MEMORANDUM

Agenda Item No. 5(F)

(Public Hearing: 9-1-26)

TO:	Honorable Chairman Anthony Rodriguez and Members, Board of County Commissioners	**DATE:**	July 21, 2026
FROM:	Geri Bonzon-Keenan County Attorney	**SUBJECT:**	Ordinance relating to County procurement; implementing, in whole or in part, multiple recommendations from the Final Report of the Special Task Force to Reduce Inefficiencies in Procurement relating to small business and local preference requirements; amending sections 2-10.4.01, 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.5 of the Code relating to small business architecture and engineering program requirements, small business enterprise services program requirements, small business enterprise goods program requirements, local business preference, locally headquartered business preference, local preference eligibility and verification, small business remedies, and related procurement policies; directing and authorizing the County Mayor to make conforming changes to implementing orders

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Chairman Anthony Rodriguez.

For

Geri Bonzon-Keenan
County Attorney

GBK/gh

MEMORANDUM
(Revised)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

DATE: September 1, 2026

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 5(F)

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**
_______	**Requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, majority plus one ____, CDMP 7 votes (majority of membership) ____, CDMP 2/3 members present but not less than 7 votes (majority of membership) ____, CDMP 9 votes (2/3 membership) _____) 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. 5(F)
9-1-26

ORDINANCE NO. ___________________

ORDINANCE RELATING TO COUNTY PROCUREMENT; IMPLEMENTING, IN WHOLE OR IN PART, MULTIPLE RECOMMENDATIONS FROM THE FINAL REPORT OF THE SPECIAL TASK FORCE TO REDUCE INEFFICIENCIES IN PROCUREMENT RELATING TO SMALL BUSINESS AND LOCAL PREFERENCE REQUIREMENTS; AMENDING SECTIONS 2-10.4.01, 2-8.1.1.1.1, 2-8.1.1.1.2 AND 2-8.5 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA RELATING TO SMALL BUSINESS ARCHITECTURE AND ENGINEERING PROGRAM REQUIREMENTS, SMALL BUSINESS ENTERPRISE SERVICES PROGRAM REQUIREMENTS, SMALL BUSINESS ENTERPRISE GOODS PROGRAM REQUIREMENTS, LOCAL BUSINESS PREFERENCE, LOCALLY HEADQUARTERED BUSINESS PREFERENCE, LOCAL PREFERENCE ELIGIBILITY AND VERIFICATION, SMALL BUSINESS REMEDIES, AND RELATED PROCUREMENT POLICIES; DIRECTING AND AUTHORIZING THE COUNTY MAYOR TO MAKE CONFORMING CHANGES TO IMPLEMENTING ORDERS; AND PROVIDING SEVERABILITY, INCLUSION IN AND EXCLUSION FROM THE CODE, AND AN EFFECTIVE DATE

WHEREAS, pursuant to Resolution No. R-441-25, the Board of County Commissioners (the "Board") established the Special Task Force to Reduce Inefficiencies in Procurement ("Task Force") to review existing laws, codes, procedures, and administrative practices governing Miami-Dade County's procurement process and to recommend changes that would improve efficiency, transparency, accountability, and fairness; and

WHEREAS, in carrying out its mandate, the Task Force examined each phase of the County's procurement lifecycle, from pre-procurement planning through contract performance, to identify opportunities to streamline procurement processes while ensuring that each discussion addressed the subject matters identified in Resolution No. R-441-25, including procurements for goods and services, architectural and engineering professional services, construction contracting, public-private partnerships, leases and development agreements, and concession agreements; and

WHEREAS, throughout its review, the Task Force worked closely with the Strategic Procurement Department, procurement professionals, and subject matter experts, and also conducted a workshop to obtain feedback from members of the County's small business community regarding opportunities to improve the procurement process; and

WHEREAS, on September 5, 2025, the Task Force adopted an Interim Report containing preliminary recommendations, and on April 23, 2026, approved fifty-nine (59) final recommendations designed to reduce procurement timelines, increase transparency, enhance fairness, support small business participation, and streamline procurement procedures across County government; and

WHEREAS, the Task Force has transmitted its Final Report to this Board, thereby fulfilling the mandate established by Resolution No. R-441-25; and

WHEREAS, recommendation 9 of the Task Force's Final Report recommends adopting contract-level Small Business Enterprise ("SBE") utilization requirements for architecture and engineering task-based contracts instead of firm-level commitments in order to simplify administration, improve the application of SBE measures based upon the procurement type, and reduce contract administration and tracking burdens; and

WHEREAS, recommendation 10 of the Task Force's Final Report recommends establishing standardized SBE participation requirements of 10 percent for architecture and engineering task-based contracts and 15 percent for architecture and engineering defined-scope contracts, while permitting deviations from those standardized percentages only upon written justification approved by the Strategic Procurement Department, thereby reducing case-by-case analyses and increasing predictability, efficiency, and fairness; and

WHEREAS, recommendation 11 of the Task Force's Final Report recommends eliminating the Small Business Enterprise Advisory Boards and the Small Business Enterprise Project Review Analysis Committees because those entities constitute redundant oversight layers whose elimination will shorten procurement timelines and reduce administrative costs; and

WHEREAS, recommendation 27 of the Task Force's Final Report recommends that, for Invitations to Quote involving purchases of $250,000.00 or less, an automatic Small Business Enterprise set-aside be utilized whenever a certified small business submits a bid that is within 10 percent of the lowest non-SBE bid, thereby supporting small business participation while simplifying compliance and preserving competition; and

WHEREAS, recommendation 28 of the Task Force's Final Report recommends replacing separate Small Business Enterprise participation goals with a bid preference for Invitations to Bid and a selection factor for Requests for Proposals, thereby simplifying the County's local and small business preference policies and reducing unnecessary procedural complexity; and

WHEREAS, recommendation 30 of the Task Force's Final Report recommends amending the Code of Miami-Dade County to clarify that Local Business Preference eligibility may be verified prior to contract award, thereby reducing litigation and bid protests, improving fairness, and ensuring that award decisions accurately reflect proposer eligibility; and

WHEREAS, recommendation 32 of the Task Force's Final Report recommends that the Office of the Inspector General perform random audits to verify claims involving Local Business Preference, Locally Headquartered Business Preference, and Large Local Employer Preference in order to deter fraudulent claims, improve accountability, and preserve the integrity of the County's local preference programs; and

WHEREAS, recommendation 33 of the Task Force's Final Report recommends requiring, as an additional criterion for qualifying as a Locally Headquartered Business, that more than 50 percent of the firm's full-time employees work in Miami-Dade County, thereby providing an objective qualification standard for locally headquartered businesses; and

WHEREAS, recommendation 34 of the Task Force's Final Report recommends allowing Locally Headquartered Business status only to firms that certify that Miami-Dade County is the only geographic local headquarters and principal place of business that such firm claims; and

WHEREAS, recommendation 36 of the Task Force's Final Report recommends amending the definition of Local Preference contained in section 2-8.5(c) of the Code of Miami-Dade County to permit special purpose entities created, owned and controlled by qualifying local businesses to receive Local Preference, thereby ensuring that local companies receive the intended preference, reducing technical barriers, and better aligning County policy with local economic realities; and

WHEREAS, recommendation 37 of the Task Force's Final Report recommends requiring that, where a business entity includes one or more non-local partners, at least 60 percent of the ownership interest be held by local owners who independently satisfy the County's Local Preference requirements in order for the entity to qualify for Local Preference, thereby preserving the integrity of the County's local preference program while recognizing legitimate business partnerships; and

WHEREAS, recommendation 38 of the Task Force's Final Report recommends supporting the Strategic Procurement Department's efforts to train County departments regarding existing authority under Implementing Order 3-39 permitting the procurement of continuing professional services contracts for specialized architectural and engineering work outside the Equitable Distribution Program, thereby improving access to specialized expertise and reducing unnecessary barriers to procurement; and

WHEREAS, recommendation 54 of the Task Force's Final Report recommends providing a mechanism to permit remedies for non-compliance with Small Business Enterprise utilization plans during the performance of active contracts rather than limiting remedies solely to future contracts, thereby accelerating work opportunities for certified small businesses, strengthening accountability, and enabling corrective action during contract performance; and

WHEREAS, this Board finds that implementation of recommendations 9, 10, 11, 27, 28, 30, 32, 33, 34, 36, 37, 38, and 54 will modernize the County's Small Business Enterprise and Local Preference programs, improve procurement efficiency, enhance fairness and accountability, provide objective qualifications criteria, simplify locally headquartered business verification, better align policy with local economic reality, reduce unnecessary administrative burdens, strengthen oversight of local preference programs, and continue to promote meaningful participation by local and small businesses in Miami-Dade County procurement,

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

Section 1. Pursuant to Recommendation ("Rec.) Nos. 9, 10, 11 and 54 of the Special Task Force to Reduce Inefficiencies in Procurement ("Task Force"), section 2-10.4.01 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

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

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[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.

