MEMORANDUM

Agenda Item No. 14(A)(1)

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

DATE: October 6, 2026

FROM: Geri Bonzon-Keenan County Attorney

SUBJECT: Ordinance relating to County procurement; implementing, in whole or in part, recommendations from the final report of the Special Task Force to Reduce Inefficiencies in Procurement; reorganizing and modifying the County's procurement regulations; creating chapter 3 of the Code relating to County procurement; amending the requirements relating to the acquisition of professional architectural, engineering services in the Code to remove the requirement that a selection committee evaluate the response to a solicitation if only one responsive bid is received; amending the Cone of Silence to require the County Mayor to commence negotiations within a certain period of time if only one responsive proposal is received or to report to the Board; repealing sections 2-8.1; 2-8.3; 2-10.4; 2-8.1.6; 2-8.2.7; 2-8.2.7.01; 2-8.2.7.02; 2-8.2.5; 2-285; 2-285.2; 2-286.1; 2-8.2.11; 2-8.2.12; 2-8.2.14; 2-8.2.15; 2-8.2.10; 2-10.6; 2-8.2.6; 2-8.1.1.1; 2-8.6.5; 2-10.4.2; 2-8.4; 2-8.1.1; 10-33.02.01; 2-8.6; 2-8.4.1; 10-34; 10-35; 10-36; 10-37; 10-38; 2-8.5; 2-8.5.1; 2-8.1.1.1.1; 2-8.1.1.1.2; 2-10.4.01; 2-8.5.2; 2-8.8; 2-8.1.4; 2-8.10; 2-10.7; 2-8.2.6.1; 2-8.2.6.2; 2-11.15; 9-3; 2-9; 2-10 and 2-10.1 of the Code and chapter 2, article CXLII of the Code relating to contracts and purchases generally, the Mayor’s recommendations, the acquisition of professional architectural, engineering, landscape architectural services, the program for expedited purchasing, the Economic Stimulus Ordinance, the Miscellaneous Construction Contracts Program, the Janitorial and Landscaping Services Purchasing Program, Aviation Department Procurement and the County Mayor’s authority as to such contracts, the Acceleration of Aviation Department Capital Improvement Projects, the County Mayor’s authority as to retail activities at Miami International Airport, the Water and Sewer Department’s Contracting Authority and its Consent Decree and Capital Improvement Programs Acceleration Ordinance, the Jackson Health System Capital Expedite Program, the Seaport Capital Improvement Program’s Expedite And Acceleration Ordinance, Procurement policy for contracts funded by Building Better Communities General Obligation Bond Funds, Competitive bidding requirements for county bond transactions, Public-private partnerships and unsolicited proposals, the Taping of selection and negotiation proceedings, the Purchase, sale, lease of real property, Appraisal requirements for the purchase, sale and lease of real property, bid protest procedures, bid collusion, County contracts with those convicted of a felony, penalties for contractors attempting to meet contractual obligations with the County through fraud, misrepresentation or material misstatement, the requirement to list subcontractors and to obtain releases of claims by subcontractors, the prohibition of bidding utility connection fees, the prohibition on membership in trade organizations as qualifications in procurement, the debarment of contractors, local preference, preference for local veteran businesses, small business programs for goods, services and architecture and engineering and the application of those preferences, policy relating to fair subcontracting practices, the prompt payment ordinance, the User Access Program, the purchase of American Iron and Steel Products Procurement Program, the Cybersecurity and Information Technology Procurement and Protection Program, Art in Public Places, the First Source Hiring Referral Program, contract extensions, Intergovernmental Agreements for services, and Joint Purchases; moving the aforementioned Code provisions to chapter 3 of the Code, including technical updates and

revisions; amending section 2-11.1 to move the Cone of Silence to chapter 3 of the Code; amending sections 2-384.3, 10-33.02, 21-154, 22-5, 26-22, 29-120, and 11A-38 of the Code to update references to chapter 3; amending section 8AA-54 of the Code relating to reporting requirements for licensees for cable systems installation, operation and maintenance to remove an outdated reporting requirement; repealing Implementing Orders 2-13, 3-21, 3-32, 3-34, 3-39, 3-41, 3-48, 3-53, 3-54, 3-57, 3-58, 3-68, 8-4, 10-13, and 10-16; adopting Master Procurement Implementing Order ("IO") 3-38 including revision to former IO 3-39, attachment 5 to Master Procurement IO 3-38; authorizing and directing the County Mayor to (1) update the Code references in the Master Procurement IO in accordance with this ordinance, (2) revise the policy on selection committees to provide for administrative review in lieu of selection committee evaluation when only one responsive submission is received, (3) implement a performance review program for County vendors, (4) make recommendations on how to improve local preference and small business goods, services and architectural and engineering programs based on meetings and feedback from the small business community and (5) prepare a written report; directing the Clerk of the Board to create, maintain, and update a centralized, automated online portal for use in the protest process in coordination with the County Mayor

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

Geri Bonzon Keenan
County Attorney

GBK/smm

MEMORANDUM
(Revised)

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

DATE: October 6, 2026

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 14(A)(1)

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. 14(A)(1)
10-6-26

ORDINANCE NO. _____

ORDINANCE RELATING TO COUNTY PROCUREMENT; IMPLEMENTING, IN WHOLE OR IN PART, RECOMMENDATIONS FROM THE FINAL REPORT OF THE SPECIAL TASK FORCE TO REDUCE INEFFICIENCIES IN PROCUREMENT; REORGANIZING AND MODIFYING THE COUNTY'S PROCUREMENT REGULATIONS; CREATING CHAPTER 3 OF THE CODE RELATING TO COUNTY PROCUREMENT; AMENDING THE REQUIREMENTS RELATING TO THE ACQUISITION OF PROFESSIONAL ARCHITECTURAL, ENGINEERING SERVICES IN THE CODE TO REMOVE THE REQUIREMENT THAT A SELECTION COMMITTEE EVALUATE THE RESPONSE TO A SOLICITATION IF ONLY ONE RESPONSIVE BID IS RECEIVED; AMENDING THE CONE OF SILENCE TO REQUIRE THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO COMMENCE NEGOTIATIONS WITHIN A CERTAIN PERIOD OF TIME IF ONLY ONE RESPONSIVE PROPOSAL IS RECEIVED OR TO REPORT TO THE BOARD; REPEALING SECTIONS 2-8.1; 2-8.3; 2-10.4; 2-8.1.6; 2-8.2.7; 2-8.2.7.01; 2-8.2.7.02; 2-8.2.5; 2-285; 2-285.2; 2-286.1; 2-8.2.11; 2-8.2.12; 2-8.2.14; 2-8.2.15; 2-8.2.10; 2-10.6; 2-8.2.6; 2-8.1.1.1; 2-8.6.5; 2-10.4.2; 2-8.4; 2-8.1.1; 10-33.02.01; 2-8.6; 2-8.4.1; 10-34; 10-35; 10-36; 10-37; 10-38; 2-8.5; 2-8.5.1; 2-8.1.1.1.1; 2-8.1.1.1.2; 2-10.4.01; 2-8.5.2; 2-8.8; 2-8.1.4; 2-8.10; 2-10.7; 2-8.2.6.1; 2-8.2.6.2; 2-11.15; 9-3; 2-9; 2-10 AND 2-10.1 OF THE CODE AND CHAPTER 2, ARTICLE CXLII OF THE CODE RELATING TO CONTRACTS AND PURCHASES GENERALLY, THE MAYOR'S RECOMMENDATIONS, THE ACQUISITION OF PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL SERVICES, THE PROGRAM FOR EXPEDITED PURCHASING, THE ECONOMIC STIMULUS ORDINANCE, THE MISCELLANEOUS CONSTRUCTION CONTRACTS PROGRAM, THE JANITORIAL AND LANDSCAPING SERVICES PURCHASING PROGRAM, AVIATION DEPARTMENT PROCUREMENT AND THE COUNTY MAYOR'S AUTHORITY AS TO SUCH CONTRACTS, THE ACCELERATION OF AVIATION DEPARTMENT CAPITAL IMPROVEMENT PROJECTS, THE COUNTY MAYOR'S AUTHORITY AS TO RETAIL ACTIVITIES AT MIAMI INTERNATIONAL AIRPORT, THE WATER AND SEWER DEPARTMENT'S CONTRACTING AUTHORITY AND ITS CONSENT DECREE AND CAPITAL IMPROVEMENT PROGRAMS ACCELERATION ORDINANCE, THE JACKSON HEALTH SYSTEM CAPITAL EXPEDITE PROGRAM, THE SEAPORT CAPITAL IMPROVEMENT PROGRAM'S EXPEDITE AND ACCELERATION ORDINANCE, PROCUREMENT POLICY FOR CONTRACTS FUNDED BY BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND FUNDS, COMPETITIVE BIDDING REQUIREMENTS FOR COUNTY BOND TRANSACTIONS, PUBLIC-PRIVATE PARTNERSHIPS AND UNSOLICITED PROPOSALS, THE TAPING OF SELECTION AND NEGOTIATION PROCEEDINGS, THE PURCHASE, SALE, LEASE OF REAL PROPERTY, APPRAISAL REQUIREMENTS FOR THE PURCHASE, SALE AND LEASE OF REAL PROPERTY, BID PROTEST PROCEDURES, BID COLLUSION, COUNTY CONTRACTS WITH THOSE CONVICTED OF A FELONY, PENALTIES FOR CONTRACTORS ATTEMPTING TO MEET CONTRACTUAL OBLIGATIONS WITH THE COUNTY THROUGH FRAUD,

MISREPRESENTATION OR MATERIAL MISSTATEMENT, THE REQUIREMENT TO LIST SUBCONTRACTORS AND TO OBTAIN RELEASES OF CLAIMS BY SUBCONTRACTORS, THE PROHIBITION OF BIDDING UTILITY CONNECTION FEES, THE PROHIBITION ON MEMBERSHIP IN TRADE ORGANIZATIONS AS QUALIFICATIONS IN PROCUREMENT, THE DEBARMENT OF CONTRACTORS, LOCAL PREFERENCE, PREFERENCE FOR LOCAL VETERAN BUSINESSES, SMALL BUSINESS PROGRAMS FOR GOODS, SERVICES AND ARCHITECTURE AND ENGINEERING AND THE APPLICATION OF THOSE PREFERENCES, POLICY RELATING TO FAIR SUBCONTRACTING PRACTICES, THE PROMPT PAYMENT ORDINANCE, THE USER ACCESS PROGRAM, THE PURCHASE OF AMERICAN IRON AND STEEL PRODUCTS PROCUREMENT PROGRAM, THE CYBERSECURITY AND INFORMATION TECHNOLOGY PROCUREMENT AND PROTECTION PROGRAM, ART IN PUBLIC PLACES, THE FIRST SOURCE HIRING REFERRAL PROGRAM, CONTRACT EXTENSIONS, INTERGOVERNMENTAL AGREEMENTS FOR SERVICES, AND JOINT PURCHASES; MOVING THE AFOREMENTIONED CODE PROVISIONS TO CHAPTER 3 OF THE CODE, INCLUDING TECHNICAL UPDATES AND REVISIONS; AMENDING SECTION 2-11.1 TO MOVE THE CONE OF SILENCE TO CHAPTER 3 OF THE CODE; AMENDING SECTIONS 2-384.3, 10-33.02, 21-154, 22-5, 26-22, 29-120, AND 11A-38 OF THE CODE TO UPDATE REFERENCES TO CHAPTER 3; AMENDING SECTION 8AA-54 OF THE CODE RELATING TO REPORTING REQUIREMENTS FOR LICENSEES FOR CABLE SYSTEMS INSTALLATION, OPERATION AND MAINTENANCE TO REMOVE AN OUTDATED REPORTING REQUIREMENT; REPEALING IMPLEMENTING ORDERS 2-13, 3-21, 3-32, 3-34, 3-39, 3-41, 3-48, 3-53, 3-54, 3-57, 3-58, 3-68, 8-4, 10-13, AND 10-16; ADOPTING MASTER PROCUREMENT IMPLEMENTING ORDER ("IO") 3-38 INCLUDING REVISION TO FORMER IO 3-39, ATTACHMENT 5 TO MASTER PROCUREMENT IO 3-38; AUTHORIZING AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO (1) UPDATE THE CODE REFERENCES IN THE MASTER PROCUREMENT IO IN ACCORDANCE WITH THIS ORDINANCE, (2) REVISE THE POLICY ON SELECTION COMMITTEES TO PROVIDE FOR ADMINISTRATIVE REVIEW IN LIEU OF SELECTION COMMITTEE EVALUATION WHEN ONLY ONE RESPONSIVE SUBMISSION IS RECEIVED, (3) IMPLEMENT A PERFORMANCE REVIEW PROGRAM FOR COUNTY VENDORS, (4) MAKE RECOMMENDATIONS ON HOW TO IMPROVE LOCAL PREFERENCE AND SMALL BUSINESS GOODS, SERVICES AND ARCHITECTURAL AND ENGINEERING PROGRAMS BASED ON MEETINGS AND FEEDBACK FROM THE SMALL BUSINESS COMMUNITY AND (5) PREPARE A WRITTEN REPORT; DIRECTING THE CLERK OF THE BOARD TO CREATE, MAINTAIN, AND UPDATE A CENTRALIZED, AUTOMATED ONLINE PORTAL FOR USE IN THE PROTEST PROCESS IN COORDINATION WITH THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE; 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 (the "County") 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 ("SPD"), 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, the Task Force has transmitted its Final Report to this Board, thereby fulfilling its mandate established by Resolution No. R-441-25; and

WHEREAS, on September 1, 2026, the Board adopted many of the recommendations of the Task Force's Final Report in Ordinance Nos. 26-61, 26-62, 26-63, and 26-64; and

WHEREAS, in Ordinance No. 26-63, the Board directed the County Attorney's Office to coordinate with the office of the Chairman of the Board of County Commissioners to prepare and present to the Board a simplified procurement framework under the Code of Miami-Dade County (the "Code"), with reference to a single implementing order ("IO") that consolidates all procurement-related IOs; and

WHEREAS, pursuant to that directive, this item presents a simplified procurement framework under the Code, with reference to a single IO that consolidates all procurement-related IOs; and

WHEREAS, the Code revisions proposed in this item reorganize and consolidate the most significant procurement-related provisions of the Code into a single chapter, thereby making it simpler for the County to administer and more transparent for entities contemplating doing business with the County; and

WHEREAS, this item also includes technical updates and revisions to the Code provisions relocated to Chapter 3 of the Code, including renumbering, updating references from the County Manager to the County Mayor, striking references to federally enjoined provisions of the Code, revising references to IO 3-38 and qualifying that the Living Wage Ordinance, Small Business Enterprises for Construction Services Program and the Responsible Wage Ordinance are only effective to the extent those programs are not prohibited by state and federal law; and

WHEREAS, in addition to the above, the proposed Code revisions revise the requirements relating to the acquisition of professional architectural and engineering to remove the requirement that a selection committee be convened to evaluate a response to a solicitation if there is only one responsive submission; and

WHEREAS, the proposed revisions to the Code also incorporate all the Code revisions adopted in Ordinance Nos. 26-61, 26-62, 26-63, 26-64, which implemented many of the recommendations in the Task Force's Final Report; and

WHEREAS, streamlining the primary procurement-related provisions of the Code into a single chapter also necessitated the deletion of the previously located Code provisions and the revision of unrelated provisions of the Code that cross-referenced the previously located Code provisions; and

WHEREAS, the Board also seeks to have all procurement-related policies in a single, master IO; and

WHEREAS, this item would repeal existing procurement-related IOs and consolidate procurement-related policies under a new, master IO, titled Master Procurement IO 3-38; and

WHEREAS, this master procurement IO would also incorporate resolutions that contain procurement-related policies, further streamlining and consolidating the procurement process; and

WHEREAS, in Ordinance No. 26-64, the Board adopted an amendment to IO 3-39 that if the lowest total qualitative score of a selection committee member deviates by twenty-five percent or more from the average selection committee member's score, the lowest qualitative score for each proposer will be discarded; and

WHEREAS, to clarify and simplify the scoring process for selection committees for professional architectural and engineering services, this item removes the language allowing a selection committee member to revise his or her score when that score varies by more than thirty-three percent from the Master Procurement IO 3-38; and

WHEREAS, in addition to the above, this item also directs the County Mayor or County Mayor's designee to eliminate the policy of convening a selection committee when there is only one responsive submission in response to a solicitation and to instead allow for administrative review of the submission provided for in the Master Procurement IO 3-38; and

WHEREAS, the Board desires to streamline and simplify the Code and the County's implementing orders relating to procurement; and

WHEREAS, the County Mayor or County Mayor's designee should continue to work on consolidating and refining County procurement policies and provide a report to the Board within 120 days on the impact of the new Master Procurement IO 3-38 as well as recommending any

further changes to such Implementing Order or the rescission of or modifications to resolutions containing procurement-related policies that will be further incorporated into Master Procurement IO 3-38; and

WHEREAS, this Board also desires to implement Recommendation Number 51 of the Task Force to create a centralized, automated online portal for filing protests that includes: (a) electronic fee submission; (b) real-time tracking of protest status; (c) automated notifications to participants; and (d) a docket of protest decisions to be maintained and updated by the Clerk of the Board,

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

Section 1. The foregoing recitals are incorporated into this ordinance and are approved.

Section 2. The following chapter and sections of the Code of Miami-Dade County are hereby repealed in their entirety: section 2-8.1; section 2-8.3; section 2-10.4; section 2-8.1.6; section 2-8.2.7; section 2-8.2.7.01; section 2-8.2.7.02; section 2-8.2.5; section 2-285; section 2-285.2; section 2-286.1; section 2-8.2.11; section 2-8.2.12; section 2-8.2.14; section 2-8.2.15; section 2-8.2.10; section 2-10.6; section 2-8.2.6; section 2-8.1.1.1; section 2-8.6.5; section 2-10.4.2; section 2-8.4; section 2-8.1.1; section 10-33.02.01; section 2-8.6; section 2-8.4.1; section 10-34; section 10-35; section 10-36; section 10-37; section 10-38; section 2-8.5; section 2-8.5.1; section 2-8.1.1.1.1; section 2-8.1.1.1.2; section 2-10.4.01; section 2-8.5.2; section 2-8.8; section 2-8.1.4; section 2-8.10; section 2-10.7; section 2-8.2.6.1; section 2-8.2.6.2; section 2-11.15; chapter 2, article CXLII; section 9-3; section 2-9; section 2-10; and section 2-10.1.

Section 3. Chapter 3 of the Code of Miami-Dade County is hereby created as follows:[1][2]

CHAPTER 3. >>PROCUREMENT.<< [[~~RESERVED~~]]

>>**ARTICLE I. GENERAL.**

Sec. 3-1. - Contracts and purchases generally.[3]

(1) Scope. Except as provided in subsections (2), (4), (6), (8), (12), and (13), this section shall apply to all contracts for public improvements and purchase of all supplies, materials and services other than professional services, except where precluded by federal or state laws or regulations.

(2)

(a) Bid requirement for certain purchases; delegation of authority to advertise, award and reject bids or proposals for certain purchases. Formal sealed bids shall be secured for all contracts and purchases within the scope of this section when the transaction involves the expenditure of more than two hundred fifty thousand dollars ($250,000.00), except that the Board of County Commissioners, upon written recommendation of the County Mayor or County Mayor's designee, may, by resolution adopted by two-thirds (⅔) vote of the members present, waive competitive bidding when it finds this to be in the best interest of the County. Any recommendation by the County Mayor for a waiver of competitive bidding shall, at a minimum, provide: (i) a written explanation of why competitive bidding processes should not be utilized, how the recommended waiver of competitive bidding is in the best interest of the County, and the steps taken to reduce or eliminate the future need for waivers of competitive bidding for the particular good or service; and (ii) a written description and summary of the findings of any market research or cost-benefit analysis conducted by the County Mayor or County Mayor's designee which supports a waiver

[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] In order to provide a proper point of reference, a complete legislative history, and assistance to the codifier/editor, any section in this ordinance that derives from a section or chapter of the Code that is being replaced shall include a footnote denoting that former section so that the relevant legislative history, editor's notes, annotations, and cross references from those former sections can be included in the corresponding sections in this ordinance.

[3] Formerly section 2-8.1 of the Code.

of competitive bidding as the preferred method of procurement, including any informal competition conducted and any and all efforts to obtain a valuation of the recommended purchase. Except as set forth in section 3-2(2) of the Code, the County Mayor or County Mayor's designee is hereby delegated the authority to advertise for bid all County contracts, including contracts for public improvements, purchases of supplies, materials and services, and purchases of professional services, without the need for action by the Board of County Commissioners. The County Mayor or County Mayor's designee shall be required to include in any such advertisement the measures relating to the County's small business programs established in this Code. The Commission Auditor shall review and evaluate the County Mayor's or County Mayor's designee's exercise of authority delegated pursuant to this section and report the results of his or her evaluation to the Board of County Commissioners on a periodic basis. The County Mayor or County Mayor's designee is hereby delegated the authority to award and reject bids or proposals for contracts for public improvements (construction), and purchases of supplies, materials and services (including professional services) costing five million dollars ($5,000,000.00) or less without the need for action by the Board of County Commissioners. The authority to award contracts provided herein shall not constitute authority for the County Mayor or County Mayor's designee to exercise an option to renew any contract where the combined value for such contract's initial term and the option to renew would exceed five million dollars ($5,000,000.00), and in such instances the County Mayor or County Mayor's designee shall obtain the prior authorization of the Board of County Commissioners to exercise such option. The County Mayor or County Mayor's designee may recommend that the foregoing requirement to obtain prior Commission authorization to exercise an option to renew be waived for a specific contract when the County Mayor or County Mayor's designee deems it to be in the best interests of the County. The Inspector General shall be invited to participate as appropriate in the processes by which the authority delegated hereby is exercised. The County Mayor or County Mayor's designee is delegated the authority to utilize any of the following processes for selection of a contractor to perform contracts for public improvements: competitive price bidding, request for proposals, or request for qualifications without the need for prior approval of the Board of County Commissioners. The County Mayor or County Mayor's designee shall review all construction projects to determine whether the break-up of the project into smaller contracts will increase the opportunity for small businesses to participate therein. The County Mayor or County

Mayor's designee may designate appropriate County staff to exercise the authority delegated hereunder by implementing order, approved by the Board of County Commissioners.

(b) Legacy Purchases. Notwithstanding the provisions of section 3-1(2)(a), formal sealed bids shall not be required for Legacy Purchases which do not result in the budget for the user department(s) exceeding the amount approved by the County Commission during the annual budget approval process. For the purposes of this section, Legacy Purchases shall mean the purchase of goods and services where competition is unavailable, impractical or constrained as a result of the need to continue to operate an existing County system which may not be replaced without substantial expenditure. Such Legacy purchases may be awarded by the Board of County Commissioners upon a majority vote of those Board Members present, where the amount of such award exceeds the threshold for purchases by the Mayor set forth in section 3-1(2)(a). Any recommendation by the County Mayor for a Legacy Purchase shall, at a minimum, provide: (i) a written explanation of why a Legacy Purchase is necessary and the steps taken to reduce or eliminate the future need for Legacy Purchases for the particular good or service; and (ii) a written description and summary of the findings of any market research or cost-benefit analysis conducted by the County Mayor or County Mayor's designee supporting the recommendation of a Legacy Purchase, including any informal competition conducted and any and all efforts to obtain a valuation of the recommended purchase.

(c) Procedures for purchases when competitive procedures are not practicable. Notwithstanding the requirements of section 3-1(2)(a), formal sealed bids for purchase of goods or services shall not be required where such formal sealed bids would not be practicable as set forth herein. Designated Purchase shall mean a purchase within the scope of this section when the purchase through the use of formal sealed bids is not practicable, including, but not limited to: (i) sole source purchases, (ii) services where no competition exists such as public utility services, (iii) where purchases or rates are fixed by law or ordinance, (iv) unique professional or artistic services not governed by the Consultants' Competitive Negotiations Act, Section 287.055, Florida Statutes, (v) purchases of goods and services necessary to address an emergency, or where additional formal competition would not be practicable, and (vi) solicitations where only a single proposer has responded to a competitive solicitation but such response contains material defects and the County still desires to enter into a contract with such proposer. Where appropriate in a Designated Purchase, the County shall pursue the maximum amount of competition available under the

circumstances, which may include telephonic bids and informal price quotations. Any recommendation by the Mayor for the award of a Designated Purchase shall, at a minimum, provide: (i) a written explanation of why the purchase through formal sealed bids would not be practicable under the circumstances and that the recommended non-competitive purchase is in the best interest of the County, and the steps taken to reduce or eliminate the future need for a Designated Purchase for the particular good or service; and (ii) a written description and summary of the findings of any market research or cost-benefit analysis conducted by the County Mayor or County Mayor's designee for a Designated Purchase as the preferred method of procurement, including any informal competition conducted and any and all efforts to obtain a valuation of the recommended purchase. The Board of County Commissioners shall adopt any resolution authorizing a Designated Purchase by a two-thirds vote of the members present. Such adoption shall be deemed for all purposes to constitute a determination by the Board of County Commissioners that formal sealed bids are not practicable for this purchase and that it is in the best interest of the County to waive competitive bidding. A recommendation for award of a Designated Purchase shall not be subject to the protest procedures set forth in Section 3-19. Nothing in this subsection is intended to affect or modify any federal or state requirements relating to competitive purchases.

(d) Procedures for single vehicle leases. Formal sealed bids shall not be required for the lease of a vehicle by the County for an individual entitled to such vehicle from the County by law, rule or contract where the total value of such lease shall not exceed fifty thousand dollars ($50,000.00). For such procurements, the County Mayor or County Mayor's designee is authorized to enter into direct negotiations with potential vendors upon completion of market research to ensure that the County obtains the best value for the requested lease. The "Cone of Silence," as set forth in Section 3-20 of the Code, and the User Access Program and Inspector General fees as set forth in section 3-40 and 2-1076(6) of the Code respectively, shall not apply to car leases under this Subsection. An award of a single vehicle lease under this Subsection shall not be subject to the competitive bidding and protest procedures set forth in Sections 3-1 and 3-19 of the Code. The County Mayor or County Mayor's designee is hereby delegated the authority to award such leases without the need for further action by the Board.

(e) Procedures for prequalification pools for the purchase of goods and services. Prequalification pools for the purchase of goods and services shall be permitted where market conditions and price fluctuations require expedient purchases preventing the efficient

evaluation of bidders without prequalification, including spot market purchases for commodities. The County Mayor's memorandum recommending the establishment of a prequalification pool shall contain a narrative justifying its creation. Any contract award for goods and services exceeding $5,000,000.00 under an approved prequalification pool is subject to Board ratification. The County Mayor shall file a report with the Board on a bi-annual basis which discloses all contract awards for goods and services under approved prequalification pools. Such report, at a minimum, shall identify: (a) the specific prequalification pools approved by the Board under which the contract awards apply; (b) the vendors awarded the contracts; (c) whether or not the awarded vendors are local or small businesses; (d) the amounts of the contract awards; (e) total contract amount spent per vendor; and (f) the pricing, including unit pricing, for the goods or services being purchased through the prequalification pool.

(3) Establishment of purchasing procedure by administrative order. By administrative order, subject to the approval of the Board of County Commissioners, the Mayor or Mayor's designee shall establish procedures for all purchases and the award of all contracts within the scope of this section. Except in the case of small purchase orders and sole source contracts, as defined by Implementing Order 3-38 or successor thereto, said procedures shall make it a condition of award that the contractor or entity receiving a contract or purchase from Miami-Dade County verify that all delinquent and currently due fees or taxes (including, but not limited to, real and personal property taxes, utility taxes, and occupational license taxes) collected in the normal course by the Miami-Dade County Tax Collector and County issued parking tickets for vehicles registered in the name of the contractor or business entity, have been paid. Failure to comply with this policy may result in debarment. Such purchasing procedures may include i) a petty cash program for the purchase of goods and services of not to exceed the amount specified in Administrative Order 3-6; and ii) a purchase card program for the purchase of goods and services of not to exceed the amount specified by Administrative Order for such program and in no event greater than that provided for small purchases under Implementing Order 3-38. Notwithstanding any other Section of this Code or Resolution of this Board, purchases under the petty cash and purchasing card programs shall be subject only to the limitations, conditions and requirements specified in the Administrative Orders therefore and shall not be subject to the requirements specified elsewhere in this Code or in Board Resolutions applicable to County contracting or procurement.

(4) Disclosure required of contractors and entities transacting business with Miami-Dade County.

(a) All contracts or business transactions or renewals thereof with Miami-Dade County, or any person or agency acting for Miami-

Dade County, including but not limited to: Contracts for public improvements; contracts for purchase of supplies, materials or services (including professional services); and leases, franchises, concessions or management agreements, shall require the person contracting or transacting such business with the County to disclose under oath his or her full legal name, and business address. Such contract or transaction shall also require the disclosure under oath of the full legal name and business address of all individuals having any interest (legal, equitable, beneficial or otherwise) in the contract; provided, however, no disclosure shall be required of subcontractors, materialmen, suppliers, laborers or lenders. Post office box addresses shall not be accepted hereunder. If the contract or business transaction is with a corporation the foregoing information shall be provided for each officer and director and each stockholder holding, directly or indirectly, five (5) percent or more of the outstanding stock in the corporation. If the contract or business transaction is with a partnership, the foregoing information shall be provided for each partner. If the contract or business transaction is with a trust, the foregoing information shall be provided for the trustee and each beneficiary of the trust. All assignments of any such contract or transaction, if otherwise authorized, shall comply with the provisions hereof. All transferees of interests required to be disclosed hereunder shall within thirty (30) days of the transfer notify the County that the transfer has occurred. The Mayor or Mayor's designee shall include in the resolution approving any assignment of any contract or business transaction or transfer of interest therein, or any change of ownership in contracts with the County, the names and business addresses of the officers, directors, partners or trustees, as applicable, of the companies involved in the contract assignment or business transaction or transfer of interest therein, or change of ownership. Notwithstanding anything in this section to the contrary, the foregoing disclosure requirements shall not apply to contracts with publicly-traded corporations, or to contracts with the United States or any department or agency thereof, the State or any political subdivision or agency thereof, or any municipality of this State. Any contract or transaction entered into in violation of this section shall be voidable.

(b) Except where precluded by federal or State law or regulations, each contract or business transaction or renewal thereof specified in the first sentence of subsection (a) of this Section 3-1(4) shall also require the entity contracting or transacting such business to disclose the following additional information under oath:

1. Whether the entity has a collective bargaining agreement with its employees; and

2. Whether the entity provides company paid health care benefits to be paid to employees; and

3. A current breakdown of the entity's work force and ownership as to race, national origin and gender; and

4. Any other information as may be required by Administrative Order.

The foregoing disclosure requirements shall not apply to contracts with the United States or any department or agency thereof, the State or any political subdivision or agency thereof, or any municipality of this State.

(c) Any and all requirements for affidavits, oaths or affirmations contained in sections 3-1(4), 2-8.1.2(b), 3-29, 3-1(3), 3-1(9), 3-20, Article V of Chapter 11A sections 11A-29 through 11A-33, 2-8.9, Article VIII of Chapter 11A sections 11A-60 through 11A-67 of the Code of Miami-Dade County, to the extent not prohibited by state and federal law, and Resolution R-182-00 shall be satisfied by the proper completion of a uniform County affidavit packet to be developed for this purpose by the Department of Procurement Management or successor department (the "Uniform County Affidavit") and maintained with the proposer's vendor registration file. A duly executed Uniform County Affidavit shall be on file prior to the award of any County contract and the sufficiency and veracity of the Uniform County Affidavit shall, at all times, be the responsibility of the vendor or proposed contractor. The execution of any contract shall be deemed a representation by the vendor or proposed contractor that a duly executed Uniform County Affidavit is on file, and that it is true and accurate through the date of bid or proposal submission. No vendor or proposed contractor shall be eligible for award unless the requirements of this Section are duly satisfied. Bid documents shall contain a statement alerting bidders of the requirements of this section.

(d) Any person who willfully fails to disclose the information required by subsection (a) of this Section 3-1(4), or who knowingly discloses false information in this regard, shall be punished by a fine of up to five hundred dollars ($500.00), or by imprisonment in the County Jail for up to sixty (60) days, or both in the discretion of the court.

(e) Notwithstanding any other provision of the Code, entities contracting or transacting business with the County for performances; honorariums; training services; historical preservation services; rehabilitative services; cable and satellite services; video conferencing services; dental services for inmates; tutoring services; animal medication purchases; shipment of

animals; organizations providing animal placement services to the Animal Services Department; veterinary services provided by licensed veterinarians; anti-venom purchases; purchases of land; and car leases for County officials shall only be required to submit, at a minimum, a W9, the entity's full legal name, business address, telephone number and email address on a form to be provided by the Department of Procurement Management or successor department and shall not be required to submit any other affidavit, disclosure or registration otherwise required by the Code.

(5) Bids from related parties. Notwithstanding any other provision of this Code, where two (2) or more related parties each submit a bid or proposal for any contract within the scope of this section, such bids or proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers or the principals thereof which have a direct or indirect ownership interest in another bidder or proposer for the same contract or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same contract. Bids or proposals found to be collusive shall be rejected.

(6) Listing of subcontractors required on certain contracts. The requirements of this subsection shall apply to those county contracts for purchase of supplies, materials or services, including professional services, which involve the expenditure of one hundred thousand dollars ($100,000.00) or more where the contract specifications do not expressly preclude the use of subcontractors to perform a portion of the work. All such contracts shall require the entity contracting with the County to list all first tier subcontractors who will perform any part of the contract work and all suppliers who will supply materials for the contract work direct to such entity. The contracts shall also require the entity contracting with the County to report to the County the race, gender and ethnic origin of the owners and employees of all such first tier subcontractors, and suppliers. This information must be submitted to the County via its web-based system. The contract shall require the contractor to provide to the County the race, gender and ethnic information as soon as reasonably available and in any event prior to final payment under the contract. The County Mayor or Mayor's designee shall include language in all contracts and specifications to which this subsection applies to implement this subsection and to provide that the contractor shall not change or substitute subcontractors or suppliers from those listed except upon written approval of the County.

(7) The Mayor or Mayor's designee shall include language in the specifications for all County contracts providing that a bidder's or proposer's performance as a prime contractor or subcontractor on previous County contracts shall

be taken into account in evaluating bids and proposals received for County contracts.

(8) Dedicated allowances, contingency allowances and additional service allowances on contracts involving the expenditure of more than $500,000. For any contract for the construction of public improvements and any professional service agreement involving the expenditure of more than $500,000, an item shall be added to the contract award recommendation identifying (1) each proposed dedicated allowance, contingency allowance and additional services allowance including the specific purpose for each and the dollar amount that shall be available for each, and (2) the corresponding percentage of each proposed dedicated allowance, contingency allowance and additional services allowance in relation to the estimated contract price. When the aggregate percentage of all proposed non-dedicated allowances, such as contingency allowances and additional services allowances, exceeds the applicable threshold set forth below, the contract award recommendation shall also include specific information to define and substantiate the proposed utilization of the particular allowances:

(a) Five percent of the contract price for new construction on public property;

(b) Ten percent of the contract price for remodeling, renovation or expansion of existing facilities on public property, or for infrastructure projects within the public right-of-way; and

(c) Ten percent of the contract price for professional service agreements.

For each contract covered by this subsection (8), an item shall be added to the contract award recommendation identifying (1) each dedicated allowance, contingency allowance and additional services allowance including the specific purpose for each and the dollar amount that shall be available for each, and (2) the corresponding percentage of each dedicated allowance, contingency allowance and additional services allowance in relation to the actual contract price.

For each contract covered by this subsection (8), during the course of contract performance, the director of the department administering the contract shall: (1) review and maintain full and complete documentation to support the specific items and associated costs utilized under the contract's dedicated allowance, contingency allowance and additional services allowance, and shall maintain such information available for inspection as a public record; and (2) whenever the actual utilization of a dedicated allowance, contingency allowance or additional services allowance exceeds the particular dollar amount or percentage for that allowance stated in the contract award recommendation immediately inform the Mayor or Mayor's designee, in writing, and shall disclose the actual, project-to-date utilization

of that account including the specific items and associated costs incurred and the Mayor or Mayor's designee shall promptly report the utilization of each such account to the Board of County Commissioners with a copy to the Director of the Strategic Procurement Department (or its successor department) and Director of Audit and Management Services (or its successor department). The procedures provided in this subsection (8) shall not constitute a delegation of authority to increase the contract price or contract ceiling of any contract without approval of the Board of County Commissioners.

(9) Delinquent Vendors. This subsection shall apply to all county contracts for public improvements; purchases of all supplies, materials and services, including professional services; leases, franchises, concessions, management agreements and permits to do business on county property; and loan transactions.

(a) No individual or entity who is in arrears in excess of the enforcement threshold, defined below, under any obligation or contract, including but not limited to those described in (8)above, final non-appealable judgment, or lien with the County, or any of its agencies or instrumentalities, including the Public Health Trust (hereinafter referred to as "County"), either directly or indirectly through a firm, corporation, partnership or joint venture in which the individual or entity has a controlling financial interest as that term is defined in Section 2-11.1(b)(8) of this Code, shall be allowed to receive any additional County contracts described in (8) above, purchase orders or extensions of County contracts until either the arrearage has been paid in full or the County has agreed in writing to a repayment schedule. Notwithstanding the above, the Mayor or Mayor's designee may enter into or extend a contract or business transaction with any individuals or entities who are not current in their obligations to the County when the Mayor or Mayor's designee determines it to be in the best interest of the County or when the Mayor or Mayor's designee determines that the individuals or entities are engaged in pending settlement negotiations regarding change orders. Such action shall be subject to ratification by the Board of County Commissioners. The Mayor or Mayor's designee shall include language in the specifications of all contracts to which this subsection applies that the failure to meet the terms and conditions of any obligation or repayment schedule shall constitute a default of the subject contract and may be cause for suspension, termination and debarment, in accordance with the terms of the contract and the debarment procedures of the County.

(b) All contracts, business transactions and renewals thereof with the County to which this subsection applies, shall require the individual or entity seeking to transact business with the County to verify by affidavit that the individual or entity is current in its obligations to

the County and is not otherwise in default of any County contract. Any contract or transaction entered into in violation of this subsection shall be voidable.

(c) By administrative order, the Mayor or Mayor's designee shall establish procedures for the implementation of this subsection. Said procedures shall require the Mayor or Mayor's designee to maintain a list of all individuals and entities who are not current in their obligations to the County. Such list shall be updated periodically and distributed or made available electronically to each County department, agency and instrumentality.

(d) The Mayor or Mayor's designee shall include language in all promissory notes and loan documents that require the borrower to assign the proceeds of any contract with the County or any of its agencies or instrumentalities to which the borrower or any firm, corporation, partnership or joint venture in which the borrower has a controlling financial interest is a party to the County in order to secure repayment of the loan.

(e) "Enforcement Threshold," shall mean any arrearage under any individual contract, final non-appealable judgment, or lien with Miami-Dade County that exceeds $25,000 and has been delinquent for greater than 180 days.

