive selection documents<< may result in the imposition of one (1) or more of the following sanctions:
- i. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
 - ii. Work stoppage;
 - iii. Termination, suspension, or cancellation of the contract in whole or part;
 - iv. In the event a bidder or CSBE attempts to comply with the provisions of this ordinance 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 contract or require the termination or cancellation of the first tier subcontract for the project on which the bidder or CSBE committed such acts. In addition, and as a further sanction, the County ~~[[*Mayor or Mayor's designee*]]~~ may impose any of the above-stated sanctions on any other contracts or first tier subcontracts the bidder or CSBE has on County projects. In each instance, the bidder or CSBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The bidder or CSBE may also be subject to debarment.

- 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 >>for such contract<<, 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 >>work<< 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<<[[~~county~~]] contracts, a contractor who fails to meet an established CSBE goal shall submit a CSBE Make-up Plan for the approval of the >>SBD<< Director. A Make-up Plan must be submitted as part of any bid or proposal for future contracts as part of the Utilization Plan submitted via the County's web-based system. The Make-up Plan must identify all CSBEs 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 submit the required Make-up Plan with the Utilization Plan for any future contracts shall result in the submittal being deemed non-compliant. 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, >>shall<<[[~~may~~]] be subject to debarment >>to be initiated by SBD in accordance

with the debarment procedures of the County<<[[~~and shall automatically be referred to the debarment committee~~]]. After serving a debarment for failure to satisfy a >>third Make-up Plan<<[[~~make-up plan~~]] for no good cause, the subject firm shall be deemed ineligible for bidding on County contracts with measures for one (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. >>A Make-up Plan requirement may not be satisfied on a contract with a 100 percent CSBE set-aside measure.<<

* * *

- (6) *Administrative penalties.* For violation of or noncompliance with this ordinance or its implementing >>or administrative<< orders, >>or<< bid[[;]] and competitive selection documents, the County Mayor or designee may impose penalties that include, but are not limited to, the following:

* * *

- 3. 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 >>or deviation from the Utilization Plan without prior approval from the SBD Director (the "Unapproved Deviation")<<, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit >>or Unapproved Deviation<<, a penalty in an amount equal to 20% of the >>deficit or value of the work performed by the subcontractor that performed the work under the Unapproved Deviation<<[[~~amount thereof~~]]; for the second deficit >>or Unapproved Deviation<<, a penalty in an amount equal to 40% thereof; >>and<< for the third and successive deficits >>or Unapproved Deviations<<, a penalty in an amount

equal to 60% thereof. >>A fourth deficit or Unapproved Deviation within a three year period shall subject the contractor to debarment to be initiated by SBD in accordance with the debarment procedures of the County.<< A fourth >>deficit or Unapproved Deviation<<[[violation ~~and~~ finding ~~of noncompliance~~]], shall >>also<< 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 County's SBE program<<[[~~Section 10-33.02 of the Code of Miami-Dade County~~]].

4. If the required payment is not made within thirty (30) days of the >>(i) date by which a request for administrative appeal of a notice of violation was due and either not filed or not filed timely, or (ii)<< 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.

- (7) *Penalties for Utilization Plan violations.* If on three (3) separate occasions, a subcontractor executed a Utilization Plan and subsequently becomes unavailable to perform or complete the work for the prime contractor during the contract period, SBD shall suspend said subcontractor from certification for one (1) year. If SBD suspends the same subcontractor three (3) times due to its failure to perform pursuant to a Utilization Plan as stated above, SBD shall suspend the subcontractor for a minimum of five (5) years, or until such time as the subcontractor can show SBD that it is ready, willing and able to perform if five (5) years has elapsed.

>>A prime contractor shall be subject to the same penalties as specified above for either: (i) deviating from its Utilization Plan without the prior approval from the SBD Director, on three separate occasions during the contract period; or (ii) being suspended three times due to a failure to comply with its Utilization Plan. The prime contractor will not be subject to a Make-up Plan of double the dollar value of the work, if a CSBE is utilized to perform the work.<<

(8) *Appeals.*

- A. 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 pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, 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.
- B. 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 >>or a recording of the hearing proceedings, and<< and all exhibits received by him/her, to the >>County<< 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 >>County<< Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

- C. 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.

Section 8. 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 9. 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 10. 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:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

David Stephen Hope

Prime Sponsor: Commissioner Barbara J. Jordan
Co-Sponsors: Commissioner Daniella Levine Cava
Chairwoman Audrey M. Edmonson