* * *

(2) *Definitions.* For purposes of this section:

A. *Agreement* means an agreement proposed by the County or Public Health Trust staff, or approved by the County Commission or Public Health Trust for architectural, landscape architectural, engineering, and surveying and mapping professional services.

B. *Available or availability* means to have, prior to proposal submission, the ability to provide professional services under an agreement or subconsultant agreement by having:

(1) Reasonably estimated, uncommitted capacity and expertise;

(2) All licenses, permits, registrations, insurances and certifications;

(3) The ability to obtain bonding that is reasonably required to perform the agreement or subconsultant agreement consistent with normal industry practice; and

(4) The ability to otherwise meet all the proposal specifications.

[[~~C. *A/E Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise Architecture & Engineering Program.~~]]

[[~~D.~~]]>>C.<< *Bonding Assistance* may include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes.

[[~~E.~~]]>>D.<< *Business day* means a regular weekday (Monday through Friday) normally starting at 8:00 a.m. and finishing at 5:00 p.m., excluding Saturdays and Sundays and excluding all legal holidays recognized by the Federal, State or Miami-Dade County governments.

[[~~F.~~]]>>E.<< *CBE-A/E Objective* means the objective of assuring that not less than 10 percent of the County's total annual expenditures for professional architectural, landscape architectural, engineering, and surveying and mapping services, are expended with CBE-A/Es certified under this section, for projects specific and multiple project contracts. The foregoing CBE-A/E objective may be increased by subsequent resolution of the Board of County Commissioners, adopted after recommendation for an increase by the County Mayor or designee.

[[~~G.~~]]>>F.<< *CBE-A/E Program* is the Small Business Enterprise Program for the Architectural, Engineering, Landscape Architectural, Surveying and Mapping Professionals.

[[~~H.~~]]>>G.<< *Calendar day* means a twenty-four (24) hour period covering all days of the week (Monday through Sunday including all holidays), starting at 12:00 a.m. and finishing at 11:59 p.m.

[[~~I.~~]]>>H.<< *Certificate of Assurance* means the departmental form submitted with proposal documents whereby the Proposer acknowledges: (i) Small Business Enterprise ("SBE") measures apply to the project; and (ii) Proposer will submit its list of certified SBEs to satisfy the measures via Miami-Dade County's web-based system, within the specified time frame.

[[~~J.~~]]>>I.<< *Commercially useful function* means contractual responsibility for the execution of a distinct element of the work of an agreement by a firm and the carrying out of the contractual responsibilities by actually performing, managing, and supervising the work involved. Acting as a broker is not considered a commercially useful function. The determination of whether an activity is a commercially useful function shall include:

1. The evaluation of the amount of work subconsulted;
2. Normal industry practices;
3. The skills, qualifications, or expertise of the firm to perform the work;
4. Whether the firm's own personnel perform, manage, and/or supervise the work involved; and other relevant factors.

[[~~K.~~]]>>J.<< *Construction* means the building, renovating, retrofitting, rehabbing, restoration, painting, altering, or repairing of a public improvement.

[[~~L.~~]]>>K.<< *Continuing contract* shall mean the term "continuing contract" as defined in Section 2-10.4(1)(f).

[[~~M.~~]]>>L.<< *Debar* means to exclude a consultant, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses from County agreements, whether as a prime consultant or subconsultant, for a specified period of time, not to exceed five (5) years.

[[~~N.~~]]>>M.<< *Design-build contract* means a single contract with a design-build firm for the design and construction of a public construction project.

[[~~O.~~]]>>N.<< *Design-build firm* means a partnership, corporation, or other legal entity which:

1. Partnership or joint venture, having at least one partner in compliance with either of the following two requirements:
   a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
   b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219, Florida Statutes, to practice architecture; or certified under Section 481.319, Florida Statutes, to practice landscape architecture.
2. An individual corporation or other legal entity in compliance with the following two requirements:
   a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and
   b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219, Florida Statutes, to practice architecture; or certified under Section 481.319, Florida Statutes, to practice landscape architecture.

[[~~P.~~]]>>O.<< *Firm* means any individual, firm, partnership, corporation, association, joint venture or other legal entity permitted by law to practice architecture, engineering, landscape architecture, design-build, and land surveying and mapping services, which has a valid business tax receipt issued by Miami-Dade County at least one year prior to certification, and an actual place of business in Miami-Dade County, not a Virtual Office. No Firm shall be certified as a CBE-A/E where the personal net worth of any of its owners is more than $3,500,000.00, exclusive of: (a) the value of the primary residence for which there is a homestead exemption; (b) the value of the business; and (c) funds invested in an individual retirement account ("IRA"), 401k, pension, or other official retirement account. The owner MUST provide information about the terms and restrictions of the account(s) to SBD, and certify that the retirement account(s) is legitimate. Representations as to average gross revenues, personal net worth of owners and payroll shall be subject to audit.

[[~~Q.~~]]>>P.<< *Graduation* means the CBE-A/E has exceeded either the personal net worth, or the specific size limits stated for the Program and thus may no longer be eligible for participation in the Program.

[[~~R.~~]]>>Q.<< *Joint venture* means a business arrangement of two or more parties, in which at least one is a CBE-A/E that agrees to pool its resources for the purpose of accomplishing a specific task. The details of Joint Venture participation in the CBE-A/E program shall be provided in Implementing Order No. IO 3-32.

[[~~S.~~]]>>R.<< *Make-up Plan* means a plan whereby a proposer submits via the County's web-based system >>for future contract or to SBD for existing contracts<< its commitment [[~~that if awarded the contract, it will~~]] >>to<<fulfill all or a portion of any pending Small Business Enterprise Architecture and Engineering makeup requirement, identifying the certified CBE-A/E 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 SBD.

[[~~T.~~]]>>S.<< *Mentor-Protégé Program* is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging small business enterprises in order for the latter to benefit from the knowledge and experience of the established mentor firms. The details of this program shall be provided in Implementing Order No. IO 3-32.

[[~~U.~~]]>>T.<< *Multiple Projects Contract* is a contract for a "project" which constitutes a grouping of minor or substantially similar construction, rehabilitation or renovation activities as defined in Section 2-10.4(1)(e)(1) and (2).

[[~~V.~~]]>>U.<< *Owned* means having all the customary incidents of ownership, including the right of disposition, and the right or obligation to share in all risks and profits commensurate with the degree of ownership interest.

[[~~W.~~]]>>V.<< *Professional services* are those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

[[~~X.~~]]>>W.<< *Project Specific awards* are contracts for professional services between Miami-Dade County and a firm whereby the firm provides professional services to the agency for work of a specified nature for a fixed capital study or planning activity.

[[~~Y.~~]]>>X.<< *Prompt Payment.* It is the intent of the County that all firms, including CBE-A/Es providing professional services to the County, shall receive payments promptly in order to maintain sufficient cash flow.

1. Contracts with CBE-A/E set-asides, or subconsultant goals shall require that billings from consultants under prime professional services agreements with Miami-Dade County, or the Public Health Trust that are a CBE-A/E contract set-aside or which contain a set-aside or subconsultant goal shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County, or the Trust.