(10) Each person or entity that seeks to do business with the County shall adopt a Code of Business Ethics and shall, prior to the execution of any contract between the contractor and the County, submit an affidavit, on a form provided by the County, stating that the contractor has adopted a Code of Business Ethics that complies with the requirements of this Section. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award. The Code of Business Ethics shall apply to all business that the contractor does with the County and shall, at a minimum, require the contractor to comply with all applicable governmental rules and regulations including, among others, the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and the Miami-Dade County False Claims Ordinance.

(11) Electronic Commerce, Electronic Signatures, and On-Line Procurement of Goods and Services.

(a) Definitions.

1. Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

2. Reverse Auction means a procurement method wherein bidders, anonymous to each other, electronically submit real-time bids on designated goods or services.

3. Electronic Signature means a manual or electronic identifier or the electronic result of an authentication technique attached to, or logically associated with, a record that is intended by the person using it to have the same full force and effect as manual signature.

(b) On-Line Procurement. The Mayor or Mayor's designee is authorized to pursue electronic commerce and on-line procurement of goods and services through the use of electronic means including the use of electronic signatures. Procurement by electronic means includes, but is not limited to, the advertising and receipt of competitive sealed bids, competitive sealed proposals and informal quotations, reverse auctions, vendor registration, and any other current or future procurement method or process.

(c) Electronic Signatures. An electronic signature may be used to sign any contract, writing, bid, proposal, vendor registration document, affidavit, or similar submission for the purposes of procurement and contracting with the County and shall have the same force and effect as a written signature.

(12) Mayor's conflicts of interest. When the County Mayor declares a conflict of interest in the procurement of a County contract in accordance with Section 5.03(d) of the Miami-Dade County Home Rule Charter, the County Mayor shall give written notice of such conflict to the Chairperson of the Board and shall designate a member of the County's staff, familiar with County procurement processes, who shall serve as the Chairperson's primary contact to oversee the affected procurement. Upon the notification of such conflict, the Chairperson of the Board of County Commissioners shall exercise all authority provided by the Charter or the County Commission to the Mayor with regard to such procurement including the authority to recommend a bid waiver. For purposes of the affected procurement only, all powers and responsibilities given to the County Mayor in any and all provisions of this Code relating to the advertisement, solicitation, protest and award of contracts, and in any implementing order related to such Code provisions, shall be transferred to the Chairperson of the Board of County Commissioners for the duration of the conflict. The County Mayor shall include language in competitive solicitation documents to give effect to the provisions of this subsection. Nothing in this subsection shall affect the rights and responsibilities of the Mayor and Chairperson following the award of any contract.

(13) Workers' Compensation Insurance. All County contracts for public improvements and services for which state law requires workers'

compensation insurance shall contain an express requirement for the proof and maintenance of such insurance throughout the term of the contract. Failure to maintain such insurance throughout the term of the contract shall be a cause for debarment under section 3-29 of the Code, without prejudice to other rights and remedies available to the County by law or contract.

Sec. 3-2. - Mayor's recommendation.[4]

(1) Subject to the requirements of subsection 2 below, whenever a competitive process is utilized for selection of a contractor, vendor, consultant, tenant or concessionaire, the County Mayor shall review the responses to the solicitation and recommend to the County Commission award or other appropriate action. Such recommendation shall be in writing and shall be filed with the Clerk of the Board, with copies mailed to all participants in the competitive process, no later than ten (10) days prior to any Commission meeting at which such recommendation is scheduled to be presented. Such recommendation shall be accompanied by a memorandum from the County Mayor that clearly identifies any and all delegations of Board authority contained in the body of the proposed contract. For those contracts covered by section 3-5 for which no timely protest is filed, the County Mayor's recommendation may be awarded by the County Mayor in accordance with the recommendation. The Commission, by two-thirds (⅔) vote of the members present, may waive the requirements of this section. The foregoing notwithstanding, the requirements of this section shall not apply to contracts or purchases which the County Mayor has the delegated authority to award under Section 3-1(2) of this Code.

(2) For purposes of this subsection, a "Board Directive" shall mean a directive to the County Mayor from the County Commission via an ordinance, resolution or motion to competitively solicit and award any County contract or supporting an existing competitive process for the award of any County contract, including but not limited to, the acquisition of goods or services, leases, public improvements and construction contracts, design-build projects, public-private partnership projects, or professional services within the scope of architectural, professional engineering, landscape architecture, registered land surveying and mapping, as defined by the laws of the state. The County Mayor shall not recommend a rejection of proposals or bids in a competitive process subject to a Board Directive except under the following circumstances:

(a) The County received no responsive bids or proposals in the competitive process; or

(b) The recommendation to reject all bids or proposals is based on the County Mayor's conclusion that the County received no bids or proposals from any responsible bidder or proposer. In such

[4] Formerly section 2-8.3 of the Code.

circumstances, the County Commission retains the final authority to determine bidder or proposer responsibility; or

(c) The County is legally unable to award a contract to any responsive and responsible bidder via the competitive process for any reason, including but not limited to, an incurable legal infirmity in the specifications of the competitive solicitation or because none of the short-listed responsive proposers or bidders are able to negotiate a contract materially and legally compliant with the terms of the competitive solicitation and their bids or proposals to the County; or

(d) If none of the exceptions set forth above in subsections (2)(a) - (c) apply and the County Mayor recommends that it is in the best interests of the County to reject all bids or proposals and waive the requirements of this subsection 2 and such recommendation is approved by a two-thirds (⅔) vote of the Board members present.

Notwithstanding and prevailing over any other provision of the Code to the contrary, if the County Mayor recommends a rejection of all bids and proposals in a competitive process subject to a Board Directive, the County Mayor has no authority to re-advertise or re-solicit for bids or proposals the same project or contract that is the subject of the Board Directive until the County Commission has approved the recommendation to reject all bids or proposals or has taken any other appropriate action in relation to the County Mayor's recommendation unless the immediate re-advertisement or re-solicitation is necessary to address an imminent threat to life, health or property pursuant to an Emergency Declaration or where the procurement was initiated pursuant to any emergency procurement authority delegated to the County Mayor pursuant to Implementing Order 3-38, as may be amended from time to time. In any recommendation to the County Commission to reject all bids and proposals in a competitive process subject to a Board Directive, the County Mayor shall attach to the recommendation the last best responsive negotiated contract offer from the highest ranked proposer or lowest bidder that is materially and legally compliant with the terms of the competitive solicitation and their bids or proposals to the County. Nothing in this section shall prohibit, limit or modify the authority of the County Commission to reject bids or proposals in a competitive process.

(3) The County Mayor or County Mayor's designee shall provide the Office of the Commission Auditor all recommendations of a selection committee regarding proposals in a competitive process subject to a Board Directive within three business days of the issuance of the selection committee's recommendation. The Office of the Commission Auditor shall track and monitor whether the County Mayor has issued a recommendation regarding proposals in a competitive process subject to a Board Directive within ninety days of a selection committee's recommendation and shall report to the County Commission every ninety days whether the County Mayor has

issued a recommendation to the County Commission on a competitive process subject to a Board Directive.

Sec. 3-3. - Acquisition of professional architectural, engineering, landscape architectural or land surveying and mapping services.[5]

(1) Definitions.

(a) The term "Professional services" shall mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, registered land surveying and mapping, as defined by the laws of the state, or those performed by any registered architect, professional engineer, registered landscape architect or registered land surveyor in connection with his professional employment or practice.

(b) The term "firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, landscape architectural or land surveying services.

(c) The term "compensation" means the total amount paid for a particular professional service to a firm by Miami-Dade County.

(d) The term "departments and agencies" means departments, instrumentalities or branches of County government.

(e) The term "project" shall mean that fixed capital outlay study or planning activity described in the public notice of Miami-Dade County pursuant to Section 3-3(2). The County Mayor or County Mayor's designee shall prescribe by Implementing Order, subject to approval of the Board of County Commissioners, procedures for the determination of a project under its jurisdiction. Such procedures may include:

1. Determination of a project which constitutes a grouping of minor construction, rehabilitation or renovation activities;

2. Determination of a project which constitutes a grouping of substantially similar construction, rehabilitation or renovation activities.

All project grouping contracts shall be subject to the approval of the County Mayor or County Mayor's designee to ensure compatibility and compliance with the Equitable Distribution Program.

(f) The term "continuing contract" shall mean a contract for professional services entered into in accordance with all the

[5] Formerly section 2-10.4 of the Code.

procedures of Chapter 287, Florida Statutes, as amended, and this section, as amended, between departments and agencies of Miami-Dade County and a firm whereby the firm provides continuing professional services to Miami-Dade County for separate project assignments in which construction costs do not exceed the limit established by Chapter 287.055, Florida Statutes, as amended, or for separate study activities in which the fee for professional services does not exceed the limit established by Chapter 287.055, Florida Statutes, as amended, work of a specified nature as outlined in the contract required by Miami-Dade County with no time limitation except that the contract shall provide a termination clause. Firms seeking to provide professional services under continuing contracts for separate project assignments in which construction costs do not exceed the limit established by Section 287.055, Florida Statutes, as amended, or for separate study activities in which the fee for professional services does not exceed the limit established by Section 287.055, Florida Statutes, as amended, may be engaged and assigned work through means of an Equitable Distribution Pool established as provided in the Implementing Order which implements this Section.

(g) The term "design-build contract" shall mean a single contract for the design and construction of a public construction project.

(h) The term "value-analysis" means an organized approach to optimizing both cost and performance in a new or existing facility or to eliminating items that add cost without contributing to required function.

(i) The term "life-cycle costing" means that process whereby all the expenses associated with the operation, maintenance, repair, replacement and alteration costs of a facility or piece of equipment are identified and analyzed.

(2) Public announcement. The County Mayor or County Mayor's designee shall publicly announce as required by Section 287.055, Florida Statutes, as amended, each occasion when professional services are required as specified in the Implementing Order which implements this Section. Such announcement shall be made by publishing the same in a newspaper of general circulation setting forth a general description of the project or projects requiring professional services, the type of services, and prescribing the procedure to be followed by any firm wishing to be employed to perform such services. The public announcement shall be made in the manner provided by law and as specified in the Implementing Order which implements this Section.

(3) Submission of qualifications. The County Mayor or County Mayor's designee shall encourage firms engaged in the lawful practice of their

profession who desire to provide professional services to the County to submit on or before January 1, 1977, and annually on that date thereafter, a statement of qualifications. Such statements shall be on a form provided by the County Mayor or County Mayor's designee who also may require additional information, and which shall be kept on file with the Clerk of the Board.

(4) Certification committee; guidelines.

(a) The County Mayor or County Mayor's designee shall appoint a certification committee consisting of not less than three (3) members, all of whom shall be professionals in the field of endeavor or practice involved. The duty of such certification committee shall be to review the statement of qualifications submitted by each firm requesting certification and to ascertain whether the firm is fully qualified to render the required services according to law and the regulations which the County Mayor or County Mayor's designee shall cause to be prepared. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, and experience record of the firm. The committee may accept certification of the firm by the State of Florida Department of Transportation or the State of Florida Department of General Services as prima facie evidence of such qualification; provided, no changes in technical and professional personnel have occurred that may affect the firm's qualifications since the date of State certification.

(b) Certification shall specify the particular category of professional work in which the firm is found qualified. The certification committee shall evaluate the experience of each certified firm that seeks to render professional services and shall make that evaluation part of the permanent record to be considered then and whenever the firm is again in consideration.

(c) Amendments to qualification statements and data shall be submitted to the County by firms immediately after any changes in technical or professional personnel that may affect the firm's qualifications or capabilities. Upon receipt of any such amendment the certification committee shall again review the qualifications of the firm to ascertain whether the firm is still qualified. If it is found not to be qualified, the committee shall revoke the certification for the particular category of service for which the firm had been previously certified.

(5) Competitive selection committees for publicly announced projects or planning or study activities.

(a) For each project or planning or study activity required to be publicly announced under subsection (2) of this Section, the County Mayor or County Mayor's designee shall appoint a competitive selection committee as set forth in the Implementing Order which implements this section. Notwithstanding the foregoing, if only one responsive submission is received for a proposed project, the County Mayor or County Mayor's designee shall evaluate the responsive firm's current statement of qualifications and performance data and shall determine whether the candidate firm based on its qualifications, approach to the project and the ability to furnish the required services is qualified and capable to perform the professional services for the publicly announced project or planning or study activity without the need to appoint a competitive selection committee. Upon the County Mayor or County Mayor's designee's determination that the firm is qualified and capable, the County shall then negotiate a contract in accordance with the procedures set forth hereafter.

(b) For each such project for which more than one responsive submission is received, the competitive selection committee shall evaluate current statements of qualifications and performance data on each firm which has requested consideration for that project and shall select several of the candidate firms based on their qualifications, approach to the project and the ability to furnish the required services, in the manner more particularly identified in the Implementing Order which implements this Section. The competitive selection committee shall then identify, after a properly noticed public hearing, at which public hearing each of the several selected candidate firms shall be given reasonable time to make their presentations, no less than three (3) firms, in order of preference, found to be the most highly qualified to perform the required services. If less than three (3) firms are found most highly qualified then each such firm, in order of preference, shall be identified.

(c) The competitive selection committee shall report its findings, together with supporting data, to the County Mayor or County Mayor's designee and shall file a copy of its findings with the Clerk of the Board of County Commissioners.

(d) The County Mayor or County Mayor's designee shall select no less than three (3) firms, in the order of preference (provided that at least three (3) firms are identified in accordance with subsection (b) above) by the competitive selection committee to be the most highly qualified to perform the required services. The competitive selection committee shall rank the firms in the order of their competence and qualification after considering such factors as the ability of professional personnel, past performance, willingness to meet time and budget requirements, locations of the firms, the recent, current,

and projected workloads of the firms, and the volume of work previously awarded to the firm by the agency with the object of effecting an equitable distribution of contracts among qualified firms. The competitive selection committee shall score the firms based on a qualitative evaluation of the selection criteria (the "Qualitative Score") but shall base its recommended ranking on the aggregate ranking provided by members of the selection committee (the "Ordinal Score") all as more particularly described in the Implementing Order. The competitive selection committee shall report to the County Mayor or the County Mayor's designee the recommended ranking of the firms including both Qualitative Scores and Ordinal Scores. The competitive selection committee shall report no fewer than three (3) firms determined to be the most highly qualified, provided at least three (3) qualified firms have responded to the solicitation.

Following the review of the selection committee's report, the County Mayor or County Mayor's designee shall determine the final ranking of firms in the order of competence and qualification upon application of the criteria set forth in subsection (d) above and the local preference considerations set forth in subsection (e) below. The County Mayor or County Mayor's designee shall at all times abide by the principle of selection of the most highly qualified firms. The County Mayor or the County Mayor's designee shall determine the order in which negotiations are conducted with the firms ranked by the County Mayor or County Mayor's designee. The County shall then negotiate a contract in accordance with the procedures set forth hereafter.

(e) Except where federal or state law, or any other funding source, mandates to the contrary, the preferences accorded to local businesses or locally headquartered businesses, as those terms are defined in section 3-31 of this Code, shall be as provided in Implementing Order 3-38. The preference provided for in this subsection (e) may be waived in the manner allowed under section 3-31(3) of this Code.

(6) Competitive negotiations. Competitive negotiations shall be conducted in the order determined by the County Mayor or the County Mayor's designee under Section 3-3(5)(d) in accordance with the process for negotiations specified in Implementing Order 3-38. For all lump sum or cost plus a fixed fee contracts in which the fee will exceed fifty thousand dollars ($50,000.00), the County will require the firm receiving the award to execute a truth-in-negotiation certificate as required by Chapter 287, Florida Statutes.

(7) Prohibition against contingent fees. Each contract for professional services shall contain a prohibition against contingent fees, as required by Chapter

287, Florida Statutes. For the breach or violation of this provision the County Commission may terminate the agreement without liability or, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

(8) Miscellaneous provisions and exceptions.

(a) Nothing herein shall affect the validity or effect of any contracts in existence at the effective date hereof.

(b) The procedures of this Section shall not apply:

1. When the County Mayor is of the opinion and certifies that a valid public emergency exists.

2. To continuing contracts as defined herein.

3. To projects in which the County is able to reuse existing plans from a prior project; provided, however, subsequent to July 1, 1975, public notice for any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse in accordance with the provisions of this subsection.

(c) Miami-Dade County agencies and instrumentalities with the independent power to contract, such as the Public Health Trust, shall adopt rules and procedures implementing this Section. For the purposes of such rules and procedures, where this section provides the Board of County Commissioners with implementing authority, the Board of Trustees shall exercise such authority, and where this section provides the County Mayor with authority, the President or Executive Director shall exercise such authority.

(9) Design-build contracts. Selection of firms to perform design-build contracts shall be in accordance with the procedures set forth in the Implementing Order which implements this Section.

(10) Implementing Order. The provisions of this Section shall be implemented by an Implementing Order approved by the Board of County Commissioners.

(11) Value analysis. Whenever the County purchases design services for certain public facilities and improvements which exceed the thresholds set by Administrative Order promulgated by the County Mayor and approved by County Commission, the following value analysis shall be performed by a firm or entity separate from the design firm and shall be included as part of the overall design costs for such facilities or improvements:

(a) Gathering and tabulating information concerning the facility as designed, in order to understand the specific use or function requirements of the items under study.

(b) Developing alternative recommendations that fulfill the facility's basic function(s).

(c) Evaluating, critiquing, and ranking feasible alternatives developed in (b) above. An estimated dollar value shall be applied to all feasible alternatives and a determination made of the alternatives that offer the greatest potential for savings.

(d) Selecting only the best alternatives and developing firm information and cost estimates on them.

(e) Presenting the written value analysis study, which incorporates the best alternatives, to County staff for approval at stages identified in the professional services agreement.

(f) Providing assistance and recommendation in incorporating the selected alternatives into the project. The costs considered in the value analysis shall include initial construction costs. At the election of the County department, and as indicated in the professional service agreement, the costs may include both initial and continuing costs. Where continuing costs are analyzed, the value analysis shall include life cycle costing.

(g) Providing value analysis services, upon request of the County department, for additional or changed work required after award to the contractor.

(12) Community Business Enterprise Program. The provisions of this section shall be applied in accordance with section 3-35.

Sec. 3-4. - Program for expedited purchasing.[6]

Notwithstanding any contrary provision of this Code, a program for expedited purchasing is hereby created, subject to the terms and conditions of this section. The program shall be referred to as the "Expedited Purchasing Program."

(1) The County Mayor or County Mayor's designee is hereby authorized to utilize the Expedited Purchasing Program for the competitive purchase of supplies, materials and services, including professional services, which are estimated to cost five million ($5,000,000.00) or less.

[6] Formerly section 2-8.1.6 of the Code.

(2) For purposes of this Program, the County Mayor or County Mayor's designee shall be expressly authorized to waive any irregularity in any bid or proposal submission which he or she determines to be non-material.

(3) For any purchase to be made under the Expedited Purchasing Program, the County Mayor or County Mayor's designee shall be authorized to issue competitive solicitation documents which in the discretion of the County Mayor or County Mayor's designee procure the best value to Miami-Dade County for the goods or services to be purchased. The method of solicitation shall be determined in the discretion of the Mayor or County Mayor's designee and may include, but not be limited to, invitations to bid, requests for proposals or requests qualifications, requests to negotiate, and best and final offers. In determining the best value to Miami-Dade County, the County Mayor or County Mayor's designee shall consider criteria to include but not be limited to price, quality, experience, the ability to deliver the required goods and services, the availability of the goods and services, and the nature and urgency of the County's needs. The selection method and criteria to be used shall be set forth in the solicitation documents.

(4) The County Mayor or County Mayor's designee shall make the final determination of best value in accordance with the method and criteria set forth in the solicitation documents. In making the determination of best value, the County Mayor or County Mayor's designee shall utilize a review team of his or her technical and professional staff and consult the County Attorney's Office as needed for purchases made under the Expedited Purchasing Program.

(5) In the event the County Mayor or County Mayor's designee determines at any time that a waiver of the competitive process for purchases two hundred fifty thousand dollars ($250,000.00) or more is in the best interests of the County, the Mayor or County Mayor's designee shall make a written recommendation to the Board for such waiver.

(6) The written recommendation of the County Mayor or County Mayor's designee to award a contract under the Expedited Purchasing Program shall be sufficient to commence the bid protest period and terminate the Cone of Silence as provided elsewhere in this Code.

(7) The protest of any award under the Expedited Purchasing Program shall be made in accordance with the provisions of section 3-19 of the Code of Miami-Dade County.

(8) The County Mayor or County Mayor's designee shall be authorized to advertise and issue solicitation documents for purchases under the Expedited Purchasing Program.

(9) Any provisions of the Code or of any applicable resolution or administrative order contrary to the provisions of this section shall be deemed suspended or amended as necessary to give effect to the intent of this section. Similarly,

any provisions of the Code or of any applicable resolution or administrative order not deemed suspended or amended hereunder shall apply to any purchase administered under the Expedited Purchasing Program.

(10) The County Mayor may, by duly executed written instrument which specifically identifies this section, delegate any and all of the responsibilities set forth in this section, whereupon the provisions of this section and its limitations shall be understood to apply to the County Mayor's designee.

Sec. 3-5. - Economic stimulus ordinance.[7]

(1) Policy: This section to be known as the "Economic Stimulus Ordinance," is intended to provide an expedited process to award certain contracts with the express purpose of stimulating the local economy.

(2) Scope: This section, and the expedited processes set forth herein, shall, to the extent permitted by law, be applicable to the processing, design, and construction of the capital improvement projects specifically identified by resolution of the Board of County Commissioners or capital projects funded in whole or in part through the American Recovery and Reinvestment Act ("ARRA") (the "Capital Stimulus Projects"). The Board of County Commissioners may, from time to time and by subsequent resolution, add or delete projects from the list of Capital Stimulus Projects to which this Section applies. All Capital Stimulus Projects must have been approved as part of the Annual Proposed Resource Allocation and Multi-Year Capital Plan. This section shall also be applicable to contracts for the purchase of goods or services funded in whole or in part through ARRA (the "Economic Stimulus Purchases").

(3) All actions taken under this ordinance shall be subject to review by the Office of Management and Budget (OMB) to ensure adequate funding for each project and that appropriate operational and maintenance funding is in place for the foreseeable future and review by the Internal Services Department (ISD) or its successor department for Capital Stimulus Projects and for Economic Stimulus Purchases to ensure compliance with contract documents and all applicable resolutions, ordinances, and statutes.

(4) Notwithstanding any other provision of the Code of Miami-Dade County to the contrary, the Mayor or his/her designee shall have the following authority with respect to contracts within the scope of this section:

(a) To issue bid and proposal documents including addenda thereto;

(b) To receive, open and review bids and proposals;

[7] Formerly section 2-8.2.7 of the Code.

(c) To appoint standing selection committee and negotiation committee members to obtain professional services in accordance with section 3-3 of the Code of Miami-Dade County and section 287.055 of the Florida Statutes, provided each such committee shall contain, whenever possible, representation from the user department;

(d) To award or reject bids for contracts including, but not limited to, professional service agreements, construction contracts and contracts for the purchase of goods and services and issue Notices to Proceed where:

1. For Capital Stimulus Projects the award value of the contract and operational considerations have been reviewed and approved by OMB; and

2. For Capital Stimulus Projects the base value of a recommended award does not exceed the base estimate by more than ten (10) percent; and

3. The contractor, vendor or consulting firm receiving the award is in good standing with the County including, but not limited to: no outstanding debts; demonstrated acceptable past performance; and has submitted required insurance, bonds, affidavits and documentation provided for by the solicitation; and

4. None of the bidders have filed a timely bid protest; and

5. All awards are subject to ratification by the Board of County Commissioners at the next available meeting and contracts for Capital Stimulus Projects approved under this authority must contain a Termination for Convenience clause.

(e) For Capital Stimulus Projects negotiate and settle contractor claims, and issue change orders for additional work under contracts and amendments for professional services agreements where:

1. The change order or claim does not increase the contract amount, including contingencies; and

2. The contingency allowance established in accordance with section 3-1(8) shall be utilized to ensure minimal disruption in work flow and shall be documented on the appropriate contingency authorization draw. Change orders shall be submitted to replenish the contingency account in a timely manner; and

3. The limitations provided in subsection (4)(e)1 above shall not apply to any change order or amendment related to emergency actions impacting environmental remediation,

public safety, health requirements or recovery from natural disaster; and

4. Any County contract or amendment with small business measures is required to meet at least eighty-five percent (85%) of the small business goals applicable to the tasks and value of the portion(s) of the contract work performed to date before a change order or contract amendment may be considered for approval, unless the following explanatory information as delineated has been provided. Except for non-compensatory time extensions, items with small business measures which failed to meet this minimum threshold or equivalent percentage must clearly explain (i) the circumstances as to why the goal(s) was not achieved, (ii) steps taken by the prime contractor(s) and the contracting department to meet the goal(s), and (iii) how the small business goal(s) will be achieved in the change order or contract amendment, or the proposed change order or contract amendment cannot be considered for approval.

(5) All actions taken by the Mayor or his/her designee under this section shall not require review by any Committee, but shall be submitted to the next available Board of County Commissioners meeting for ratification. Awards that do not meet the requirements of subsection (4)(d) above shall not require Committee review but shall be submitted to the next available meeting of the Board of County Commissioners for approval. The authority delegated to the Mayor or the Mayor's designee pursuant to this section shall be in addition and not in derogation to other delegations of authority set forth elsewhere in this Code.

(6) Special exemptions: This process shall be modified to ensure full conformance with any special provisions or review processes established by the Board. As such, any proposed County contract for a project included in the TIP approved by the MPO that is funded in whole or in part by proceeds of the Charter County Transit System Sales Surtax authorized by Article XVI of Chapter 29 of the County Code, the Mayor or his/her designee shall have the authority to advertise and issue bid or proposal documents for such contracts where the bid or proposal documents expressly provide that no award shall be effective and no contractual relationship shall arise with the County unless and until ratified by the County Commission and that ratification is approved by the Citizens' Independent Transportation Trust or reaffirmed by the County Commission as provided in subsection (e) of section 29-124 of the County Code, and the authority to issue notices to proceed after award for such contracts shall be limited to those instances where the County Commission has ratified the award and the Citizens' Independent Transportation Trust has approved the Commission's action or, if the Trust disapproves such Commission action,

the Commission has reaffirmed same as provided in subsection (e) of section 29-124 of the County Code.

Sec. 3-6. - Miscellaneous Construction Contracts Program.[8]

(1) Policy: This section, to be known as the Miscellaneous Construction Contracts Program ("MCC"), is intended to enhance the contracting opportunities of Small Business Enterprises for Construction Services ("SBE") as defined in section 10-33.02 and to facilitate and expedite the award of construction contracts to small businesses.

(2) Scope: This section, and the processes set forth herein, shall be applicable to the prequalifying, registration, award and construction of miscellaneous construction contracts designed to provide opportunities for firms certified as Small Business Enterprise-Construction ("SBE-Con").

(3) MCC participants are allowed to participate in the contracting plans identified in this section, in accordance with the contracting procedures and specifications to be developed, maintained and amended by the Small Business Development Division of the Internal Services Department or such department as the Mayor may designate specifically for these purposes (SBD), in Implementing Order ("IO") 3-38:

(a) 7040 Plan ("SBE Rotational Set Aside Plan"):

1. The Set Aside Plan shall be a 100 percent SBE-Con set aside. To qualify, participants must be certified by SBD in their contracting trade.

2. SBD shall establish and administer a rotational pool to distribute work among program participants in an equitable manner through competitive bids. The pool shall be designed to effect the maximum distribution of work among qualified firms, established in accordance with the contractor's license and abilities to do the work, all in accordance with the provisions of the IO.

3. SBD shall determine the Community Workforce Program ("CWP") goal applicable to each contract in accordance with applicable CWP requirements.

(b) 7360 Plan ("Open Competitive Plan"):

1. Bidders under this plan shall be prequalified prior to award in forms to be developed for this purpose by IO.

2. This plan shall be used whenever the funding source prohibits the use of SBE-Con set asides or when SBD

[8] Formerly section 2-8.2.7.01 of the Code.

determines that there is insufficient availability for a SBE-Con set aside within the 7040 Plan to accomplish the proposed work.

3. This plan shall provide contract award opportunities to SBE-Con through subcontracting.

4. CWP goals shall be established for each award under the 7360 Plan by SBD.

(c) Department Specific Plan:

1. When authorized by the Board of County Commissioners by resolution, ISD shall establish and administer rotational pools limited to CSBE program participants who register and qualify to serve the contracting needs of an identified County department (each referred to in this section as a "Department Specific Plan"). The Department Specific Plan shall be a 100 percent CSBE set aside. To qualify, participants must be certified by SBD in their contracting trade.

2. The Department Specific Plan shall be designed to effect the maximum distribution of work among qualified firms for the identified department in accordance with the contractor's license and ability to do the work. The rotation shall be limited to the contractors registered and qualified to serve the department. Participation in the Department Specific Plan shall not impair a contractor's ability to participate in the 7040 Plan.

3. ISD shall provide a Department Specific Plan to meet the needs of the capital development program of the Water and Sewer Department. The provisions of this section shall not impair any pool or program in effect as of the effective date of the ordinance creating the Department Specific Plan.

4. It is the policy of Miami-Dade County to promote the opportunities of CSBEs through the use of miscellaneous construction contracts. Consistent with that policy, the Mayor is hereby authorized and directed to create Department Specific Plans as necessary to meet the capital development needs of identified County departments. The Mayor shall report to the Board the creation of any such plan.

(4) The MCC Program shall be subject to an Overall Program Expenditure Limit ("OPEL") which is to be set by the Board of County Commissioners by resolution. SBD shall be authorized to allocate the OPEL among the plans as necessary. Individual awards within the plans shall be subject to the dollar limitations set forth in Section 3-1(2) of this Code. The first OPEL

shall be the unexpended balance of the amount previously authorized by the Board by Resolution No. R-597-08.

(5) Notwithstanding any other provision of the Code of Miami-Dade County to the contrary, the Mayor or Mayor's designee shall have the following authority with respect to the Miscellaneous Construction Contracts Program:

(a) To issue bid and proposal documents including addenda thereto;

(b) To receive, open and review bids and proposals;

(c) To make revisions to the MCC Contract and Program documents to address ambiguities and to make other clarifications as needed;

(d) To award or reject bids for construction contracts and issue the Notice to Proceed on each where:

1. Operational considerations, if applicable, have been reviewed and approved by the Office of Management and Budget or its successor office; and

2. The base value of a recommended award does not exceed the dollar limitations set forth in section 3-1(2); and

3. The contractor receiving the award is a registered vendor who is licensed, properly insured and in good standing with the County including, but not limited to: no outstanding debts; demonstrated acceptable past performance; and has submitted required insurance, bonds, affidavits and documentation provided for by the solicitation; and

4. Participants have submitted a program participation application form; and

(e) To negotiate and settle contractual disputes, and issue change orders for additional work. Any County contract with small business measures is required to meet at least eighty-five percent (85%) of the small business goals applicable to the tasks and value of the portion(s) of the contract work performed to date before a change order or contract amendment may be considered for approval, unless the following explanatory information as delineated has been provided. Except for non-compensatory time extensions, items with small business measures which failed to meet this minimum threshold or equivalent percentage must clearly explain (i) the circumstances as to why the goal(s) was not achieved, (ii) steps taken by the prime contractor(s) and the contracting department to meet the goal(s), and (iii) how the small business goal(s) will be achieved in the change order or contract amendment, or the

proposed change order or contract amendment cannot be considered for approval; and

(f) To terminate contracts in accordance with the contract documents.

(6) All actions taken by the Mayor or Mayor's designee under this section shall not require review by the Board of County Commissioners. The Mayor or Mayor's designee shall submit to the Board, on a quarterly basis, reports on the contracting activities during the previous quarter. These reports shall include the number of awards, total dollars awarded and SBE-Con activity.

(7) Special Exemptions: This process shall be modified to ensure full conformance with any special provisions or review processes established by the Board. As such, any proposed County contract for a project that is funded in whole or in part by proceeds of the Charter County Transit System Sales Surtax shall be governed in accordance with the authority granted in Section 29-124 of the Code of Miami-Dade County. The County Mayor or Mayor's designee shall have the authority to advertise and issue bid or proposal documents for those contracts funded in whole or in part by proceeds of the Charter County Transit System Sales Surtax.

Sec. 3-7. - Janitorial and Landscaping Services Purchasing Program.[9]

(1) Policy and Scope: This section, to be known as the Janitorial and Landscaping Services Purchasing Program (the "JLS Purchasing Program"), is intended to facilitate and expedite the award of contracts for janitorial or landscaping services to firms certified as Small Business Enterprises-Services ("SBE") as defined in section 3-33 of this Code (Small Business Enterprise Services Program).

(2) The JLS Purchasing Program shall consist of two pools set aside for prequalified SBE firms as defined in section 3-33: one pool for the purchase of janitorial services and one pool for the purchase of landscaping services. To qualify for inclusion in the pools, vendors must be certified as SBE firms by the Small Business Development Division ("SBD") of the Internal Services Department or its successor entity and be primarily engaged in providing the services, janitorial or landscaping, in either respective pool. Award of contracts under each of the pools shall be based on competitive sealed bids or proposals among the JLS Purchasing Program participants.

(3) The term of the pools established under the JLS Purchasing Program shall be for a term not to exceed five years unless otherwise authorized through a resolution adopted by the Board of County Commissioners (the "Board"). The allocation for each five-year pool under the JLS Purchasing Program shall not exceed fifty million dollars ($50,000,000.00) unless otherwise authorized through a resolution adopted by the Board. Individual contract awards within the JLS Purchasing Program shall be subject to the dollar

[9] Formerly 2-8.2.7.02 of the Code.

limitations set forth in section 3-1(2) for delegated contractual authority and section 3-33 for SBE set aside contracts.

(4) The County Mayor or designee shall present a resolution to the Board setting forth the term of the JLS Purchasing Program pools, the identification of the JLS Purchasing Program SBE participants, the dollar amounts of each pool, and a written recommendation to the Board as to whether it is in the best interests of Miami-Dade County to waive the competitive bidding requirements of section 5.03(D) of the Charter of Miami-Dade County, Florida, and section 3-1 of the Code of Miami-Dade County, Florida, to establish the set aside pools consisting solely of certified SBE firms and effectuate contract awards thereunder. The JLS Purchasing Program pools shall be established by a two-thirds vote of the Board members present to waive competitive bidding processes. The County Mayor and the Board shall follow the requirements set forth in this subsection each time a pool is established pursuant to the JLS Purchasing Program.

(5) Competitive solicitations and awards within the SBE set-aside pools shall be designed to achieve the maximum participation of SBE firms and effect the equitable distribution of work among JLS Purchasing Program participants. SBD shall monitor the competitive solicitations and contract lengths and award amounts to ensure that SBE firms do not graduate from the Small Business Enterprise Services Program due to contracts awarded under the JLS Purchasing Program.

(6) Notwithstanding any other provision of the Code of Miami-Dade County to the contrary, the Mayor or Mayor's designee shall have the following authority with respect to the JLS Purchasing Program:

(a) To issue bid and proposal documents including addenda thereto;

(b) To receive, open and review bids and proposals;

(c) To make revisions to the JLS Purchasing Program contract documents to address ambiguities and to make other clarifications, through contract amendments, or otherwise as needed;

(d) To award or reject bids for contracts and issue purchase orders to proceed where:

1. Operational considerations, if applicable, have been reviewed and approved by the Office of Management and Budget or its successor office; and

2. The value of a recommended contract award does not exceed the dollar limitations set forth in section 3-1(2); and

3. The vendor receiving the award is a registered vendor who is licensed, properly insured and in good standing with the

County including, but not limited to: no outstanding debts; demonstrated acceptable past performance; and has submitted required insurance, bonds, affidavits and documentation provided for by the solicitation; and

(e) To terminate contracts in accordance with the contract documents.

(7) The Mayor or Mayor's designee shall submit to the Board, on an annual basis, reports on the JLS Purchasing Program contracting activities during the previous year. These reports shall include the number of awards, total dollars awarded, the number of SBE firms participating in the JLS Purchasing Program and the performance of the awarded SBE firms under contract. The Board retains the authority to cancel any future solicitations and awards under the JLS Purchasing Program.

(8) To the extent practicable, subject to available funding allocations, and upon the Board's approval of the establishment of the JLS Purchasing Program Pools all County contracts for the purchase of janitorial services or landscaping services shall be procured pursuant to this section unless prohibited by the funding source. If SBD determines there are insufficient qualified SBE firms to be awarded contracts, perform the services required under the JLS Purchasing Program, or meet the County's demand for janitorial or landscaping services, the Mayor or Mayor's designee may procure janitorial services or landscaping services through competitive bids and proposals open to all vendors or any other legal procurement method. Any determinations by SBD that there are insufficient qualified SBE firms under the JLS Purchasing Program shall be included in the annual reports required under this section.

Sec. 3-8. - Aviation Department Procurement.[10]

(1) In general. The County Mayor or his designee is authorized to advertise any proposed contract to be administered by the Aviation Department without prior approval of the Board, upon the County Mayor's recommendation of the contract measures applicable to such contract. The Board's approval of the award or its ratification of such contract shall constitute the Board's approval of such contract measures previously recommended by the County Mayor.