2. Small Business Development may investigate reported instances of late payments to CBE-A/Es. The County Mayor or designee shall establish an administrative procedure for the resolution of written complaints pertaining to underpayment of professional services.

[[~~Z.~~]]>>Y.<< *Proposal* means a proposal, letter of interest, letter of participation or offer by any proposer in response to any kind of invitation, request or public announcement to submit such proposal, letters of interest, letter of participation or offer to perform the agreement.

[[~~AA.~~]]>>Z.<< *Proposer* means any firm that submits a proposal to provide professional services.

[[~~BB.~~]]>>AA.<< *Qualifier* means the individual who qualifies the firm professional license holder as required by Florida Statute.

[[~~CC. *Review Committee or RC* means the committee established by the County Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus and when public input requires deliberation regarding the measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed.~~]]

[[~~DD.~~]]>>BB.<< *SBD* means the Division of Small Business Development or successor division or department.

[[~~EE.~~]]>>CC.<< *Small Business Enterprise Architecture & Engineering* means a firm providing architectural, landscape architectural, engineering, or surveying and mapping professional services, including a design-build firm, which has a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, an actual place of business in Miami-Dade County, not a Virtual Office, and whose three (3) year average annual gross revenues do not exceed $500,000.00 for all Tier 1 CBE-A/Es, $2,000,000.00 for all Tier 2 CBE-A/Es, $4,500,000.00 for Tier 3 CBE-A/Es in the case of architectural services, or $6,000,000.00 for Tier 3 CBE-A/Es in the case of landscape architectural services, engineering, and surveying and mapping services, and $6,500,000.00 for Tier 4

CBE-A/Es in the case of architectural services, or $8,000,000.00 for Tier 4 CBE-A/Es in the case of landscape architectural services, engineering, and surveying and mapping services. A CBE-A/E will graduate out of the program once it has exceeded the Tier CBE-A/E size limits based on its three-year average annual gross revenues. As part of the certification process, CBE-A/Es must go through a technical certification process, which will be used to determine which of the technical certification categories the CBE-A/E will be placed in. A firm's eligibility to participate in the CBE-A/E program shall be determined based on the cumulative adjusted gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A. No firm shall be certified as a CBE-A/E where the personal net worth of any of its owners is more than $1,500,000.00, exclusive of: (a) the value of the primary residence for which there is a homestead exemption; (b) the value of the business; and (c) funds invested in an individual retirement account ("IRA"), 401k, pension, or other official retirement account. The owner MUST provide information about the terms and restrictions of the account(s) to SBD, and certify that the retirement account(s) is legitimate. Representations as to average gross revenues, personal net worth of owners and payroll shall be subject to audit. The Contracting Participation Levels are as follows:

i. Tier 1 CBE-A/Es in the case of architectural, landscape architectural, engineering, or surveying and mapping services - 3-year average annual gross revenues of $0 to $500,000.00.

ii. Tier 2 CBE-A/Es in the case of architectural, landscape architectural, engineering, or surveying and mapping services - 3-year average annual gross revenues of $500,000.01 to $2,000,000.00.

iii. Tier 3 CBE-A/Es in the case of architectural services - 3-year average annual gross revenues of $2,000,000.01 to $4,500,000.00.

iv. Tier 3 CBE-A/Es in the case of landscape architectural services, engineering, or surveying and mapping services - 3-year average annual gross revenues of $2,000,000.01 to $6,000,000.00.

v. Tier 4 CBE-A/Es in the case of architectural services - 3-year average annual gross revenues of $4,500,000.01 to $6,500,000.00.

vi. Tier 4 CBE-A/Es in the case of landscape architectural services, engineering, or surveying and mapping services - 3-year average annual gross revenues of $6,000,000.01 to $8,000,000.00.

[[~~FF.~~]]>>DD.<< *Subconsultant goal* means a proportion of a prime agreement value stated as a percentage to be subconsulted to Tier 1 and Tier 2 CBE-A/Es to perform a commercially useful function.

[[~~GG.~~]]>>EE.<< *Suspension* means temporary debarment for a period not to exceed two (2) years.

>>FF. *Task-based contract awards* are contracts for professional services between Miami-Dade County and a firm whereby the firm provides professional services to the County through the performance of specific task orders or work orders as part of a larger contract.

Task-based contract awards are particularly suited for projects requiring a range of services or products over an extended period.<<

[[~~HH.~~]]>>GG.<< *Technical certification* means a certification approved by the Miami-Dade County Technical Certification Committee to allow a firm to submit proposals on, and receive award of, County agreements for architectural, engineering, landscape architecture, or surveying and mapping services. Firms may be certified in several different technical certification categories.

[[~~II.~~]]>>HH.<< *Tier 1 Set-Aside* means reservation for competition solely among Tier 1 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees is $500,000.00 or less. Tier 2 CBE-A/Es may not compete for Tier 1 CBE-A/E set-asides as prime consultants, unless Tier 1 CBE-A/E prime consultant unavailability exists.

[[~~JJ.~~]]>>II.<< *Tier 2 Set-Aside* means reservation for competition solely among Tier 1 and/or Tier 2 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees are between $500,00.01 and $2,000,000.00. Tier 1 CBE-A/Es may compete for Tier 2 CBE-A/E set-asides as prime consultants. Tier 3 CBE-A/Es may not compete for Tier 2 CBE-A/E set-asides as prime consultants, unless Tier 1 and Tier 2 CBE-A/E prime consultant unavailability exists.

[[~~KK.~~]]>>JJ.<< *Tier 3 Set-Aside* means reservation for competition solely among Tier 1, Tier 2 and/or Tier 3 CBE-A/E prime consultants and Tier 1, Tier 2 and/or Tier 3 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees is between $2,000,000.01 to $6,500,000.00. Tier 1 and Tier 2 CBE-A/Es may compete for Tier 3 CBE-A/E set-asides as prime consultants.

[[~~LL.~~]]>>KK.<< *Tier 4 Set-Aside* means reservation for competition solely among Tier 1, Tier 2, Tier 3 and/or Tier 4 CBE-A/E prime consultants and Tier 1, Tier 2, Tier 3 and/or Tier 4 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees $4,500,000.01 or greater. Tier 1, Tier 2 and Tier 3 CBE-A/Es may compete for Tier 4 CBE-A/E set-asides as prime consultants.

[[~~MM.~~]]>>LL.<< *Utilization Plan* means the plan whereby a proposer submits via the County's web-based system its commitment that if awarded the agreement, it will enter into written subconsultant agreements with the identified CBE-A/Es for the scope of work >>in project specific awards<< and at the >>applicable<< percentages set forth in the Utilization Plan >>for all contract types<< within the time frame specified by SBD.

[[~~NN.~~]]>>MM.<< *Virtual Office* means an agreement that provides a receptionist, mail and facsimile services, and similar services, that give the appearance of having a business presence at a location, but the business entity has no ongoing, full-time physical presence in the building. Virtual Offices are invalid for certification purposes.

(3) *Program Components:*

A. *Application.* Except where federal or state laws or regulations mandate to the contrary, the provisions of this section shall require review of all project specific contracts, design-build contracts, and multiple contracts for architectural, landscape architecture, engineering, and surveying and mapping professional services funded in whole or in part with County funds and all leases and contracts for privately funded construction on County-owned land to determine the appropriateness of applying measures as set forth in this section. The CBE-A/E Program shall not apply to continuing contracts. The County Mayor or his or her designee shall take steps to ensure that the Small Business Enterprise Architecture & Engineering objective of assuring that not less than ten (10) percent of the County's total annual expenditures for professional architectural, landscape architectural, engineering, and surveying and mapping services, are expended with CBE-A/Es certified under this section is met. The provisions of this section shall apply to all departments and agencies of the County and the Public Health Trust. The words County Mayor in this section shall mean the County Mayor or his or her designee. All leases and contracts for privately funded construction on County-owned land for which measures are determined to be appropriate under this section shall contain specific provisions to implement the intent of the CBE program in a manner consistent with its application to County design contracts. A Small Business Enterprise Goods Program and Small Business Enterprise Services Program goal(s) may be applied to projects with an estimated value over $700,000. Notwithstanding the foregoing, this section shall not apply to privately funded construction on any County-owned facilities or property where the total value of the construction is two hundred thousand dollars ($200,000.00) or less.