(2) County Mayor's authority as to contracts for the Aviation Department. Notwithstanding any other provision of the Miami-Dade County Code to the contrary, the County Mayor shall have the following authority:

(a) The County Mayor may advertise any competitive contract in which appropriate contract measures have been specified; issue bid and proposal documents including addenda thereto; receive, open and review bids and proposals; issue notices to proceed after award;

[10] Formerly sections 2-8.2.5, 2-285, 2-285.2 and 2-286.1 of the Code.

advertise, select committees for, and negotiate professional services agreements under section 3-3 of the Code; issue amendments to any professional services agreement after award by the Board, including any professional services agreement that relates to a construction or project contract which has been increased in scope hereunder or by approval by the Board (subject, however, to any limitations on such authority as may be contained in the statutory and code provisions applicable to competitive selection of professional services); and perform all the foregoing for professional services agreements not subject to section 3-3; provided however, that the authority in this subsection (a) is subject to subsection (d) of this section;

(b) The County Mayor may provide in the bid specifications and contract documents that the contract time may be extended and that liquidated damages for failure to comply therewith may be waived before or after the specified date for completion of the contract;

(c) The County Mayor may negotiate and settle contractor claims, and issue change orders for additional work under contracts and amendments for professional services agreements; as to any specific contract or agreement, change orders or amendments thereto shall not exceed five hundred thousand dollars ($500,000.00) in cumulative dollar amount and shall not exceed fifteen (15) percent of the contract price in cumulative percentage amount; provided however, that the foregoing limitation shall not apply to any change order or amendment related to environmental remediation or health requirements, and the foregoing change orders and amendments shall require ratification by the Board; provided further, that the County Mayor may reduce in any amount the scope and compensation payable under any contract and grant compensable and non-compensable time extensions thereunder. Any County contract or amendment with small business measures is required to meet at least eighty-five percent (85%) of the small business goals applicable to the tasks and value of the portion(s) of the contract work performed to date before a change order or contract amendment may be considered for approval, unless the following explanatory information as delineated has been provided. Except for non-compensatory time extensions, items with small business measures which failed to meet this minimum threshold or equivalent percentage must clearly explain (i) the circumstances as to why the goal(s) was not achieved, (ii) steps taken by the prime contractor(s) and the contracting department to meet the goal(s), and (iii) how the small business goal(s) will be achieved in the change order or contract amendment, or the proposed change order or contract amendment cannot be considered for approval;

(d) The provisions of subsection (c) above notwithstanding, the County Mayor shall have the authority to issue change orders or

amendments provided that the cumulative effect of any such change orders and amendments to a specific contract or agreement does not exceed twenty (20) percent of the original amount of such contract or amendment, and further provided that the consulting engineer (under the existing trust indenture), the Aviation Director, and the Miami-Dade Aviation Consultants (DAC) concur in such action, that the change order or amendment is submitted to the Board for ratification within one hundred eighty (180) days. Any County contract or amendment with small business measures is required to meet at least eighty-five percent (85%) of the small business goals applicable to the portion(s) of the contract work performed to date before a change order or contract amendment be considered for approval. Except for non-compensatory time extensions, items with small business measures which failed to meet this minimum threshold or equivalent percentage must clearly explain (i) the circumstances as to why the goal(s) was not achieved, (ii) steps taken by the prime contractor(s) and the contracting department to meet the goal(s), and (iii) how the small business goal(s) will be achieved in the change order or contract amendment, or the proposed change order or contract amendment cannot be considered for approval. The County Mayor shall report on a monthly basis to the Aviation Operations Committee of the Board on his actions taken in exercising the authority delegated to him hereunder. The County Mayor shall not have delegated authority hereunder to issue any change order or amendment that is the result of design errors or omissions, and any such change order or amendment shall require prior Board approval;

(e) All actions taken by the County Mayor under this section shall not require review by any Committee, but the County Mayor shall obtain approval of the Board to execute any contract or agreement submitted under subsection (a);

(f) For any lease with an airport tenant, the County Mayor may authorize reimbursement for construction and other costs for the tenant's relocation of all or a portion of its premises, preparation of premises for occupancy, or making emergency repairs, provided the tenant obtains competitive bids for construction work, follows the procedures in section 3-3 for obtaining professional services covered therein, complies with contract measures as approved by the County Mayor, and complies with direction otherwise provided by the Aviation Department;

(g) Subject to ratification of the Board, the County Mayor may execute all standard form federal grant documents or state joint participation agreements, including acceptance of grant or joint participation commitments required to be imposed by federal or state law as a

condition to the County's receiving grant or joint participation benefits;

(h) The County Mayor may delegate authority for execution by the Aviation Director or his immediate designee of actions and authorizations permitted hereunder;

(i) For all Aviation Department contracts subject to section 3-2 of the Code, the County Mayor may waive the provisions of section 3-2 to the extent provided in the solicitation documents; and

(j) The County Mayor shall prepare and submit to the County Commission for approval, an Administrative Order which shall establish procedures to expedite the review and approval of change orders, including total quality management techniques and concurrent review by departmental and consultant staff.

(3) Acceleration of Miami-Dade Aviation Department Capital Improvement Projects.

(a) The Capital Improvement Program consists of those projects, whether funded through capital or other funds, which are (a) specifically identified as a "Capital Improvement Project" in the budget adopted by the Board for the then current or any previous fiscal year, or (b) otherwise designated as Capital Improvement Projects pursuant to a resolution of the Board.

(b) The County Mayor or Mayor's designee is authorized, subject to funding limitations set forth in the annual budget adopted by the Board, to accelerate the processing, procurement, award, and administration of any contract or agreement of the County necessary for the successful completion of the capital improvement program and to maintain the operational effectiveness and commercial viability of the County airport system during the capital improvement program, including any contracts related to the purchase of goods and services, construction or professional services. The authority delegated under this section applies to any contract whose funding source is in whole or in part airport revenue bonds, so long as the use of such contract is in support of the capital improvement program, and irrespective of whether such contract was awarded pursuant to this section.

(c) All actions taken pursuant to this section shall be subject to review by the Office of Management and Budget or its successor department with budget oversight authority to ensure adequate funding for each project and that appropriate operational and maintenance funding is in place for the foreseeable future and to ensure compliance with contract documents and all applicable resolutions, ordinances, and statutes.

(d) With respect to any project included in the capital improvement program, the County Mayor or Mayor's designee is authorized to do any or all of the following:

1. Draft, issue and advertise invitations to bid, requests for proposals, requests for qualifications, notices to professional consultants, or any other competitive procurement document without Board approval;

2. Award and reject bids, proposals, or other offers received in connection with any competitive procurement. However, in the event that any proposed award of a contract is protested, the Board shall award such contract as provided for in section 3-19 of the Code and Implementing Order 3-38 governing the bid protest process. Unless otherwise authorized and delegated, the County Mayor or Mayor's designee may not waive competitive bids in the award of a contract without the prior approval of the Board. The authority to award or reject is granted where the following circumstances are present:

   i. The base value of a recommended award does not exceed the base estimate by more than ten percent; and

   ii. The contractor or consulting firm receiving the award has a rating of 2.5 or higher in the Capital Improvement Information System (CIIS) database and has no outstanding debts or goal deficits, and, by the time of award, has submitted required insurance, bonds, affidavits and documentation required; and

   iii. None of the bidders have filed a timely bid protest;

3. Appoint selection evaluation committees to obtain professional services in accordance with 3-3 of the Code and section 287.055, Florida Statutes, and any applicable implementing orders. Where the potential for a conflict of interest may arise between a potential selection committee member and a potential proposer, the County Mayor or County Mayor's designee shall consult with the Commission on Ethics and Public Trust prior to making such appointment, and shall not appoint any such member where the potential for a conflict exists;

4. Amend contracts and extend the time for completion of any contract for construction, materials or professional services, including waivers of liquidated damages and other compensable or non-compensable time extensions;

5. Negotiate and settle claims, and issue settlement agreements or change orders for additional work under contracts and amendments when:

   i. The individual change order or claim does not exceed ten percent of the base contract amount; and

   ii. The contingency allowance is utilized to ensure minimal disruption in work flow and is documented on the appropriate contingency authorization draw. Change orders shall be submitted to replenish the contingency account in a timely manner;

6. Notwithstanding, the foregoing limitations shall not apply to any change order or amendment related to emergency actions impacting remediation, public safety, health requirements or recovery from natural disaster;

7. Reallocate unspent monies among projects within the approved Multi-Year Capital Plan;

8. Apply for, execute, and receive any federal or state grant in connection with any capital project, and execute any ancillary documents required to effectuate such grant, without need for subsequent ratification by the Board;

9. Apply for, execute and enter into joint participation agreements with (i) any local, state or federal government entity for the completion of a Capital Project or (ii) with the owner of any utility whose facilities traverse airport property, in order to accommodate the relocation of any existing utility as may be necessary to advance a Capital Project;

10. Issue and evaluate Requests for Qualifications (RFQs) for Professional Services, provided the RFQs and evaluation process are otherwise consistent with section 3-3of the Code. In the event that the County Mayor or Mayor's designee is unable to negotiate a contract with the most qualified firm, the County Mayor or Mayor's designee is authorized to negotiate, sequentially, with the remaining firms in order of qualifications. Alternately, the County Mayor or Mayor's designee may at any time reject all qualifications received. Except as noted herein, nothing contained in this section shall otherwise modify the substantive or procedural requirements of section 3-3 of the Code.

(e) The County Mayor or Mayor's designee shall prepare a monthly report to be known as the Aviation Capital Program Report which shall include the following information:

1. A list of all procurement activities advertised or placed for public notice under the authority of this section including upcoming advertisements for contracts, their estimated contract value, qualifications for award beyond requisite licensing, and the proposed contract measures, including Small Business Enterprise goals and Community Business Enterprise goals or Disadvantaged Business Enterprise goals, as may be applicable; and

2. A listing of all active capital projects by project number, project title, project phase, estimated completion date including i) adopted budget amount, ii) current budget amount, iii) previous month-to-date expenditures, iv) current month-to-date expenditures, and v) cumulative total expenditures. The Aviation Capital Program Report shall include indicators informing the members of the Board when project expenditures reach 30 percent, 60 percent and 90 percent of the approved current budget amount and a comment section to explain variances. The Aviation Capital Program Report shall be made available for placement on the Tourism and the Ports Committee agenda or the applicable committee agenda to which Miami-Dade Aviation Department matters are assigned and then on the next available Board agenda. The first Aviation Capital Program Report shall be made available for placement on a committee agenda no less than 60 days after the first contract is awarded under the authority of this section. Upon review of the Aviation Capital Program Report by the Board, any Board member shall have the authority to require that specific capital improvement projects or contracts be removed from the authority granted under this section and that the award of such projects or contracts be subject to future Board approval, and the Board may by resolution limit or condition the advertisement, award or other authority delegated to the County Mayor or Mayor's designee under this section for specific capital improvement projects.

3. Any information that highlights the improvements, infrastructure investments and capital projects at Miami International Airport or the County's General Aviation Airports, in addition to any other relevant airport activities, accomplishments, and awards that contribute to making Miami International Airport a more efficient, innovative, and avant-garde airport.

4. All federal or state grants applied for or received, inclusive of any amendments or supplemental agreements to previously awarded grants.

(f) Any award, change order, settlement, modification, adjustment, or amendment undertaken pursuant to the authority of subsections (d)(1)-(7), or (d)(10) above is subject to ratification by the Board and shall be brought to the Board for ratification and will not be subject to the 4-Day Rule. Any contract, change order, settlement, modification, adjustment, or extension granted pursuant to any authority herein shall contain a termination for convenience clause or such other provision as necessary to specify that the action is revocable if not ratified by the Board. The specifications shall also include a sufficient release such that, in the event that the Board does not ratify such item, the contractor is not entitled to lost profits or other consequential or indirect damages; however, the contractor is eligible for payment for any work done prior to failure of the ratification. Acts subject to ratification shall, within sixty days of the effective date of such act, be submitted to the Office of the Chair for placement on an agenda of the Board.

(g) The County Mayor or Mayor's designee is authorized to enter into leases for a term which shall not exceed 20 years, or authorize the conveyance of licenses and easements to, the following entities: the Federal Aviation Administration, the Department of Homeland Security, including, but not limited to, the Transportation Security Administration and Customs and Border Protection, and any other federal or state agency whose presence at an airport is necessary for the efficient and effective functioning of that airport.

(h) The County Mayor or Mayor's designee is authorized to enter reimbursement agreements providing for County funding of agency services with the Federal Aviation Administration, the Transportation Security Agency, Customs and Border Protection, the Department of Homeland Security, and any other Federal or State agency whose presence at an airport is necessary for the efficient and effective functioning of that airport. Such Agreements must contain a termination for convenience clause and shall be presented to the Board for ratification pursuant to subsection (e) above, regardless of the duration or cost of such agreement.

(i) The Aviation Director, with respect to any airport contract, is authorized to exercise all authority granted or delegated to the Internal Services Director or their successor pursuant to any current or future Implementing Order, resolution, or ordinance, as may be applicable to such contract or class of contract.

(j) The powers conferred in this section shall be supplemental to, and not in derogation of, any other powers or authority granted elsewhere in any statute, ordinance, or resolution. The provisions of this section shall be broadly construed to effectuate its goals.

(4) County Mayor's authority for retail activities at Miami International Airport.

(a) The County Mayor shall implement retail activities (which shall be defined as including retail, food, and beverage products and services) at Miami International Airport envisioned in the Retail Concessions Master Plan, dated May 1995, as it may be administratively amended from time to time. Notwithstanding any other provisions of the Code, and notwithstanding any prior resolution or administrative order approved by the Board, including, but not limited to, Resolutions No. R. 1586-72 and 1587-72, and Administrative Orders No. 3-2, 3-4, and 3-16, the provisions of which resolutions and administrative orders are hereby waived, the County Mayor shall have the following authority as to retail activities at the Airport:

1. Maintain close working relationships with the signatory air carriers at the Airport to obtain their input into the retail activities at the Airport, and execute amendments to airline agreements so as to permit negotiation of concessions at the Airport;

2. Issue invitations for bids, requests for qualifications, and requests for proposals for concessions, activities, services or goods related to retail activities at the Airport, provided, however, that to the extent permitted by state law and by contract, such invitations and requests in the discretion of the County Mayor may be limited to retailers or suppliers, including a single retailer or supplier, whom the County Mayor determines will best meet the goals of the Retail Concessions Master Plan;

3. Enter into negotiations with a single retail concession provider, or competitive negotiations with two (2) or more retail concession providers, whom the County Mayor in his discretion determines will best meet the goals of the Retail Concessions Master Plan. If the proposed concession will be exclusive, the County Mayor is authorized to comply with all requirements of section 125.012(17), Florida Statutes;

4. Negotiate and settle all claims arising out of the foregoing leases and concession agreements;

5. To the extent permitted by ordinance and other law, establish Disadvantaged Business Enterprise goals and set asides for concessions;

6. For any agreement with a concessionaire or tenant, authorize reimbursement or rental credit for construction and other costs for relocation of all or a portion of its premises, preparation of its premises for occupancy, and making changes or emergency repairs to the premises in any manner necessary or reasonably required to meet the requirements of the retail activities; provided that the concessionaire or tenant shall comply with the County's competitive bidding requirements, the essential requirements of section 3-3, DBE contract measures, and any other directions provided by the County Mayor;

7. For all the foregoing leases and concession agreements subject to section 3-2 of the Code, waive the provisions of section 3-2 to the extent provided in the solicitation documents;

8. Extend any concession, management agreement or agreement related to the retail activities on a month-to-month basis for so long as may be needed to avoid disruption of concession services to passengers, and

9. Delegate authority for execution of actions or authorizations permitted hereunder to the Aviation Director or his or her designee.

(b) The County Manager may exempt from the County's classified service such Aviation Department employees as determined by the County Mayor to be necessary or reasonably required for the efficient management or administration of retail activities at the Airport.

(c) From the day on which any advertisement of a competitive contract is placed by the County Mayor until the day the County Mayor's notice of intent is filed with the Clerk, neither the bidder nor any one on its behalf shall have any contact with the County Manager, any County Commissioner, or any member of their staff, except for any person specifically designated by the County Mayor in the contract documents or otherwise, or except in response to any inquiry or contact initiated by the County Mayor.

Sec. 3-9. - Water and Sewer Department Contracting Authority.[11]

[11] Formerly section 2-8.2.11 of the Code.

(1) Intent. This ordinance grants the Mayor or his designee authority to accelerate the processing and procurement of contracts and agreements related to design and construction of the improvements on Exhibits A and B attached to the ordinance from which this section derives. Copies of Exhibits A and B are attached in their entirety and incorporated herein by reference.

(2) Authority of the County Mayor With Respect to Specified Projects. Notwithstanding any other provision of the Code of Miami-Dade County to the contrary, the Mayor or his designee shall have the authority to take the following actions with respect to the projects specified in section 3-9(1), and for which the appropriate contract measures as provided in sections 10-33.02(3)(b)(6) and 10-33.02(3)(b)(7)(c), to the extent not prohibited by state and federal law, have been applied:

(a) Competitive solicitation of capital improvements contracts, including the ability to:

1. Approve Request to Advertise construction contracts or solicitations for professional services with applicable measures subject to ratification by the Board of County Commissioners.

2. Issue bid and proposal documents including addenda thereto.

3. Receive, open and review bids and proposals.

4. Appoint selection committee and negotiation committee members for professional services in accordance with Florida Statute Section 287.055.

5. Recommend award or rejection of bids or proposals, including professional service agreements and construction contracts.

(b) The Mayor or his designee shall be entitled to exercise all provisions of all contracts awarded pursuant to this ordinance. The County Mayor or his designee may, if specified in the bid specifications and contract document, negotiate and settle contractor claims, waive liquidated damages, extend contract time, and issue change orders for additional work under contracts and amendments for professional services agreements; as to any specific contract or agreement, change orders or amendments thereto shall not exceed $500,000 in cumulative dollar amount and shall not exceed 15 percent of the contract price in cumulative percentage amount; provided however, that the foregoing limitation shall not apply to any change order or amendment related to environmental remediation or health requirements and the foregoing change orders

and amendments shall require ratification by the Board; provided further that the County Mayor or his designee may reduce in any amount the scope and compensation payable under any contract and grant compensable and non-compensable time extensions thereunder.

(c) All actions executed by the Mayor or his designee pursuant to subsections 3-9(a) and (b) shall be submitted to the next meeting of the Governmental Operations and Environment Committee and shall be waived to the agenda of the next scheduled Board of County Commissioners meeting for ratification. However, no ratification is required of an action executed by the Mayor or his designee which involves waiving liquidated damages as a result of rescheduling contract activities or internal milestones provided neither the total contract time inclusive of time allowances nor the total contract amount inclusive of contingency allowances is exceeded. Any such action shall be included in a report submitted to the Board of County Commissioners on a quarterly basis.

(3) Authority to Award. The Mayor or Mayor's designee shall not have the authority to award contracts pursuant to this section, and all awards of such contracts shall be made by the Board of County Commissioners. Any contract recommended for award under this Chapter shall be heard by the committee to which it is assigned by the Chairperson of the Board of County Commissioners. If the contract recommended for award is recommended favorably by the committee, recommended favorably with committee amendment or forwarded without recommendation or if the chair of the committee to which the item has been assigned requests waiver of the item to the Board of County Commissioners before the item has been considered by committee, it shall be placed on the agenda of the next regular meeting of the Board of County Commissioners and shall not be subject to Rule 5.05(c) (the "4-Day Rule").

Sec. 3-10. - Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement Programs Acceleration Ordinance.[12]

(1) This Section of the Miami-Dade County Code shall be referred to as the Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement Programs Acceleration Ordinance.

(a) The Miami-Dade Water and Sewer Department Consent Decree Work consists of all those projects needed to comply with the Consent Decree approved on April 9, 2014 by the United States District Court for the Southern District of Florida.

[12] Formerly section 2-8.2.12 of the Code.

(b) The Miami-Dade Water and Sewer Department Capital Improvement Program consists of only those projects approved by the Board of County Commissioners as part of the Multi-Year Capital Plan.

(2) The County Mayor or Mayor's designee shall, subject to the funding limitations set forth in the Multi-Year Capital Plan approved by the Board of County Commissioners, be authorized to accelerate the processing, procurement, and award of any contract and agreement of the County for Consent Decree Work and other required Capital Improvements contracts to maintain the operational effectiveness and capacity of the water and sewer systems, including any contracts related to the purchase of goods and services, construction and professional services.

(3) All actions taken under this Ordinance shall be subject to review by the Office of Management and Budget to ensure adequate funding for each project and that appropriate operational and maintenance funding is in place for the foreseeable future and to ensure compliance with contract documents and all applicable resolutions, ordinances, and statutes.

(4) With respect to any Consent Decree Work or other required Capital Improvement Contract, the County Mayor or Mayor's designee is authorized to:

(a) Draft, Issue or Advertise Invitations to Bid, Requests for Proposals, Requests for Qualifications, Notices to Professional Consultants, or any other competitive procurement document.

(b) Award and reject bids, proposals, or other offers received in connection with any competitive procurement. However, in the event that any proposed award of a contract is protested, the Board of County Commissioners shall award such contract as provided for in Section 3-19 of the Code of Miami-Dade County and Implementing Order 3-21 governing the bid protest process. Unless previously authorized and delegated, the County Mayor or Mayor's designee may not waive competitive bids in the award of a contract without the approval of the Board of County Commissioners. The authority to award or reject is granted where:

1. the base value of a recommended award does not exceed the base estimate by more than ten percent (10%); and

2. the contractor or consulting firm receiving the award has a rating of 2.5 or higher in the Capital Improvement Information System (CIIS) database and has no outstanding debts, no goal deficits, and has submitted required insurance, bonds, affidavits and documentation provided for by the time of award; and

3. none of the bidders have filed a timely bid protest.

(c) Appoint selection evaluation committees to obtain professional services in accordance with Section 3-3 of the Code of Miami-Dade County and Section 287.055 of the Florida Statutes.

(d) Amend contracts and extend the time for completion of any contract for construction, materials or professional services, including waivers of liquidated damages and other compensable and/or non-compensable time extensions.

(e) Negotiate and settle claims, and issue settlement agreement(s) or change orders for additional work under contracts and amendments where:

1. the change order or claim does not exceed ten percent (10%) of the base contract amount; and

2. the contingency allowance shall be utilized to ensure minimal disruption in work flow and shall be documented on the appropriate contingency authorization draw. Change orders shall be submitted to replenish the contingency account in a timely manner; and

3. the limitations provided in (4)(e)(1) above shall not apply to any change order or amendment related to emergency actions impacting remediation, public safety, health requirements or recovery from natural disaster.

(f) Re-allocate unspent monies among projects within the approved Multi-Year Capital Plan.

(g) Apply for, execute, and receive any federal or state grant in connection with any project, and execute any ancillary documents required to effectuate such grant.

(h) Apply for, execute and enter into joint participation agreements with any local, state or federal government entity for the completion of a project.

(i) Issue and evaluate Requests for Qualifications for Professional Services, if the RFQ and evaluation process is otherwise consistent with Section 3-3 of the Code of Miami-Dade County. In the event that the County Mayor or Mayor's designee is unable to negotiate a contract with the most qualified firm, the County Mayor or Mayor's designee is authorized to negotiate, sequentially, with the remaining firms in order of qualifications. Alternately, the County Mayor or Mayor's designee may at any time reject all qualifications received. Except as noted herein, nothing contained in this Section shall

otherwise modify the substantive or procedural requirements of Section 3-3 of the Code of Miami-Dade County.

(5) With respect to any Consent Decree Work or other required Capital Improvements Contract, the County Mayor or Mayor's designee shall publish a monthly report to be known as the "Transparency Report" which includes a listing of all procurement activities advertised or placed for public notice under the authority of this Ordinance and the status of Consent Decree Work projects on the County's web portal in an electronic format by the second Monday of each calendar month, and send the "Transparency Report" to each Commission District Office. The "Transparency Report" shall at minimum identify upcoming advertisement for contracts, their estimated contract value, qualifications for award beyond requisite licensing, and the proposed methodology for award. With respect to each contract award, the report shall also provide proposed contract measures, including Small Business Enterprise (SBE) goals and Community Business Enterprise (CBE) goals. Upon review of the "Transparency Report", the Committee to which Miami-Dade Water and Sewer matters are assigned shall have the authority to require that specific projects be removed from the authority granted under this Ordinance and that the award of such projects be subject to future Committee and Board approval, and the Board may by resolution duly adopted limit or condition the advertisement, award or other rights conferred upon the County Mayor or Mayor's designee under this Section for specific projects.

(6) In addition to the reporting requirement set forth in Section (5) above, the County Mayor or Mayor's designee shall also request that a discussion item pertaining to the overall procurement activities of the Miami-Dade Water and Sewer Department be placed on the agenda of the full Board, on a quarterly basis, which may be placed on the Board agenda at the discretion of the Chair.

(7) Any act undertaken pursuant to the authority set forth in this Ordinance is subject to ratification by the Board of County Commissioners and shall be brought directly to the Board at the next available meeting and will not be subject to the 4-Day Rule. Any resolution ratifying an act undertaken pursuant to the authority set forth in this Ordinance shall include an effective date provision that provides that it will become effective upon approval by the County Mayor of the resolution and the filing of the Mayor's approval with the Clerk of the Board, which approval may be provided before the expiration of the ten (10) day mayoral veto period. Any contract, change order, settlement, modification, adjustment, or extension granted pursuant to any authority herein shall contain a termination for convenience clause or such other provision as necessary to specify that the action is revocable if not ratified by the Board of County Commissioners. The specification shall also include a sufficient release such that, in the event that the Board of County Commissioners does not ratify such item, the contractor is not entitled to lost profits or other consequential or indirect

damages; however, the contractor is eligible for payment for any work done prior to failure of the ratification.

(8) The powers conferred in this Ordinance shall be supplemental to, and not in derogation of, any other powers or authority granted elsewhere in any ordinance, statute or resolution.

Sec. 3-11. - Jackson Health System Capital Expedite Program.[13]

(1) Policy. It is the policy of Miami-Dade County and the Public Health Trust of Miami-Dade County, Florida (referred to herein as the "Trust") to expedite the delivery of health care throughout Miami-Dade County through the design, construction and improvement of the capital facilities of the Jackson Health System. Expediting the design, construction and improvement of those facilities, through open, competitive and transparent processes will also promote the local economy by creating employment opportunities for Miami-Dade County. To advance these policies, Miami-Dade County hereby enacts this ordinance creating the "Jackson Health System Capital Expedite Program."

(2) Professional Services. The Trust is hereby authorized to create specifications for, advertise, negotiate and award contracts for architecture, professional engineering, landscape architecture, and registered surveying and mapping, and other professional services as defined in Section 287.055 of the Florida Statutes, all in accordance with the procurement policy duly enacted by the Public Health Trust, as the same may be amended from time to time (the "Procurement Policy") and the provisions of law. In particular, and without limitation to the grant of authority in the preceding sentence, the Trust shall be authorized to create within its Procurement Policy provisions for the award of continuing contracts as defined under state law to providers who specialize in health care facilities. The Procurement Policy shall be consistent with the County's policy contained in section 3-3 of this Code except where the Trust determines in its discretion that simplification is in the best interest of the Jackson Health System Capital Expedite Program.

(3) Construction and Design-Build Services. The Trust is hereby authorized to create specifications for, advertise, negotiate and award contracts for construction, construction management, and design-build services, all in accordance with the Procurement Policy and the provisions of law.

(4) Procurement Policy. The Trust is hereby authorized and directed to amend the Procurement Policy as necessary to give effect to this Section. The Procurement Policy shall, at a minimum, contain provisions:

[13] Formerly 2-8.2.14 of the Code.

(a) establishing processes for the award of design, construction and design build contracts, including without limitation, applicable thresholds for the award by the Trust or its executive staff,

(b) governing bid protests where applicable,

(c) establishing the appointment of selection committees, including where appropriate, standing committees,

(d) governing the establishment and disbursement of contract contingency accounts, and

(e) governing the issuance of change orders.

The Procurement Policy and all contract awards pursuant thereto shall at all times comply with all applicable provisions of this Code including, without limitation, the provisions governing Community Business Enterprises and Community Small Business Enterprises or successor programs, which include the requirements that all design and construction contracts be submitted to Small Business Development ("SBD") prior to advertisement for review and assignment of small business measures and that all subsequent amendments and/or change orders must include SBD determination of compliance with applicable goals and responsible wages.

(5) Implementation. The Trust's adoption of the Procurement Policy in its discretion in accordance with this Section shall satisfy any requirement contained in section 3-3 that the Trust adopt rules and procedures to implement that section. Any administrative or implementing order, or part thereof, which is inconsistent with this Section is hereby repealed.

Sec. 3-12. - Miami-Dade Seaport Department Capital Improvement Programs Expedite and Acceleration Ordinance.[14]

(1) This Section of the Miami-Dade County Code shall be referred to as the Miami-Dade Seaport Department Capital Improvement Program Expedite and Acceleration Ordinance and is intended to provide an expedited process to award certain contracts with the express purpose of accelerating the completion of time sensitive projects at the Port of Miami.

(2) Definitions.

(a) The term "Capital Improvements" shall mean the repair, maintenance, improvement and construction of port buildings, roads, utilities, bulkheads, garages, and other Port Facilities as that term is defined in section 315.02(6), Florida Statutes, and the associated purchases of furniture, fixtures and equipment.

[14] Formerly section 2-8.2.15 of the Code.

(b) The term "Capital Improvement Projects" shall mean the specific Capital Improvement projects identified by the Board of County Commissioners by resolution as set forth in Subsection 3 below.

(c) The term "Professional Services" shall mean architectural, engineering, design and other services within the scope of section 287.055, Florida Statutes required or desired for Capital Improvements.

(d) The term "Stakeholders" shall mean users of the Port of Miami including cruise lines and affiliated companies, cargo terminal operators, cargo shipping lines, supporting federal government agencies, and stevedores.

(3) Scope: This section, and the expedited processes set forth herein, shall, to the extent permitted by law, be applicable to the processing, design, and construction of the Capital Improvement Projects specifically identified by resolution of the Board of County Commissioners. The Board of County Commissioners may, from time to time and by subsequent resolution, add or delete projects from the list of Capital Improvement Projects to which this Section applies. All Capital Improvement Projects must have been either approved as part of the Annual Proposed Resource Allocation and Multi-Year Capital Plan or be Capital Improvement Projects required to be completed by a revenue generating contract, or amendment thereto, previously approved by the Board of County Commissioners. This [section] shall not exempt the Seaport Department from any requirement of the Code of Miami-Dade County not expressly addressed in this [section] including but not limited to community, small business, or workforce legislative requirements.

(4) All actions taken under this [section] shall be subject to review by the Office of Management and Budget (OMB) to ensure adequate funding for each project and that appropriate operational and maintenance funding is in place for the foreseeable future and to review by the Internal Services Department (ISD) or its successor department to ensure compliance with contract documents and all applicable resolutions, ordinances, and statutes.

(5) Notwithstanding any other provision of the Code of Miami-Dade County to the contrary, the Mayor or the Mayor's designee shall have the following authority with respect to contracts within the scope of this section;

(a) To issue bid and proposal documents including addenda thereto;

(b) To receive, open and review bids and proposals;

(c) To appoint standing selection committee and negotiation committee members to obtain professional services in accordance with Section 3-3 of the Code of Miami-Dade County and Section 287.055 of the

Florida Statutes, provided each such committee shall contain, whenever possible, representation from the Seaport Department;

(d) To award or reject bids for Capital Improvement Project contracts, including, but not limited to, professional service agreements, construction contracts, design-build contracts and contracts for the purchase furniture, fixtures and equipment for such Capital Improvement Projects and issue Notices to Proceed where:

1. The award value of the contract and operational considerations have been reviewed and approved by OMB; and

2. The base value of a recommended award does not exceed the Seaport Department's base estimate by more than twenty percent (20%); and

3. The contractor or consulting firm receiving the award has an average evaluation rating of 2.5 or higher in the Capital Improvement Information System (CIIS) database and has no outstanding debts or goal deficits, and has submitted the required insurance(s), bonds, affidavits and documentation provided for as a condition of award; and

4. None of the bidders have filed a timely bid protest pursuant to Sections 3-2 and 3-19 of the Code of Miami-Dade County and Implementing Order 3-38.

(e) Amend contracts and extend the time for completion of any contract for construction, materials or Professional Services, including waivers of liquidated damages and other compensable and/or non-compensable time extensions.

(f) Negotiate and settle claims, and issue settlement agreement(s) or change orders for additional work under contracts and amendments where the change order or claim does not exceed ten percent (10%) of the base contract amount, or $1,000,000.00, whichever is lower. This limitation shall not apply to any change order or amendment related to emergency actions impacting remediation, public safety, health requirements or recovery from natural disaster.

(g) Apply for, execute, and receive any federal or state grant in connection with any project, and execute any ancillary documents required to effectuate such grant.

(h) Apply for, execute and enter into joint participation agreements with any local, state or federal government entity for the completion of a project.

(i) Issue and evaluate Notices to Professional Consultants ("NTPC") and Requests for Qualifications ("RFQ") for Professional Services, if the NTPC or RFQ and the evaluation process of responses is otherwise consistent with Section 3-3 of the Code of Miami-Dade County. In the event that the County Mayor or Mayor's designee is unable to negotiate a contract with the most qualified firm, the County Mayor or Mayor's designee is authorized to negotiate, sequentially, with the remaining firms in order of qualifications. Alternately, the County Mayor or Mayor's designee may at any time reject all qualifications received. Except as noted herein, nothing contained in this Section shall otherwise modify the substantive or procedural requirements of section 3-3 of the Code of Miami-Dade County.

(6) Any contract, change order, settlement, modification, adjustment, or extension awarded, issued or entered into pursuant to the authority set forth in this [section] is subject to ratification by the Board of County Commissioners and shall be brought directly to the Board at the next available meeting and will not be subject to the 4-Day Rule. Any contract, change order, settlement, modification, adjustment, or extension granted pursuant to any authority herein shall contain a termination for convenience clause or such other provision as necessary to specify that the action is revocable if not ratified by the Board of County Commissioners. The specification shall also include a sufficient release such that, in the event that the Board of County Commissioners does not ratify such item, the contractor is not entitled to lost profits or other consequential or indirect damages; however, the contractor is eligible for payment for any work done prior to failure of the ratification.

(7) The powers conferred in this section shall be supplemental to, and not in derogation of, any other powers or authority granted elsewhere in any ordinance, statute or resolution.

Sec. 3-13. - Procurement policy as to contracts related to projects funded in whole or in part by Building Better Communities General Obligation Bond Program Funds.[15]

(1) Notwithstanding and prevailing over any other provision of the Code of Miami-Dade County, Florida, to the contrary, as to contracts related to projects constructed by any municipality and funded in whole or in part by Building Better Communities General Obligation Bond Program funds, municipalities shall use their own procurement procedures, including bid waivers where permitted by municipal ordinance; provided, however, if a project funded in whole or in part by Building Better Communities General Obligation Bond Program funds is constructed by any municipality on behalf of the County, the provisions of sections 9-71 through 9-75, section

[15] Formerly section 2-8.2.10 of the Code.

3-35 and section 10-33.02, respectively, shall apply to such project, to the extent not prohibited by state and federal law. The foregoing notwithstanding, a municipality which elects to apply its own sustainable building program to a project shall not be required to apply the provisions of sections 9-71 through 9-75 to that project.

(2) Notwithstanding and prevailing over any other provision of the Code of Miami-Dade County, Florida to the contrary, as to contracts related to projects funded in whole or in part by grants to not-for-profit organizations of Building Better Communities General Obligation Bond Program funds (provided such projects are not for facilities owned by the County or operated by the not-for-profit organization on behalf of the County), not-for-profit organizations shall use their own procurement procedures, including bid waivers.

(3) All applicable provisions of the Miami-Dade County Code shall continue to apply to all contracts related to not-for-profit projects funded in whole or in part by Building Better Communities General Obligation Bond Program funds where the County owns the facility or the not-for-profit organization operates the facility on behalf of the County. By exception, a not-for-profit organization may for a specified project seek an exemption from the application of any of these requirements in advance of procuring the required goods or services. The Commission, upon the written recommendation of the County Mayor, may by a two-thirds (⅔) vote of the members present, grant such an exemption when it finds it to be in the best interest of the County.

Sec. 3-14. - Competitive bidding requirement for all county bond transactions.[16]

(1) Definitions. In addition to words and terms defined within the context of this section, the following words and terms shall mean:

(a) "Capital Before Haircut" means "Net Capital before haircuts on securities positions" as shown in item 3640 of each underwriting firm's Focus Report filed with the SEC periodically or any equivalent measure of capital established by the SEC from time to time.

(b) "Eligible Amount" means an underwriting firm's Capital Before Haircut multiplied by 15, or any equivalent measure of eligibility established by the SEC from time to time.

(c) "Focus Report" means the monthly focus report filed by underwriting firms with the SEC or any successor report required by the SEC from time to time.

[16] Formerly section 2-10.6 of the Code.

(2) Sale of Bonds. All general obligation, special obligation and revenue bonds, certificates of participation, notes and other similar obligations of the County (collectively, the "Bonds") shall be sold at public sale by competitive bid at such place or places as the Board shall determine.

(3) Waiver of Competitive Sale. The provisions of subsection 2 may be waived:

(a) Upon both the written recommendation of the County Mayor and the County's financial advisor responsible for the transaction in question, and by a majority vote of the entire membership of the Board that a waiver is in the best interest of the County, provided the written recommendation of County Mayor sets forth specific findings as to the reasons a negotiated sale is recommended; or

(b) By an affirmative vote of two-thirds (⅔) of the entire membership of the Board, provided the Board makes specific findings as to the reasons a negotiated sale is in the best interest of the County.

(4) Mayor's Finance Committee.

(a) The Mayor's Finance Committee ("MFC") is established and shall be comprised of a representative of the County Mayor's Office, the Water and Sewer Department, the Aviation Department, the Department of Solid Waste Management, the Seaport Department, the Department of Transportation and Public Works, and the Office of Strategic Business Management; and two members from the public sector and one member from the private sector to be selected by the County Mayor, all of whom shall be familiar with corporate or municipal public finance. The representative of the County Mayor's Office shall serve as voting Co-Chairperson and the Finance Director shall serve as a non-voting Co-Chairperson.

(b) The County Attorney's Office shall serve as staff counsel to the MFC. The County's Financial Advisors shall serve in an advisory capacity pursuant to the terms of this section.

(c) A majority of the voting members present shall constitute a quorum for purposes of transacting business.

(d) It shall be the responsibility of the MFC to assign the underwriting teams to a particular negotiated transaction in accordance with the terms of this section.

(e) The MFC shall make recommendations to the County Mayor whether a particular transaction has merit.

(f) The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, codified in section 3-20 of the County Code, shall be applicable to the members of the MFC.

(5) Selection of Underwriting Firms Pursuant to RFQ.

(a) The County Mayor shall issue a Request for Qualifications ("RFQ") for the selection of underwriting firms to serve as members of the County's Underwriting Pool (the "Pool") on all negotiated transactions, prior to each Pool term. All underwriting firms in the Pool may serve as Senior Manager, Co-Senior Manager or Co-Manager in accordance with the provisions of this section.

(b) No underwriting firm shall be a member of the Pool if such underwriting firm is serving as one of the financial advisors to the County.

(6) Underwriting Pool.

(a) A Pool shall be in existence for a five-year period, commencing on the effective date of the Board's approval of that Pool (the "Term"). A Pool may be established by resolution after a RFQ proposal process is complete.

(b) The Pool shall consist of three segments of underwriting firms (the "Segment" or "Segments") categorized by their Capital Before Haircut. The three Segments are:

1. Segment 1 — National Firms: Segment 1 shall consist of underwriting firms with a Capital Before Haircut greater than or equal to $350,000,000.00.

2. Segment 2 — Regional Firms: Segment 2 shall consist of underwriting firms with a Capital Before Haircut greater than or equal to $5,000,000.00 and less than $350,000,000.00.

3. Segment 3 — Small Business Firms: Segment 3 shall consist of underwriting firms with a Capital Before Haircut greater than or equal to $250,000.00 and less than $10,000,000.00.

(c) Underwriting firms responding to the RFQ shall indicate which Segment they are applying under and must meet the Capital Before Haircut requirement for that Segment; however, an underwriting firm with Capital Before Haircut between $5,000,000.00 and $10,000,000.00 may apply under either Segment 2 or Segment 3 but shall be subject to the applicable rules of that Segment.

(d) The aggregate total number of underwriting firms selected in the Pool shall not exceed 24 firms.

(e) Underwriting firms responding to the RFQ shall be evaluated on a point-based system by an Evaluation/Selection Committee to

determine their rank ("RFQ Rank") within the list of qualified underwriting firms.

(f) Selection of underwriting firms to the three Segments of the Pool shall be based on RFQ Rank as follows:

1. Segment 1 shall consist of the 12 highest ranked underwriting firms that have applied under Segment 1 of the Pool; however, if fewer than 12 firms have applied under Segment 1, Segment 1 shall consist of only the nine highest ranked firms that have applied under Segment 1.

2. Segment 2 shall consist of the six highest ranked underwriting firms that have applied under Segment 2 of the Pool; however, if fewer than six firms have applied under Segment 2, Segment 2 shall consist of only the three highest ranked firms that have applied under Segment 2.

3. Segment 3 shall consist of the six highest ranked underwriting firms that have applied under Segment 3 of the Pool; however, if fewer than six firms have applied under Segment 3, Segment 3 shall consist of only the three highest ranked firms that have applied under Segment 3.

(g) Any additional underwriting firms that have responded to the RFQ but not selected to the Pool shall be placed in "batter's box" for the purpose of filling any vacancy that may occur in one of the Teams (as defined below) pursuant to the provisions of subsection 8(c) below.

(h) Each underwriting firm shall submit line 3640 (Capital Before Haircut) of its Focus Report to the County upon each filing of the underwriting firm's Focus Report, and at the very least, every six months. Failure by the underwriting firm to submit the Focus Report within 10 business days from the date of the Focus Report could result in automatic removal from the Pool.

(i) If the average Capital Before Haircut of an underwriting firm decreases below $250,000.00 over a period of six consecutive months, the MFC shall automatically remove the underwriting firm from the Pool.

(j) Underwriting firms may be suspended or removed from the Pool upon the written recommendation of the MFC to the County Mayor, who will then consider the MFC's recommendation before submitting his or her recommendation to the Board. The County Mayor shall not be bound by the MFC's recommendation and may recommend to the Board the suspension or removal of an underwriting firm from the Pool without a recommendation from the

MFC. Final decisions reside with the Board, which may also suspend or remove an underwriting firm without a recommendation from the MFC or the County Mayor.

(k) The MFC, County Mayor or the Board shall consider, among other factors, the following in evaluating whether an underwriting firm shall be suspended or removed from the Pool:

1. Any investigation whether threatened, pending or resolved by any federal or state authority, including the State of Florida, concerning an underwriting firm's public finance related activities, particularly any Miami-Dade transactions, as evidenced by receipt of a Wells Letter or notice of a Wells Letter received by the firm with respect to a federal investigation and/or receipt or notice of an investigation from any state, including the State of Florida; or

2. Any civil or criminal litigation involving the firm or any of its principals relating to activities as underwriters.

(l) An underwriting firm shall be automatically removed from the Pool if the underwriting firm:

1. Ceases operations due to bankruptcy; or

2. Terminates underwriting operation activities.

(7) Sale on a Negotiated Basis. Whenever the competitive bid process has been waived pursuant to the provisions of subsection 3, the transaction being proposed may be sold on a negotiated basis to the underwriting firms assigned in the manner described in subsections 8 and 9.

(8) Assignment of Underwriting Firms to Teams.

(a) All underwriting firms selected to the Pool will be assigned to one of three teams ("Team"), with each team comprised of eight underwriting firms: four firms from Segment 1, two firms from Segment 2, and two firms from Segment 3.

(b) Individual underwriting firms in the Pool will be assigned to the three Teams based on their Segment and RFQ Rank, as follows:

1. Team 1 shall consist of the first, sixth, seventh and twelfth ranked firms from Segment 1; the third and fourth ranked firms from Segment 2; and the first and sixth ranked firms from Segment 3.

2. Team 2 shall consist of the second, fifth, eighth and eleventh ranked firms from Segment 1; the second and fifth ranked

firms from Segment 2; and the second and fifth ranked firms from Segment 3.

3. Team 3 shall consist of the third, fourth, ninth and tenth ranked firms from Segment 1; the first and sixth ranked firms from Segment 2; and the third and fourth ranked firms from Segment 3.

(c) The three Teams shall remain constant for the duration of the Term, unless a vacancy in one of the Teams occurs, in which case such vacancy shall be filled by the underwriting firm in the "batter's box" (as defined in subsection 6(g) above) with the highest RFQ Rank that has applied under the same Segment as the firm it is replacing. If such vacancy cannot be filled with an underwriting firm from the "batter's box," the County Mayor shall issue a RFQ for the limited purpose of selecting an underwriting firm to fill such vacancy. An underwriting firm selected to fill a vacancy in a Team shall remain a member of the Team for the duration of the Term and shall receive the same number of Assignment Points (as defined below) as the firm it is replacing. In the event that a vacancy in a Team cannot be filled as provided above, any new Assignment Points resulting from such vacancy shall be reallocated to the remaining members of the Team as determined by the MFC.

(9) Assignment of Underwriting Teams to Particular Bond Transaction.

(a) Until a new Pool is established pursuant to the terms of this section, the MFC shall continue to make assignments on negotiated transactions pursuant to the provisions of section 3-14 of the County Code in the same manner as if such provisions were still in effect.

(b) After a new Pool is established pursuant to the terms of this section, bond transactions will be assigned to the three Teams as follows:

1. The first bond transaction shall be assigned to Team 1.

2. The second bond transaction shall be assigned to Team 2.

3. The third bond transaction shall be assigned to Team 3.

4. All subsequent bond transactions shall be assigned to the Team with the least par amount of Bonds previously assigned, with the intent of equalizing the par amount of Bonds sold by each Team.

(c) A Senior Manager shall be assigned to each bond transaction as follows:

1. Once a Team is assigned a bond transaction, one Senior Manager shall be assigned from that Team.

2. A Segment 1 firm or a Segment 2 firm may be the Senior Manager but must have an Eligible Amount greater than or equal to 60 percent of the par amount of the transaction. A Segment 3 firm may be the Senior Manager on any transaction with a par amount equal to or less than $125,000,000.00, or if the firm has an Eligible Amount greater than or equal to 60 percent of the par amount of the transaction.

3. The Senior Manager shall be assigned 35 percent of the par amount of the transaction as its assigned points ("Assignment Points"). Such Assignment Points shall have no relationship to the firm's compensation.

4. The Senior Manager for the first bond transaction assigned to a Team shall be the underwriting firm with the highest RFQ Rank in that Team. For each subsequent bond transaction assigned to that Team, the Senior Manager shall be the underwriting firm with the next highest RFQ Rank, until all members on the Team have served as Senior Manager on a transaction. Once all members on a Team have served as Senior Manager on a transaction, the Senior Manager for each subsequent transaction assigned to that Team shall be the member with the fewest Assignment Points, with the intent of equalizing Assignment Points across all Team members.

5. For the first two bond transactions with a par amount less than or equal to $125 million, the two Segment 3 firms on the assigned Team shall serve as Senior Manager, one for each transaction. Thereafter, the Senior Manager will be assigned in accordance with subsection 9(c)(4) above.

(d) Co-Senior Managers shall be assigned to each bond transaction as follows:

1. Once a Team is assigned a bond transaction, two Co-Senior Managers shall be assigned from that Team.

2. The two Co-Senior Managers shall be firms from the two Segments not represented by the Senior Manager.

3. Each Co-Senior Manager shall be assigned 15 percent of the par amount of the transaction as its Assignment Points. Such Assignment Points shall have no relationship to the firm's compensation.

4. The Co-Senior Managers for the first bond transaction assigned to a Team shall be the underwriting firms with the

highest RFQ Rank in that Team from the two Segments not represented by the Senior Manager. For each subsequent bond transaction assigned to that Team, the Co-Senior Managers shall be the underwriting firms with the next highest RFQ Rank in that Team from the two Segments not represented by the Senior Manager, until all Team members from the two Segments not represented by the Senior Manager have served as Co-Senior Manager on a transaction. Once all Team members from the two Segments not represented by the Senior Manager have served as Co-Senior Manager on a transaction, the Co-Senior Managers for each subsequent transaction assigned to that Team shall be the members with the fewest Assignment Points, with the intent of equalizing Assignment Points across all Team members.

(e) Co-Managers shall be assigned to each bond transaction as follows:

1. Once a Team is assigned a bond transaction, the five remaining Team members not serving as either Senior Manager or Co-Senior Manager shall serve as Co-Managers on the transaction.

2. Each Co-Manager shall be assigned 7 percent of the par amount of the transaction as its Assignment Points. Such Assignment Points shall have no relationship to the firm's compensation.

(10) Award Resolution. All Bonds sold to an underwriting firm in the Pool must be accomplished pursuant to a resolution of the Board. The Board reserves the right to remove an underwriting firm, suspend an underwriting firm or to exercise its sole discretion and not award a particular transaction to an underwriting firm.

(11) Post-Sale Review. After completion of each transaction, the participating underwriting firms shall be subject to post-sale review by the Finance Director and the County's financial advisor assigned to the matter. The criteria to be reviewed shall include, among other things, breakdown of Bonds sold at retail or to institutions, responsiveness and cooperation of individuals assigned to each aspect of the transaction, perspective concerning agreed compensation and results achieved when compared with similar credits in the same market. The MFC may, based on one or more such reviews, submit a report to the Board recommending removal of any one or more underwriting firms.

(12) Unsolicited Proposals.

(a) It is contemplated that underwriting firms will continually monitor the County's capital needs and market opportunities and develop

unsolicited proposals in order to increase the likelihood for a negotiated transaction. In the event an unsolicited proposal results in a negotiated transaction within a reasonable time of its submission, the underwriting firm that submitted the unsolicited proposal, whether a member of the Pool or not, shall serve as Senior Manager, provided the underwriting firm has an Eligible Amount greater than or equal to 60 percent of the par amount of the transaction as required by subsection 9(c)(2) above.

(b) If the underwriting firm that submitted the unsolicited proposal is a current member of a Team, the remaining members of that Team shall also be assigned the transaction. For such a transaction, the underwriting firm that submitted the unsolicited proposal shall serve as Senior Manager and shall be allocated Assignment Points in accordance with subsection 9(c)(3) above; however, the underwriting firm's service as Senior Manager shall not count for purposes of subsection 9(c)(4) above. Co-Senior Managers and Co-Managers shall also be assigned to the transaction and allocated Assignment Points in accordance with subsections 9(d) and (e) above.

(c) If the underwriting firm that submitted the unsolicited proposal is not a current member of a Team, a Team will also be assigned to the transaction in accordance with the provisions of subsection 9(b) above, and the underwriting firm will be added to the Team solely for the purposes of the transaction and will not remain with the Team upon the completion of the transaction. For such a transaction, the underwriting firm that submitted the unsolicited proposal shall serve as Senior Manager and shall be allocated Assignment Points in accordance with subsection 9(c)(3) above. Of the eight remaining Team members, the three firms with the fewest Assignment Points—one firm from each Segment—shall serve as Co-Senior Managers on the transaction and shall be allocated 10 Assignment Points each, and the five remaining Team members not serving as either Senior Manager or Co-Senior Manager shall serve as Co-Managers on the transaction and shall be allocated Assignment Points in accordance with subsection 9(e)(2) above.

(d) A meritorious unsolicited proposal must be a unique and innovative approach to: solving a County financial problem; improving the way in which the County gains access to short or long term capital funds; or identifying new sources of security to support County debt obligations. Matters which should be routinely monitored by the County's financial advisors such as debt which should be refunded for interest cost savings will not qualify. In addition, interest rate swap recommendations will not ipso facto qualify as meritorious unsolicited proposals. An unsolicited proposal deemed meritorious by the financial advisors shall be presented to the MFC for

consideration. Upon a majority vote of the MFC in favor of the unsolicited proposal, underwriting firms will be assigned to the bond transaction in accordance with the terms of this section.

(13) Exceptions. The provisions of this section do not apply to the issuance of Bonds by the Miami-Dade County Educational Facilities Authority; the Miami-Dade County Health Facilities Authority; the Housing Finance Authority of Miami-Dade County, Florida and the Miami-Dade County Industrial Development Authority.

Sec. 3-15. - Public-private partnerships; unsolicited proposals.[17]

(1) Policy and Intent. The Board hereby fully adopts, for the County and for the benefit of the residents of the County, the legislative findings and intent set forth in section 255.065, Florida Statutes, as may be amended from time to time, relating to unsolicited proposals, public records and public meetings exceptions, and public private partnerships. This section of the Code is cumulative and supplemental to all other authority and power vested in Miami-Dade County by the Home Rule Charter, the laws of the State of Florida and the Code. This section of the Code provides an alternative method of contracting and shall not be deemed to limit the power or authority of the Board or the County Mayor to procure, finance, operate or maintain any public improvement or services. It is the intent of the County that the public records and public meetings exceptions set forth in section 255.065(15), Florida Statutes, as may be amended, will apply to records and meetings arising from the process set forth herein. In particular, and without prejudice to the generality of the intent stated in the prior sentence, the County shall protect the confidentiality of documents exempt from disclosure to the maximum extent provided by law. The County Mayor shall develop specifications, processes and protocols for training County personnel to give effect to the intent of this policy.

(2) Definitions. Except as otherwise specifically set forth herein, the County adopts the definitions set forth in section 255.065, Florida Statutes, (including the capitalized terms within the definitions set forth below of special application to the County), as may be amended from time to time. For purposes of this section, the following definitions shall apply to the County:

(a) "Authorizing Resolution" is a resolution passed by the Board upon its own initiative or upon a recommendation of the County Mayor to treat an unsolicited proposal or a Qualifying Project as a P3 Qualifying Project.

(b) "County Mayor" wherever used in this section shall be deemed to include the County Mayor and his or her designee(s).

[17] Formerly section 2-8.2.6 of the Code.

(c) "Non-P3 Qualifying Project" are those Qualifying Projects approved for publication via the unsolicited proposal process set forth in this section but are not deemed a P3 Qualifying Project via an Authorizing Resolution.

(d) "P3" is a contractual arrangement between the County and a Private Entity to design, build, finance, operate, and/or maintain an improvement by the Private Entity with the public improvement remaining in County ownership and control or reverting to County control at the end of the contract term.

(e) "P3 Qualifying Project" is a Qualifying Project as that term is defined in section 255.065, Florida Statutes which the Board determines is appropriate for a P3 in the Authorizing Resolution.

(f) "Responsible public entity" shall mean Miami-Dade County, inclusive of all of its agencies and instrumentalities.

(g) "Value for Money Analysis" or "VfM Analysis" is a process used to compare the financial impacts of a P3 method of delivery with the financial impacts for the traditional public delivery alternative. Generally, the VfM will estimate the present value of the life-cycle cost of a project where the County finances, designs, builds, maintains and/or operates such project through the procurement process commonly used by the County for the procurement of similar goods and services versus the present value of payments to be made to a private entity for undertaking the same project on behalf of the County. A VfM may also assess the value of any risks retained by the County, opportunity costs, and ancillary costs borne by the County in using a P3.

(3) Procurement Procedures. This section shall govern both: (i) unsolicited proposals received by the County which are to be treated as Non-P3 Qualifying Projects and procured through the procedures set forth herein; and (ii) all P3 Qualifying Projects, whether originating via an unsolicited proposal or initiated by the County. The Office of the Miami-Dade County Inspector General shall have the full authority, functions and powers enumerated in Section 2-1076 of this Code, as may be amended, relating to the investigation, oversight, auditing and any other powers granted to it by this Code relating to the processes, procurement procedures and agreements set forth herein.

(a) Unsolicited Proposals.

1. A private entity may submit an unsolicited proposal to the County for a Qualifying Project at any time. The unsolicited proposal must include:

a. An initial application fee in an amount of $25,000.00 paid by cash, cashier's check, or other non-cancelable instrument. Personal checks may not be accepted.

b. All material and information set forth in section 255.065(4), Florida Statutes. Additionally, the private entity must provide: (a) information on how the project would benefit small and community based contractors within the County; (b) a listing of all small business enterprises (as defined in applicable County ordinances) which are proposed to participate in the project and the proposed scope of each; and (c) a listing of all proposed obligations and requirements of the County and any other governmental agencies, including but not limited to, contributions to project financing, staffing and permitting.

2. Within 30 days of receipt of any unsolicited proposal, the County Mayor may elect to not evaluate the unsolicited proposal, in which case the County must return the application fee. On at least a monthly basis, the County Mayor shall submit a report to the Board of all unsolicited proposals the County Mayor has elected not to evaluate. Upon a majority vote of the Board members present, the Board may direct the County Mayor to evaluate an unsolicited proposal the County Mayor elected not to evaluate provided the application fee is resubmitted and the unsolicited proposal otherwise meets the requirements of this section.

3. If the County Mayor elects to evaluate an unsolicited proposal, the County Mayor may seek the advice of County staff, outside advisors, or consultants using the County Mayor's delegated authority under Board approved contracts with the County, or any combination thereof, with relevant experience in determining whether to accept the unsolicited proposal for publication of a solicitation for the same project purpose and/or whether to enter into an agreement with the private entity or any competing proposer. The County Mayor may require the private entity to provide a technical study as set forth in section 255.065(3)(f), Florida Statutes. In determining whether to recommend the unsolicited proposal for publication of a solicitation for the same project purpose as either a P3 Qualifying Project or as a Non-P3 Qualifying Project, the County Mayor may take into consideration such factors as: whether the proposed

project is in the public's best interest; the costs of the proposed project and its funding sources and its financial viability; whether the proposed project may be accomplished through the use of County resources; the need for the proposed project; the scientific, technical or socioeconomic merits of the unsolicited proposal; the contribution of the proposal to the County's goals and objectives; the cost, if any, to the County to proceed with implementation of the proposed project; and any other information the County deems appropriate for such evaluation.

4. If the initial application fee does not cover the County's costs to evaluate the unsolicited proposal, the County Mayor must request in writing the additional amounts the County Mayor deems reasonably necessary to fully evaluate the unsolicited proposal. The private entity must remit the requested additional amounts within 30 days of receipt of the request for additional fees or the County Mayor shall stop the review of the unsolicited proposal and recommend its rejection to the Board. At the completion of the review of the unsolicited proposal, the County Mayor shall refund any portion of the application fee paid which in the discretion of the County Mayor exceeded the costs associated with evaluating the unsolicited proposal.

5. If the County Mayor elects to evaluate an unsolicited proposal that has been submitted with the application fee and all of the information and materials required pursuant to this section, the County Mayor shall have 60 days to evaluate the unsolicited proposal if the unsolicited proposal involves only one department or is for a Qualifying Project valued below $100,000,000.00 and 90 days if the unsolicited proposal involves two or more departments or is for a Qualifying Project valued at or greater than $100,000,000.00. In the event that such timeframes are insufficient to complete an evaluation, the County Mayor may submit a report to the Chairperson of the Board to be forwarded to all Commissioners notifying the Board that an extension of these time frames is necessary to evaluate the unsolicited proposal. At or prior to the completion of the 60 or 90 day review period, unless extended by the County Mayor upon notice to the Board, the County Mayor shall either: (1) prepare a solicitation for a P3 Qualifying Project or a Non-P3 Qualifying Project for the same project purpose as the unsolicited proposal in accordance with the County's general procurement rules; or (2) submit an item to the Chairperson of the Board for placement on the appropriate

agenda of the Board containing a recommendation to reject the unsolicited proposal or to take any other such action as may be appropriate. If the County Mayor elects or the Board directs the County Mayor or Mayor's designee to prepare a solicitation for a P3 Qualifying Project or a Non-P3 Qualifying Project for the same project purpose as an unsolicited proposal, the County Mayor shall, within 130 days of the receipt of the unsolicited proposal, submit an item to the Chairperson of the Board for placement on the appropriate agenda of the Board seeking approval to publish a solicitation for the same project purpose as the unsolicited proposal along with the proposed solicitation prepared by the County Mayor.

6. The Board shall have final discretion in its determination of whether to publish a solicitation for the same project purpose as an unsolicited proposal and the form and contents of the solicitation. The determination to treat the unsolicited proposal as a P3 Qualifying Project shall be made in accordance with the factors set forth in paragraph (b) below.

7. In the event the Board determines to issue a solicitation for the same project purpose as an unsolicited proposal for a Non-P3 Qualifying Project, the solicitation shall contain a description of the project purpose consistent with the unsolicited proposal and sufficient criteria to allow a comparison of the unsolicited proposal with other proposals which may be offered in response to the solicitation. The solicitation for the Non-P3 Qualifying Project for the same project purpose approved for publication shall be published in the manner and for the time periods set forth in the law, including those periods of extension which may be authorized by the Board by resolution and in accordance with paragraph (c) below.

(b) Authorizing Qualifying Projects as P3 Qualifying Projects.

1. A P3 Qualifying Project requires Board approval via an Authorizing Resolution. A project shall only be a P3 Qualifying Project when the potential contribution of the private sector, which may include innovation, capital or other resources and expertise outweigh the complexity and additional up-front time and costs which may be attendant to the contemplated procurement. Approval of a Qualifying Project as a P3 Qualifying Project must be justified based on: a favorable initial comparative analysis of the relative benefit-cost of developing the Qualifying Project, utilizing alternative development approaches, with the results of such

analysis reflected in financial and economic terms; the complexity of the Qualifying Project; the schedule and budget challenges; risk shifting; and creative financing opportunities available through or with a private entity. Unless otherwise prohibited by law, the Board may by resolution, at its option, and by two-thirds vote of the members present, waive the requirements of this ordinance and any other provisions of the Code in connection with the procurement or contracting of a P3 Qualifying Project, upon a finding that such waiver is in the best interest of the County.

2. If the Board approves an unsolicited proposal or a Qualifying Project as a P3 Qualifying Project, then the Board shall provide guidance for special factors to be considered before publication of a solicitation for the same project purpose of the unsolicited proposal or the P3 solicitation such as criteria and material assumptions to be used for the VfM Analysis, design and construction, labor considerations, including but not limited to the consideration of labor peace agreements and County employee retention issues, or any other factor related to the specific project. Any proposed Authorizing Resolution shall set forth the proposed material assumptions and parameters to be approved by the Board.

3. The County Mayor shall undertake a VfM Analysis on all P3 Qualifying Projects prior to publication of a solicitation for the same project purpose of the applicable unsolicited proposal or for the P3 Qualifying Project utilizing the material assumptions and parameters approved by the Board. The County shall only publish solicitations for the same project purpose of unsolicited proposals for P3 Qualifying Projects or for P3 Qualifying Projects where the VfM Analysis supports a determination, which determination shall be based on the material assumptions and parameters approved by the Board in the Authorizing Resolution that a P3 method for the P3 Qualifying Project is in the best interest of the County. The County Mayor shall submit a written report to the Board on the results of any VfM Analysis conducted of a P3 Qualifying Project.

4. All solicitations for P3 Qualifying Projects shall consist of two separate but related competitive processes to select a qualified proposer. The first shall be a Request for Qualifications ("RFQ") where the County shall select the best proposers on the basis of their qualifications to contract for and perform the P3 Qualifying Project. The second shall

be a Request for Proposals ("RFP") where the best or short-listed proposers resulting from the RFQ can offer proposals to contract for and perform the P3 Qualifying Project. Each of the RFQ and RFP processes shall be separately advertised and evaluated, and the County Mayor shall be authorized, but not required to utilize a separate selection committee for the evaluation of each. The Cone of Silence provided for under 3-20 of the Code shall be imposed upon formal issuance of the P3 Qualifying Project RFQ and terminate upon the County Mayor filing with the Clerk of the Board a written recommendation in connection with the RFQ process. The Cone of Silence shall subsequently be imposed upon formal issuance of the RFP and terminate upon the County Mayor filing with the Clerk of the Board a written recommendation in connection with the RFP Process.

5. The County Mayor's recommendation with respect to the RFQ process shall be exempt from, and not subject to, bid protests under section 3-19 of this Code.

(c) Publishing Solicitations for P3 Qualifying Projects and for Non-P3 Qualifying Projects.

1. Design Professionals. As to any publication and solicitation for a P3 Qualifying Project or Non-P3 Qualifying Project that involves architecture, engineering, or landscape architecture, the County must select an architect, a landscape architect, or a qualified engineer licensed in Florida to:

a. Review the initial and subsequent proposals to ensure that the Qualifying Project meets certain quality standards, proper space utilization, proper budget estimates, reasonable design and construction schedules, and sustainable design and construction standards consistent with public projects; and

b. Prepare a design criteria package to be included in the RFP solicitation, which design criteria package must include the criteria set forth in section 255.065(3)(c), Florida Statutes.

Such professionals shall advise the County through completion of the design and construction of the Non-P3 Qualifying Project or P3 Qualifying Project, as applicable.

2. Advertisement for P3 Qualifying Projects.

a. Upon the adoption of an Authorizing Resolution the County Mayor is delegated the authority to prepare and advertise RFQs for P3 Qualifying Projects.

b. The Board, upon reviewing the recommendation(s) of the County Mayor resulting from the RFQ, shall: (a) approve the selection of no more than four proposers from proposers competing under the RFQ (the "short-listed proposers") as qualified to proceed to participate in the RFP; (b) reject all recommended proposers and direct the County Mayor to re-advertise the RFQ for the P3 Qualifying Project; or (c) reject all recommended proposers and proceed no further on soliciting the P3 Qualifying Project.

c. If the Board approves the short-listed proposers, the County Mayor shall prepare the RFP for the P3 Qualifying Project seeking proposals only from the approved short-listed proposers and shall submit such RFP to the Board for approval via resolution before its issuance to the short-listed proposers. After Board approval, the County Mayor is delegated the authority to issue necessary addenda, clarifications and corrections to the RFP subject to any limitations set forth in the resolution approving the RFP.

d. The County may also, at its option, include in the RFP the ability of proposers to submit alternate technical concepts that incorporate technical innovation and creativity into their proposals.

e. The County Mayor shall publish notice of the RFQ and the RFP for the P3 Qualifying Project, in accordance with the provisions of any of the applicable solicitation documents and the requirements of law. The County shall determine the timeframe during which it will accept proposals on a project-by-project basis based on the complexity of the P3 Qualifying Project and the public benefit to be gained by allowing a longer or shorter period of time within which proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days but no more than 120 days after the initial date of publication. The Board may by majority vote alter the time periods to accept proposals to more adequately suit the needs of the P3 Qualifying Project. A copy of the notice must be sent to each local government in the affected area.

3. Evaluation and Award of P3 Qualifying Projects and Non-P3 Qualifying Projects.

a. After the deadline for submitting proposals has expired, the County Mayor shall evaluate and rank proposals in order of preference based on the criteria advertised for the project. The County Mayor may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The County Mayor may then begin negotiations with private entities as set forth in the solicitation document in order to reach an interim or comprehensive agreement.

b. The County, in its discretion, reserves the right to reject all proposals at any point in the process prior to the full execution of an interim or comprehensive agreement with a private entity. Such rejection of proposals shall be made by Board resolution upon the County Mayor's recommendation or upon the Board's own initiative.

c. Before approving a comprehensive agreement, as such term is described below and in section 255.065, Florida Statutes, with any private entity, the County must determine that the proposed project is in the public's best interest; is for a public improvement that is owned by the County or for which ownership will be conveyed to the County; and has adequate safeguards in place to ensure that (A) additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the County and (B) there is opportunity for the County or the private entity to add capacity to the proposed project. In determining the public's best interest the County shall consider costs and other factors such as social and community opportunities and benefits.

d. Any award of a contract for a Non-P3 Qualifying Project or for a P3 Qualifying Project under this section, be it an interim agreement, as such term is described below and in section 255.065, Florida Statutes, or a comprehensive agreement, shall be approved by the Board.

e. The only recommendations that can be protested under this section utilizing the bid protest procedures provided for in the Code are recommended contract awards arising from the publication of solicitations for the same project purpose of an unsolicited proposal or a solicitation for a P3 Qualifying Project. Such protest procedures may be waived, however, in accordance with the Code.

f. Nothing in this section shall affect the County Mayor's authority to recommend a waiver of competitive bids when the County Mayor determines such waiver to be in the best interest of the County.

4. Contracting for P3 Qualifying Projects and Non-P3 Qualifying Projects. Any contract with a private entity for a Non-P3 Qualifying Project or a P3 Qualifying Project must, at a minimum, ensure: that provision is made for the private entity's performance and payment of subcontractors including, but not limited to, compliance with section 255.05, Florida Statutes; the most efficient pricing of the security package that provides for the performance and payment of subcontractors; and that the comprehensive agreement addresses termination upon a material default by the private entity.

a. Interim Agreement. Before or in connection with the negotiation of a comprehensive agreement, the County may enter into an interim agreement with the private entity proposing a Non-P3 Qualifying Project or a P3 Qualifying Project, all in accordance with the provisions of section 255.065(6), Florida Statutes, as may be amended.

b. Comprehensive Agreement. Any comprehensive agreement entered into between the County and a private entity for a Non-P3 Qualifying Project or a P3 Qualifying Project must comply with the provisions set forth in section 255.065(7)(a), Florida Statutes, as may be amended, and may also include those provisions set forth in section 255.065(7)(b), (8) and (9), Florida Statutes, as may be amended.

(i) As part of any comprehensive agreement, the County may provide services to the private entity but the County must be fully reimbursed for the provision of any such services.

(ii) The full faith and credit of the County may not be pledged to secure the financing of the private entity for any Non-P3 Qualifying Project or any P3 Qualifying Project. The assumption of the development or operation of a Non-P3 Qualifying Project or of a P3 Qualifying Project does not obligate the County to pay any obligation of the private entity from sources other than revenues from the Non-P3 Qualifying Project or the P3 Qualifying Project, as applicable, unless otherwise stated in the comprehensive agreement.

Sec. 3-16. - Taping of selection committee and negotiation committee proceedings required.[18]

All proceedings of selection committees and of negotiation committees shall be taped, either by audio or video taping. This subsection shall be construed as directory only, and the failure to comply with the provisions hereof, in whole or in part, shall not affect the validity of any contract, resolution, motion, recommendation or other action, nor provide the basis for any person to protest or challenge any contract, resolution, motion, recommendation or other action.

Sec. 3-17. - Purchase, sale, lease of real property.[19]

(1) Definitions. As used in this section:

(a) The term "Principal" means an owner, officer, or director. By exception, the term Principal shall not include the shareholders of a publicly traded corporation.

(b) The term "Tenant" means an individual, corporation, partnership, joint venture, or other legal entity, including both for-profit and not-for-profit entities.

(c) The term "waterfront county property" means real property owned by or leased to the county and located along and abutting the ocean, the Miami River, the Intracoastal waterway, aquatic channels, and bays. The term "waterfront county property" does not include the Port of Miami, the Aviation Department canals and lakes.

(2) Documenting ownership interest.

(a) Prior to the County's entering into any contract, agreement or lease relating to the purchase, sale or leasing of real property by, to or

[18] Formerly section 2-8.1.1.1 of the Code.
[19] Formerly section 2-8.6.5 of the Code.

from the County, all individuals, corporations, partnerships, joint ventures or other legal entities having any interest of any kind in the property to be purchased, sold or leased, shall file with the County a document identifying the extent of its ownership interest in the subject real property.

(b) Failure by any party to comply with the requirements of subsection (2)(a) hereof shall render the entire agreement to purchase, sell or lease voidable.

(3) Criminal background checks of certain proposed Tenants.

(a) Prior to the County entering into a nonresidential lease of County-owned property with a proposed Tenant where the property is to be used by the proposed Tenant as a facility for, or to provide programs and services to, children and/or developmentally disabled individuals, the County Mayor or Mayor's designee shall perform a national criminal background check of the proposed Tenant, of its Principals, and of any spouses, parents and children of the proposed Tenant and its Principals that will be working at the nonresidential County-owned property to be leased. The cost of the criminal background check(s) performed by the County shall be the responsibility of the proposed Tenant and payment for the cost of the criminal background checks shall be made by the proposed Tenant to Miami-Dade County prior to the County incurring the cost thereof.

(b) Together with any recommendation to approve a nonresidential lease of County-owned property to be used as a facility for, or to provide programs and services to, children and/or developmentally disabled individuals, the County Mayor shall report to the Board of County Commissioners any instance where the criminal background check required by subsection (3)(a) hereof revealed information which may adversely affect a finding of Tenant responsibility.

(4) Conveyances of County property to Not-For-Profit Entities.

(a) Notwithstanding and prevailing over any other provisions of the code, unless otherwise provided herein, all conveyances to not-for-profit entities for a public purpose or community interest and welfare under section 125.38, Florida Statutes, as may be amended from time to time, shall be by lease and not by deed, and such lease shall include a timeframe for lease termination in the event the purpose of the lease is not effectuated within the period specified in such lease. The Board may, by resolution adopted by two-thirds (⅔) vote of the Board members present, waive the requirements herein that conveyance be by lease upon a finding that a compelling

circumstance exists for conveyance of County property to a not-for-profit entity by deed.

(b) Any not-for-profit entity desiring the conveyance of County property for a public purpose or community interest and welfare shall submit a written request to the Director or designee of the County's Internal Services Department or its successor department, identifying the property requested and the proposed use of such property. If the not-for-profit entity desires that the conveyance be by deed, it shall include in its written request the specific basis for the compelling circumstances asserted by the entity to justify the conveyance by deed. The Director or designee, shall within ten business days of receipt of the request, forward same to the office of the County Commissioner in which district the property is located.

(c) Notwithstanding subsections (a) and (b) above, such requirements shall not apply to conveyances of County property to not-for-profit entities which develop such properties in accordance with the Miami-Dade County Infill Housing Initiative Program, as codified in section 17-121 et seq. of the Code, or other County affordable housing and workforce housing programs.

(5) Conveyances, Leases, or Use and Development of Waterfront County Property.

(a) Policy. It shall be the policy of this Board to endeavor, whenever possible, to preserve the public's access to, use of and view of the water from all waterfront County property.

(b) Any conveyance to, lease to, or contract with a person or legal entity for the development and private use of waterfront County property, may only be approved by a resolution adopted by two-thirds (⅔) vote of the full Board membership. Nothing herein shall prohibit the issuance of temporary permits for the use of County land pursuant to Administrative Order 8-5.

Sec. 3-18. - Appraisers required for purchases, sales and leases.[20]

(1) Whenever the County purchases, sells or is involved in a lease of real estate, whether as lessor or lessee, and the fee simple value of the property being bought or sold or the annual value of the property being leased is in excess of five million dollars, the County shall prior to consummating the purchase, sale or lease have the property appraised by two (2) real estate appraisers holding the M.A.I. designation.

[20] Formerly section 2-10.4.2 of the Code.

(2) Upon the written recommendation of the County Mayor, this Board may waive the provisions of this section if it finds it to be in the best interest of the County to do so.

(3) The County Commission shall be informed of each of the appraisals prior to the Board's approving or disapproving the transaction.

Sec. 3-19. - Protest procedures.[21]

(1) This section shall govern any protest made by a participant in any competitive process utilized for selection of a person or other entity to construct any public improvement, to provide any supplies, materials or services (including professional or management services other than professional services whose acquisition procedure is governed by the Consultant's Competitive Negotiation Act, F.S. Section 287.055 et seq.), or to lease any county property.

The foregoing notwithstanding the protest procedures contained in this section shall not apply to contracts and purchases which the County Mayor has the delegated authority to award under Section 3-1(2) of this Code, and protests thereon shall be governed by procedures established by implementing order approved by the Board of County Commissioners.

A protest hereunder may not challenge the relative weight of the evaluation criteria or the formula specified for assigning points therefor contained in bid, request for proposals ("RFP") or request for qualifications ("RFQ") specifications which have been approved by the Commission. A protest hereunder may not challenge any recommendation to reject all proposals received for a solicitation.

Any question, issue, objection or disagreement concerning, generated by, or arising from the rankings, scoring or recommendations of a selection committee in a competitive procurement process shall be deemed waived by the protestor and shall be rejected as a basis of a bid protest unless it was brought by that proposer to the attention of the procurement agent or contracting officer identified in the competitive solicitation responsible for administering the procurement process, in writing with a copy to the Clerk of Board and in compliance with the Cone of Silence provisions in 3-20 of this Code, within five (5) working days of the date the proposers have received the Selection Committee Coordinator report referred to in Implementing Order 3-38.

Additionally, during two-step qualification-based procurements, any question, issue, objection or disagreement concerning, generated by, or arising from the rankings, scoring or recommendations of a selection committee within the first step of the procurement process shall be deemed waived by the protestor and shall be rejected as a basis of a bid protest unless

[21] Formerly section 2-8.4 of the Code.

it was brought by that proposer to the attention of the procurement agent or contracting officer identified in the competitive solicitation responsible for administering the procurement process, in writing with a copy to the Clerk of the Board and in compliance with the Cone of Silence provisions in Section 3-20 of this Code, within five (5) working days of the date the proposers have received either the Selection Committee Coordinator report referred to in Implementing Order 3-38 for the first step or a notification of shortlisted proposers.

Such written objections shall state with particularity the basis of the objection and with sufficient information to allow the County's procurement professionals to promptly consider, evaluate and address the issues raised in the objection in a manner that does not delay completion of the procurement process.

(2) Responsiveness. Prior to this Board or any committee thereof hearing any protests relating to a competitive bid, request for proposal or request for qualifications, the County Mayor shall request the County Attorney to certify whether the bid or proposal in question is responsive. Upon receiving such request, the County Attorney shall, in consultation with the County Mayor if necessary, determine whether the bid or proposal is responsive. This Board and any committee thereof shall be bound by the determination of the County Attorney with regard to the issue of responsiveness.

(3) A written intent to protest shall be filed with the Clerk of the Board and mailed to all participants in the competitive process and to the County Attorney within three (3) working days of the filing of the Mayor's recommendation. For purposes of calculating this period, the day of filing of the County Mayor's recommendation with the Clerk shall not be counted. Such written intent to protest shall state the particular grounds on which it is based and shall be accompanied by a filing fee. The protester shall then file all pertinent documents and supporting evidence with the Clerk of the Board and mail copies to all participants in the competitive process and to the County Attorney within three (3) working days after the filing of a written intent to protest. No bid protest shall be accepted unless it complies with the requirements of this section. Notwithstanding the above, in the event that a public records request is made within the first three days of the above referenced period, a protester may utilize any public records obtained as evidence or additional grounds for protest, provided that, a) the protester met all the deadlines set forth above, and, b) a supplementary filing is made with the Clerk of the Board within 48 hours of receipt of the records responsive to the request.

(4) Protests filed in accordance herewith shall be referred to a hearing examiner. A hearing examiner shall be appointed not later than five (5) working days following the filing of a bid protest. Within five (5) working days following the appointment of the hearing examiner, the County may move for dismissal of a protest when there is no genuine dispute as to any

material fact and the County is entitled to a decision in its favor as a matter of law. The hearing examiner must issue a written decision on such motion within five (5) working days of receiving the County's filing. If granted, such dismissal shall be final and binding on all parties. If the County's motion to dismiss is denied, the hearing examiner shall conduct a hearing in connection with the bid protest within ten (10) working days of the denial of the motion to dismiss. If the County does not move for dismissal of the protest, the hearing examiner shall conduct a hearing in connection with the bid protest which shall be completed within fifteen (15) working days following his or her appointment. The hearing examiner shall, within five (5) working days of the hearing, file written findings and recommendations with the Clerk of the Board and shall submit or mail a copy of same to all participants in the competitive process and to the County Attorney. The hearing examiner may extend the deadline for completion of the hearing upon written petition for good cause shown, but such extension shall not exceed an additional five (5) working days. The hearing examiner shall consider the written protest and supporting documents and evidence appended thereto, the County Mayor's recommendation, and supporting documentation, and all evidence presented at the hearing. The hearing examiner may also require written summaries, proffers, affidavits and other documents the hearing examiner determines to be necessary in order to conclude the hearing and issue the report and recommendation within the time limits set forth in this ordinance. The hearing examiner shall be entitled to rely on evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, whether or not such evidence would be admissible in a trial in the courts of Florida. The Hearing Examiner shall determine, for each protest, whether the legal or factual grounds for the protest are frivolous; in making such determination, the Hearing Examiner shall consider whether or not the protest was supported by material facts necessary to establish the claim, or if the claim was supported by the application of then-existing law to those material facts. For procurements valued at over twenty-five million dollars ($25,000,000), if the hearing examiner determines that the legal or factual grounds for the protest are frivolous, the hearing examiner shall award attorney's fees to the County and/or any party defending the County Mayor's award in the protest if the County or the defending party filed a notice of intent to seek attorney's fees for a frivolous protest within five (5) working days of the protest being filed and the protestor did not withdraw the protest prior to the commencement of the hearing.