B. *Miami-Dade County Small Business Enterprise Architecture & Engineering Program:*

1. *Agreement Set-Asides:* The County Commission, or Public Health Trust may determine it is in its best interest to set-aside a prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when determined, prior to proposal advertisement, that there are at least three (3) Tier 1, Tier 2, Tier 3, and/or Tier 4 CBE-A/Es available. On a set-aside agreement, the successful proposer must be a certified Tier 1, Tier 2, Tier 3, and/or Tier 4 CBE-A/E; one hundred (100) percent of the total estimated value of professional services of the agreement must be performed by either the successful proposer, or the successful proposer and other certified Tier 1, Tier 2, Tier 3, and/or Tier 4 CBE-A/Es.

   Transferring to, or substitution of, a non first tier CBE-A/E through subconsulting or otherwise all or part of the actual work of a set-aside agreement is prohibited unless such transfer receives prior approval from Small Business Development as consistent with normal industry practice except as allowed under (commercially useful function) above.

2. >>*<u>Standardized Subconsultant Utilization</u>*<< [[*~~Subconsultant goals~~*]]*:* >><u>Awarded proposers are required to meet the following standardized utilization percentages in</u>

County awarded contracts: (1) for task-based contract awards, awarded proposers shall utilize ten percent (10%) of contract funds on CBE-A/E firms; (2) for project specific awards, awarded proposers shall utilize fifteen percent (15%) of contract funds on CBE-A/E firms. The County's procurement staff may waive the standardized utilization percentages and/or provide for higher or lower utilization percentages for good cause and upon written justification.<< [[~~The County Commission, or Public Health Trust may establish subconsultant goals to be applied to a particular agreement based on estimates made prior to proposal advertisement of the quality, quantity and type of subconsulting opportunities provided by the agreement, and of the availability of first, second, and third tier CBE-A/Es to afford effective subconsulting competition therefor. After proposal advertisement, or other formal public notice, the established subconsultant goal may be reduced only with the approval of the County Commission or Public Health Trust.~~]]

Proposal documents shall require proposers to submit a Certificate of Assurance acknowledging >>compliance with the applicable<< [[~~all~~]] Small Business Enterprise standardized utilization percentage [[~~goals~~]] assigned to the project and the submittal of a Utilization Plan via the County's web-based system within the time frame identified by SBD. >>For task-based contract awards, the Utilization Plan shall describe how the prime shall meet its 10% utilization requirement in their performance of the particular contract and shall not be required to identify the subconsultant firms. For project specific awards<< [[~~The~~]] >>the<<Utilization Plan, shall be submitted by the prime and the subconsultant and shall at a minimum state the type of work that the subconsultant will perform, the technical certification category, and >>an estimated<< [[~~the~~]] percentage [[~~that~~]] >>of<<the amount of the fees payable to the subconsultant bears to the overall fees payable under the contract. Failure to submit the required Certificate of Assurance at the time of proposal submission, and submit the Utilization Plan via the County's web-based system within the time frame specified by SBD, shall render the proposer non-compliant. [[~~A CBE-A/E firm may fulfill a subconsultant goal in only one (1) goal type per contract.~~

~~Proposal documents shall include documentation demonstrating the basis for the subconsultant goal established in the contract. Any proposer may challenge or protest the goal by submitting to SBD or the Contracting Officer no later than ten (10) business days prior to the scheduled proposal submission date the reasons for such a challenge or protest in writing. Challenges or protests to a CBE-A/E goal by proposers after that time, or based on reasons not provided in writing within the time frame stated above, shall not be considered by the County Commission.~~]] A successful prime proposer or joint venture certified as a CBE-A/E may perform up to one hundred (100) percent of a CBE-A/E subconsultant goal with its own forces provided that the Certificate of Assurance and subsequent Utilization Plan, as filed with the proposal submission and submitted via the County's web-based system identifies such prime proposer or joint venture as performing such work.

Proposal documents shall provide that:

(i) Only expenditures to CBE-A/Es for performing a commercially useful function shall be counted toward meeting the applicable >>required<< small business >>utilization percentages<< [[~~a specified subconsultant or subcontractor goal~~]];

(ii) Expenditures to CBE-A/Es for acting essentially as a conduit to transfer funds to a non-CBE-A/E shall not be counted toward meeting a >>required<< subconsultant or subcontractor >>utilization percentage<< [[~~goal~~]] unless such conduct receives prior approval from Small Business Development as consistent with normal industry practice; and

(iii) Expenditures to CBE-A/Es who subconsult work further to non-CBE-A/Es shall not be counted toward meeting a >>required<< subconsultant [[~~goal~~]] >>utilization percentage<< unless such subconsulting receives prior approval from Small Business Development as consistent with industry practice.

(iv) Only expenditures to CBE-A/Es made under written subconsultant agreement executed by both the prime proposer and the CBE-A/E shall be counted towards meeting the >>required<< subconsultant [[~~goal~~]] >>utilization percentage<<.

3. *Graduation:* Upon review, any CBE-A/E that exceeds the personal net worth or Tier 2 CBE-A/E size limits established by this section shall be graduated from the CBE-A/E program upon notification by SBD. These firms shall be allowed to complete any currently awarded agreements and remain eligible to be awarded agreements as primes or subconsultants for proposal(s) submitted prior to notice of graduation. However, the graduated firm will not be eligible to receive any new agreements under the CBE-A/E program.

4. *Bonding and Financial Assistance Program:* This program will provide CBEs with assistance in obtaining bonding and/or financial assistance for architectural, landscape architecture, engineering, and surveying and mapping professional services, and design-build contracts. Bonding assistance will include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes. Financial assistance will include providing financial assistance such as mobilization capital, line of credit and/or working capital loans through partnering relationships with financial institutions.

[[~~C. *A/E Advisory Board.* There is hereby created a Miami-Dade County Advisory Board for the Small Business Enterprise Architecture & Engineering Program.~~

~~1. The A/E Advisory Board will operate as a focal point for the public and with the assistance of the County Mayor or designee, will collect, input, and disseminate information related to economic opportunities within Miami-Dade County government for CBE-A/E business owners.~~

~~2. The A/E Advisory Board shall consists of fifteen (15) members, as follows:~~

~~a. Two (2) members to be appointed by the Mayor.~~

~~b. One (1) member to be appointed by each County Commissioner.~~

~~3. The term of the mayoral appointees and that of each commissioner shall be coterminous with the term of the appointing Mayor and commissioner, respectively.~~

~~4. In no event shall an A/E Advisory Board member serve more than four (4) consecutive years.~~

~~5. Members shall serve without compensation.~~

~~6. The A/E Advisory Board may submit interim reports as it deems appropriate.~~

~~7. SBD shall provide appropriate staff support.~~

~~8. Sections 2-11.1(c) and (d) of the Conflict of Interest and Code of Ethics Ordinance of Miami-Dade County are waived for A/E Advisory Board members for transactions arising from the exercise of those powers given the A/E Advisory Board by this section.~~

~~9. The County Mayor shall prepare a report with respect to the A/E Advisory Board pursuant to Section 2-11.37 of the Code of Miami-Dade County.~~]]

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(5) *Sanctions:* 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. Termination, suspension, or cancellation of the agreement in whole or part;

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.

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 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 >>or an existing contract with the County<<. 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 noncompliant. 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 be subject to debarment to be initiated by SBD in accordance with the debarment procedures of the County. After serving a debarment for failure to satisfy a third 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.