(5) The hearing examiner shall allow a maximum of two hours for the protester's presentation of its protest and a maximum of two hours for the County's response to each protest. In the event of multiple protests, the hearing examiner shall allocate the time as necessary to ensure that the hearing shall not exceed one day.

(6) The County Mayor shall prepare an implementing order, to be approved by this Commission, amending Implementing Order No. 3-38 and setting forth a fee schedule for filing of bid protests. The fee shall be in the amount necessary to defray the cost of the bid protest process established in this section. A separate fee shall be established reflecting the costs of the County's participation in the process, including legal fees and costs; this fee shall be retained by the County in the event the hearing examiner determines the protest is frivolous as provided in section 3-19(4) above, and shall otherwise be refundable to the protester at the conclusion of the process. There shall be no fee for the County's participation in the process for informal bid protests as defined in Implementing Order No. 3-38. The administrative order shall also establish the amount of compensation to be paid the hearing examiner, and shall provide for a prorated reduction of that compensation in the event the hearing examiner fails to abide by the time limitations set forth in section 3-19(4) above.

(7) Hearing examiners shall be selected and appointed as follows:

(a) Panel. A panel of 10 hearing examiners (the "Panel") shall be selected from among and comprised of retired judges who have served ten (10) or more years as Circuit Judges in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida and other members of the Florida Bar who meet the minimum requirements for selection set forth below. The number of Hearing examiners may be increased where the County Attorney or the Clerk of the Board finds and recommends in writing that such action is necessary to handle the existing case load.

(b) Appointment and Term. The Clerk of the Board and the County Attorney shall jointly select and appoint the hearing examiners to serve on the Panel. Each hearing examiner on the Panel shall serve for a term of two years, unless the term is terminated sooner as provided below. Upon expiration of a term, a hearing examiner shall be eligible for reappointment in accordance with the applicable selection criteria.

(c) Minimum requirements. Retired judges who have served ten years or more as Circuit Judges in the Eleventh Judicial Circuit in and for Miami-Dade County may be selected as hearing examiners. Any other person who desires to serve must be an elector of the State of Florida, reside in Miami-Dade County, and be a current member in good standing of the Florida Bar for at least ten continuous years immediately preceding one's appointment and term.

(d) Selection Criteria. Selection of hearing examiners shall be made with consideration of the following selection criteria:

1. Hearing examiners should represent the community at large and reflect the racial, gender and ethnic make-up of the community.

2. The selection and appointment of hearing examiners shall avoid the appearance of impropriety or bias. Accordingly, lawyers who, individually or as members of law firms, have a substantial involvement, directly or indirectly, in matters involving the County, will not be selected.

3. Hearing examiners shall have demonstrated professional competence and the highest levels of integrity and ethical conduct.

4. To achieve greater diversity in the persons serving as hearing examiners, prior service as a hearing examiner under this section of the Code will be disfavored in the selection process for a vacancy following the expiration or termination of a prior term.

(e) Utilization and Attendance. The Clerk of the Board shall designate the hearing examiner to be utilized for any particular hearing by blind rotation from among the Panel members. A hearing examiner shall be automatically removed from the Panel if, during any year: (1) he or she is unavailable to serve as a hearing examiner at the request of the Clerk on three consecutive occasions; or (2) he or she is unable to serve on five occasions during his/her term.

(f) Removal and vacancies. A hearing examiner may be removed from the Panel by the County Attorney and Clerk of the Board jointly for dereliction of duty, repeated inability to meet the applicable time frames of this section, failure to maintain active Florida Bar membership, the discovery of a material omission, misstatement or misrepresentation with regards to the qualifications of the applicant to serve as hearing examiner or a material change with respect to those qualifications. No less than 60 days prior to the expiration of the term of any hearing examiner on the Panel or immediately upon the occurrence of any vacancy on the Panel, the County Mayor or Mayor's designee shall post prominently on the County's website and publish for no less than once a week for two weeks in a newspaper of general circulation in the County, the fact that there will be an upcoming or pending vacancy on the Panel of hearing examiners along with the minimum requirements for hearing examiners, information on how to apply and deadline by when to apply. The Clerk of the Board and the County Attorney shall report to the Board on the selection of any hearing examiners to the Panel along with detailed information on how each of the hearing examiners on the Panel satisfy the minimum requirements and

selection criteria, including but not limited to, their respective race, gender, and ethnicity to ensure that they are representative of the community at large.

(8) Unless the hearing examiner finds that the County Mayor or County Mayor's designee acted fraudulently, arbitrarily, illegally, or dishonestly, the hearing examiner's findings and recommendation shall be presented to the Commission together with the recommendation of the County Mayor. Notice thereof shall be mailed to all participants in the competitive process at least five (5) days in advance of such presentation. Notwithstanding any other provision of this Code or any prior resolution, the matter shall be heard by the Commission without prior presentation to any committee. The matter shall be resolved on the basis of the record before the hearing examiner and no evidence or issue which was not presented or raised at such hearing shall be considered. Presentations to the Commission by any participant in the competitive process or their representatives if authorized by subsection (9) below shall be limited to ten (10) minutes per side. The foregoing time limitation shall be inclusive of all speakers addressing the Commission on behalf of each side.

(9) If the hearing examiner concurs in the County Mayor's recommendation, a two-thirds (⅔) vote of the Commission members present shall be required to take other than the recommended action. Provided however, a two-thirds (⅔) vote shall not be required to reject all bids. If the hearing examiner concurs in the County Mayor's recommendation, the Commission shall not allow presentations by any participants in the competitive process or their representatives at the time the matter is presented to the Commission. If the hearing examiner does not concur in the County Mayor's recommendation and finds that the County Mayor or County Mayor's designee acted fraudulently, arbitrarily, illegally, or dishonestly or if the hearing examiner finds that there is a violation of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, including but not limited to the County's Cone of Silence, by any participants in the competitive process, then the protested recommendation, any supplemental recommendations from the County Mayor and the hearing examiner's report and recommendation shall be placed on the next available Commission agenda. The participants in the competitive process and their representatives may, at the discretion of the Chairperson, make presentations to the Commission and the Commission shall decide by majority vote whether to reject all proposals and resolicit the procurement, disqualify the recommended proposer, direct negotiations or award to the next ranked proposer, award to the recommended proposer or take any other action the Commission deems appropriate. Additionally, if the hearing examiner finds that there is a violation of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance by any participants in the competitive process, the Clerk of the Board shall immediately provide copies of the protested recommendation, the hearing examiner's report and recommendation, and all other documents and

transcripts of the bid protest hearing to the Executive Director of the Miami-Dade County Commission on Ethics and the Public Trust.

(10) The County Mayor may provide different time periods for the taking of any actions required hereunder when the interest of the County so requires by including appropriate language in the specifications or addenda thereto.

(11) The foregoing notwithstanding, the Commission, by two-thirds (⅔) vote of the members present, may waive the requirements of this section and entertain a bid protest, upon written recommendation of the County Mayor.

ARTICLE II. VENDOR INTEGRITY AND ELIGIBILITY

Sec. 3-20. - Cone of Silence.[22]

(1) Definitions. For the purposes of this section the following definitions shall be effective:

(a) The term "Commissioners" shall refer to the Mayor and the members of the Board of County Commissioners as duly constituted from time to time.

(b) The term "autonomous personnel" shall refer to the members of semi-autonomous authorities, boards, and agencies as are entrusted with the day to day policy setting, operation and management of certain defined County functions or areas of responsibility, even though the ultimate responsibility for such functions or areas rests with the Board of County Commissioners.

(c) The term "quasi-judicial personnel" shall refer to the members of the Community Zoning Appeals Board and such other boards and agencies of the County as perform quasi-judicial functions.

(d) The term "advisory personnel" shall refer to the members of those County advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners.

(e) The term "departmental personnel" shall refer to the County Mayor, his or her department heads, the County Attorney and all Assistant County Attorneys.

(f) The term "employees" shall refer to all other personnel employed by the County.

[22] Formerly section 2-11.1(t) of the Code.

(g) The term "compensation" shall refer to any money, gift, favor, thing or value or financial benefit conferred in return for services rendered or to be rendered.

(h) The term "controlling financial interest" shall refer to ownership, directly or indirectly, to ten (10) percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten (10) percent or more in a firm, partnership, or other business entity.

(i) The term "immediate family" shall refer to the spouse, domestic partner, parents, stepparents, siblings, half-siblings, step-siblings, children, and stepchildren of the person involved.

(j) The term "transact any business" shall refer to the purchase or sale by the County of specific goods or services for a consideration.

(k) The term "Ethics Commission" shall refer to the Miami-Dade County Commission on Ethics and Public Trust.

(l) The term "domestic partner" shall mean a person who is a party to a valid domestic partnership relationship as described in section 11A-72(b)(1),(2), (3), (4) and (6) of the Code.

(m) The term "contract staff' shall mean any employee and/or principal of an independent contractor, subcontractor (of any tier), consultant or sub-consultant (of any tier), designated in a contract with the County as a person who shall be required to comply with the provisions of Subsections 2-11.1(g), (h), (j), (l), (m), (n) and (o) of the Conflict of Interest and Code of Ethics Ordinance. Prior to determining whether to designate a person as contract staff in a RFP, RFQ, bid or contract, the Mayor or his or her designee shall seek a recommendation from the Executive Director of the Ethics Commission.

(2) Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.

(a) "Cone of Silence" is hereby defined to mean a prohibition on:

1. Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including, but not limited to, the County Mayor and his or her staff;

2. Any communication regarding a particular RFP, RFQ or bid between County Commissioners or their respective staffs and any member of the County's professional staff, other than any professional staff member who is designated by the County Mayor to engage in such communications;

3. Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefor;

4. Any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefor;

5. Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and County Commissioners and their respective staffs; and

6. Any communication regarding a particular RFP, RFQ, or bid between any member of the County's professional staff and any member of the selection committee therefore.

The County Mayor and the Chairperson of the selection committee may communicate about a particular selection recommendation, but only after the committee has submitted an award recommendation to the Mayor and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change as well as the reasons for such change shall be described in writing and filed by the Mayor with the Clerk of the Board and be included in any recommendation submitted by the Mayor to the Board of County Commissioners. Notwithstanding the foregoing, the Cone of Silence shall not apply to:

1. Competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the Miami-Dade County Office of Community and Economic Development and the community-based organization (CBO) competitive grant processes administered by the Park and Recreation, Library, Water and Sewer, and Solid Waste Management Departments, Cultural Affairs and Tourist Development Councils and the Miami-Dade County Environmental Resources Management division of the Regulatory and Economic Resources Department;

2. Communications with the County Attorney and his or her staff;

3. Communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees of the Management and Technical Assistance Unit of the Small Business Development Division regarding small business

and/or minority business programs, the Community Business Enterprise and Equitable Distribution Programs;

4. Communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County departments receiving federal funds, provided the communications are limited strictly to matters of programmatic process or procedure;

5. Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the County Mayor makes his or her written recommendation;

6. Any emergency procurement of goods or services pursuant to Implementing Order 3-38;

7. Communications regarding a particular RFP, RFQ or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

8. Communications between a potential vendor, service provider or bidder and employees of the Strategic Procurement Department or other department identified in the solicitation document as the issuing department;

9. Consultations by employees of the Strategic Procurement Department with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress; and

10. Communications regarding a particular RFP, RFQ or bid between County Commissioners or their respective staffs and the County Mayor or any member of the County's professional staff designated by the County Mayor to engage in such communications.

(b) Procedure.

1. A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the County Mayor or his or her designee shall provide for public notice of the Cone of Silence. The County Mayor shall issue a

written notice thereof to the affected departments, file a copy of such notice with the Clerk of the Board, with a copy thereof to each Commissioner, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.

2. The Cone of Silence shall terminate at the time the Mayor makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the Mayor's recommendation back to the Mayor or staff for further review, the Cone of Silence shall be reimposed until such time as the Mayor makes a subsequent written recommendation. The foregoing notwithstanding, for contracts and purchases which the County Mayor has the delegated authority to award under Section 3-1(2) of this Code, the Cone of Silence shall terminate: (i) at the time the award recommendation letter is issued and filed with the Clerk of the Board for such contracts and purchases involving the expenditure of over one hundred thousand dollars ($100,000); (ii) at the time the written award recommendation is posted in accordance with Section III of Implementing Order 3-21 for such contracts or purchases involving the expenditure of over $25,000 up to $100,000; or (iii) at the time the award recommendation is issued in accordance with Section IV of Implementing Order 3-21 for contracts and purchases involving the expenditure of $25,000 or less.

3. While the Cone of Silence is in effect, County Staff shall create a written record of any oral communications with potential vendor, service provider, bidder, lobbyist, or consultant related to or regarding a solicitation, bid, proposal, or other competitive process. The record shall indicate the date of such communication, the persons to whom staff communicated, and a general summation of the communication. This subsection applies to all communications made while the Cone of Silence is in effect for a particular solicitation.

(c) Exceptions. The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, recorded oral presentations before selection committees in compliance with the exemption in Section 286.0113, Florida Statutes, recorded contract negotiations and contract negotiation strategy sessions in compliance with the exemption in Florida Statutes Section 286.0113, any portion of a meeting discussing an unsolicited proposal in compliance with the exemptions in section 255.065, Florida Statutes, public presentations made to the Board of County Commissioners during

any duly noticed public meeting or communication in writing at any time with any County employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

(3) Audit and IPSIG contracts.

(a) "Cone of Silence" is hereby defined to mean a prohibition on any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Mayor and his or her staff. Notwithstanding the foregoing, the Cone of Silence shall not apply to (a) communications with the County Attorney and his or her staff; (b) communications between a potential vendor, service provider or bidder and employees of the Strategic Procurement Department or its successor department or other department identified in the solicitation document as the issuing department; and (c) consultations by employees of the Strategic Procurement Department or its successor department with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress.

(b) Except as provided in subsections 2(c) and 2(d) hereof, a Cone of Silence shall be imposed upon each RFP, RFQ and bid for audit and IPSIG services after the advertisement of said RFP, RFQ or bid. At the time of the imposition of the Cone of Silence, the County Mayor or his or her designee shall provide for the public notice of the Cone of Silence. The Cone of Silence shall terminate when the County Mayor executes a particular audit or IPSIG contract.

(c) Nothing contained herein shall prohibit any bidder or proposer: (i) from making public presentations at duly noticed pre-bid conferences or before duly noticed selection committee meetings; (ii) from engaging in recorded contract negotiations in compliance with the exemption in Florida Statutes Section 286.0113; or (iii) from communicating in writing with any County employee or official for purposes of seeking clarification or additional information from, subject to the provisions of the applicable RFP, RFQ or bid documents. Any recordings made pursuant to this section shall be made available, as a public record, upon the conclusion of the selection committee or negotiation meetings notwithstanding the elapsed time from bid or proposal opening. The bidder or proposer shall file a copy of any written communication

with the Clerk of the Board. The Clerk of the Board shall make copies available to the general public upon request.

(d) Nothing contained herein shall prohibit any lobbyist, bidder, proposer or other person or entity from publicly addressing the Board of County Commissioners during any duly noticed public meeting regarding action on any audit or IPSIG contract. The County Mayor shall include in any public solicitation for auditing or IPSIG services a statement disclosing the requirements of this ordinance.

(4) Penalties. In addition to the penalties provided in subsections (s) and (v) hereof, violation of this subsection (t) by a particular bidder or proposer shall render any RFP award, RFQ award or bid award to said bidder or proposer voidable. Any person who violates a provision of this ordinance shall be prohibited from serving on a Miami-Dade County competitive selection committee. In addition to any other penalty provided by law, violation of any provision of this ordinance by a Miami-Dade County employee shall subject said employee to disciplinary action up to and including dismissal. Additionally, any person who has personal knowledge of a violation of this ordinance shall report such violation to the State Attorney and/or may file a complaint with the Ethics Commission.

(5) The requirements of section 3-20 shall not apply to any municipality in Miami-Dade County that has adopted an ordinance providing that the cone of silence shall not apply to that municipality. Any municipality that opts out of the requirements of 3-20 shall provide the Ethics Commission with a copy of the ordinance.

(6) Within thirty days of a recommendation from a selection committee, the County Mayor or his designee shall either appoint a negotiation committee or take other affirmative action with respect to the solicitation, including but not limited to rejection of proposals or recommendation for award. If only one responsive submission is received for a proposed project, the County Mayor or County Mayor's designee shall evaluate the responsive firm's proposal and, within thirty days, either commence negotiations with the responsive firm or take other affirmative action with respect to the solicitation. In the event that negotiations have not commenced within thirty days, or if such other affirmative action has not been taken within thirty days, the County Mayor or his designee shall report such event, and the reasons therefore, to the Board of County Commissioners. Additionally, the County Mayor or his designee shall present the Clerk of the Board with a recommendation for award, or a recommendation to reject proposals, within ninety days from the date a selection committee makes a recommendation. In the event that the County Mayor or his designee has not provided such recommendation to the Clerk of the Board within ninety days, the County Mayor or his designee shall provide a report on the status of the solicitation to the Board of County Commissioners, including the reasons for any delay.

(7) The authority of the Ethics Commission to render opinions on the request of any person included in the terms defined in subsection (1)(a) through (f), (1)(i) and (1)(m) as set forth in section 2-11.1(r) of this Code apply to and are incorporated into this section. The powers and jurisdiction of the Ethics Commission as set forth in section 2-11.1(y) of this Code apply to and are incorporated into this section.

Sec. 3-21. - Bids from related parties and bid collusion for the purchase of goods and services, leases, permits, concessions and management agreements.[23]

(1) Notwithstanding any other provision of this Code, where two (2) or more related parties each submit a bid or proposal for any County purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to section 3-3 and section 287.055, Florida Statutes), lease, permit, licensing agreement, concession or management agreement, such bids or proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean the bidder or proposer; the principals, corporate officers, and managers of a bidder or proposer; or the spouse, domestic partner, parents, stepparents, siblings, children or stepchildren of a bidder or proposer or the principals, corporate officers, and managers thereof which have a direct or indirect ownership interest in another bidder or proposer for the same agreement or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same agreement. Bids or proposals found to be collusive shall be rejected.

(2) All bids or proposals submitted for any County purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to section 3-3 and Section 287.055, Florida Statutes), lease, permit, concession or management agreement must be genuine and not sham or collusive, or made in the interest or on behalf of any person not therein named, and the contractor may not have, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. Any bid or proposal submitted in violation of this subsection shall be rejected and the proposer shall be subject to debarment and referred for prosecution.

[23] Formerly 2-8.1.1 of the Code.

Sec. 3-22. - Bids precluded from related parties and colluding bidders.[24]

(1) Notwithstanding any other provision of this Code, when two (2) or more related parties each submit a bid or proposal for any construction contract subject to this section, such bid or proposal shall be presumed collusive. The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean the bidder or proposer; the principals, corporate officers, and managers of a bidder or proposer; or the spouse, domestic partner, parents, stepparents, siblings, children or stepchildren of a bidder or proposer or the principals, corporate officers, and managers thereof which have a direct or indirect ownership interest in another bidder or proposer for the same contract or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership in another bidder or proposer for the same contract. Bids or proposals found to be collusive shall be rejected.

(2) All bids or proposals submitted for any construction contract must be genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. Any bid or proposal submitted in violation of this subsection shall be rejected and the proposer shall be subject to debarment.

(3) The provisions of this section shall be applicable to all departments, agencies and instrumentalities, and legal entities created by the Board of County Commissioners of Miami-Dade County, Florida. Unless specifically adopted by a municipality, this article does not apply to any municipality.

Sec. 3-23. - Funding of, or County contracts with individuals or entities convicted of a felony during past ten years.[25]

Any individual who has been convicted of a felony during the past ten (10) years and any corporation, partnership, joint venture or other legal entity having an officer, director or executive who has been convicted of a felony during the past ten (10) years shall disclose this information at the time of bid or proposal submission. Nothing herein shall be interpreted to affect County employment. Failure to disclose such conviction may result in debarment for those persons or entities who knowingly fail to make the required disclosure or falsify information.

[24] Formerly section 10-33.02.1 of the Code.
[25] Formerly section 2-8.6 of the Code.

Sec. 3-24. - Penalties for contractors attempting to meet contractual obligations with the county through fraud, misrepresentation or material misstatement.[26]

(1) The County Mayor shall include language in the specifications for every county contract which provides that whenever any individual or corporation or other entity attempts to meet its contractual obligations with the county through fraud, misrepresentation or material misstatement, the county shall, whenever practicable, terminate the contract. Such specifications shall in addition, and as a further sanction, provide that the county may terminate or cancel any other contracts which such individual or other entity has with the county and that such individual or entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

(2) The foregoing notwithstanding, any individual or entity who attempts to meet its contractual obligations with the county through fraud, misrepresentation or material misstatement may be debarred from county contracting for up to five (5) years. The procedure for such debarment shall be as provided in subsection c of Section VI of Administrative Order 3-2.

Sec. 3-25. - Listing of subcontractors required.[27]

The requirements of this section shall apply to those county and Public Health Trust construction contracts in which a bidder may use a subcontractor which involve the expenditure of one hundred thousand dollars ($100,000.00) or more. Such contracts shall require the entity contracting with the county to list all first-tier subcontractors who will perform any part of the contract and all suppliers who will supply materials for the contract work direct to such entity. The contract shall also require the entity contracting with the County to report to the County the race, gender, and ethnic origin of the owners and employees of all such first-tier subcontractors , and suppliers. This information must be submitted to the County via its web-based system. When a competitive process is utilized to select the entity that will contract with the county, the specifications shall provide that it shall be a condition of award for the successful bidder to provide the listing of subcontractors, if required. The contract shall require the contractor to provide to the County the race, gender and ethnic information as soon as reasonably available and in any event prior to final payment under the contract. The Mayor or Mayor's designee shall include language in all contracts to which this section applies to implement this section and to provide that the contractor shall not change or substitute subcontractors or suppliers from those listed except upon written approval of the County.

[26] Formerly section 2-8.4.1 of the Code.
[27] Formerly section 10-35 of the Code.

Sec. 3-26. - Releases of claim by subcontractors required.[28]

Before any prime contractor can receive any draw, except the first draw, for moneys due it as a result of a percentage of the work completed, it must pay all first-tier subcontractors and all direct suppliers of the prime contractor who have performed any work or supplied any materials directly to the prime contractor for the project as of that date their proportionate share of all previous draws and must provide the County's Project Manager with duly executed affidavits (subcontractor's statement of satisfaction) or releases of claim from all first-tier subcontractors and direct suppliers to the prime contractor who have performed any work or supplied any materials for the project as of that date, stating that said subcontractors and suppliers have been paid their proportionate share of all previous draws. In the event such affidavits cannot be furnished, the contractor may submit an executed consent of surety to requisition payment, identifying the subcontractors and suppliers, and the amounts for which the statement of satisfaction cannot be furnished. The contractor's failure to provide a consent of surety to requisition payment will result in the amount in dispute being withheld until (1) the statement of satisfaction is furnished, or (2) consent of surety to requisition payment is furnished.

Sec. 3-27. - Utility connection fees not biddable.[29]

Utility connection fees, as hereinafter defined, shall not be included in the bid of any prime contractor. Upon the prime contractor's receipt from the utility of an invoice setting forth the utility connection fee, the prime contractor shall forward said invoice to the County, and the County shall pay the utility connection fee directly to the utility. For the purposes of this section, "utility connection fee" includes connection charges, impact fees and other cost factors which represent a proportionate share of the cost of other water and sewer facilities.

Sec. 3-28. - Membership in trade organizations or standards writing body not to be a qualification.[30]

The County shall be the sole qualifying agent for prime contractors and subcontractors. No prime contractor or subcontractor shall be required to possess any other professional designation or affiliation in order to be eligible to bid on a project. Nothing in this section, however, shall prevent the County from requiring proof of sufficient expertise and skill to qualify for the subject project.

Sec. 3-29. - Debarment of contractors from County work.[31]

(1) Purpose of debarment:

[28] Formerly section 10-35 of the Code.
[29] Formerly section 10-36 of the Code.
[30] Formerly section 10-37 of the Code.
[31] Formerly section 10-38 of the Code.

(a) The County shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. To effectuate this policy, the debarment of contractors from County work may be undertaken.

(b) The serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the County's protection, and not for purposes of punishment. Debarment shall be imposed in accordance with the procedures contained in this ordinance.

(c) Debarment is intended as a remedy in addition to, and not in substitution of, the evaluation of the responsibility of County bidders and contractors, and the rejection or termination of County bidders and contractors based on findings of non-responsibility on a case-by-case basis.

(2) Definitions:

(a) Affiliates. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (i) either one (1) controls or has the power to control the other, or (ii) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized by a debarred entity, individual, or affiliate following the debarment of a contractor that has the same or similar management, ownership, or principal employees as the contractor that was debarred or suspended.

(b) Civil judgment means a judgment or finding of a civil offense by any court of competent jurisdiction.

(c) Causing Damage means impacting or contacting, including, without limitation, penetrating, striking, scraping, displacing, or denting, however slight, the protective coating, housing, or other protective devices of an underground facility, or removing or weakening of any lateral or vertical support from an underground facility, or severing, whether partially or completely, an underground facility resulting in injury to the underground facility.

(d) Civil Judgment means a judgment or finding of a civil offense by any court of competent jurisdiction.

(e) Contractor means any individual or other legal entity that: (i) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a County contract for construction or for procurement

of goods or services, including professional services; or (ii) Conducts business, or reasonably may be expected to conduct business, with the County as an agent, surety, representative or subcontractor of another contractor. (iii) For the purposes of this section, the terms "vendor" and "consultant" have the same meaning as "contractor." "Subconsultant" has the same meaning as "subcontractor."

(f) Conviction means a judgment or conviction of a criminal offense, be it a felony or a misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

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

(h) Debarment Committee means a group of two (2) County department directors or assistant directors and one (1) member from the hearing officers appointed pursuant to Section 8CC-2 of the Code. The Debarment Committee shall be appointed by the County Mayor, to evaluate and, if warranted, to impose debarment. At least one (1) member of the Debarment Committee shall have working knowledge of the affected area. All Debarment Committee members appointed to a specific Debarment Committee shall be subject to restrictions similar to those in the Cone of Silence codified in section 3-20 in that they are prohibited from having any communication with any of the parties involved in the specific debarment, or their representatives. Violation of this policy could lead to removal from the Debarment Committee.

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

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

(k) Legal proceeding means any civil judicial proceeding to which the County is a party or any criminal proceeding. The term includes appeals from such proceedings.

(l) List of debarred contractors means a list compiled, maintained and distributed by SBD or successor division or department of Miami-Dade County, containing the names of contractors debarred under the procedures of this ordinance.

(m) Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(n) Underground Facility means a County property that is buried, placed below ground, or submerged on the right- of-way, easement, or permitted use that is being used or will be used in connection with the storage or conveyance of water, stormwater, sewage, electronic or telephone communication, optical signals, or street lighting and includes, but is not limited to, pipelines, pipes, sewers, lines, conduits, and cables.

(o) 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).

(3) List of debarred contractors:

(a) SBD, as the agency charged with the implementation of this ordinance shall:

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

2. Revise and distribute the Debarred Contractors List and issue update supplements, as necessary, to all County departments, the office of the County Mayor, and the Board of County Commissioners.

(b) The Debarred Contractors List shall indicate:

1. The names and addresses of all contractors (including individuals) debarred, in alphabetical order;

2. The name of the County department, or entity that recommended initiation of the debarment action;

3. The cause for the debarment action, as is further described herein, or other statutory or regulatory authority;

4. The effect of the debarment action;

5. The termination date for each listing;

6. The contractor's certificate of competency or license number at the time of the debarment, when applicable;

7. The qualifier of the contractor at the time of the debarment, when applicable;

8. The name and telephone number of the point of contact in the County department, or entity recommending the debarment action; and

9. The name and telephone number of the SBD staffer responsible for the maintenance and distribution of the list.

(c) SBD shall:

1. In accordance with internal retention procedures, maintain records relating to each debarment;

2. Establish procedures to provide for the effective use of the list, including internal distribution thereof, to ensure that departments do not solicit offers from, award contracts to, or consent to subcontracts with contractors on the list; and

3. Respond to inquiries concerning listed contractors and coordinate such responses with the department that recommended the action.

(4) Effects of debarment:

(a) Debarred contractors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the County Mayor determines that an emergency exists justifying such action, and obtains approval from the Board of County Commissioners. Debarred contractors are also excluded from conducting business with the County as agents, representatives, subcontractors or partners of other contractors.

(b) Debarred contractors are excluded from acting as individual sureties.

(5) Continuation of current contracts:

(a) Commencing on the effective date of this ordinance, all proposed County contracts for construction, or for procurement of goods and services, including professional services, shall incorporate this ordinance and specify that debarment may constitute grounds for termination of any existing County contract.

(b) The debarment shall take effect in accordance with the notice provided by the County Mayor pursuant to subsection (9)(i) below, except that if a department continues contracts or subcontracts in existence at the time the contractor was debarred, the debarment period shall commence upon the conclusion of the contract, and in the interim the debarred contractor shall not enter into any new County contracts.

(c) Departments may not renew or otherwise extend the duration of current contracts, or consent to subcontracts with debarred contractors, unless the County Mayor determines that an emergency exists justifying the renewal or extension or for an approved extension due to delay or time extension for reasons beyond the contractors control, and such action is approved by the Board of County Commissioners.

(d) No further work shall be awarded to a debarred contractor in connection with a continuing or miscellaneous construction contract, or a continuing or miscellaneous contract for goods or services, including professional services, or similar contract, where the work is divided into separate discrete groups and the County's refusal or denial of further work under the contract will not result in a breach of such contract.

(6) Restrictions on subcontracting:

(a) When a debarred contractor is proposed as a subcontractor for any subcontract subject to County approval, the department shall not consent to subcontracts with such contractors unless the County Mayor determines that an emergency exists justifying such consent, and the Board of County Commissioners approves such decision.

(b) The County shall not be responsible for any increases in project costs or other expenses incurred by a contractor as a result of rejection of proposed subcontractors pursuant to subsection (6)(a) above, provided the subcontractor was debarred prior to bid opening or opening of proposals.

(7) Debarment:

(a) The Debarment Committee may, in the public interest, debar a contractor for any of the causes listed in this ordinance, using the procedures outlined below. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

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

(c) A contractor's debarment shall be effective throughout County government.

(8) Causes for debarment:

(a) The Debarment Committee may debar a contractor for a conviction or civil judgment:

1. For commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, performing, or making a claim upon a public contract or subcontract, or a contract or subcontract funded in whole or in part with public funds;

2. For violation of federal or State antitrust statutes relating to the submission of offers;

3. For commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

4. For commission of any other payment or performance related offense that seriously and directly affects the completion of one (1) or more contracts or the performance of the completed building, or project, or goods and services;

5. Which makes the County the prevailing party in a legal proceeding, and a court determines that the lawsuit between

the contractor and the County was frivolous or filed in bad faith; or

6. For negligence or a violation of section 556.106, Florida Statutes, or its successor statute, in connection with damage to a County underground facility, as defined in section 556.102(16), Florida Statutes.

(b) The Debarment Committee may debar a contractor, based upon a preponderance of the evidence, for:

1. Violation of the terms of a County contract or subcontract, or a contract or subcontract funded in whole or in part by County funds, such as willful failure to perform in accordance with the terms of one (1) or more contracts; or the failure to perform, or unsatisfactory performance of one (1) or more contracts.

2. Violation of a County ordinance or implementing order or administrative order which lists debarment as a potential penalty.

3. Any other cause of so serious or compelling a nature that it affects the responsibility of a County contractor or subcontractor in performing County work.

4. Negligently causing damage to an underground facility three (3) or more times in a 12-month period and failing to fully compensate the County for costs incurred by the County to repair the damage within 90 days of notice of the damage. Such 12-month period shall start on the date that notice of damage to the first underground facility is sent by the County to the contractor.

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

(d) The Debarment Committee may debar a contractor, based upon a preponderance of evidence, that the contractor has (i) four or more goal deficits or unapproved Utilization Plan deviations in the SBE goods, services, construction services or architecture and engineering programs within a three year period, (ii) four or more

wage underpayments in the responsible wages and benefits or living wages programs within a three year period, or (iii) failed to comply with any of the material terms of a third Make-up Plan without good cause, as codified in sections 3-33, 3-34, 3-35 of the Code or in 2-8.9, 2-11.16, 10-33.02 of the Code, to the extent not prohibited by state and federal law.

(9) Debarment procedures:

(a) Investigation and referral. Departments shall promptly investigate and prepare written reports concerning a proposed debarment, and prepare written requests to SBD for the debarment of contractors the department believes is subject to any of the causes listed above. The County Mayor (or his or her designee), and the Office of the Inspector General, may investigate, prepare written reports on, and prepare written requests for, debarment of contractors or subcontractors. SBD shall investigate, prepare written reports on, and initiate written requests for debarment of contractors or subcontractors: (i) with four or more goal deficits or unapproved Utilization Plan deviations or wage underpayments within a three year period; or (ii) who failed to comply with a third Make-up Plan without good cause.

(b) Upon receipt of a request for debarment, SBD shall coordinate the creation of a Debarment Committee appointed by the County Mayor, none of whose members shall include a representative from the department making the debarment request. SBD shall act as staff to the Debarment Committee. The department requesting debarment shall present evidence and argument to the Debarment Committee. In the event that the requesting department requests the assistance of the County Attorney's Office, the County Attorney's Office shall provide as counsel to the requesting department a representative of the office independent from any designated to advise the Debarment Committee in the proceedings.

(c) Notice of proposal to debar. SBD, on behalf of the Debarment Committee, shall issue a notice of proposed debarment advising the contractor and any specifically named affiliates, by certified mail, return receipt requested, or personal service, of the following:

1. Debarment is being considered.

2. The reasons and causes for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based.

3. A hearing shall be conducted before the Debarment Committee on a date and time not less than twenty (20) days after service of the notice. The contractor may be represented

by an attorney, may present documentary evidence and verbal testimony, and may cross-examine evidence and testimony presented against it.

4. Describe the effect of the issuance of the notice of proposed debarment, and of the potential effect of an actual debarment.

(d) No later than seven (7) calendar days prior to the scheduled hearing date, the contractor must furnish SBD a list of the defenses, and the documents and records supporting those defenses, the contractor intends to present at the hearing. If the contractor fails to submit the list of defenses, in writing, and the documents and records supporting those defenses, at least seven (7) calendar days prior to the hearing, or fails to seek an extension of time, in writing, at least seven (7) calendar days prior to the hearing, within which to do so, the contractor shall have waived the opportunity to be heard at the hearing. Failure to request an extension at least seven (7) calendar days prior to the hearing shall constitute an absolute waiver to present defenses and to be heard before the Debarment Committee. The Debarment Committee Chair (or the Director of SBD, or his or her designee) has the right to grant or deny an extension of time so long as the request for an extension of time is made at least seven (7) calendar days prior to the hearing, and his or her decision may only be reviewed upon an abuse of discretion standard.

(e) Discovery. The process of discovery, including the subpoenaing of witnesses, the taking of depositions, the submission of interrogatories, and requests for documents, is not permitted under this ordinance. However, any party may make a public records request under chapter 119 of the Florida Statutes.

(f) Hearsay evidence shall be admissible at the hearing but shall not form the sole basis for initiating a debarment procedure nor the sole basis of any determination of debarment. The hearing shall be transcribed, taped or otherwise recorded by use of a court reporter, at the election of the committee and at the expense of the County. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party.

(g) Debarment Committee's decision. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the Debarment Committee shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submissions made by the contractor. Where actions are based on disputed evidence, the Debarment Committee shall decide what weight to attach to evidence of record, judge the credibility of

witnesses, and base its decision on the preponderance of the evidence standard. In the event that the contractor fails to appear at the debarment hearing or to present competent proof under affirmation or oath through persons with direct knowledge of the contractor's performance, the contractor shall be presumed to be not responsible and subject to debarment. The Debarment Committee's decision shall be based on a majority of the members of the Committee. The Debarment Committee shall be the sole trier of fact. The committee's decision shall be made within twenty (20) working days after conclusion of the hearing, unless the Debarment Committee extends this period for good cause.

(h) The committee's decision shall be in writing and shall include the committee's factual findings, the principal causes of debarment as enumerated in this Ordinance, identification of the contractor and all affiliates affected by the decision, and the specific term, including duration, of the debarment imposed.

(i) Notice of Debarment Committee's decision.

1. If the Debarment Committee decides to impose debarment, and the Debarment Committee's decision is not overridden by the County Mayor, the County Mayor shall give the contractor and any affiliates involved written notice by certified mail, return receipt requested, or hand delivery, within twenty (20) working days of the decision, specifying the reasons for debarment and including a copy of the committee's written decision; stating the period of debarment, including effective dates; and advising that the debarment is effective throughout the County departments.

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

(j) All decisions of the Debarment Committee shall be final and shall be effective on the date the notice is signed by the County Mayor unless overridden by the County Mayor within twenty (20) working days of the date of the Debarment Committee's written decision. If the County Mayor overrides the decision of the Debarment Committee, the County Mayor shall state in writing the reasons for his or her override of the Debarment Committee's decision. If the County Mayor does not override the Debarment Committee's decision within twenty (20) working days of the date of the Debarment Committee's written decision, and does not sign the

notice to the contractor as stated in section (9)(i) above, the Debarment Committee's decision is final, and becomes effective on the twenty-first (21st) working day after the date of the Debarment Committee's written decision. The Director of SBD or his or her designee shall then issue the notice to the contractor as required in section (9)(i) above. Decisions of the Debarment Committee may be appealed to the Appellate Division of the Circuit Court within thirty (30) calendar days of the date the notice is signed by the County Mayor or issued by the Director of SBD if the County Mayor does not sign the notice. Decisions of the Debarment Committee shall not be overturned absent a finding of abuse of discretion. A debarred contractor may seek a stay of the debarment decision in accordance with the Florida Rules of Appellate Procedure.