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:

1. A CBE-A/E serving as a conduit for CBE-A/E work awarded to a firm as a CBE-A/E but which is being performed by a non-CBE-A/E firm;
2. A prime successful proposer not meeting CBE-A/E Program set-aside or subconsultant goal requirements;
3. Not obtaining or retaining CBE-A/E certification while performing work designated for CBE-A/E firms;
4. Failure to report payments to subconsultants or subcontractors via the County's web-based system, or failure of subconsultants or subcontractors to confirm payments upon notification by the prime contractor, within the specified time frame;
5. Failure to comply with CBE-A/E certification requirements, including not maintaining a place of business in Miami-Dade County, not reporting organizational

and operational changes, providing inaccurate or false information, and other certification related violations;

6. Failure to maintain certification as a CBE-A/E;
7. Deviation from the Utilization Plan without prior approval from SBD;
8. Termination of the CBE-A/E's agreement without prior approval from SBD;
9. Reduction of the scope of work of a CBE-A/E subconsultant agreement without prior approval from SBD;
10. Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from SBD;
11. Failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a Utilization Plan; and
12. Failure to pay subconsultants promptly and in accordance with the administrative procedures under this section.

* * *

<u>Section 2.</u> Pursuant to Rec. Nos. 11, 27 and 54 of the Task Force, 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.

* * *

(2) *Definitions.* The following definitions shall apply in this section.

1. *Agreement* is a duly executed legally binding contract.
2. *Available* or *availability* means to have prior to bid submission, the ability to provide services under a contract, by having:
   a. Reasonably estimated, uncommitted capacity;
   b. All necessary licenses, permits, registrations and certifications, including Small Business Enterprise (SBE) certification to provide the type of services being purchased under the contract;
   c. The ability to obtain financing/insurance that is reasonably required and consistent with normal industry practice; and
   d. The ability to otherwise meet bid specifications.
3. *Bid* means a quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letter of interest or offer for a contract.

4. *Bid preference* means an amount deducted from the total bid price in order to calculate the bid price to be used to evaluate the bid submitted by a SBE on a competitively bid contract to be awarded on the basis of price (as opposed to an RFP, RFI or RFQ) which is not set aside.

5. *Bidder* or *Proposer* means any person, partnership, corporation or other business entity that submits a bid or proposal.

6. *Board* means the Board of County Commissioners of Miami-Dade County, Florida.

7. *Certificate of Assurance* means the departmental form submitted with bid documents whereby the Bidder acknowledges: (i) Small Business Enterprise ("SBE") measures apply to the project; and (ii) Bidder will submit its list of certified SBEs to satisfy the measures via Miami-Dade County's web-based system, within the specified time frame.

8. *Commercially useful function* means contractual responsibility for the execution of a distinct element of the work of a contract by a SBE and the carrying out of its contractual responsibilities by actually performing, managing, and supervising the work involved. The determination of whether an activity is a commercially useful function shall include the evaluation of the amount of work subcontracted; normal industry practices; the skills, qualifications, or expertise of the enterprise to perform the work; whether the business owner performs, manages, and/or supervises the work involved; and other relevant factors. Acting as an authorized representative of a manufacturer as is normal industry practice is considered a commercially useful function. Commercially useful function shall also include a distributor authorized by a manufacturer to distribute the manufacturer's products locally. Acting as a broker is not considered a commercially useful function.

9. *Contract* means an agreement for the purchase of services, including professional services. Professional services as used in this section includes but is not limited to accounting, legal, health care, consulting and management services. Contract does not mean: an agreement to purchase, lease, or rent real property; a grant, license, permit, franchise or a concession; an agreement to acquire professional architectural, engineering, landscape architectural or land surveying and mapping services of seven hundred thousand dollars ($700,000.00) or less; or a contract for construction or construction management services of seven hundred thousand dollars ($700,000.00) or less.

10. *Graduation* means the SBE has exceeded either the personal net worth, or the specific size limits stated for the program and may no longer be eligible to participate in the program.

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

12. *Joint venture* means a business arrangement of two (2) or more parties, in which at least one (1) is a SBE that agrees to pool its resources for the purpose of accomplishing a specific task. The details of Joint venture participation in the SBE-Services program shall be provided in Implementing Order No. IO 3-41.

13. *Make-up Plan* means a plan whereby a bidder submits via the County's web-based system >>for future contracts or to SBD for existing contracts<< its commitment [[~~that if awarded the contract, it will fulfill~~]] >>to<< all or a portion of any pending Small Business Enterprise Services makeup requirement, and identify 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 SBD.

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

15. *Mentor-Protege Program* is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging SBEs in order for the latter to benefit from the knowledge and experience of the established mentor firms. The details of this program shall be provided in Implementing Order No. IO 3-41.

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

17. *Review Committee* or *RC* means the committee established by the Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus and when public input requires deliberation regarding the measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed.

18. *SBD* means the Division of Small Business Development or successor division or department.

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

    A SBE,

    A joint venture with one or more SBEs.

[[~~20. *Small Business Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise Program(s).~~]]

[[~~21.~~]]>>20.<< *Small Business Enterprise ("SBE" or "SBE-Services")* means a business entity certified by SBD, providing services, which has a valid business tax receipt issued by Miami-Dade County at least one year prior to certification, an actual place of business in Miami-Dade County, not a Virtual Office, and whose three year average gross revenues does not exceed the following contracting participation levels:

(i) Tier 1 — $0 to $750,000;

(ii) Tier 2 — $750,000.01 to $2,000,000;

(iii) Tier 3 — $2,000,000.01 to $5,000,000; or

(iv) Tier 4 — $5,000,000.01 to $8,000,000.

No firm shall be certified as a SBE where the personal net worth of any of its owners is more than $3,500,000.00, exclusive of: (a) the value of the primary residence for which there is a homestead exemption; (b) the value of the business; and (c) funds invested in an individual retirement account ("IRA"), 401k, pension, or other official retirement account. The owner MUST provide information about the terms and restrictions of the account(s) to SBD, and certify that the retirement account(s) is legitimate. Representations as to a business entity's average gross revenues, personal net worth of owners and payroll shall be subject to audit.

[[~~22.~~]]>>21.<< *Service* means work offered for public or private consumption that does not consist primarily of goods.

[[~~23.~~]]>>22.<< *Set-aside* means the designation of a given contract for competition among SBEs.

[[~~24.~~]]>>23.<< *Subcontractor goal* means a proportion of a total contract value stated as a percentage to be subcontracted to SBE(s) to perform a commercially useful function.

[[~~25.~~]]>>24.<< *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).

[[~~26.~~]]>>25.<< *Virtual Office* means an agreement that provides a receptionist, mail and facsimile services, and similar services, that give the appearance of having a business presence at a location, but the business entity has no ongoing, full-time physical presence in the building. Virtual Offices are invalid for certification purposes.

[[~~27.~~]]>>26.<< *Work* means the provision of services, as defined herein.

(3) *Program.*

* * *

(b) *Contracts of $250,000.00 or less.*

[[~~1. Within the fiscal year, it is required that County departments expend with SBEs 100 percent of the total value of contracts two hundred-fifty thousand dollars ($250,000.00) or less for services. The departmental requirement shall be complied with unless SBD determines that there is either not enough capacity, or the contract(s) can only be handled by a non-SBE firm(s). The total value of Public Health Trust contracts applicable under this section shall remain at one hundred thousand dollars ($100,000.00).~~]]

[[~~2.~~]] >>1.<<Bids or quotes submitted by any SBE that is a Tier 1 or Tier 2 shall automatically receive a 10 percent bid preference and a Tier 3 or Tier 4 SBE shall automatically receive a 5 percent bid preference, when not set-aside for SBEs. When set-aside, the preference shall be: 10 percent for Tier 1 SBEs; 5 percent for Tier 2 SBEs; and 0 percent for Tier 3 and Tier 4 SBEs. The departments shall

deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation.

[[~~3.~~]] >>2.<<Annually, SBD shall provide a report of awards to SBEs to the Board.

[[~~4. There shall be at least two available SBEs to perform a competitive bid contract.~~]]

* * *

[[~~(g) *Small Business Advisory Board*. There is hereby created a Miami-Dade County Advisory Board for the Small Business Enterprise Program(s).~~

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

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

~~a. One member to be appointed by the Mayor.~~

~~b. One member to be appointed by each County Commissioner.~~

~~c. One member to be appointed by the County Manager.~~

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

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

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

~~6. Members shall serve without compensation.~~

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

~~8. SBD shall provide appropriate staff support.~~

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

[[~~(h)~~]]>>(g)<< *Certification.*

1. Small Business Development shall implement eligibility criteria and administrative procedures for entities to be certified as SBEs.