(10) Period of debarment:

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

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

1. For commission of an offense as described in subsection (8)(a)(1): ten (10) years

2. For commission of an offense as described in subsection (8)(a)(2): ten (10) years.

3. For commission of an offense as described in subsection (8)(a)(3): ten (10) years.

4. For commission of an offense as described in subsection (8)(la)(4): one (1) to two (2) years.

5. For commission of an offense as described in subsection (8)(a)(5): two (2) to ten (10) years.

6. For commission of an offense as described in subsections (8)(b)(1) or (2): two (2) to ten (10) years.

7. For commission of an offense as described in subsection (8)(b)(3): one (1) to two (2) years.

8. For commission of an offense as described in subsections (8)(c) or (8)(d): one to three years.

9. Notwithstanding the foregoing, in the event that the Debarment Committee finds that an individual (i.e., officers, directors, shareholders, partners, agents, employees, or other persons associated with a Contractor or a Contractor who is a person) has knowingly and willfully committed an offence described in subsection (8) such individual may be permanently debarred upon a unanimous vote of the Debarment Committee.

(c) The Debarment Committee may, in its sole discretion, reduce the period of debarment, upon the contractor's written request, for reasons such as:

1. Newly discovered material evidence;

2. Reversal of the conviction or civil judgment upon which the debarment was based;

3. Bona fide change in ownership or management;

4. Elimination of other causes for which the debarment was imposed; or

5. Other reasons the Debarment Committee deems appropriate.

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

(11) Scope of debarment:

(a) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, agent, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor

who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal or other seriously improper conduct of any subcontractor associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the subcontractor's performance of duties for or on behalf of the contractor and the contractor had knowledge of, approved of, or acquiesced in this conduct. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

(d) The fraudulent, criminal, or other seriously improper conduct of one (1) contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval, or acquiescence.

Sec. 3-30. – Applicability.

(1) To County government. The provisions of sections 3-22, 3-25, 3-26, 3-27, 3-28 and 3-29 shall be applicable to all departments, agencies and instrumentalities, and legal entities created by the Board of County Commissioners of Miami-Dade County, Florida.

(2) To municipalities. Unless specifically adopted by a municipality, this article does not apply to any municipality.

ARTICLE III. PREFERENCE FOR LOCAL AND VETERAN BUSINESSES, SMALL BUSINESS PROGRAMS AND SUBCONTRACTING.

Sec. 3-31. - Procedure to provide preference to local business in county contracts.[32]

(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.

[32] Formerly section 2-8.5 of the Code.

(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. 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; or (b) all of the constituent vendors comprising the joint venture meets the requirements of a "local business" set forth in this section. 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 after bid or proposal submission and before award pursuant to the solicitation's deadlines. 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 3-24 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.

(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.

(2) Preference in purchase of personal property, general services, professional services, the purchase of or contract for construction or renovation of public works or improvements, and in the purchase of personal property, general services or professional services by means of competitive bid, request for proposals, qualifications or other submittals and competitive negotiation and selection. Except where federal or state law, or any other funding source, mandates to the contrary, Miami-Dade County and its agencies and instrumentalities, including the Public Health Trust, shall give preference to local businesses in the following manner:

(a) Competitive bid. In any competitive bid process where award, if any, is to be made to the responsive and responsible bidder offering the lowest bid (the "Low Bidder" and "Low Bid" respectively), the following shall apply:

1. If the Low Bidder is not a Local Business, then any and all responsive and responsible Local Businesses submitting a price within ten percent of the Low Bid, the Low Bidder, and any and all responsive and responsible Locally Headquartered Businesses submitting a price within fifteen percent of the Low Bid, shall have an opportunity to submit a best and final bid equal to or lower than the Low Bid.

2. If the Low Bidder is a Local Business which is not a Locally Headquartered Business, then any and all responsive and responsible Locally Headquartered Businesses submitting a price within five percent of the Low Bid, and the Low Bidder shall have an opportunity to submit a best and final bid equal to or lower than the Low Bid.

3. Award, if any, shall be made to the responsive and responsible bidder offering the lowest best and final bid.

4. Ties in best and final bid shall be resolved in the following order of priority: Locally Headquartered Business, Local Business, other business.

5. If no best and final bid is required in accordance with the provisions above, award, if any, shall be made to the Low Bidder.

In revenue producing contracts, where award, if any, is to be made to the bidder returning the highest amount to the County, the same preferences set forth above shall be applied by reference to the highest bid.

(b) Request for proposals, qualifications or other qualitative submittals and competitive negotiation and selection. If, following the completion of final rankings (technical and price combined, if applicable) by the selection committee, a non-local business is the highest ranked proposer, and the ranking of a local proposer is within five percent of the ranking obtained by the non-local proposer, then the highest ranked local proposer shall have the opportunity to proceed to negotiations or advance to the next step in the solicitation process with the County under the applicable sections of this Code.

(c) Professional services procured pursuant to Section 287.055, Florida Statutes. The application of local preference to professional services

procured pursuant to Section 287.055, Florida Statutes shall be in accordance with the process outlined in Implementing Order 3-38, including, and notwithstanding anything to the contrary in the Code, with respect to the breaking of tie scores. The preference provided for in this subsection (c) may be waived in the manner allowed under section 3-31(3) of this Code.

If following the application of the rules above, a tie occurs between two (2) or more local businesses, then contract award on the basis of best and final bids (paragraph (a) above), or the opportunity to proceed to negotiations or advance to the next step in the solicitation process (paragraph (b) above), shall be made to such local business having the greatest number of its employees that are Miami-Dade County residents.

(3) Waiver of the application of local preference. The application of Local Preference to a particular purchase or contract for which the Board of County Commissioners is the awarding authority may be waived upon approval of the Board of County Commissioners. The application of Local Preference to a particular purchase or contract for which the County Mayor is the awarding authority may be waived upon written recommendation of the Director of Procurement Management or successor and approval of the County Mayor.

(4) Reserved.

(5) Comparison of qualifications. The preferences established herein in no way prohibit the right of the Board of County Commissioners to compare quality of materials proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals. Further, the preferences established herein in no way prohibit the right of the County Commission from giving any other preference permitted by law instead of the preferences granted herein.

(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. 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.

(7) Exemption of certain contracts. The provisions of this section shall not apply, and no local preference shall be accorded hereunder, to prime County or Public Health Trust construction contracts whose estimated cost is five million dollars ($5,000,000.00) or less which have been set aside for competition solely for CSBEs (Community Small Business Enterprises) under Section 10-33.02 of this Code.

(8) Implementation by certain County agencies. Miami-Dade County agencies and instrumentalities with the independent power to contract, such as the Public Health Trust, shall adopt rules and procedures implementing this Section. For the purposes of such rules and procedures, where this section provides the Board of County Commissioners with implementing authority, the Board of Trustees shall exercise such authority, and where this section provides the County Mayor with authority, the President or Executive Director shall exercise such authority.

Sec. 3-32. - Procedure to Provide Preference to Local Certified Veteran Business Enterprises in County Contracts.[33]

(1) Definitions:

(a) Board means the Miami-Dade County Board of County Commissioners.

(b) Code means the Code of Miami-Dade County, Florida.

(c) Local Certified Veteran Business Enterprise means a firm that is (i) a local business pursuant to of the Code, and (ii) prior to proposal or bid submittal is certified by the State of Florida Department of Management Services as a veteran business enterprise pursuant to section 295.187, Florida Statutes.

(2) A Local Certified Veteran Business Enterprise that submits a bid for a contract shall receive a bid preference of five percent of the bid price. These preferences will only be used for evaluating and awarding the bids and shall not affect the contract price. However, if a Local Certified Veteran Business Enterprise is the lowest bidder as a result of a Best and Final Bid (also known as a BAFO), then the price submitted as part of the Best and Final Bid shall be the contract price. The County department responsible for conducting the procurement shall confirm a Local Certified Veteran Business Enterprise's certification and bid preference eligibility as part of the responsibility check prior to an award recommendation. The County

[33] Formerly section 2-8.5.1 of the Code.

department responsible for conducting the procurement shall provide quarterly reports to the County Mayor and the Board of all Local Certified Veteran Business Enterprises whose certification status has changed during that three-month period.

(3) A Local Certified Veteran Business Enterprise that submits a proposal in response to an RFP, RFQ, or an RFI that assigns weights to evaluation and selection criteria shall receive an additional five percent of the evaluation points scored on the technical portion of such bidder's proposal. For evaluations of professional services procured under Section 287.055, Florida Statutes, the application of local preference shall be in accordance with the process outlined in Implementing Order 3-38, including, and notwithstanding anything to the contrary in the Code, with respect to the breaking of tie scores. The preference provided for in this subsection (3) may be waived in the manner allowed under section 3-31(3) of this Code.

(4) In procurements where SBE (Small Business Enterprises) measures are being applied, a Local Certified Veteran Business Enterprise who is also an SBE shall not receive the veteran preferences provided in this section and shall be limited to any applicable SBE preferences.

(5) At the time of bid or proposal submission, the firm must affirm in writing its compliance with the certification requirements of Section 295.187 of the Florida Statutes and submit this affirmation and a copy of the actual certification along with the bid or proposal submission.

(6) In the event that Broward, Palm Beach or Monroe County extend preferences to Local Certified Veteran Business Enterprises, Miami-Dade County may enter into an inter-local agreement with such County wherein the preferences of this section may be extended and made available to vendors that are both Certified Veteran Business Enterprises (as such term is defined in section 295.187 Florida Statutes) and considered local vendors in those counties pursuant to section 3-31 of the Code of Miami-Dade County. Nothing in this ordinance is meant to limit any preferences otherwise available to local businesses pursuant to the Code.

Sec. 3-33. - Small Business Enterprise Services Program.[34]

(1) Title. This section shall be referred to as the Small Business Enterprise Services Program.

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

(a) Agreement is a duly executed legally binding contract.

(b) Available or availability means to have prior to bid submission, the ability to provide services under a contract, by having:

[34] Formerly section 2-8.1.1.1.1 of the Code.

1. Reasonably estimated, uncommitted capacity;

2. All necessary licenses, permits, registrations and certifications, including Small Business Enterprise (SBE) certification to provide the type of services being purchased under the contract;

3. The ability to obtain financing/insurance that is reasonably required and consistent with normal industry practice; and

4. The ability to otherwise meet bid specifications.

(c) 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.

(d) 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.

(e) Bidder or Proposer means any person, partnership, corporation or other business entity that submits a bid or proposal.

(f) Board means the Board of County Commissioners of Miami-Dade County, Florida.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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 3-38.

(l) 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 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.

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

(n) 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 3-38.

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

(p) Review Team or RT 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 RT will make recommendations to the Mayor or designee as needed.

(q) SBD means the Division of Small Business Development or successor division or department.

(r) 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.

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

(t) 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:

1. Tier 1 — $0 to $750,000;

2. Tier 2 — $750,000.01 to $2,000,000;

3. Tier 3 — $2,000,000.01 to $5,000,000; or

4. 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.

(u) Service means work offered for public or private consumption that does not consist primarily of goods.

(v) Set-aside means the designation of a given contract for competition among SBEs.

(w) 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.

(x) 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).

(y) 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.

(z) Work means the provision of services, as defined herein.

(3) Program.

(a) Application. Except where federal or state laws or regulations mandate to the contrary, the provisions of this section shall be applicable to Miami-Dade and Public Health Trust contracts (as defined in this section) funded in whole or in part by County funds. The Public Health Trust shall provide data on a quarterly basis of all contracts awarded to SBEs. The County Mayor or designee shall prepare implementing orders, bid and contract documents implementing the provisions of this section. The County Mayor or designee by implementing order may exclude classes of contracts, or parts thereof, from application of this section. The words County Mayor or designee in this section shall mean the County Mayor or designee.

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

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.

2. Annually, SBD shall provide a report of awards to SBEs to the Board.

(c) Contracts Greater than $250,000.00. The following SBE measures may be applied to contracts greater than two hundred-fifty thousand dollars ($250,000.00), except the total value of Public Health Trust contracts applicable under this section shall remain at one hundred thousand dollars ($100,000.00):

1. Set-asides:

a. Competitive bidding requirements may be waived (by the County Mayor or County Commission depending on whether the amount of the contract is above or below the minimum amount established by ordinance for competitive bidding) for a contract and the contract set-aside for bidding solely by SBEs where prior to bid advertisement, there are at least three available SBEs to perform the contract, and where such set-aside is in the best interest of the County. Where applicable: (i) contracts from $250,000 to $750,000 shall be set-aside for Tier 1 SBEs; contracts from $750,000.01 to $2 million shall be set-aside for Tier 2 SBEs; (iii) contracts from $2,000,000.01 to $5 million shall be set-aside for Tier 3 SBEs; and (iv) contracts from $5,000,000.01 to $8 million shall be set-aside for Tier 4 SBEs.

b. In the event there is no availability in the designated SBE tier, SBD may assign a set-aside to the next level tier which will retain a set-aside recommendation. Lower tier SBE firms may bid on higher tier set-asides.

c. Transferring to a non-SBE through subcontracting or otherwise all or part of the actual work of a set-aside contract to a non-SBE is prohibited unless such transfer receives prior approval from SBD.

d. When set-aside, the bid 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. The County Mayor or

the County Mayor's designee shall implement this subsection no later than 60 days from the effective date of this ordinance.

2. Subcontractor goals:

a. Subcontractor goals may be applied to a contract based on estimates made prior to bid advertisement of the quality, quantity and type of subcontracting opportunities provided by the contract and the availability of SBEs to perform such work. Bid documents for contracts to which a SBE subcontract goal is applied shall provide that only SBEs certified to provide the type of services be counted towards meeting a goal. The bid documents shall further provide that a bidder must be found in compliance with the requirements of subsections b and c below in order to be eligible for award of the contract.

b. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that bidders must submit with its bid a completed Utilization Plan submitted via the County's web-based systems. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform therefore. The solicitation documents for any competitive selection involving a separate evaluation of sealed price envelopes shall require that the technical submission contain a Utilization Plan submitted via the County's web-based system listing the certified SBEs to fulfill the measure. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a SBE may itself meet the goal to the extent it is certified to provide the type of services that are the subject of the contract. Bidder must include in bid documents a Utilization Plan submitted via the County's web-based system listing itself to fulfill the measure. The Utilization Plan shall be executed by the bidder via

the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a joint venture one or more of whose venturers is an SBE must submit with its bid a copy of the joint venture agreement in order for such venturer(s)'s participation to be eligible to be counted towards meeting the goal. The joint venture agreement shall be in writing, signed by all venturers, and shall specify the ownership, control, profits and financial risk assumed by each venturer, including the SBE venturer(s). The joint venture agreement shall also specify the portion of the contract work (i.e. the services to be provided) to be performed by the SBE venturer(s) in detail separately from the work to be performed by the non-SBE member. The bidder shall receive credit towards meeting the goal to the extent that the combined dollar value of the SBE's participation as shown in the joint venture agreement submitted in conformity with and meeting the requirements of this paragraph bears to the total contract price bid by the bidder. Bidder must include in bid documents a Utilization Plan submitted via the County's web-based system listing the certified SBEs to fulfill the measure. The Utilization Plan shall be executed by the bidder and the SBE(s) via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform. A SBE-Services firm may fulfill a subcontractor goal in only one (1) goal type per contract.

c. A bidder that is a SBE may meet up to 100% of the subcontractor goal with its own forces. A bidder that is a joint venture having one or more SBE venturers may comply with the goal based on the percentage participation of the SBE joint venturer(s) in the ownership, control and profits of the joint venture, and in the performance of the contract work.

d. Bid documents shall provide only expenditures to SBEs for performing a commercially useful function. These expenditures shall be counted toward meeting

a subcontractor goal, expenditures to SBEs who subcontract work further to non-SBEs shall not be counted toward meeting a specified goal unless such subcontracting receives prior approval from SBD.

e. Successful bidder shall submit to the Contracting Officer, for approval, a written subcontract agreement corresponding in all respects to the Successful Bidder's Schedule of Intent Affidavit to include the type of goods and services the SBE is to provide and the percentage and/or price. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Services Program.

3. Bid Preference:

a. A bid preference shall apply to all contracts which are to be awarded on the basis of price (excluding RFPs, RFIs and RFQs) and are not set-aside. The preference shall be used only to evaluate a bid and shall not affect the contract price.

b. The preference accorded on contracts from $250,000.01 to $1 million shall be 10 percent of the price bid for Tier 1 and Tier 2, and 5 percent of the bid price for Tier 3 and Tier 4; best and final offers ("BAFOs"), shall apply a bid preference of 10 percent at the time of BAFO submission for all tiers. The preference accorded on contracts greater than $1 million shall be 5 percent of the price bid for all tiers, including BAFO submissions.

Preferences shall be applied to the bid price of bidders that:

(i) Are SBEs; or

(ii) Are joint ventures with at least one SBE.

c. The County Mayor or the County Mayor's designee shall implement this subsection no later than 60 days from the effective date of this ordinance.

4. SBE Selection Factor.

a. Any bidder that is an SBE, a joint venture with an SBE, shall be accorded a selection factor on all RFPs, RFQs and RFIs for contracts greater than $50,000 that are not set aside for bidding solely by SBEs.

b. RFPs, RFQs and RFIs that assign weights to evaluation or selection criteria, shall provide that a bidder entitled to a selection factor shall receive an additional ten (10%) percent of the evaluation points scored on the technical portion of such bidder's proposal. RFPs, RFQs and RFIs that do not assign weights to evaluation or selection criteria, shall provide that whenever there are two best ranked proposals that are substantially equal and only one of the two so ranked is submitted by a bidder entitled to a selection factor, the selection factor shall be the deciding factor for award.

(d) Administrative Procedure. The County Mayor or designee shall establish an administrative procedure for the review of each proposed County contract greater than one hundred thousand dollars ($100,000.00) to which this section applies.

(e) Management and Technical Assistance. Small Business Development will provide Management and Technical Assistance and community outreach to business entities certified as SBEs with Miami-Dade County.

(f) SBE Bonding and Financial Assistance. This program will provide SBEs/Micro Enterprises with assistance in obtaining bonding and/or financial assistance for goods and services 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.

(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 Mayor, 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 Mayor.

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 Mayor appointed member shall be at the will and discretion of the County Mayor.

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) 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) Prompt Payment. The prompt payment provisions of this section shall take precedence over section 3-39 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 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 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) 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 or on an existing contract with the County. 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) 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) Penalties for Utilization Plan violations. If on three separate occasions, a subcontractor executed a Utilization Plan and subsequently becomes unavailable to perform or complete the work for the prime contractor during the contract period, SBD shall suspend said subcontractor from certification for one year. If SBD suspends the same subcontractor three times due to its failure to perform pursuant to a Utilization Plan as stated above, SBD shall suspend the subcontractor for a minimum of five years, or until such time as the subcontractor can show SBD that it is ready, willing and able to perform if five years has elapsed.

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

(m) Appeals.

1. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a

written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer pursuant to section 8CC-2 of the Code of Miami-Dade County, Florida, and fix a time for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of sections 2-10.2 or 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.

Sec. 3-34. - Small Business Enterprise Goods Program.[35]

(1) Title. This section shall be referred to as the Small Business Enterprise Goods Program.

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

(a) Agreement is a duly executed legally binding contract.

(b) Available or availability means to have prior to bid submission, the ability to provide goods under a contract, by having:

1. Reasonably estimated, uncommitted capacity;

2. All necessary licenses, permits, registrations and certifications, including Small Business Enterprise ("SBE") certification to provide the type of goods being purchased under the contract;

[35] Formerly section 2-8.1.1.1.2 of the Code.

3. The ability to obtain financing/insurance that is reasonably required and consistent with normal industry practice; and

4. The ability to otherwise meet bid specifications.

(c) 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.

(d) 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.

(e) Bidder or Proposer means any person, partnership, corporation or other business entity that submits a bid or proposal.

(f) Board means the Board of County Commissioners of Miami-Dade County, Florida.

(g) 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.

(h) 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.

(i) Goods mean any tangible product, material or supply that is not a service.

(j) 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.

(k) 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.

(l) 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 3-38.

(m) 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 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.

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

(o) 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 3-38.

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

(q) Review Team or RT 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 RT will make recommendations to the Mayor or designee as needed.

(r) SBD means the Division of Small Business Development or successor division or department.

(s) 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.

(t) Small Business Advisory Board is the board established for the purpose of supporting and promoting the Small Business Enterprise Program(s).

(u) Small Business Enterprise ("SBE" or "SBE-Goods") means a business entity certified by SBD, providing goods, 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:

1. Tier 1 — $0 to $750,000;

2. Tier 2 — $750,000.01 to $2,000,000;

3. Tier 3 — $2,000,000.01 to $5,000,000; or

4. 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.

(v) Set-aside means the designation of a given contract for competition among SBEs.

(w) 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.

(x) 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).

(y) 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.

(z) Work means the provision of goods, as defined herein.

(3) Program.

(a) Application. Except where federal or state laws or regulations mandate to the contrary, the provisions of this section shall be applicable to Miami-Dade and Public Health Trust contracts (as defined in this section) funded in whole or in part by County funds. The Public Health Trust shall provide data on a quarterly basis of all contracts awarded to SBEs. The County Mayor or designee shall prepare implementing orders, bid and contract documents implementing the provisions of this section. The County Mayor or designee by implementing order may exclude classes of contracts, or parts thereof, from application of this section. The words County Mayor or designee in this section shall mean the County Mayor or designee.

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

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.

2. Annually, SBD shall provide a report of awards to SBEs to the Board.

(c) Contracts Greater than $250,000.00. The following SBE measures may be applied to contracts greater than two hundred-fifty thousand dollars ($250,000.00), except the total value of Public Health Trust contracts applicable under this section shall remain at one hundred thousand dollars ($100,000.00):

1. Set-asides:

a. Competitive bidding requirements may be waived (by the County Mayor or Board depending on whether the amount of the contract is above or below the minimum amount established by ordinance for competitive bidding) for a contract and the contract set-aside for bidding solely by SBEs where prior to bid advertisement, there are at least three available SBEs to perform the contract, and where such set-aside is in the best interest of the County. Where applicable: (i) contracts from $250,000 to $750,000 shall be set-aside for Tier 1 SBEs; contracts from $750,000.01 to $2 million shall be set-aside for Tier 2 SBEs; (iii) contracts from $2,000,000.01 to $5 million shall be set-aside for Tier 3 SBEs, wholesalers, and manufacturers; and (iv) contracts from $5,000,000.01 to $8 million shall be set-aside for Tier 4 SBEs, wholesalers, and manufacturers.

b. In the event there is no availability in the designated SBE tier, SBD may assign a set-aside to the next level tier which will retain a set-aside recommendation. Lower tier SBE firms may bid on higher tier set-asides.

c. Transferring to a non-SBE through subcontracting or otherwise all or part of the actual work of a set-aside

contract to a non-SBE is prohibited unless such transfer receives prior approval from SBD.

d. When set-aside, the bid 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. The County Mayor or the County Mayor's designee shall implement this subsection no later than 60 days from the effective date of this ordinance.

2. Subcontractor goals:

a. Subcontractor goals may be applied to a contract based on estimates made prior to bid advertisement of the quality, quantity and type of subcontracting opportunities provided by the contract and the availability of SBEs to perform such work. Bid documents for contracts to which a SBE subcontract goal is applied shall provide that only SBEs certified to provide the type of goods be counted towards meeting a goal. The bid documents shall further provide that a bidder must be found in compliance with the requirements of subsections b and c below in order to be eligible for award of the contract.

b. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that bidders must submit with its bid a completed Utilization Plan, which shall be submitted via the County's web-based system. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of goods the SBE is to provide and the percentage of work the SBE is to perform therefore. The solicitation documents for any competitive selection involving a separate evaluation of sealed price envelopes shall require that the technical submission contain a Utilization Plan submitted via the County's web-based system listing

the certified SBEs to fulfill the measure. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of goods the SBE is to provide and the percentage of work the SBE is to perform. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a SBE may itself meet the goal to the extent it is certified to provide the type of goods that are the subject of the contract. Bidder must include in bid documents a Utilization Plan submitted via the County's web-based system listing itself to fulfill the measure. The Utilization Plan shall be executed by the bidder via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of goods the SBE is to provide and the percentage of work the SBE is to perform. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a joint venture one or more of whose venturers is an SBE must submit with its bid a copy of the joint venture agreement in order for such venturer(s)'s participation to be eligible to be counted towards meeting the goal. The joint venture agreement shall be in writing, signed by all venturers, and shall specify the ownership, control, profits and financial risk assumed by each venturer, including the SBE venturer(s). The joint venture agreement shall also specify the portion of the contract work (i.e. the goods to be provided) to be performed by the SBE venturer(s) in detail separately from the work to be performed by the non-SBE member. The bidder shall receive credit towards meeting the goal to the extent that the combined dollar value of the SBE's participation as shown in the joint venture agreement submitted in conformity with and meeting the requirements of this paragraph bears to the total contract price bid by the bidder. Bidder must include in bid documents a Utilization Plan submitted via the County's web-based system listing the certified SBEs to fulfill the measure. The Utilization Plan shall be executed by the bidder and the SBE(s) via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of goods the SBE is to provide and the percentage of work the SBE is to perform. A

SBE-Goods firm may fulfill a subcontractor goal in only one goal type per contract.

c. A bidder that is a SBE may meet up to 100 percent of the subcontractor goal with its own forces. A bidder that is a joint venture having one or more SBE venturers may comply with the goal based on the percentage participation of the SBE joint venturer(s) in the ownership, control and profits of the joint venture, and in the performance of the contract work.

d. Bid documents shall provide only expenditures to SBEs for performing a commercially useful function. These expenditures shall be counted toward meeting a subcontractor goal, expenditures to SBEs who subcontract work further to non-SBEs shall not be counted toward meeting a specified goal unless such subcontracting receives prior approval from SBD.

e. Successful bidder shall submit to the Contracting Officer, for approval, a written subcontract agreement corresponding in all respects to the Successful Bidder's Schedule of Intent Affidavit to include the type of goods and services the SBE is to provide and the percentage and/or price. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Goods Program.

3. Bid Preference:

a. A bid preference shall apply to all contracts which are to be awarded on the basis of price (excluding RFPs, RFIs and RFQs) and are not set-aside. The preference shall be used only to evaluate a bid and shall not affect the contract price.

b. The preference accorded on contracts from $250,000.01 to $1 million shall be 10 percent of the price bid for Tier 1 and Tier 2, and 5 percent of the bid price for Tier 3 and Tier 4, wholesalers and manufacturers; best and final offers ("BAFOs"), shall apply a bid preference of 10 percent at the time of BAFO submission for all tiers. The preference accorded on contracts greater than $1 million shall be 5 percent of the price bid for all tiers, wholesalers, and manufacturers, including BAFO submissions.

Preferences shall be applied to the bid price of bidders that:

(i) Are SBEs; or

(ii) Are joint ventures with at least one SBE.

c. The County Mayor or the County Mayor's designee shall implement this subsection no later than 60 days from the effective date of this ordinance.

(d) Administrative Procedure. The County Mayor or designee shall establish an administrative procedure for the review of each proposed County contract greater than one hundred thousand dollars ($100,000.00) to which this section applies.

(e) Management and Technical Assistance. SBD will provide management and technical assistance and community outreach to business entities certified as SBEs with Miami-Dade County.

(f) SBE Bonding and Financial Assistance. This program will provide SBEs with assistance in obtaining bonding and/or financial assistance for goods and services 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.

(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 3-33(3)(g) of the Code of Miami-Dade County Florida.

(h) 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) Prompt Payment. The prompt payment provisions of this section shall take precedence over section 3-39 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 of 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) 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 or an existing contract with the County. 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) 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) Penalties for Utilization Plan violations. If on three separate occasions, a subcontractor executed a Utilization Plan and subsequently becomes unavailable to perform or complete the work for the prime contractor during the contract period, SBD shall suspend said subcontractor from certification for one year. If SBD suspends the same subcontractor three times due to its failure to perform pursuant to a Utilization Plan as stated above, SBD shall suspend the subcontractor for a minimum of five years, or until such time as the subcontractor can show SBD that it is ready, willing and able to perform if five years has elapsed.

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

(m) Appeals.

1. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, and fix a time for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of Section 2-10.2, or 2-11.1 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.

Sec. 3-35. – Small Business Architecture and Engineering Program.[36]

(1) Title. This Section shall be referred to as the Miami-Dade County Small Business Enterprise Architecture & Engineering ("CBE" or "CBE-A/E") Program.

(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.

[36] Formerly 2-10.4.01 of the Code.

(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) Bonding Assistance may include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes.

(e) 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) 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) CBE-A/E Program is the Small Business Enterprise Program for the Architectural, Engineering, Landscape Architectural, Surveying and Mapping Professionals.

(h) 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) 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) 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) Construction means the building, renovating, retrofitting, rehabbing, restoration, painting, altering, or repairing of a public improvement.

(l) Continuing contract shall mean the term "continuing contract" as defined in section 3-3(1)(f).

(m) 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) Design-build contract means a single contract with a design-build firm for the design and construction of a public construction project.

(o) 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) 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) 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) 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 3-38.

(s) 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 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) 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 3-38.

(u) 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 3-3(1)(e)(1) and (2).

(v) 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) 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) 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) 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) 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) Proposer means any firm that submits a proposal to provide professional services.

(bb) 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) SBD means the Division of Small Business Development or successor division or department.

(ee) 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:

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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) 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) Suspension means temporary debarment for a period not to exceed two (2) years.

(hh) 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) 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) 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 $500,000.01 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) 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) 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) 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 and at the percentages set forth in the Utilization Plan within the time frame specified by SBD.

(nn) 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. Subconsultant goals: 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 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. 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 the percentage that

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:

a. Only expenditures to CBE-A/Es for performing a commercially useful function shall be counted toward meeting the applicable small business a specified subconsultant or subcontractor goal;

b. 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 subconsultant or subcontractor goal unless such conduct receives prior approval from Small Business Development as consistent with normal industry practice; and

c. Expenditures to CBE-A/Es who subconsult work further to non-CBE-A/Es shall not be counted toward meeting a subconsultant goal unless such subconsulting receives prior approval from Small Business Development as consistent with industry practice.

d. 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 subconsultant goal.

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.

(4) Certification Requirements: The County Mayor or designee shall implement eligibility criteria and administrative procedures for firms to be certified as CBE-A/Es based on regulations outlined in this section. Firms exceeding size limits established hereunder and under Appendix A of the ordinance from which this section derives are not eligible for measures or participation in these programs.

(a) Small Business Development shall maintain an updated list of CBE-A/Es.

(b) SBD shall not certify an applicant, shall not recertify a CBE-A/E, and shall decertify a CBE-A/E that fails to comply with the criteria or procedures for obtaining or maintaining certification. SBD shall have authority to suspend the certification of a CBE-A/E during any appeal of a certification 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.

(c) Applicants and certified CBE-A/Es must be properly licensed to conduct business with the State of Florida and in Miami-Dade County, must have a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, and must perform a commercially useful function with an actual place of business in Miami-Dade County, not a Virtual Office, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified. A qualifier can only qualify one CBE-A/E firm. 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.

(d) The applicant qualifier of the certified CBE-A/E firm must own at least twenty-five (25) percent of the certified firm's issued stock or have at least a twenty-five (25) percent ownership interest in the certified firm. A CBE-A/E firm may be certified in other technical categories for which the firm has received Technical Certification in accordance with section 3-3 of the Miami-Dade County Code, through a non-owner qualifier.

(e) 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 proposal submittal. For successful proposers, certification must be maintained throughout the selection process and contract award. The County Mayor or County department responsible for conducting the procurement shall confirm a CBE-A/E'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 County Commissioners of all CBE-A/Es whose certification status has changed during that three month period. With the exception of provisions previously described for graduation from the CBE-A/E program, loss of CBE-A/E certification will lead to removal of the firm from continued participation in the CBE-A/E program. CBE-A/Es experiencing changes in address or ownership shall notify SBD within 30 days of the effective date of such changes.

(f) A business owner, alone or as a member of a group, shall own or control only one CBE-A/E at a time. A business owner, alone or as a member of a group, and any CBE-A/E may not hold more than a ten (10) percent equity ownership in any other CBE-A/E.

(g) Applicants for CBE-A/E certification shall, as part of their application, disclose the information specified in subsections (d) (1) and (2) of Appendix A of this Code.

(h) SBD may require applicants and CBE-A/Es to submit information regarding their business operations, including but not limited to a breakdown of the applicant's or CBE-A/E's ownership, gross annual sales and/or workforce; however, the race, national origin, gender, shall not be used in the consideration.

(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:

(a) The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;

(b) The issuance of fines upon prime consultants for violations of this section;

(c) Work stoppage;

(d) Termination, suspension, or cancellation of the agreement in whole or part;

(e) 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, to the extent such article is not prohibited under state and federal law, 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.

(6) Administrative penalties. The County Mayor or designee may impose, notwithstanding any other provision of this section, one or more of the following penalties for violation of or noncompliance with this section or its implementing or administrative orders, or proposal(s) and competitive selection documents:

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

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

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

(d) If any individual or corporation, partnership or other entity, or any individual officer, shareholder with significant interests, director or partner of such entity or affiliated business of such entity participates in an attempt to comply with the provisions of this section through fraud, misrepresentation, or material misstatement,

all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, subcontracting, and CBE-A/E certification, for a specified period of time, not to exceed five years.

(e) 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.

(f) 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 CBE-A/E program.

(g) 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.

(7) Appeals.

(a) Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer pursuant to section 8CC-2 of the Code of Miami-Dade County, Florida, and fix a time for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of sections 2-10.2 or otherwise.

(b) Upon completion of the administrative hearing, the hearing officer shall transmit his/her findings of facts, conclusions and recommendations together with a transcript of all evidence taken before him/her or a recording of the hearing proceedings, and all exhibits received by him/her, to the County Mayor or designee, who (i) may sustain, reverse or modify the hearing officer's recommendations and (ii) shall render a final decision, in writing. The determination of the County Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

(c) The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.

(8) County responsibilities. Small Business Development (or other County department designated by the County Mayor) shall:

(a) Administer, or provide oversight for, the CBE-A/E programs and incentives outlined in this section;

(b) Provide staff assistance to the Review Committee and the CBE-A/E Advisory Board;

(c) Compile and maintain the data necessary to make the appropriate determinations as to the certification and decertification of CBE-A/Es, and to make recommendations for the application of measures to a given agreement;

(d) Ensure that an integrated system exists for information gathering, reporting, and statistical analysis including (but not limited to) interfacing with other County financial systems such as FAMIS, Seaport, Aviation, MDHA and MDWASD to obtain actual amount

of work orders authorized to firms versus the project award amount (for successful proposers as well as for subconsultants), and interfacing with the GSA mainframe system to access data on vendors and awards;

(e) Monitor all agreements for which program measures have been applied in terms of consultant and subconsultant compliance with the provisions of this section;

(f) Provide assistance in technical and financial matters including:

1. Assistance in increasing the ability of CBE-A/Es to compete effectively on contracts;

2. Conduct of seminars on project management; and

3. Assistance in identifying and solving problems on projects.

(g) Review and investigate reports of non-compliance, and make the appropriate recommendations to the County Mayor or his or her designee as to penalties to be invoked; and

(h) Prepare an annual report for the Board of County Commissioners on the results of the CBE-A/E Program.

(9) Notwithstanding the requirements of this section, the Mayor or his designee is hereby expressly authorized and directed to establish an expedited process for the creation, review and approval of measures relating to Economic Stimulus Projects subject to section 3-5 of this Code. Such process shall be set forth in an administrative order.

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

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

Sec. 3-36. - Application of contracting preferences.[37]

In any competitive process conducted by the County where the County is required to apply one or more of the preferences provided in the Code, the preferences will be applied in the following manner:

(1) Definitions:

(a) Board means the Miami-Dade County Board of County Commissioners.

(b) Code means the Code of Miami-Dade County, Florida.

(c) SBE means a Small Business Enterprise certified by the Small Business Development division of ISD or its successor division or department.

(2) The County will apply first the preferences available to Small Business Enterprises under sections 3-33(3)(c)(3), 3-33(3)(c)(4), and 3-34(3)(c)(3) without reference to preferences which may be available to local or locally headquartered businesses under other provisions of the Code.

(3) The County will apply the local and locally headquartered business preferences only after applying the preferences provided in subsection (2) above.

(4) In determining whether a Small Business Enterprise is entitled to the opportunity to submit a best and final bid equal to or lower than the low bid under section 3-31(2)(a)(1), the bid of the Small Business Enterprise shall be reduced by the amount of any preference to which the Small Business Enterprise is entitled under section 3-33(3)(c)(3) and section 3-34(3)(c)(3), which shall be referred to as the SBE evaluation price. The SBE evaluation price shall be used for evaluating the Small Business Enterprise's opportunity to participate in the best and final bid.

(5) In determining whether a Small Business Enterprise is entitled to proceed to negotiations or advance to the next step in the solicitation process under section 3-31(2)(b), the SBE Proposer shall be entitled to the application of the Selection Factor available to the SBE under section 3-33(3)(c)(4) by the addition of 10 percent of the evaluation points scored on the technical portion of such SBE's proposal, which shall be referred to as the SBE evaluation score. The SBE evaluation score shall be added to the price score, if applicable, to determine the final rankings.

(6) The preference to Local Certified Veteran Business Enterprises provided for under section 3-32 shall be applied without reference to any bid preference or selection factor available to a Small Business Enterprise.

[37] Formerly section 2-8.5.2 of the Code.

(7) The County department responsible for conducting the procurement shall confirm bid preference eligibility as part of the responsibility check prior to an award recommendation. The County department responsible for conducting the procurement shall provide quarterly reports to the County Mayor and the Board of all entities whose bid preference eligibility status has changed during that three-month period.

Sec. 3-37. - Additional information required from bidders or proposers seeking to demonstrate that joint venturer CBEs or small or local businesses will perform a commercially useful function in the work of a County contract.[38]

Notwithstanding any other provision of this Code, whenever: a CBE measure (other than a set-aside) or a small or local business participation requirement is applied to the bid or competitive process for award of a County contract, the County Mayor shall include language in the specifications therefor requiring a bidder or proposer who seeks to meet such goal or measure by means of a joint venture in which a CBE or small or local business is a joint venturer to submit a copy of the written joint venture agreement with the bid or proposal submission. The joint venture agreement shall specify the role of the CBE or small or local business joint venturer and its principals in the overall ownership, control, management responsibilities, risks and profits of the joint venture. The joint venture agreement shall also specify a clearly defined portion of the contract work which the CBE or small or local business joint venturer will be responsible to perform and the extent of time to be devoted by and personal involvement of the principals of such joint venturer therein. The foregoing information shall be considered in determining whether the CBE or small or local business joint venturer will perform a commercially useful function in the work of the contract.

Sec. 3-38. - Fair subcontracting practices.[39]

(1) Policy. It is the policy of this County to promote diversity in the use of Subcontractors on Miami-Dade County projects and to allow opportunities for subcontracting to as many qualified Subcontractors as possible.

(2) Definitions. As used in this section:

(a) The term 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.

(b) The term contract means an agreement proposed by County or Public Health Trust staff, or approved by the County Commission or Public Health Trust in any of the following classes:

[38] Formerly section 2-8.7 of the Code.
[39] Formerly section 2-8.8 of the Code.

1. Procurement of goods and services not included in the classes 2, 3 and 4 below;

2. Construction of a public improvement;

3. Professional services subject to section 287.055, Florida Statutes, and section 3-3 of the Code of Miami-Dade County;

4. Other professional services including but not limited to accounting, legal, health care, consulting and management services;

5. Contract does not mean an agreement to purchase, lease or rent real property; grant licenses, permits or franchises; operate concessions; or make grants.

(d) The term local means having headquarters located in Miami-Dade County or having a place of business located in Miami-Dade County from which the contract or subcontract will be performed.

(e) The term subcontract means an agreement between a bidder and a subcontractor to perform a portion of a contract.

(f) The term Subcontractor means a business independent of a bidder which may agree with the bidder to perform a portion of a contract.

(3) Standards for awarding subcontracts. The County encourages bidders to adopt policies and procedures which

(a) Notify the broadest number of local Subcontractors of the opportunity to be awarded a subcontract;

(b) Invite local Subcontractors to submit bids in a practical, expedient way;

(c) Provide local Subcontractors access to information necessary to prepare and formulate a subcontracting bid;

(d) Allow local Subcontractors to meet with appropriate personnel of the bidder to discuss the bidder's requirements; and

(e) Award subcontracts based on full and complete consideration of all submitted proposals and in accordance with the bidder's stated objectives.

ARTICLE IV. CONTRACT ADMINISTRATION AND REQUIREMENTS

Sec. 3-39. - Sherman S. Winn Prompt Payment Ordinance.[40]

(1) Purpose and policy.

(a) The purpose of this section is:

1. To provide for prompt payments by County agencies and the Public Health Trust;

2. To provide for expedited payment to small businesses;

3. To provide for interest payments on late payments made by the County and the Public Health Trust;

4. To create a dispute resolution process for payment of County and Public Health Trust obligations.

(b) It is the policy of this County that payment for all purchases by County agencies and the Public Health Trust be made in a timely manner.

(2) Definitions. As used in this section:

(a) Proper invoice means an invoice which conforms with the present requirements of the County departments listed in section (8) below or the Public Health Trust, and any rules promulgated from time to time by administrative order of the County Mayor. A proper invoice shall include a statement by the vendor waiving claims for extra direct and indirect costs or time associated with work preceding the date of the invoice, or a statement in sufficient detail containing all rights reserved for work already performed. All present requirements or future rules pertaining to the execution of a proper invoice must be made available to vendors in a timely manner.

(b) Purchase means the purchase of goods or services, the purchase or lease of personal property, or the lease of real property.

(c) Minority and women business enterprises means any business enterprise certified by Miami-Dade County in accordance with the Disadvantaged Business Enterprise Program of the United States Department of Transportation.

(d) Small business means a small business as defined in section 2-222 of the County Code, as presently written and as may hereafter be amended.

[40] Formerly section 2-8.1.4 of the Code.

(e) Vendor means any person who sells goods or services, sells or leases personal property, or leases real property to the County.

(3) Timely payment. The time at which payment for a purchase by the County or the Public Health Trust is due shall be calculated from:

(a) The date on which a proper invoice is received by the County or the Public Health Trust, after approval by the Board of County Commissioners or the Trust; or

(b) If a proper invoice is not received by the County or the Public Health Trust, the date:

1. On which delivery of personal property is accepted by the local government entity;

2. On which services are completed;

3. On which the rental period begins; or

4. On which the County or the Public Health Trust and the vendor agree in a contract which may provide dates relative to payment periods; whichever date is latest.

(4) Procedures for calculation of payment due dates.

(a) The County Mayor, by administrative order, shall establish procedures whereby each invoice received by the County or the Public Health Trust shall be marked as having been received on the date on which it is first delivered into the hands of an agent or employee of the County or the Public Health Trust, or is first delivered to a facility or office of the County or the Public Health Trust. The date so marked shall be the date on which the invoice is received.

(b) The time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from the date specified in section (3) above.

(c) The time at which payment shall be due to small businesses and minority and women business enterprises shall be thirty (30) days from the date specified in section (3) above.

(d) If the terms under which a purchase is made allow for partial deliveries and a proper invoice is submitted for such a partial delivery, then the time for payment for such partial delivery shall be calculated from the time of such partial delivery and submission of such invoice in the same manner as provided in section (3) above.

(e) All payments due from the County or the Public Health Trust, and not made within the time specified by these sections shall bear interest from thirty (30) days after the due date at the rate of one (1) percent per month on the unpaid balance. The vendor must invoice the County or the Public Health Trust for any interest accrued in order to receive the interest payment. Any overdue period of less than one (1) month shall be considered as one (1) month in computing interest. Unpaid interest shall compound monthly. With respect to each past due payment, interest shall cease to accrue after interest on that payment has accrued for twelve (12) months. For purposes of this section, one (1) month shall constitute a period beginning on any day of one (1) month and ending on the same day of the following month.

(5) Mandatory interest. No contract between the County or the Public Health Trust and a vendor shall prohibit the vendor from invoicing for late payment interest charges allowed under this part.

(6) Improper invoice; resolution of disputes.

(a) In any case in which an improper invoice is submitted by a vendor, the County or the Public Health Trust shall, within ten (10) days after the improper invoice is received by it, notify the vendor that the invoice is improper and indicate what corrective action on the part of the vendor is needed to make the invoice proper.

(b) In the event a dispute occurs between a vendor and the County or the Public Health Trust concerning payment of an invoice, such disagreement shall be finally determined as provided in this section. Proceedings to resolve the dispute shall be commenced not later than forty-five (45) days after the date on which the proper invoice was received by the County or the Public Health Trust, and shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust. The proceedings shall be recorded or transcribed, at the expense of the County or the Public Health Trust, and shall be conducted on an informal basis, with hearsay evidence being admissible.

If the dispute is resolved in favor of the County or the Public Health Trust, interest charges shall begin to accrue on the sum contained in the County Mayor's, or his or her designee's decision, fifteen (15) days after the Mayor's or his or her designee's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.

(7) Payment by federal funds. Where the County or the Public Health Trust intend to pay for a purchase with federal funds, the purchase shall not be made without reasonable and written assurance that federal funds will cover the cost thereof. Where payment or the time of payment is contingent on receipt of federal funds or federal approval, any contract and any solicitation to bid shall clearly state such contingency.

(8) Report of interest. The County Finance Department or its successor department, Aviation Department, Department of Housing and Urban Development, the Public Health Trust, and the Water and Sewer Authority, shall, during December of each year, report to the Board of County Commissioners or the Trust, as applicable, the number of interest payments made by each during the preceding fiscal year, the total amount of such payments made pursuant to this ordinance and the Florida Prompt Pay Act, and an explanation as to each such interest payment made.

(9) Inclusion in contracts; applicability to subcontracts. All county contracts and contracts of the Public Health Trust shall contain the provisions of this section as presently written and as may hereafter be amended. The County Mayor shall develop and include appropriate language in all County contracts and contracts of the Public Health Trust to require the prime vendor to issue prompt payment and have dispute resolution procedures in place in the event of disputed payments to small businesses. Failure of the prime vendor to issue prompt payment to a small business, or to adhere to its dispute resolution procedures, may be cause for suspension, termination, and debarment, in accordance with the terms of the County contract or Public Health Trust contract and the debarment procedures of the County.

Sec. 3-40. - User Access Program in County Purchases.[41]

(1) A User Access Program ("UAP") in County purchases is hereby created. Under the UAP, contracts for the purchase of goods and services shall provide that the County will deduct two (2) percent from each invoice with the amount retained by the County to defray the cost of procurement activities. Contracts shall further provide that in the event a non-County entity accesses a County contract, it shall deduct two (2) percent from each invoice and remit seventy-five (75) percent of the retained amount to the County to defray the cost of procurement activities. In cases where Miami-Dade County invoices and collects the UAP relating to a non-County entity accessing a County contract, the County shall retain ninety (90) percent of the fee, and the non-County entity will retain ten (10) percent to defray administrative costs.

(2) The County Mayor or Mayor's designee is authorized and directed to include UAP provisions, as specified in this section, in each competed and non-competed County contract for the purchase of goods and services,

[41] Formerly section 2-8.10 of the Code.

including one-time, term, blanket and pool contracts and emergency awards, regardless of which Department issues the contract. The UAP shall apply to extensions and renewals of existing contracts. The UAP shall also be applicable to non-County entities who wish to access contracts procured by the County.

(3) The following contracts shall be exempt from the UAP: Miscellaneous Construction Contract Program contracts with a total contract value of less than five hundred thousand dollars ($500,000.00), design, design-build, professional service contracts, small purchase orders issued by County departments, contracts funded with any funding source, including federal, which prohibits or restricts the application of the credit to the County effected in the UAP, revenue generating contracts, and contracts with rates established by ordinance, resolution or applicable law. In addition, this Board may waive the application of the UAP upon a finding that the waiver is in the best interest of the County.

(4) The County Mayor shall allocate the money retained upon application of the UAP as necessary to defray the cost of procurement activities throughout the County. The Public Health Trust is authorized and directed to implement a UAP program consistent with this section.

(5) The County Mayor shall develop appropriate specifications and contract provisions to give effect to the requirements of this section.

Sec. 3-41. - Sales Tax Exemption Program.[42]

(1) Creation. It is the policy of the County to apply for and use to the maximum extent the sales tax benefits and exemptions made available to the County by the State of Florida. By operation of law, Miami-Dade County is exempt from sales taxes for certain purchases made directly to the County of materials and supplies which may ultimately be utilized or incorporated in County construction projects. Further, by operation law, Miami-Dade County is entitled to certain sales tax refunds based on the types of purchases involved in the conduct of its business and proprietary functions. To advance the County's policy, this section establishes a sales tax exemption program.

(2) Tax Exempt Owner Purchased Materials.

(a) The County shall incorporate specifications for tax exempt owner purchases in all covered contracts. A tax exempt owner purchase is one made directly by the County which is intended to be tax exempt in accordance with section 212.08(6) of the Florida Statutes and Rule 12A-1.094 of the Florida Administrative Code, as the same may be amended. A covered contract is a contract for the

[42] Formerly section 2-10.7 of the Code.

construction, improvement or rehabilitation of property which is estimated to exceed ten million dollars ($10,000,000.00) in cost.

(b) The specifications for tax exempt owner purchases shall maximize the sales tax benefits available to the County, shall be in compliance with the statutory and regulatory requirements for obtaining the exemption and shall at minimum: (i) provide for obtaining a Technical Assistance Advisement Letter from the Department of Revenue; (ii) establish a process for the integration of owner purchases with contractor deliverables; (iii) provide for the securing, insuring and accounting of owner purchases and (iv) provide for the effect of owner purchases on any applicable contractual Community Small Business Enterprise (CSBE) goals.

(c) The requirements of this subsection may be waived by the Board of County Commissioners upon written request of the Mayor. The Mayor's request shall set forth the reasons why owner purchases under the subject contract are not in the best interest of the County, which may include, but are not limited to contracts with unique purchasing constraints requiring the expertise of the contractor, instances where the savings from application of the program are minimal in comparison with the cost of administration of the program, and instances where the anticipated pace or scheduling of the work would not permit the timely completion of County purchases.

(d) The County Mayor shall expedite owner purchases under the program, including, where appropriate, evaluating the possibility of recommending the waiver of competitive bidding as necessary to comply with scheduled deliverables for the subject project.

(3) Other tax benefits and refunds relating to County purchases. The County shall wherever possible maximize the tax benefits and refunds available to the County in connection with County purchases. Commencing ninety (90) days after the effective date of this section, and every year thereafter, the Mayor shall report to the Board the efforts of the County to maximize its tax benefits and refunds. In particular, and without limitation, the report shall set forth how the County has availed itself of the sales tax exemptions and refunds on account of use provided for under Florida Statutes, section 212.08(5) which may include those available for building materials used in the rehabilitation of real property located in an enterprise zone, and those for building materials in redevelopment projects.

Sec. 3-42. - Buy American Iron and Steel Products Procurement Program.[43]

(1) Policy and Scope. This section shall be known as the "Buy American Iron and Steel Products Procurement Program" and is intended to set forth requirements to use iron and steel products produced in the United States for construction contracts that are subject to approval or ratification by the Board of County Commissioners.

(2) Definitions. For purposes of this section:

(a) County Mayor wherever used in this section shall mean the County Mayor and his or her designee.

(b) Iron and steel products shall mean products made primarily of iron or steel, including, but not limited to, lined or unlined pipes and fittings, bars and rods, wire, wire ropes and link chains, forgings, manhole covers and other castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, materials made primarily of iron and steel within precast concrete, and other construction materials made primarily of iron or steel.

(c) Manufacturing process shall mean the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a new finished product, but does not include the process of merely placing the materials or elements on a construction site or assembling finished materials or elements into a product.

(d) Produced in the United States shall mean, with respect to iron and steel products, a product for which all manufacturing processes, from initial melting through application of coatings, occur in the United States, other than metallurgical processes to refine steel additives.

(e) Project shall mean a construction contract between Miami-Dade County and a private contractor for public improvements that is subject to the approval or ratification by the Board of County Commissioners.

(3) Iron and Steel Products Procurement and Contracting Requirement. All solicitations and contracts for projects in which iron and steel products shall be used shall include terms and specifications requiring that any iron and steel products produced through a manufacturing process and used in the project be produced in the United States.

(4) Exceptions. The requirement set forth in subsection 3 shall not apply, if:

[43] Formerly section 2-8.2.6.1 of the Code.

(a) Iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

(b) Inclusion of iron and steel products produced in the United States will increase the cost of the project by more than 20 percent; or

(c) Upon a written recommendation of the County Mayor approved by a majority vote of the Board members present, compliance with the procurement and contracting requirements in subsection (3) are not consistent with the best interests of the public.

(5) Federal law, Florida law and International Agreements. This section shall be applied in a manner consistent with existing federal law, State of Florida law and any obligations applicable to Miami-Dade County under international agreements.

Sec. 3-43. - Cybersecurity and Information Technology Procurement and Protection Program.[44]

(1) Policy and Scope. This section shall be known as the "Cybersecurity and Information Technology Procurement and Protection Program" and is intended to set forth requirements to purchase cybersecurity products produced in the United States for contracts that are subject to approval or ratification by the Board of County Commissioners and to provide heightened review of vendors with access to County cybersecurity systems.

(2) Definitions. For purposes of this section:

(a) County Mayor wherever used in this section shall mean the County Mayor and his or her designee.

(b) Cybersecurity products shall mean software or hardware that include technologies, processes, and practices designed to protect information technology networks, devices, programs, and data from attack, damage, or unauthorized access.

(c) Produced in the United States shall mean, with respect to cybersecurity products, a product for which all development and production occurs in the United States.

(d) Heightened security review shall mean any and all security screening conducted on County employees with access to cybersecurity products or any other additional security screenings or reviews the County Mayor or County Mayor's designee determines necessary to protect the security of the County's information technology networks, devices, programs, and data.

[44] Formerly section 2-8.2.6.2 of the Code.

(3) Cybersecurity Procurement and Contracting Requirement. All solicitations and contracts for cybersecurity products shall include terms and specifications requiring that any cybersecurity products be produced in the United States.

(4) Exceptions. The requirement set forth in subsection 3 shall not apply, if:

(a) A required cybersecurity product is not produced in the United States, or if such required cybersecurity product is produced in the United States, it is not of a satisfactory quality to meet the needs of Miami-Dade County;

(b) Upon a written recommendation of the County Mayor approved by a majority vote of the Board members present, compliance with the procurement and contracting requirements in subsection 3 is not consistent with the best interests of the public; or

(c) The cybersecurity product is purchased from a company or subsidiary that is not on the list of prohibited telecommunications companies in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115-232, as that list may be amended from time.

(5) Heightened Review of Employees of Vendors with Cybersecurity Access. All employees of County vendors who have access to County owned, licensed or operated cybersecurity products shall be subject to heightened security review prior to such County vendor employees being granted access to County cybersecurity products.

(6) Federal law, Florida law and International Agreements. This section shall be applied in a manner consistent with existing federal law, State of Florida law and any obligations applicable to Miami-Dade County under international agreements.

Sec. 3-44. - Works of art in public places.[45]

(1) This section shall be known, and may be cited, as the "Miami-Dade Art in Public Places Ordinance."

(2) Art in public places program.

(a) Applicability and Jurisdiction over County facilities. Subject to the provisions of paragraph (2)(e) below, this section is intended to, and shall, govern art in public places in the incorporated and unincorporated areas of the County. County facilities located, or intended to be located, within the boundaries of a municipality shall be governed solely and exclusively by the Miami-Dade Art in Public Places Ordinance with respect to matters covered in this section,

[45] Formerly section 2-11.15 of the Code.

including with respect to the collection, payment, and allocation of funds for the acquisition and display of works of art relating to said County facilities, and shall not be within the jurisdiction of the municipality for such purposes.

(b) Appropriation for construction to include amount for works of art. Miami-Dade County and each municipality in Miami-Dade County shall provide for the acquisition of works of art equivalent in value to not less than one and one-half (1½) percent of the construction cost of new governmental buildings, provided that no funds may be appropriated for this purpose from the ad valorem tax operations fund. To the extent the total appropriation is not used for the acquisition of works of art for said buildings, the remainder may be used for:

1. Program administrative costs, insurance costs or for the repair and maintenance of any works of art acquired under this section; or

2. To supplement other appropriations for the acquisition of works of art under this section or to place works of art in, on, or near government facilities which have already been constructed.

(c) Waiver of requirements. The requirements of paragraph (b) may be waived by resolution of the Board of County Commissioners of Miami-Dade County when and if it appears to said Board that a construction project covered hereunder is not appropriate for application of the above requirements.

(d) Definitions. For the purpose of this section, the following terms are hereby defined:

1. Works of art is defined as the application of skill and taste to production of tangible objects, according to aesthetic principles, including, but not limited to, paintings, sculptures, engravings, carvings, frescoes, mobiles, murals, collages, mosaics, statues, bas-reliefs, tapestries, photographs, lighting designs and drawings.

2. Construction cost is defined to include architectural and engineering fees, site work, and contingency allowances. It does not include land acquisition or subsequent changes to the construction contract. All construction costs shall be calculated as of the date the contract is executed.

3. County facility is defined as any facility, building, structure, improvement, or infrastructure, whether subterranean, above-ground, or overhead, that is (i) owned, leased, or

operated by, or (ii) constructed upon land owned or leased by, the County or any of its agencies or instrumentalities, including Public Health Trust of Miami-Dade County.

(e) Option for municipalities to enact art in public places ordinances. Any municipality within the County may opt out of this section by enacting and administering its own art in public places ordinance for non-County facilities located within its municipal boundaries. This section sets forth the minimum standards for any municipal ordinance and any such municipal ordinance shall be consistent with the minimum standards of this section. The municipality shall provide written notice of the municipality's intent to opt out of this section and a copy of the proposed ordinance to the Office of the County Mayor and to the Art in Public Places Trust at least 30 days prior to the scheduled adoption of any such municipal ordinance so that the County Mayor or County Mayor's designee can advise the municipality whether or not the proposed ordinance is consistent with the minimum standards set forth in this section. Within 30 days following the adoption by a municipality of an art in public places ordinance, the municipality shall provide a copy of the adopted ordinance to the County Mayor and the Art in Public Places Trust. Any municipality that, prior to March 30, 2019, has adopted an art in public places ordinance and seeks to use said ordinance to opt out of this section, shall provide a copy of said ordinance to the County Mayor and the Art in Public Places Trust so that the County Mayor or County Mayor's designee can advise the municipality whether or not the adopted ordinance is consistent with the minimum standards set forth in this section.

(3) Art in Public Places Trust. There shall be an Art in Public Places Trust to administer the program.

(a) Purpose. The Trustees of the Art in Public Places Trust shall act in the public interest upon all matters relating to the program and shall support the program's goals and objectives. The Trustees' responsibilities include the selection, maintenance, planning, public education and curating of all works of art acquired by the program. The Trustees shall oversee and administer the funds collected by municipalities for municipal facilities and projects consistent with this section to be used for the benefit of such municipalities, except where a municipality has enacted its own art in public places ordinance and administers its own program as provided in this section.

1. Membership; qualifications. The Trust shall be composed of fifteen (15) Trustees appointed to staggered terms by the Board of County Commissioners, serving without compensation. Each Board member shall be appointed to a

term which shall end concurrently with the last day of the term of the County Commissioner who appointed the Board member. If a vacancy occurs prior to the expiration of the Board member's term, the County Commissioner who appointed that member shall appoint a new member to fill the balance of the term. Additionally, the Mayor shall appoint two (2) members of the Board of County Commissioners to sit as ex officio Trustees. Each Trustee must be knowledgeable in public art, must be a resident of Miami-Dade County and may not operate, own or be employed by any art dealer, art gallery, artists' representative, museum or other entity which derives income from the sale or display of art work. Membership is governed by sections 2-11.38 and 2-11.39 of the Miami-Dade County Code.

2. Term of office. No trustee shall serve more than eight (8) consecutive years on the Council; provided that this limitation shall not be applicable to Trustees with unexpired terms on November 1, 1993 who were reappointed after that date. Nothing shall prohibit any individual from being reappointed to the Trust after a hiatus of two (2) years.

3. Duties. The Trustees shall prepare a master art plan to ensure a coherent acquisition program and implementation guidelines, both of which shall be approved by the Board of County Commissioners. The Trustees shall approve all program acquisitions in accordance with the master art plan and implementation guidelines and shall oversee the public education, and curatorial aspects of the program. The Trustees shall recommend to the County Mayor an Executive Director, a budget for staff and other expenditures necessary to operate the program and shall deliver an annual report to the Board of County Commissioners.

(b) Professional Advisory Committee. The Professional Advisory Committee shall be composed of eleven (11) members appointed by the Trust, and shall be compensated for professional services in accordance with a schedule established by the Trust, although this shall not preclude donation of such services.

1. Membership, qualifications. Each member of the professional advisory committee shall be a professional in the field of art, architecture, art history, or architectural history. Members' reasonable expenses shall be reimbursed at a uniform rate to be established from time to time by the Trust.

2. Term of office. Each Professional Advisory Committee member shall serve a two-year term and may be reappointed for a total of three (3) consecutive terms.

3. Duties. The Professional Advisory Committee will screen submissions and will recommend to the Trust for each acquisition not more than three (3) possible selections, which may be existing works of art or new commissions.

4. Proceedings. For each acquisition the Trust shall direct the Professional Advisory Committee to act as a committee of the whole or in smaller subcommittees.

(c) Selections of works of art. All acquisitions will be in accordance with the master art plan. Trustees shall approve each acquisition from those selections recommended by the Professional Advisory Committee. The County Mayor will negotiate and execute appropriate contracts to acquire each approved work of art. Funds may be aggregated to acquire works of art.

1. Selection criteria. In the selection process, the following principles shall be observed:

a. Works of art shall be located in areas where residents and visitors live and congregate and shall be highly accessible and visible.

b. Areas used by tourists, including the airport, seaport, beaches, parks and thoroughfares, shall each have a separate master plan which shall be incorporated as a portion of the master art plan.

c. The Trustees should consider the inherently intrusive nature of public art on the lives of those frequenting public places. Artworks reflecting enduring artistic concepts, not transitory ones, should be sought.

d. The Trust's selections must reflect the cultural and ethnic diversity of this County without deviation from a standard of excellence.

e. Final selection shall also take into account appropriateness to the site, permanence of the work in light of environmental conditions at the site, maintenance requirements, quality of the work, likelihood that the artist can successfully complete the work within the available funding, diversity of works already acquired by the Trust, diversity of the artists whose work has been acquired by the Trust.

(d) Master art plan and implementation guidelines. The Trustees shall adopt and publish a master art plan and written uniform guidelines to govern the manner and method of the submission of proposed works of art to the Professional Advisory Committee, the process by which the Professional Advisory Committee shall make recommendations to the Trustees and the process by which the Trustees shall approve acquisition. These shall be approved by the Board of County Commissioners. Purchases and Commissions pursuant to such approved guidelines shall be reflected on the information section of the Commission agenda, but shall not require Commission approval.

(4) Ownership and Upkeep. Ownership of all works of art acquired by the County under this section is vested in Miami-Dade County, except that ownership of all works of art acquired with municipal funds for a new governmental building shall be vested in the applicable municipality. The Art in Public Places Trust is charged with the custody, supervision, maintenance and preservation of works of art acquired by the County pursuant to this section, while each municipality is charged with the custody, supervision, maintenance, and preservation of works in art acquired with municipal funds pursuant to this section. In each instance, the County or municipality, as applicable, shall acquire title to each work of art acquired.

(5) Personnel. The County Mayor shall provide adequate and competent clerical and administrative personnel as may be reasonably required by the Trust for the proper performance of its duties, subject to budget limitations.

Sec. 3-45. - First Source Hiring Referral Program.[46]

(1) Title. This section shall be referred to as the "Miami-Dade County First Source Hiring Referral Program."

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

(a) "Implementing Order" or "IO" means the implementing order developed by the Mayor or Mayor's designee and approved by this Board of County Commissioners (the "Board") to give effect to the provisions of this section.

(b) "County Contract" means an agreement for the purchase of goods and services specifically identified in the Implementing Order.

(c) "Contractor" means any person or entity which enters into a County Contract.

[46] Formerly Article CXLII of the Code.

(d) "First Source Register" means the register of unemployed persons maintained by the Referral Agency in accordance with the provisions of this section.

(e) "Referral Agency" means the South Florida Workforce Investment Board ("SFWIB"), through its career centers, or community-based partners and faith-based organizations.

(f) "Referral Period" means the three (3) to five (5) day period following notification to the Referral Agency of employment availability.

(3) First Source Register created. The Referral Agency shall compile and maintain a First Source Register, which shall be a listing of unemployed persons, including graduates of programs funded by the Workforce Investment Act to be made available to Contractors as a first source for their employment needs. The Referral Agency shall not discriminate on the basis of race, ethnicity, sex, residence, or other protected category or class, in the compilation or maintenance of the First Source Register, or in its referral activities provided for in this section. The Referral Agency shall, to the extent allowed by law, maintain a data base which identifies the race, ethnicity, sex, and residence of the persons within the First Source Register sufficient to permit adequate analysis of the available work force.

(4) Referral Procedure.

(a) The Referral Agency shall be the first source for employees to fill jobs created to satisfy the requirements of County Contracts. The following requirements shall be included in all County Contracts, except those covered under the Community Workforce Program ("CWP"), and except those covered under programs intended to encourage and assist in the employment of the blind and other severely handicapped persons such as described in sections 413.032—413.037, Florida Statutes (2011):

1. The Contractor, prior to hiring to fill each vacancy arising under a County Contract, shall first notify the Referral Agency of the vacancy and list the vacancy with the Referral Agency. The listing shall contain a detailed description of the job responsibilities and qualifications, and be posted during the Referral Period. The Referral Agency shall provide a list of qualified candidates, if such candidates are available, to Contractor within twenty-four (24) hours of receiving notice of vacancy. Thereafter, Contractor shall (a) review the resumes and qualifications of the candidates, and (b) make a good faith effort as determined by the County, to fill a minimum of fifty percent (50%) of its employment needs under the County Contract from the First Source

Register. Notwithstanding the foregoing, if after the Referral Period a suitable employee is not found from the Referral Agency, the Contractor is free to fill its vacancies from other sources.

2. A good faith effort to employ candidates from the Referral Agency shall constitute, at a minimum, evaluating the qualification of such candidates, and conducting interviews with those candidates who satisfy the minimum competency requirements. The Contractor is not required to hire any individual candidate referred. However, Contractors shall not commit to fill vacancies in any other manner until after the end of the Referral Period, unless the Referral Agency notifies the Contractor in writing prior to the end of the Referral Period that qualified candidates are not available in sufficient numbers to fill the vacancies. Upon such notification, the Contractor may immediately fill vacancies using other sources.

3. In determining whether a Contractor has made good faith efforts, the County may consider, among other criteria to be set forth in the Implementing Order: (a) the number, skills and composition of the Contractor's labor force ultimately hired; (b) whether minimum requirements were established for available positions beyond reasonable requirements to complete the job; (c) the number of referred candidates interviewed for the position; and (d) the Contractor's use of the First Source Register to satisfy its labor needs in contracts other than County Contracts. The County's determination as to whether a Contractor has made such good faith efforts is final and binding.

4. All competitive solicitations for County Contracts, except those covered under CWP, shall set forth the requirements of this section.

(5) Monitoring and Compliance.

(a) County Contracts shall require the Contractor to submit quarterly reports to the Referral Agency indicating the name and number of employees hired by Contractor in the previous quarter, including the source from which such employees were found, and payroll records and tallies of employee work hours. If none of the candidates referred to a Contractor by the Referral Agency were hired, the Contractor shall report the reasons why all referred candidates were rejected in its quarterly reports. Each quarterly report shall be submitted to Referral Agency within two (2) weeks of the end of the quarter.

(b) For each County Contract, the Contractor shall retain records sufficient to determine compliance with this Section. Such records shall include: (1) notifications to the Referral Agency; (2) referrals from the Referral Agency; (3) job applications received from sources other than the Referral Agency; and (4) the number of candidates hired based on referrals from the Referral Agency. To the extent allowed by law, such records shall be made available to Referral Agency upon request.

(c) Referral Agency shall be entitled to perform random, unannounced site visits to applicable project sites to determine whether or not Contractor has filled its vacancies.

(d) Referral Agency shall report to the County, any noncompliance with the requirements of this ordinance, any related Implementing Order, or first source agreement between Referral Agency and Contractor.

(6) Implementation.

(a) The Mayor or Mayor's designee shall prepare and submit to the Board for approval, the Implementing Order which shall at a minimum:

1. Indicate that all County Contracts shall be subject to the requirements of this Section. The requirements of this Section shall be implemented to the maximum extent feasible, for all County purchases of goods and services.

2. Develop a time frame for implementation of First Source Hiring Referral Program. A rollout department shall be identified to use the Referral Agency with its County Contracts, and all other County departments will be phased into this process within six (6) months of the passage of this ordinance.

3. Advise prospective and awarded Contractors of the nature of the First Source Hiring Referral Program.

4. Set forth procedures to determine Contractor compliance with the requirements of this Section.

5. Recommend and establish a minimum funding threshold.

6. Establish a procedure for review and investigation of allegations of noncompliance with the provisions of this ordinance, implementing order, or first source hiring agreement.

7. Establish a procedure to determine appropriate sanctions for failure to comply with the terms of this ordinance, implementing order, or first source hiring agreement.

8. Establish an appeals process for determinations of noncompliance with the provisions of the ordinance, implementing order, or first source hiring agreement.

(b) The Mayor or Mayor's designee shall prepare quarterly reports for the Board which shall include: (a) the dollar amount of each County Contract utilizing the First Source Hiring Referral Program; and (b) an analysis of the effectiveness of the program during each quarterly reporting period.

(7) Sanctions for Violations.

(a) Each County Contract shall include provisions stating the nature of the sanctions to be imposed on a Contractor that is not in compliance with this Section. Such sanctions shall include, but not be limited to, the following:

1. Suspension of contract until Contractor performs obligations, if appropriate.

2. Default and/or termination.

3. Payment of one thousand five hundred dollars ($1,500.00) per employee, or the value of wages that would have been earned by employees injured by Contractor's noncompliance, whichever is less.

(b) If any Contractor attempts to comply with the provisions of this ordinance through fraud, misrepresentation or material misstatement, the County, in its sole discretion, may immediately terminate the subject County Contract.

Sec. 3-46. - Contract extensions; exemption from requirements.[47]

(1) When, following the receipt of competitive bids, the County has entered into a contract with a particular builder or contractor calling for the construction of a project and that contract requires the builder to complete the project or some defined portion thereof by a specified date or else be liable to the County for liquidated damages, the Board of County Commissioners may, in its discretion, by majority vote extend the period of time in which the project may be completed for good cause shown and demonstrated, before or after the specified date for completion of the project stated in the contract. For purposes of this section, good cause may be established only if the cause of the construction delay is expressly contemplated and provided for in the underlying contract, and if such delay is non-contractor caused and non-compensable to the County.

[47] Formerly section 9-3 of the Code.

(2) This section shall not apply to any contracts for the construction of all or any part of Stage I of the Rapid Transit System under section 2-171, or to any contracts for the Aviation Department under section 3-8(2) or to any contracts covered by section 3-5.

ARTICLE V. INTERGOVERNMENTAL AND JOINT PURCHASES.

Sec. 3-47. - Contracts with municipalities or governmental units for services—Authority of Mayor.[48]

The County Mayor is hereby authorized to enter into contracts in behalf of this County with municipalities and other governmental units for joint performance with the County or performance by any municipality or other governmental unit in behalf of the County or any function or service which the County is authorized or directed to perform under Section 11, Article VIII of the Florida Constitution, the Home Rule Charter, or any ordinance adopted by the Board.

Sec. 3-48. - Same—Ratification of Board; duration; filing.[49]

All contracts authorized by section 3-44 shall be entered into subject to ratification by the County Commission and no such contract shall extend for a period longer than one (1) year without the express authorization of the Commission. All such contracts shall be filed with the Clerk of the Commission and the Clerk of the other governmental unit involved and shall be open to public inspection.

Sec. 3-49. - Joint purchases by County and quasi-governmental entities surcharges.[50]

(1) Definitions.

(a) County Mayor shall refer to the County Mayor or his designee.

(b) Joint purchase provision shall refer to a provision in County contract documents that County purchases shall be available to any quasi-governmental entity at the County contract price.

(c) County purchases shall refer to the County's purchase of commodities, services or both by competitive bidding procedures.

(d) Quasi-governmental entity shall refer to any municipality or not-for-profit organization located in the State of Florida.

(2) Joint purchases.

[48] Formerly section 2-9 of the Code.
[49] Formerly section 2-10 of the Code.
[50] Formerly section 2-10.1 of the Code.

(a) The County may include a Joint Purchase Provision in its contract documents for County purchases.

(b) Any quasi-governmental entity utilizing a Joint Purchase Provision shall be exempt from competitive bid requirements otherwise applicable for that particular purchase.

(3) Surcharges. In order to fund the costs of the County's procurement function, the County Mayor is authorized to impose a surcharge on the purchase by a Quasi-Governmental Entity utilizing a Joint Purchase Provision. The contracts which shall be affected, the amount of the surcharge as a percentage of purchase price, and the method of collection shall be established by administrative order. The surcharges shall be deposited directly to the General Services Administration but shall be subject to appropriation as deemed necessary by the County Mayor.<<

Section 4. Section 2-11.1 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 2-11.1. - Conflict of Interest and Code of Ethics Ordinance.

* * *

[[~~(t) Cone of Silence.~~

~~1. Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.~~

~~(a) "Cone of Silence" is hereby defined to mean a prohibition on:~~

~~(i) Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including, but not limited to, the County Mayor and his or her staff;~~

~~(ii) Any communication regarding a particular RFP, RFQ or bid between County Commissioners or their respective staffs and any member of the County's professional staff, other than any professional staff member who is designated by the County Mayor to engage in such communications;~~

~~(iii) Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefor;~~

~~(iv) Any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefor;~~

~~(v) Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and County Commissioners and their respective staffs; and~~

~~(vi) Any communication regarding a particular RFP, RFQ, or bid between any member of the County's professional staff and any member of the selection committee therefore.~~

~~The County Mayor and the Chairperson of the selection committee may communicate about a particular selection recommendation, but only after the committee has submitted an award recommendation to the Mayor and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change as well as the reasons for such change shall be described in writing and filed by the Mayor with the Clerk of the Board and be included in any recommendation submitted by the Mayor to the Board of County Commissioners. Notwithstanding the foregoing, the Cone of Silence shall not apply to:~~

~~(i) Competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the Miami-Dade County Office of Community and Economic Development and the community-based organization (CBO) competitive grant processes administered by the Park and Recreation, Library, Water and Sewer, and Solid Waste Management Departments, Cultural Affairs and Tourist Development Councils and the Miami-Dade County Environmental Resources Management division of the Regulatory and Economic Resources Department;~~

~~(ii) Communications with the County Attorney and his or her staff;~~

~~(iii) Communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees of the Management and Technical Assistance Unit of the Small Business Development Division regarding small business and/or minority business programs, the Community Business Enterprise and Equitable Distribution Programs;~~

~~(iv) Communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County departments receiving federal funds, provided the communications are limited strictly to matters of programmatic process or procedure;~~

~~(v) Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the County Mayor makes his or her written recommendation;~~

~~(vi) Any emergency procurement of goods or services pursuant to Implementing Order 3-38;~~

(vii) Communications regarding a particular RFP, RFQ or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

(viii) Communications between a potential vendor, service provider or bidder and employees of the Strategic Procurement Department or other department identified in the solicitation document as the issuing department;

(ix) Consultations by employees of the Strategic Procurement Department with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress; and

(x) Communications regarding a particular RFP, RFQ or bid between County Commissioners or their respective staffs and the County Mayor or any member of the County's professional staff designated by the County Mayor to engage in such communications.

(b) Procedure.

(i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the County Mayor or his or her designee shall provide for public notice of the Cone of Silence. The County Mayor shall issue a written notice thereof to the affected departments, file a copy of such notice with the Clerk of the Board, with a copy thereof to each Commissioner, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.