2. Any SBE that exceeds the personal net worth or size limits shall immediately be graduated from the program after formal written notification. Such SBE shall be allowed to remain through the contract period on awarded contracts and any options to renew on the contract. The graduated firm shall not be eligible for any new contracts under the SBE program under the existing certification. With exception of provisions described in the ordinance for graduation from the SBE program, loss of

certification may lead to removal of the firm from continued participation in the Small Business Enterprise program.

3. Small Business Development shall maintain an updated list of firms that identifies each listed SBE based on the nature of the services the SBE shall be certified to provide.

4. Small Business Development shall not certify an applicant, shall not recertify an SBE, and shall decertify an SBE that fails to comply with the criteria or procedures for obtaining or maintaining certification. SBD shall have authority to suspend the certification of a SBE during any appeal of a decertification decision. Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD.

5. The County Mayor or designee shall establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners. Certification must be in effect at the time of bid submission; at bid award, and throughout the duration of the contract. The County Mayor or County department responsible for conducting the procurement shall confirm a SBE's certification and bid preference eligibility as part of the responsibility check prior to an award recommendation. SBD shall provide quarterly reports to the County Mayor and the Board of all SBEs whose certification status has changed during that three month period. SBEs experiencing changes in address or ownership shall notify SBD within 30 days of the effective date of such changes.

6. Applicants and certified SBEs must have a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, and an actual place of business in Miami-Dade County, not a Virtual Office, at which they perform a commercially useful function in the provision of the type of services for which certification is sought in order to be eligible for certification or remain certified. In addition, a firm shall not be certified unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to the retention and expansion of employment opportunities and the support and increase to the County's tax base.

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

8. A business owner alone or as a member of a group, shall own or control only one SBE at a time and shall not own and control another separate business certified under the Small Business Enterprise Program.

9. Small Business Development may require applicants and SBEs to submit information regarding their business operations in order to determine eligibility for certification.

[[~~(i)~~]]>>(h)<< *Prompt Payment.* The prompt payment provisions of this section shall take precedence over Section 2-8.1.4 of the Code ("Sherman S. Winn Prompt Payment Ordinance"), as to the contracts specified below:

1. All firms, including SBEs providing services to the County, shall receive payments promptly in order to maintain sufficient cash flow. Billings from prime vendors under goods and services contracts with Miami-Dade County or the Public Health Trust, that are a SBE/Micro Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on these amounts not in dispute within 14 calendar days of receipt of such billing by the County, or the Trust.

2. The County or Public Health Trust shall establish administrative procedures requiring that billings from SBE prime vendors on contracts shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or Trust.

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

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

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

[[~~(j)~~]]>>(i)<< *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 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 >><u>or on an existing contract with the County</u><<. 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 noncompliant. 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 be subject to debarment to be initiated by SBD in accordance with the debarment procedures of the County. After serving a debarment for failure to satisfy a third 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.

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

1. A SBE serving as a conduit for SBE work awarded to a firm as a SBE but which is being performed by a non-SBE firm;
2. A prime contractor not meeting SBE Services Program set-aside or subcontractor goal requirement;
3. Not obtaining or retaining SBE certification while performing work designated for SBE firms;
4. Failure of the prime contractor to report payments to subcontractors via the County's web-based system upon notification of payment by the County, or failure of subcontractors to confirm payments upon notification by the prime contractor, within the specified time frame;
5. Failure to comply with SBE certification requirements, including not maintaining an actual place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
6. Failure to maintain certification as a SBE;
7. Deviation from the Utilization Plan without prior approval from SBD;
8. Termination of the SBE's contract without prior approval from SBD;
9. Reduction of the scope of work of a SBE subcontractor agreement without prior approval from SBD;
10. Modifications to the terms and/or prices of payment to a SBE without prior approval from SBD;
11. Failure to enter into a written subcontract with a SBE after listing the firm on a Utilization Plan; and
12. Failure to pay subcontractors promptly and in accordance with the administrative procedures under this section.

The foregoing obligation shall be in addition to any SBE subcontractor goal otherwise applicable to the future contract. The contractor's failure to enter into a written subcontract with a SBE after listing the firm in its Utilization Plan, may result in the imposition of one or more of the sanctions listed in Subsection (j) above.

[[~~(k)~~]]>>(j)<< *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 bid and competitive selection documents:

1. The exclusion from county contracting and subcontracting for a specified period of time, not to exceed three (3) years, of a contractor, its individual officers, its shareholders with significant interests, and its affiliated businesses.
2. The loss of eligibility to be certified as an SBE for a specified period of time, not to exceed three (3) years, for an applicant or a SBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.

3. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, and SBE certification for a specified period of time, not to exceed five (5) years.

4. If any individual or corporation, partnership or other entity, or any individual officer, shareholder with significant interests, director or partner of such entity or affiliated business of such entity participates in an attempt to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, subcontracting, and SBE certification, for a specified period of time, not to exceed five (5) years.

5. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the 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 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; 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 shall also constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms. 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.

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 contracts for a period not to exceed three (3) years.

[[~~(l)~~]]>>(k)<< *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)~~]]>>(l)<< *Appeals.*

1. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer 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 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. Pursuant to Rec. Nos. 11, 27 and 54 of the Task Force, 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.

* * *

(2) *Definitions.* The following definitions shall apply in this section:

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

9. *Contract* means an agreement for the purchase of goods. Contract does not mean: an agreement to purchase, lease, or rent real property; or a grant, license, permit, franchise or a concession.

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

11. *Graduation* means the SBE has exceeded either the personal net worth, or the specific size limits stated for the program and may no longer be eligible to participate in the program.

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

13. *Joint venture* means a business arrangement of two (2) or more parties, in which at least one (1) is a SBE that agrees to pool its resources for the purpose of accomplishing a specific task. The details of Joint venture participation in the SBE-Goods program shall be provided in Implementing Order No. IO 3-41.

14. *Make-up Plan* means a plan whereby a bidder submits via the County's web-based system >>for future contracts or to SBD for existing contracts<< its commitment [[~~that if awarded the contract, it will~~]] >>to<< fulfill all or a portion of any pending Small Business Enterprise Goods 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 within the time frame specified by SBD.

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

16. *Mentor-Protégé* Program is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging SBEs in order for the latter to benefit from the knowledge and experience of the established Mentor firms. The details of this program shall be provided in Implementing Order No. IO 3-41.

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

18. *Review Committee* or *RC* means the committee established by the Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus and when public input requires deliberation regarding the measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed.

19. *SBD* means the Division of Small Business Development or successor division or department.

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

A SBE,

A joint venture with one or more SBEs.

[[~~21. *Small Business Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise Program(s).~~]]

[[~~22.~~]] >>21.<< *Small Business Enterprise ("SBE" or "SBE-Goods")* means a business entity certified by SBD, providing services, which has a valid business tax receipt issued by Miami-Dade County at least one year prior to certification, an actual place of business in Miami-Dade County, not a Virtual Office, and whose three year average gross revenues does not exceed the following contracting participation levels:

(i) Tier 1 — $0 to $750,000;

(ii) Tier 2 — $750,000.01 to $2,000,000;

(iii) Tier 3 — $2,000,000.01 to $5,000,000; or

(iv) Tier 4 — $5,000,000.01 to $8,000,000.

The term Small Business Enterprise shall also include a (x) manufacturer with 100 employees or less, or (y) wholesaler with 50 employees or less, without regard to gross revenues. A wholesaler or manufacturer must comply with all other requirements of this section to be a certified SBE.

No firm shall be certified as a SBE where the personal net worth of any of its owners is more than $3,500,000.00, exclusive of: (a) the value of the primary residence for which there is a homestead exemption; (b) the value of the business; and (c) funds invested in an individual retirement account ("IRA"), 401k, pension, or other official retirement account. The owner MUST provide information about the terms and restrictions of the account(s) to SBD, and certify that the retirement account(s) is legitimate. Representations as to a business entity's average gross revenues, personal net worth of owners and payroll shall be subject to audit.

[[~~23.~~]] >>22.<< *Set-aside* means the designation of a given contract for competition among SBEs.

[[~~24.~~]]>>23.<< *Subcontractor goal* means a proportion of a total contract value stated as a percentage to be subcontracted to SBE(s) to perform a commercially useful function.

[[~~25.~~]]>>24.<< *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).

[[~~26.~~]]>>25.<< *Virtual Office* means an agreement that provides a receptionist, mail and facsimile services, and similar services, that give the appearance of having a business presence at a location, but the business entity has no ongoing, full-time physical presence in the building. Virtual Offices are invalid for certification purposes.

[[~~27.~~]]>>26.<< *Work* means the provision of goods, as defined herein.

(3) *Program.*

* * *

(b) *Contracts of $250,000.00 or less.*

[[~~1. Within the fiscal year, it is required that County departments expend with SBEs 100 percent of the total value of contracts two hundred-fifty thousand dollars ($250,000.00) or less for goods. The departmental requirement shall be complied with unless SBD determines that there is either not enough capacity, or the contract(s) can only be handled by a non SBE firm(s). The total value of Public Health Trust contracts applicable under this section shall remain at one hundred thousand dollars ($100,000.00).~~]]

[[~~2.~~]] >>1.<< Bids or quotes submitted by any SBE that is a Tier 1 or Tier 2 (which shall also include manufacturers with 50 or less employees, and wholesalers with 15 or less employees), shall automatically receive a 10 percent bid preference, and a Tier 3 or Tier 4 SBE (which shall also include manufacturers with 51 to 100 employees, and wholesalers with 16 to 50 employees), shall automatically receive a 5 percent bid preference, when not set-aside for SBEs. When set-aside, the preference shall be: 10 percent for Tier 1 SBEs; 5 percent for Tier 2 SBEs, which shall also include manufacturers with 50 or less employees, and wholesalers with 15 or less employees; and 0 percent for Tier 3 and Tier 4 SBEs, which shall also include wholesalers with 16 to 50 employees, and manufacturers with 51 to 100 employees. The departments shall deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation.

[[~~3.~~]] >>2.<< Annually, SBD shall provide a report of awards to SBEs to the Board.

[[~~4. There shall be at least two available SBEs to perform a competitive bid contract.~~]]

* * *

[[~~(g) *Small Business Advisory Board.* The Small Business Advisory Board shall be the advisory board for the Small Business Enterprise Program(s), as codified in Section 2-8.1.1.1.1(3)(g) of the Code of Miami-Dade County Florida.~~]]

[[~~(h)~~]]>>(g)<< *Certification.*

1. Small Business Development shall implement eligibility criteria and administrative procedures for entities to be certified as SBEs.

2. Any SBE that exceeds the personal net worth or size limits shall immediately be graduated from the program after formal written notification. Such SBE shall be allowed to remain through the contract period on awarded contracts and any options

to renew on the contract. The graduated firm shall not be eligible for any new contracts under the SBE program under the existing certification. With exception of provisions described in the ordinance for graduation from the SBE program, loss of certification may lead to removal of the firm from continued participation in the Small Business Enterprise program.

3. Small Business Development shall maintain an updated list of firms that identifies each listed SBE based on the nature of the goods the SBE shall be certified to provide.

4. Small Business Development shall not certify an applicant, shall not recertify an SBE, and shall decertify an SBE that fails to comply with the criteria or procedures for obtaining or maintaining certification. SBD shall have authority to suspend the certification of a SBE during any appeal of a decertification decision. Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD.

5. The County Mayor or designee shall establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners. Certification must be in effect at the time of bid submission; at bid award, and throughout the duration of the contract. The County Mayor or County department responsible for conducting the procurement shall confirm a SBE's certification and bid preference eligibility as part of the responsibility check prior to an award recommendation. SBD shall provide quarterly reports to the County Mayor and the Board of all SBEs whose certification status has changed during that three month period. SBEs experiencing changes in address or ownership shall notify SBD within 30 days of the effective date of such changes.

6. Applicants and certified SBEs must have a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, and an actual place of business in Miami-Dade County, not a Virtual Office, at which they perform a commercially useful function in the provision of the type of goods for which certification is sought in order to be eligible for certification or remain certified. In addition, a firm shall not be certified unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to the retention and expansion of employment opportunities and the support and increase to the County's tax base.

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

8. A business owner alone or as a member of a group, shall own or control only one SBE at a time and shall not own and control another separate business certified under the Small Business Enterprise Program.

9. Small Business Development may require applicants and SBEs to submit information regarding their business operations in order to determine eligibility for certification.

[[~~(i)~~]]>>(h)<< *Prompt Payment.* The prompt payment provisions of this section shall take precedence over Section 2-8.1.4 of the Code ("Sherman S. Winn Prompt Payment Ordinance"), as to the contracts specified below:

1. All firms, including SBEs providing goods to the County, shall receive payments promptly in order to maintain sufficient cash flow. Billings from prime vendors under goods contracts with Miami-Dade County or the Public Health Trust, that are a SBE contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within 14 calendar days of receipt or such billings by the County, or Trust.

2. The County or Public Health Trust shall establish administrative procedures requiring that billings from SBE prime vendors on contracts shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or Trust.

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

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

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

[[~~(j)~~]]>>(i)<< *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 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 >><u>or on an existing contract with the County</u><<. 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 noncompliant. 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 be subject to debarment to be initiated by SBD in accordance with the debarment procedures of the County. After serving a debarment for failure to satisfy a third 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.

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

1. A SBE serving as a conduit for SBE work awarded to a firm as a SBE but which is being performed by a non-SBE firm;
2. A prime contractor not meeting SBE Goods Program set-aside or subcontractor goal requirement;
3. Not obtaining or retaining SBE certification while performing work designated for SBE firms;
4. Failure of the prime contractor to report payments to subcontractors via the County's web-based system upon notification of payment by the County, or failure of subcontractors to confirm payments upon notification by the prime contractor, within the specified time frame;
5. Failure to comply with SBE certification requirements, including not maintaining an actual place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
6. Failure to maintain certification as a SBE;
7. Deviation from the Utilization Plan without prior approval from SBD;
8. Termination of the SBE's contract without prior approval from SBD;
9. Reduction of the scope of work of a SBE subcontractor agreement without prior approval from SBD;
10. Modifications to the terms and/or prices of payment to a SBE without prior approval from SBD;
11. Failure to enter into a written subcontract with a SBE after listing the firm on a Utilization Plan; and
12. Failure to pay subcontractors promptly and in accordance with the administrative procedures under this section.

The foregoing obligation shall be in addition to any SBE subcontractor goal otherwise applicable to the future contract. The contractor's failure to enter into a written subcontract with a SBE after listing the firm in its Utilization Plan, may result in the imposition of one or more of the sanctions listed in Subsection (j) above.

[[~~(k)~~]]>>(j)<< *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 bid and competitive selection documents:

1. The exclusion from county contracting and subcontracting for a specified period of time, not to exceed three (3) years, of a contractor, its individual officers, its shareholders with significant interests, and its affiliated businesses.

2. The loss of eligibility to be certified as an SBE for a specified period of time, not to exceed three (3) years, for an applicant or a SBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.

3. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, and SBE certification for a specified period of time, not to exceed five (5) years.

4. If any individual or corporation, partnership or other entity, or any individual officer, shareholder with significant interests, director or partner of such entity or affiliated business of such entity participates in an attempt to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, subcontracting, and SBE certification, for a specified period of time, not to exceed five (5) years.

5. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the 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 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; 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 shall also constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms. 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.

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 contracts for a period not to exceed three (3) years.

[[~~(l)~~]]>>(k)<< *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)~~]]>>(l)<< *Appeals.*

1. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer 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 Section 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 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. Pursuant to Rec. No. 28 of the Task Force, the Board of County Commissioners ("Board") directs the County Attorney's Office to coordinate with the office of the Chairman of the Board of County Commissioners to prepare all necessary legislative items including County Code changes or adoption of or amendments to Implementing Order(s) to establish a preference in invitations to bid and other price-based solicitations or a selection factor for requests for proposals and other qualitative solicitations in lieu of providing subcontractor small business goals and measures for the purchase of goods and services. The requested legislation shall also remove project review analysis committees for goods and services contracts pursuant to recommendation 11 of the Task Force. This section may be amended by resolution of this Board.

Section 5. The Board directs the County Mayor or County Mayor's designee to prepare a written report analyzing the County's small business enterprise programs and policies. The report shall include, to the extent practicable: an overview of the County's small business programs and policies; an analysis of the costs to the County associated with administering and implementing such programs and policies, including administrative, personnel, operational, compliance, and other material fiscal costs; an analysis of the economic impacts of such programs and policies, including, where data are available, participation levels, County contract awards, job creation and retention, business growth, local economic activity, and other measurable economic outcomes; and further recommendations to improve the effectiveness, efficiency, accountability, or cost-effectiveness of the County's small business programs and policies. The County Mayor or County Mayor's designee shall place the completed report on an agenda of the Board within 90 days, without committee review, pursuant to Rule 5.06(j) of the Board's Rules of Procedure.

Section 6. Pursuant to Rec. Nos. 30, 33, 34, 36, and 37 of the Task Force, section 2-8.5 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 2-8.5. – Procedure to provide preference to local business in county contracts.

(1) *Definitions.*

(a) *General services* means support services performed by an independent contractor requiring specialized knowledge, experience, or expertise that includes, but is not limited, to pest control, janitorial, laundry, catering, security, lawn maintenance and maintenance of equipment.

(b) *Goods* includes, but is not limited to, supplies, equipment, materials and printed matter.

(c) Local business means the vendor has a valid business tax receipt issued by Miami-Dade County at least one year prior to bid or proposal submission, and a physical business address located within the limits of Miami-Dade County from which the vendor operates or performs business ("Local Business Location"). The vendor must own or lease the Local Business Location and the address or another Local Business Location where the owner maintains the appropriate business permits, must have served as the place of employment for at least three full time employees of the vendor for the continuous period of one year prior to the bid or proposal submission. By exception, in the event the vendor is a Small Business Enterprise certified pursuant to any County ordinance, the vendor's Local Business Location must have served as the place of employment for at least one full time employee of the vendor for the continuous period of one year prior to the bid or proposal submission. The owner of the business may be counted towards the full time employee requirement provided that the owner was paid a salary by the business for the one-year period prior to bid or proposal submission at the Local Business Location. Local Firms who provide goods or services which are exempt from Miami-Dade Business Tax Receipt requirements shall be required to submit documentation, to the County's satisfaction, demonstrating the physical business presence of the firm within the limits of Miami-Dade County for at least one year prior to bid or proposal submission. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In addition to the foregoing, a vendor shall not be considered a "local business" unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to, the retention and expansion of employment opportunities and the support and increase to the County's tax base. [[~~Vendors shall affirm in writing their compliance with the foregoing at the time of submitting their bid or proposal to be eligible for consideration as a "local business" under this section.~~]] If a vendor is a joint venture, the joint venture shall be considered a "local business" under this section, if: (a) the joint venture entity meets the requirements of a "local business" set forth in this section; (b) [[~~all~~]] >><u>at least 60%</u><< of the [[~~constituent vendors comprising~~]] the joint venture meets the requirements of a "local business" set forth in this section. >><u>A special purpose entity, which is a legally independent business entity created for the narrow purpose of contracting with the</u>

County, shall be considered a "local business" under this section if such entity was created by a local business and owned and controlled by a business with at least 60% local ownership. At the time of submitting their bid or proposal, vendors shall affirm in writing their compliance with the foregoing and eligibility as a "local business" under this section. A vendor's failure to affirm their eligibility as a "local business" at the time of bid or proposal submission shall not render such vendors automatically ineligible to qualify as a local business hereunder. Information regarding a vendor's eligibility as a "local business" may be furnished to the County for verification before award.<< The County may, in its sole discretion, investigate any claim that a vendor is not a local business and shall investigate any vendor that claims a Local Business Location located within an area zoned for residential uses for contracts whose award is valued at $500,000.00 or more. >>Additionally, the Office of the Inspector General (OIG) is empowered to conduct random investigations and reviews to verify vendors' claims of eligibility as a local business under this section.<<The vendor shall, as a condition of award of a contract, and at any time after a contract is awarded cooperate fully with any investigation which the County >>or OIG<< decides to conduct in connection with the vendor's claim to be a local business. The obligation to cooperate shall include, but not be limited to, the submittal to the County >>or OIG<< of any document supporting the vendor's claim to being a local business promptly upon request. Such documents shall constitute a public record and may not be submitted subject to any confidentiality or public record exemption. The County Mayor or County Mayor's designee >>or the OIG<<shall provide information on any investigation conducted in any recommendation for award of a contract submitted to the Board of County Commissioner. A vendor who misrepresents the status of its firm under this Section in a proposal or bid submitted to the County will lose the privilege to claim any preference under this Section for a period of up to one year. The County Mayor, in his discretion, may also recommend that the firm be referred for debarment in accordance with Section 2-8.4.1 of the Code of Miami-Dade County.

(d) *Locally Headquartered Business* means a Local Business as defined in this Section which has a Principal Place of Business in Miami-Dade County >>and more than 50 percent of the business's full-time employees work in Miami-Dade County. To qualify as a Locally Headquartered Business under this section, the Local Business shall certify in writing that Miami-Dade County is the only geographic local headquarters and Principal Place of Business that such firm claims<<.

(e) *Principal Place of Business* means the nerve center or the center of overall direction, control, and coordination of the activities of the bidder. If the bidder has only one business location, such business location shall be its principal place of business.

(f) *Professional services* includes any services where the County is obtaining advice, instruction, or specialized work from an individual, firm, or corporation specifically qualified in a particular area.

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(6) *Reciprocity.* In the event Broward, Palm Beach or Monroe County extends preferences to local businesses, Miami-Dade County may enter into an interlocal agreement with such County wherein the preferences of this section may be extended and made available to vendors that have a valid occupational license issued by Broward, Palm Beach or Monroe County to

do business in that County that authorizes the vendor to provide the goods, services, or construction to be purchased, and a physical business address located within the limits of that County. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In addition to the foregoing, a vendor shall not be considered a "local business" unless it contributes to the economic development and well-being of Broward, Palm Beach or Monroe County, whichever is applicable, in a verifiable and measurable way. This may include, but not be limited to, the retention and expansion of employment opportunities and the support and increase to that County's tax base. [[~~Vendors shall affirm in writing their compliance with the foregoing at the time of submitting their bid or proposal to be eligible for consideration as a "local business" under this section.~~]] In no event shall the amount of the preference accorded Broward, Palm Beach or Monroe County firms exceed the amount of preference that such County extends to Miami-Dade County firms competing for its contracts.

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Section 7. Pursuant to Rec. No. 38 of the Task Force, the County Mayor or County Mayor's designee is directed to train County departments on the existing authority under Implementing Order 3-39, Section II(C)(1)(b), which allows County departments to procure "continuing contracts", as that term is defined under Florida statutory law, for specialized architectural and engineering outside of the County's Equitable Distribution Program. This section may be amended by resolution of the Board.

Section 8. This Board directs and authorizes the County Mayor or County Mayor's designee to make conforming changes to the affected implementing or administrative orders to implement the policies set forth in sections 1, 2, 3 and 6. The directive in this section may be amended by resolution of the Board.

Section 9. 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.

<u>Section 10.</u> It is the intention of the Board, and it is hereby ordained that the provisions of this ordinance contained in sections 1, 2, 3 and 6 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.

<u>Section 11.</u> It is the intention of the Board, and it is hereby ordained, that sections 4, 5 and 7 of this ordinance shall be excluded from the Code of Miami-Dade County, Florida.

<u>Section 12.</u> 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: JMM for

Prepared by:

Eduardo W. Gonzalez
Sophia Guzzo

Prime Sponsor: Chairman Anthony Rodriguez