(ii) The Cone of Silence shall terminate at the time the Mayor makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the Mayor's recommendation back to the Mayor or staff for further review, the Cone of Silence shall be reimposed until such time as the Mayor makes a subsequent written recommendation. The foregoing notwithstanding, for contracts and purchases which the County Mayor has the delegated authority to award under Section 2-8.1(b) of this Code, the Cone of Silence shall terminate: (i) at the time the award recommendation letter is issued and filed with the Clerk of the Board for such contracts and purchases involving the expenditure of over one hundred thousand dollars ($100,000); (ii) at the time the written award recommendation is posted in accordance with Section III of Implementing Order 3-21 for such contracts or purchases involving the expenditure of over $25,000 up to $100,000; or (iii) at the time the award recommendation is issued

~~in accordance with Section IV of Implementing Order 3-21 for contracts and purchases involving the expenditure of $25,000 or less.~~

~~(iii) While the Cone of Silence is in effect, County Staff shall create a written record of any oral communications with potential vendor, service provider, bidder, lobbyist, or consultant related to or regarding a solicitation, bid, proposal, or other competitive process. The record shall indicate the date of such communication, the persons to whom staff communicated, and a general summation of the communication. This subsection applies to all communications made while the Cone of Silence is in effect for a particular solicitation.~~

~~(c) Exceptions.~~

~~(i) The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees duly noticed as a public meeting, recorded contract negotiations and contract negotiation strategy sessions in compliance with the exemption in Florida Statutes Section 286.0113, any portion of a meeting discussing an unsolicited proposal in compliance with the exemptions in section 255.065, Florida Statutes, public presentations made to the Board of County Commissioners during any duly noticed public meeting or communication in writing at any time with any County employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.~~

~~2. Audit and IPSIG contracts.~~

~~(a) "Cone of Silence" is hereby defined to mean a prohibition on any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Mayor and his or her staff. Notwithstanding the foregoing, the Cone of Silence shall not apply to (a) communications with the County Attorney and his or her staff; (b) communications between a potential vendor, service provider or bidder and employees of the Strategic Procurement Department or its successor department or other department identified in the solicitation document as the issuing department; and (c) consultations by employees of the Strategic Procurement Department or its successor department with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress.~~

~~(b) Except as provided in Subsections 2(c) and 2(d) hereof, a Cone of Silence shall be imposed upon each RFP, RFQ and bid for audit and IPSIG services after the advertisement of said RFP, RFQ or bid. At the time of the~~

~~imposition of the Cone of Silence, the County Mayor or his or her designee shall provide for the public notice of the Cone of Silence. The Cone of Silence shall terminate when the County Mayor executes a particular audit or IPSIG contract.~~

~~(c) Nothing contained herein shall prohibit any bidder or proposer: (i) from making public presentations at duly noticed pre-bid conferences or before duly noticed selection committee meetings; (ii) from engaging in recorded contract negotiations in compliance with the exemption in Florida Statutes Section 286.0113; or (iii) from communicating in writing with any County employee or official for purposes of seeking clarification or additional information from, subject to the provisions of the applicable RFP, RFQ or bid documents. Any recordings made pursuant to this section shall be made available, as a public record, upon the conclusion of the selection committee or negotiation meetings notwithstanding the elapsed time from bid or proposal opening. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to the general public upon request.~~

~~(d) Nothing contained herein shall prohibit any lobbyist, bidder, proposer or other person or entity from publicly addressing the Board of County Commissioners during any duly noticed public meeting regarding action on any audit or IPSIG contract. The County Mayor shall include in any public solicitation for auditing or IPSIG services a statement disclosing the requirements of this ordinance.~~

~~3. Penalties. In addition to the penalties provided in subsections (s) and (v) hereof, violation of this subsection (t) by a particular bidder or proposer shall render any RFP award, RFQ award or bid award to said bidder or proposer voidable. Any person who violates a provision of this ordinance shall be prohibited from serving on a Miami-Dade County competitive selection committee. In addition to any other penalty provided by law, violation of any provision of this ordinance by a Miami-Dade County employee shall subject said employee to disciplinary action up to and including dismissal. Additionally, any person who has personal knowledge of a violation of this ordinance shall report such violation to the State Attorney and/or may file a complaint with the Ethics Commission.~~

~~4. The requirements of Section 2-11.1(t) shall not apply to any municipality in Miami-Dade County that has adopted an ordinance providing that the cone of silence shall not apply to that municipality. Any municipality that opts out of the requirements of Section 2-11.1(t) shall provide the Ethics Commission with a copy of the ordinance.~~

~~5. Within thirty days of a recommendation from a selection committee, the County Mayor or his designee shall either appoint a negotiation committee or take other affirmative action with respect to the solicitation, including but not limited to rejection of proposals or recommendation for award. In the event that negotiations have not commenced within thirty days, or if such other affirmative action has not been taken within thirty days, the~~

~~County Mayor or his designee shall report such event, and the reasons therefore, to the Board of County Commissioners. Additionally, the County Mayor or his designee shall present the Clerk of the Board with a recommendation for award, or a recommendation to reject proposals, within ninety days from the date a selection committee makes a recommendation. In the event that the County Mayor or his designee has not provided such recommendation to the Clerk of the Board within ninety days, the County Mayor or his designee shall provide a report on the status of the solicitation to the Board of County Commissioners, including the reasons for any delay.~~]] >>Reserved.<<

(u) Prohibition on certain business transactions. No person who is serving as an elected county official or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager or department director shall enter into a business transaction with any person or entity that has a contract with Miami-Dade County or any shareholder, partner, officer, director or employee of said contractor, unless said business transaction is an arm's length transaction made in the ordinary course of business. The provisions of this subsection (u) shall not apply to a business transaction between an elected county official, a member of the staff of an elected county official, the county manager, a senior assistant to the county manager or a department director and a not-for-profit entity. As used herein, a "shareholder" shall mean any person owning ten (10) percent or more of the outstanding capital stock of any corporation. As used herein, "elected county official" shall mean the mayor, county commissioners and community council members. As used herein, "business transaction" shall mean any contract wherein persons either sell, buy, deal, exchange, rent, lend or barter real, personal or intangible property, money or any other thing of value, or render services for value.

* * *

Section 5. Section 1-7 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 1-7. - [[~~†~~]]Certain provisions not applicable to DEFGH program.[[~~†~~]]

Notwithstanding and prevailing over any other provision in the Code of Miami-Dade County, Florida to the contrary. Administrative Order 3-2, Code [[~~Section 2-8.5~~]] >>section 3-31<< relating to local preference and Code [[~~Section 10-34~~]] >>section 3-25<< relating to listing of first-tier subcontractors shall not apply to contracts for construction of the DEFGH Program and such contracts shall be exempt from the requirements thereof.

Section 6. Section 2-8.2.13 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 2-8.2.13. - Mental Health Diversion Facility Capital Expedite Program.

* * *

(4) Delegation of authority. The Facility shall be subject to the Economic Stimulus Ordinance, codified under [[~~Section 2-8.2.7~~]] >>section 3-5<<of this Code, except that there shall be no bid protest as provided in [[~~Section 2-8.4~~]] >>section 3-19<< of this Code in connection with the construction of the Facility or the award of any contract for the acquisition of goods or services for the Facility. Accordingly, [[~~Section 2-8.2.7(4)(d)(4)~~]] >>section 3-5(4)(d)(4)<<, providing that the Mayor or the Mayor's designee shall award bids or contracts only where none of the bidders have filed a timely bid protest, shall be inapplicable to the Facility. The appointment of all selection and negotiation committees for the Facility shall contain at least one representative from the Court

* * *

Section 7. Section 2-384.3 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 2-348.3. - Dispute resolution procedure.

* * *

(1) Applicability. This section applies only to those persons, other than participants in a competitive process, who are adversely affected by the planning, design, construction, and operation of sewage or wastewater treatment facilities owned by Miami-Dade County which are financed pursuant to Section 403.1835, Florida Statutes. Any protest made by any participant in a competitive process shall utilize the procedures set forth in [[~~Section 2-8.4~~]] >>section 3-19<< of the Code of Miami-Dade County. A person shall be defined as an individual, corporation, partnership, joint venture or other business entity.

* * *

Section 8. Section 10-33.02 of the Code of Miami-Dade County is hereby amended as follows:

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

* * *

(3) Program components:

* * *

B. Miami-Dade County Small Business Enterprise Construction Services Program. 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. Prompt payment.

a. The County Mayor or designee and the President of the Public Health Trust shall establish administrative procedures requiring that billings from contractors under prime construction contracts with Miami-Dade County or the Public Health Trust that are a CSBE contract set-aside or which contain a trade set-aside or subcontractor goal, shall be promptly reviewed and payment made to the prime contractor 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.

The County and Trust shall notify the prime contractor, and the Department of Small Business Development (SBD) or its successor department, in writing, of those billings submitted by the prime which are in dispute, and the reasons why they are in dispute, within fourteen (14) calendar days of receipt of such billing by the County or Trust. This provision is applicable regardless of whether the disputed billing pertains to the work performed and/or billing of CSBE subcontractors. Reference is hereby made to [[~~Section 2-8.1.4(6)~~]] >>section 3-39(6)<< of the Code, which sets forth the procedures for improper invoices and resolution of disputes.

* * *

e. The prime contractor agrees to the contract requirements of Miami-Dade County, Florida Code, [[~~Section 10-35~~]] >>section 3-26<<, Release of Claim by Subcontractors Required. The requirements found in [[~~Section 10-35~~]] >>section 3-26<< are hereby fully incorporated into this CSBE Prompt Payment Subsection and non-compliance, by failing to pay subcontractors

and failing to provide the requisite subcontractor affidavit and/or consent of surety to requisition payment, shall be enforceable through this Subsection.

* * *

(4) Certification requirements: The County Mayor or designee shall implement eligibility criteria and procedures for entities to be certified as CSBEs based on regulations outlined in this section. Firms exceeding size limits established hereunder and under Appendix A [which can be found in the County Clerk's office attached to Ordinance Number 97-52] are not eligible for contract measures or participation in these programs.

* * *

7. Applicants for CSBE certification shall, as part of their application, disclose the information specified in [[~~Subsections (d)(1) and (2) of Section 2-8.1~~]] >>section 3-1(4)(a)-(b)<< of this Code.

* * *

(10) Notwithstanding the requirements of this Section, the Mayor or his designee is hereby expressly authorized and directed to establish an expedited process for the creation, review and approval of measures relating to Economic Stimulus Projects subject to [[~~Section 2-8.2.7~~]] >>section 3-5<< of this Code. Such process shall be set forth in an administrative order.

Section 9. Section 21-154 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 21-154. - Permits—Bid procedure.

* * *

(c) A contract(s) for placement of bus passenger benches in the public right-of-way in unincorporated Miami-Dade County shall be awarded by territory based upon competitive bids or request for proposals. The bid specifications or requests for proposals shall contain a complete listing of all official bus stops of the Metro Miami-Dade Transportation Administration within the applicable territory. Such contracts may be extended beyond their term without the need for further competitive process upon compliance with the requirements for bid waivers contained in Section 4.03D of the Miami-Dade County Home Rule Charter and [[~~Section 2-8.1(b)~~]] >>section 3-1(2)<< of this Code.

Section 10. Section 22-5 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 22-5. - Enforcement of wage theft violations.

* * *

(2) Failure to Comply with Final Order. If the County finds that any respondent employer has failed to comply with the Hearing Examiner's order within forty-five (45) days after written notice from the County, the County shall issue a further written order on the respondent employer as follows:

* * *

(d) A County vendor or contractor (including a lessee or concessionaire of County property or a permittee to conduct private business on County property) which has not paid an amount due under a Final Order issued pursuant to this chapter, in whole or in part, and its officers, directors, principals, owners, and shareholders owning a controlling interest in the vendor or contractor, shall be presumed not to be responsible to receive a County contract award, lease of County property, a concession on County property, or a permit to conduct private business on County property. Additionally, the failure of a County vendor or contractor to satisfy a Final Order issued pursuant to this chapter may be cause for debarment under [[~~section 10-38~~]] >>section 3-29<< of this Code.

* * *

Section 11. Section 26-22 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 26-22. - Scope.

This section shall apply to all permit agreements, license agreements and lease agreements for programming as defined herein, by not-for-profit organizations at Miami-Dade Park and Recreation Department Facilities with the park classification of Metropolitan Park, District Park, Community Park, Special Activity Areas, and Single-Purpose Park. This section shall supersede [[~~Section 2-8.1~~]] >>section 3-1<< and [[~~Administrative~~]] >>Implementing<< Order 3-38 and >>Administrative Order<< 8-5 for the issuance of such permit agreements, license agreements and lease agreements with these entities.

Section 12. Section 29-120 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 29-120. - Value analysis.

Value analysis, as provided in [[~~items (a) through (g) of Subsection (11) of Section 2-10.4~~]] >>section 3-3(11)(a) through 3-3(11)(g)<< of the Code, shall be incorporated into the establishment of proposed transit routes, their feasibility, and all capital improvements made pursuant to this article.

Section 13. Section 11A-38 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 11A-38. - Definitions.

* * *

Contract means an agreement that may include, but is not limited to those proposed by the County or Public Health Trust staffs or approved by the County Commission or Public Health Trust in any of the following classes:

(1) Procurement of goods and services not included in the subsections (2), (3), and (4) below;

(2) Construction of a public or private improvement;

(3) Professionals subject to Section 287.055, Florida Statutes and [[~~Section 2-10.4~~]] >>section 3-3<< of the Code of Miami-Dade County; or

(4) Other professional services including but not limited to accounting, legal, health care, consulting and management services.

* * *

Section 14. Section 8AA-54 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 8AA-54. - Annual reports.

* * *

(4) A copy of updated maps depicting the location of all trunks and areas by megahertz capacity, separately identifying those areas where there was construction in the year of the report[[~~.~~]] >>; and<<

(5) For information purposes only, a listing of licensee's closings or holidays for the year.

[[~~(6) Demonstration of compliance with Section 2-8.1.5 of the Code of Miami-Dade County with regard to nondiscrimination, and a report on the number of personnel employed by the licensee within Miami-Dade County, including gender, racial, and ethnic group classifications to include white non-Hispanics, Hispanics, black, and other categories, in accordance with Section 2-8.1(d)(iii) of the Code of Miami-Dade County.~~]]

* * *

Section 15. The Board repeals Implementing Orders 2-13, 3-21, 3-32, 3-34, 3-39, 3-41, 3-48, 3-53, 3-54, 3-57, 3-58, 3-68, 8-4, 10-13, and 10-16. These former Implementing Orders shall be attachments to Master Procurement IO 3-38 which this Board is adopting in this ordinance in Section 16 herein. This section may be amended by resolution of the Board.

Section 16. The Board replaces IO 3-38 with the Master Procurement IO 3-38, attached hereto as Attachment 1. This Board authorizes and directs the County Mayor or County Mayor's designee to update the attached Master Procurement IO3-38 consistent with the reorganization, recodification and renumbering of procurement related Code provisions established in this ordinance and to revise internal references relating to former implementing orders attached thereto. The provisions of Master Procurement IO 3-38 shall control over any previously enacted procurement-related policies only to the extent such previously enacted procurement-related policies are inconsistent with Master Procurement IO 3-38. This section may be amended by resolution of the Board.

Section 17. The Board directs the County Mayor or County Mayor's designee to (1) amend the policy relating to selection committee scoring in former IO 3-39 to delete the language allowing a selection committee member to revise his or her score when that score varies by more

than thirty-three percent in Master Procurement IO 3-38, as reflected in Attachment 5 to Master Procurement IO 3-38; (2) implement performance review measures for County vendors to track a vendor's performance during County contracts and require the consideration of that performance record in future procurements where the vendor is under consideration for a contract; (3) make recommendations on how to improve local preference and the small business goods, services and architectural and engineering programs based on meetings with the small business community and by considering the final recommendations of the Special Task Force to Reduce Inefficiencies in Procurement on small business, local preference, and large local employer programs to make it easier to conduct business with the County; (4) continue to work on consolidating and refining County procurement policies and provide a written report to the Board within 120 days on the impact of Master Procurement IO 3-38 as well as any recommendations of further changes to such Implementing Order or the rescission of or modifications to resolutions containing procurement-related policies that will be further incorporated into Master Procurement IO 3-38. The County Mayor or County Mayor's designee shall place the completed report on an agenda of the Board, without committee review, pursuant to Rule 5.06(j) of the Board's Rules of Procedure. This section may be amended by resolution of the Board.

Section 18. The Board directs the County Mayor or County Mayor's designee to revise Master Procurement IO 3-38 to amend the policy on selection committees to provide for the County Mayor or County Mayor's designee evaluation applying the solicitation's selection criteria in lieu of selection committee evaluation when only one responsive submission is received for a proposed contract, subject to review for legal sufficiency by the County Attorney's Office. This section may be amended by resolution of the Board.

Section 19. Pursuant to Recommendation No. 51 of the Task Force, the Board directs the Clerk of the Board to create, maintain, and update a centralized, automated online portal for use in the protest process in coordination with the County Mayor or County Mayor's designee which includes the following features: electronic fee submission; real-time tracking of protest status; automated notifications to participants; and a docket of protest decisions. This section may be amended by resolution of the Board.

Section 20. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 21. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance contained in sections 2 through 14 shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 22. It is the intention of the Board, and it is hereby ordained, that sections 1, and 15 through 19 shall be excluded from the Code of Miami-Dade County, Florida.

Section 23. 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: SMG

Sophia Guzzo
Eduardo W. Gonzalez

Prime Sponsor: Chairman Anthony Rodriguez

Implementing Order No.: IO 3-38
Title: MASTER PROCUREMENT IMPLEMENTING ORDER
Ordered: TBD **Effective**: TBD

AUTHORITY:
The Code of Miami-Dade County (Code) and of the Miami-Dade County Home Rule Charter.

SUPERSEDES:
This Implementing Order (IO) supersedes previous Implementing Order 3-38 ordered April 1, 2025, and effective April 11, 2025.

SCOPE:
This IO governs Miami-Dade County's (County) processes for 1) Goods and services; 2) Professional services such as architecture, engineering, and design build services; 3) Construction services; and 4) Leasing, permitting, and infrastructure and development projects.

This IO establishes the roles and responsibilities of the Strategic Procurement Department (SPD) or successor department, the methods of purchasing, and the authority to award contracts. This IO provides guidance for vendor registration, services, and programs. Additional procedures relating to the County's procurement processes are detailed in other Administrative Orders, Implementing Orders, and the Code.

1. Introduction

1.1. Purpose

The purpose of this IO is to establish clear parameters of procurement authority and accountability, consolidate and standardize the procedures governing procurement countywide, enhance public confidence, ensure the fair treatment of vendors, foster competition and help safeguard the quality and integrity of procurement in the County.

1.2. SPD and Department Responsibilities

It is the responsibility of SPD to issue and maintain procurement policies and procedures for all types of procurements for County departments. A general summary of the responsibilities of SPD and all other departments is below. **[Section 2-8.1 of the Code, IO 3-38; see also 3.1.5. in this IO]**

1.2.1. Goods and Services

SPD issues solicitations and awards contracts for goods and services. **[Section 2-8.1 of the Code]** County departments administer procurement for their department as applicable. County departments issue solicitations and award goods and services quotes under pools.

1.2.2. Architecture, Engineering and Design-Build

SPD issues solicitations and administers the negotiation process for architectural, engineering, landscape architecture, land surveying and mapping services, including design-build and construction manager at risk services for the County.

[Section 2-8.1 of the Code and IO 3-39] County departments manage the award process for professional services.

1.2.3. Construction
SPD evaluates construction bids as applicable. **[Section 2-8.1 of the Code]** County departments solicit and manage the award process for construction contracts.

1.2.4. Leases and Permits and Infrastructure and Development Projects
SPD administers countywide real estate development, real property lease negotiations and management, property acquisition and sales. **[IO 8-04]** SPD issues solicitations and manages the award of competitive development projects.

1.3. SPD Guiding Principles
SPD is the central agency for the acquisition of goods and services, including professional services for the County.

The Department's Guiding Principles are aligned with the word PURPOSE:

- **P**rofessional service to departments, businesses and constituents
- **U**nparalleled model for accountable and transparent governance
- **R**esilient and adaptive to the evolving needs of our environment
- **P**romote ethical standards in our business practices
- **O**perational efficiencies through use of innovative technology and processes
- **S**trategic development of talent through training and recognition
- **E**ngagement and inclusion of all stakeholders to promote competition

1.4. Ethics
The Miami-Dade County Commission on Ethics and Public Trust (COE) is responsible for promoting ethical conduct among public officials and employees, investigating complaints, and providing ethics training established through the County Home Rule Charter. The COE operates as an independent agency with both advisory and quasi-judicial powers.

SPD follows the COE's ethical standards and procurement rules in its day-to-day operations. The COE reviews procurement-related ethics complaints and can investigate alleged violations of procurement laws or conflict of interest statutes. Provisions and procedures can be found in **[Section 2-11.1 of the Code]**.

2. Countywide Systems

2.1. Integrated Financial Resources Management System (INFORMS)
INFORMS stands for **IN**tegrated **F**inancial **R**esources **M**anagement **S**ystem. The County's bidding of all contracts shall be managed through INFORMS. **[R-1102-24]**

INFORMS is the brand name of the technology that manages budget, procurement, human resources and financial operations systems. INFORMS is utilized by the County and Constitutional Offices. INFORMS is the platform that integrates the County's financial, procurement, human resources and supply chain management systems and serves as the centralized online bidding and procurement management system. Key functions for procurement include:

- Online Bidding Platform: Solicitations are issued through INFORMS.

- Online Bidding System (formerly BidSync): Vendors can register, view solicitations, and submit bids or proposals electronically. Paper proposals are no longer accepted unless explicitly requested.
- Vendor Registration and Management: Vendors register through INFORMS to do business with the County.
- Procurement Process Integration: INFORMS integrates procurement workflows with budgeting, contract management, and vendor payments, ensuring transparency and efficiency from solicitation to contract closeout.

2.2. Bid Tracking System

The Bid Tracking System (BTS) is a web-based, customized procurement database that supplements the functionalities of other systems used in County procurement.

2.3. Capital Improvements Information System

The Capital Improvements Information System (CIIS) is a countywide management tool used by the County to track, plan and manage capital improvement projects. Key uses include:

- Project Tracking: CIIS records and monitors all capital improvement projects, including construction, renovation, and infrastructure work, ensuring that each project is properly documented and progressing as planned.
- Budget Integration: It is used to submit and manage budgetary data for capital projects, aligning with the County's annual budget cycle.
- Procurement Support: CIIS data feeds into the County's procurement processes, helping to identify and manage contracts.
- Compliance and Reporting: It supports compliance with local, state and federal requirements, including public involvement plans for major projects and contractor registration for capital improvement work.
- Data Management: It centralizes information on project scope, costs, timelines and funding sources.

2.4. Business Management and Workforce System

The Business Management and Workforce System (BMWS) is a web-based software platform used by the County to manage small business certifications, workforce compliance and contract reporting for public procurement. Main uses include:

- Managing Small Business Enterprise (SBE) certification.
- Hosting online applications and directories for Disadvantaged Business Enterprise (DBE), Local Developing Business (LDB) Certification, and the Equitable Distribution Program (EDP) Registration.
- Enabling electronic submission of subcontractor information and verification of payments.
- Automating the monitoring of compliance requirements and sending deadline alerts or updates.
- Monitoring contracts and goals.

2.5. Vendor Portal

The Vendor Portal is the County's free vendor registration system. SPD and the Regulatory and Economic Resources Department or successor department are responsible for determining the criteria for vendor registration and maintaining an up-to-date vendor registration system. Further details and registration requirements can be found on SPD's webpage.

2.6. e-Builder

e-Builder is a cloud-based construction program management software platform used to plan, manage and deliver capital improvement projects. The County is working toward further implementation of this platform. **[Ord. 26-63 STRIP]**

3. Governance and Responsibility

3.1. Authority and Levels

All authorized purchases by the County shall be made in compliance with this IO and applicable Federal Regulations, Florida Statutes, Miami-Dade County Code, County resolutions, and Administrative Orders (AO).

3.1.1. Board of County Commissioners

The Board, established under the County Home Rule Charter, consists of elected officials, each representing a district, and serves as the governing body of unincorporated Miami-Dade County, establishing County service policies through ordinances and resolutions.

For goods and services and professional services, the Board shall award all competitively solicited contracts greater than $5,000,000 or the current threshold and noncompetitive contracts greater than $250,000 or the current threshold specified in **[Section 2-8.1 of the Code]**.

The Board shall award the sale, lease or disposal of County-owned real property. **[IO 8-04]**

The Board shall award competitively solicited construction contracts greater than $5,000,000 and noncompetitive contracts greater than $250,000 or the current threshold or the current threshold specified in **[Section 2-8.1 of the Code].**

3.1.2. County Mayor

The County Mayor serves as the County's government chief executive and head administrator, with administrative and policy implementation authority. The County Mayor is delegated certain procurement-related authority through the Miami-Dade County Home Rule Charter and various ordinances and resolutions adopted by the Board. The County Mayor may issue guidelines and procedures to staff in the form of AOs.

The County Mayor authority for contracts in the Code Section 2-8.1 is summarized below. This authority may be delegated by the County Mayor to subordinates, as applicable. Any award, rejection, modification or extension that exceeds the below authorities shall be approved by the Board.

Advertise Solicitations

- Advertise solicitations of any value.

Award Contracts

- Award competitively solicited contracts up to $5,000,000.
- Reject bids or proposals on solicitations up to $5,000,000.

- Approve non-competitive contracts when the award amount is $250,000 or less.
- Approve non-competitive emergency purchases, once the emergency is declared by the user department director, regardless of the amount of expenditure subject to ratification by the Board when the expenditure is greater than $250,000.

Modify Contracts

- Approve modifications to competitively solicited contracts having an original contract amount of $5,000,000 or less, up to a total contract amount of $5,000,000.
- Approve modifications to competitively solicited contracts having an original contract amount of more than $5,000,000, up to 20% of the original contract amount for the initial term, and up to 20% of the original contract amount for any option-to-renew term, if applicable, that may be exercised.
- Approve modifications for noncompetitive contracts having an original contract amount less than $250,000, up to a total contract amount of $250,000.
- Approve modifications for noncompetitive contracts having an original contract amount of more than $250,000, up to 20% of the original contract amount for the initial term, and up to 20% of the original contract amount for any option-to-renew term, if applicable, that may be exercised.
- Approve contract modifications that reduce the maximum value of the contract.
- Authorize departments to shift allocations among multiple vendors under a single contract.

Extend Contracts

- Extend expiring contracts for a maximum of 90 days, with prorated allocation authorization, or such longer period as may be necessary, provided such longer extension in no event exceeds 180 days.
- Non-competitive contracts may be extended beyond the 180 days provided that the total contract amount does not exceed $250,000.

Establish and Modify Prequalification Pools

- Establish prequalification pools up to $5,000,000.
- Approve modifications to prequalification pools having an original amount of $5,000,000 or less, up to a total amount of $5,000,000.
- Approve modifications to prequalification pools having an original amount of more than $5,000,000, up to 20% of the original amount for the initial term, and not exceeding 20% of the original amount for any option to renew term, if applicable, that may be exercised.
- Approve modifications that reduce the maximum value of the prequalification pool.
- Authorize departments to shift allocations among departments.
- Extend prequalification pools having an original amount of $5,000,000 or less, for a maximum of 180 days with prorated allocation authorization, or for any period with the total allocation not to exceed $5,000,000.
- Extend prequalification pools having an original amount of more than $5,000,000, for a maximum of 180 days with prorated allocation authorization, or for any period without an additional allocation.
- Add vendors to established pools, subject to biannual ratification by the Board.

Construction

- Award and reject bids or proposals for contracts for public improvements (construction) costing $5,000,000 or less. **[Section 2-8.1 of the Code]**

3.1.3. SPD Director

The Chief Procurement Officer (CPO) leads SPD and serves as its Director. The SPD Director shall have relevant experience in large-scale public procurement of goods and services, possess a record of unquestioned integrity and have demonstrated executive, managerial and organizational skills. The SPD Director may also delegate SPD professional staff to exercise purchasing authority. The SPD Director is responsible for hiring appropriately qualified professional staff to carry out the Department's mission.

The SPD Director is charged with fostering full and open competition consistent with County policy. The SPD Director is also responsible for implementing programs and initiatives to improve competition geared at yielding best value. This includes, but is not limited to, providing specialized training for staff regarding determination of appropriate acquisition methods, assuring effective and efficient market research, enhancing competitive contracting opportunities for small and local business entities, scrutinizing noncompetitive acquisitions, and challenging specifications and scopes of work to ensure no artificial barriers limit or reduce competition.

For awards under the County Mayor's delegated authority, the SPD Director may render the vendor in default, award the contract to the next lowest bidder or negotiate with the next highest ranked proposer. The SPD Director may also resolicit and subject the defaulted vendor to re-procurement charges or to forfeiture of the bid bond or security in an amount equal to the damages sustained by the County as a result of the default and recommend the vendor or contractor for debarment. For awards over the County Mayor's delegated authority, the SPD Director shall prepare a recommendation for the County Mayor. The County Mayor shall consider and may present the recommendation to the Board for approval.

3.1.4. Matrix Structure

The County Mayor, at his or her discretion, oversees a matrix reporting structure where a procurement and contracting lead in each County department will report on a "dotted" line basis to the County's CPO, or designee.

The County Mayor has created the position of CPO, who would be responsible for overseeing the implementation of all procurement policies and procedures approved by the Board and the administration across the County. The County Mayor has required each department to designate an individual as a Procurement Lead who will serve as a point of contact for the Department Director, Mayor's Office, CPO, vendors, and the public, oversee all procurement activities of the department, be responsible for implementing County procurement policies and procedures, and will coordinate directly with the CPO. The County Mayor has directed that the hiring, setting goals and objectives and annual evaluation of all departmental Procurement Leads must be approved jointly by the CPO and the respective department director, ensuring both county wide consistency and oversight. The County Mayor has provided the CPO with the authority to: develop and implement tools and processes for structured engagement with department directors and their Procurement Leads; support proactive acquisition planning and

establish baseline procurement standards; and provide training and guidance on best practices to ensure compliance and efficiency. The CPO shall standardize Countywide positions for procurement functions and work with Procurement Leads to analyze workload and make recommendations to the County Mayor for appropriate staffing levels in each department to ensure all procurement activities are handled in the manner that maximizes efficiency and costs-savings to the County.

3.1.5. Departmental Delegated Authorities

3.1.5.1. Water and Sewer

The Director of the Water and Sewer Department (WASD) or successor department has delegated authority from the County Mayor to award, reject, modify, extend, and exercise options-to-renew to assist the County to accelerate the processing, procurement and award of contracts in the most responsible, efficient and expedient manner possible. The delegated authority is to ensure timely performance of projects required to maintain the operational effectiveness and capacity of the water and sewer systems related to 1) The Consent Decree; and 2) WASD's Multi-Year Capital Plan, including those that provide goods and services, construction and professional services. The delegated authorities can be found in **[Section 2-8.2.12 of the Code].**

3.1.5.2. Aviation

The Director of the Aviation Department or successor department has delegated authority from the County Mayor to award, reject, modify, extend, and exercise options-to-renew to assist the County to accelerate the processing, procurement and award of contracts in the most responsible, efficient and expedient manner possible. The delegated authority is to ensure timely performance of MDAD's Capital Improvement Program. The delegated authorities can be found in **[Section 2-285.2 of the Code].**

An expedited procurement and contract-management process for the North Terminal Development Program at Miami International Airport (MIA) applies to certain contracts associated with the MIA. Provisions and procedures can be found in **[IO 3-48].**

3.2. Board Agenda Items

3.2.1. Procedure for Awards

The Board acts as the County's governing body and may upon written recommendation of the County Mayor, by resolution adopt competitive and non-competitive awards as provided in the County Home Rule Charter.

When the Board considers policy changes related to procurement, or takes action relating to an ongoing procurement, the Board shall also consider the impact of such action on procurement timelines. **[Ord. 26-63 STRIP]**

An award of a successor contract, or extension of an existing contract in order to assure no hiatus, requiring Board approval must be requested to be placed before

the Committee of the Board or the Board for consideration no later than 60 days before contract expiration. **[R-515-19]**

3.2.2. Board Memorandum Disclosures

3.2.2.1. Due Diligence

An award recommendation by the County Mayor or County Mayor's Designee to award a contract presented to the Board shall include a statement regarding due diligence, including verifying corporate status on the contractor to determine their responsibility. **[R-187-12]**

3.2.2.2. Awards to Non-local Businesses

Where a contract award recommendation for the purchase of goods and services to a vendor that is not a local business per Section 2-8.5 of the Code, the contract award recommendation memorandum to the Board shall disclose 1) information relating to reasons and factors as to why the County is not procuring the goods and services from a local business; and 2) what outreach efforts and actions the County undertook to ensure that local businesses had a full opportunity to openly and fairly compete for the goods and services being solicited. **[R-477-18]**

For the establishment of prequalification pools competing for contracts for the purchase of goods and services and less than 75% of the recommended vendors in the prequalification pool are local businesses per **Section 2-8.5 of the Code]**, the recommendation memorandum to the Board shall disclose 1) Information relating to reasons and factors as to why less than 75% of the prequalified vendors in the pool are local businesses; and 2) What outreach efforts and actions the County took to ensure that local businesses have a full opportunity to openly and fairly compete for the goods and services being solicited. **[R-658-23]**

3.2.2.3. Options-to-Renew

A memorandum recommending to the Board the award of a contract shall state the total cost of the contract including the cost of all options-to-renew that will be authorized to exercise without further approval of the Board. **[R-734-09]**

3.2.2.4. County Mayor Delegated Authority

The memorandum shall specify the dollar amount of delegated authority in the titles of ordinances and resolutions delegating contract authority to the County Mayor. **[R-1038-06]**

3.2.2.5. Non-Substantive Changes

Items placed on a County Commission or committee agenda seeking approval of a contract and authority to execute shall include the contract that is completely negotiated, in final form, and executed by all non-County parties. Items placed on a County Commission or committee agenda seeking approval to convey an interest in County property shall include the underlying conveyance instrument in final form. After adoption by the Board, the County Mayor or County Mayor's Designee may only make those changes

necessary to correct non-substantive, scrivener's errors, with the exception of interlocal agreements with other governmental entities. These requirements may be waived by the Board where the County Mayor or County Mayor's Designee recommends in writing that it is in the best interest of the County. **[R-130-06]**

3.2.2.6. Relating to Commissioner Districts
The County requires written notification to all applicable district commissioners when a Board item relates to one or more commission district(s) per **[Section 2-1.5.06]**

3.2.2.7. Single-Use Plastics and Polystyrene
If the County is unable to negotiate with vendors to include a provision to voluntarily eliminate the use of single-use plastics and polystyrene items, the County shall explain, inb the Mayor's memorandum, specify the reason that such a provision could not be negotiated. Single-use plastics and polystyrene includes straws, containers, utensils, bottles, stirrers, bags, except for prepackaged foods. **[R-1030-24]**

3.2.2.8. Noncompetitive Procurements
Any recommendation by the County Mayor to the Board for the award of a noncompetitive procurement shall provide a written explanation of why the noncompetitive procurement is necessary, steps taken to reduce or eliminate the future need for noncompetitive purchases, summary of findings of any market research or cost benefit analysis conducted by the County, or any other relevant information which supports a noncompetitive purchase as the preferred method of procurement, including any informal competition conducted and any and all efforts to obtain a valuation of the recommended purchase.

The County Mayor shall bring any 1) Emergency contract; or 2) Retroactive contract modification, that is over the delegated authority, to the Committee of the Board for ratification within 120 days of the date of the emergency or the date at which the administration became aware of the emergency and identify such date in any ratification item. In the event the County Mayor is unable to bring emergency contract ratifications to the Board within 120 days, the County Mayor shall explain in writing the reason for the delay in bringing the ratification item to the Committee of the Board. **[R-454-13]**

3.2.2.9. SBE, DBE and ACDBE
The County shall identify all certified SBE, DBE, and Airport Concession Disadvantaged Business Enterprise (ACDBE) firms, as part of the memorandum to the Board. **[R-716-12]**

4. Procurement Planning

4.1. General Overview
For the County to function efficiently and responsibly, goods and services which meet the necessary quality and fit shall be procured at fair and reasonable prices and in a timely manner. Advance acquisition planning by departments, market research, and early SPD collaboration with user departments in the acquisition process are essential to successful

procurement.

4.2. Electronic Signing and Notarization in Procurement

At all stages of procurement and contracting, the County shall encourage and accept electronic signatures and electronic notarization. Such notarization—electronic or otherwise—shall not be requested or required unless mandated by law. **[R-249-25]**

4.3. Pre-handoff Industry Meeting

A pre-handoff industry meeting for complex, non-repetitive procurements, shall be held unless such meeting is deemed waived by the director of the user department in consultation with the SPD Director**. [Ord. 26-63 STRIP]** Complex procurements include procurement processes for high-value, strategically important, technically intricate, requiring extensive planning, and requiring strategic risk management. The department should document a waiver to include information sufficient to make the determination such as a brief description of the rationale as to why a pre-hand-off industry meeting is unnecessary or impractical and any relevant background or supporting documentation.

4.4. Procurement Leads

Each department shall designate an individual as a Procurement Lead who will serve as a point of contact for the department director, County Mayor's Office, CPO, vendors and the public; oversee all procurement activities of the department; be responsible for implementing County procurement policies and procedures; and coordinate directly with the CPO. **[Ord. 26-63 STRIP]**

4.5. Competitive Process Standard and Best Value

The County shall 1) conduct competitive procurements for contracts whenever feasible **[R-391-17].**

To obtain the best value for the taxpayers' dollars and to promote equitable economic participation by all segments of our community, it is the policy of the County to purchase goods and services via an open and competitive process. When competition is not available, or when it is determined in the best interest of the County to utilize means other than full and open competition, County legislation authorizes the execution of purchases on a bid waiver, sole source or emergency basis.

4.6. Complete Contract in Solicitation

The County shall include a complete contract in all RFP solicitations for the purchase of goods and services, specifying to the extent possible, which terms are negotiable. Alternatively, the County shall include in the award recommendation to the Board, as applicable, why it was in the best interests of the County not to include a complete contract. **[R-442-25]** The County shall post the draft contract for comment and will accept feedback from outside industry and vendors during the procurement planning process in formulating the contract to be included in RFPs.

4.7. Reprocurement of Existing Contracts or Pools

4.7.1. Scope Review Memorandum

The County shall conduct a full review of the scope prior to the re-procurement of replacement contracts for goods or services to ensure such contracts reflect the current needs of the County. **[R-140-15]**

4.7.2. Reprocurement Starts Two (2) Years Before Contract Expiration

For the purchase of goods and services 1) Reprocurement and readvertisement of contracts requiring Board approval must begin two (2) years before expiration, inclusive of option-to-renew periods; (2) County departments must timely provide County procurement staff draft contractual scopes of services and specifications requiring Board approval within two (2) years before expiration, inclusive of option-to-renew; and 3) Reprocurement and readvertisement of contracts for the purchase of concessions at MIA must begin two (2) years before expiration, inclusive of options-to-renew.

When SPD is the issuing department for solicitations, departments shall provide to SPD draft scopes and specifications no later than two (2) years before the expiration of contracts inclusive of option-to-renew periods. The technical review and revision of specifications of a solicitation prior to advertisement shall be completed by the reviewing department and returned to SPD in not more than 15 working days from the date received by the department.

4.7.3. Reprocurement for Pools Starts 18 Months Before Pool Expiration

Reprocurement of prequalification pools shall begin 18 months prior to the expiration of the pool. **[R-718-17]**

4.7.4. Solicitation Response One (1) Year Before Contract Expiration

The County shall, when practicable, ensure competitive solicitations for replacement contracts are advertised and bids or proposals in response to the solicitation are received at least one (1) year prior to the expiration of the existing contract.

4.8. Market Research

The County shall conduct market research prior to or during the development of specifications or scope of work for any purchase of goods or services. The Office of the Inspector General (OIG) shall review staff's compliance with the required procedures periodically.

The primary purpose of market research in public procurement is to collect and analyze data to determine the availability of sources of supply and to promote the formulation of specifications that provide best value, and fair and open competition. Specifications and requirements should neither be exclusionary nor unreasonably favor any vendor.

The process of market research begins with the intent to satisfy a legitimate County requirement. Whenever practical, the requirement should be stated in terms of performance or functionality. The required output of the goods or services to be purchased should be clearly understood and defined. During market research, the County shall contact, whenever possible, no less than three (3) different sources in the affected market. Documentation of such contacts shall identify the sources contacted and the date the source is contacted and shall be maintained in a manner that may be reviewed by the OIG.

Market research may include a formal process such as a Request for Information.

4.9. Other Preplanning and Procurement Practices

4.9.1. Solicitation Processing Time

The processing goal to submit a recommendation with the Clerk's Office for procurements under $5,000,000 is no later than 90-120 days of the submission of bids, and for procurements over $5,000,000, no later than 120-150 days **[Ord. 26-63 STRIP].**

To facilitate these goals, any technical review of bids or proposals prior to award shall be completed by the reviewing department and returned to SPD in not more than 10 working days from the date received by the department. If additional time exceeding the stipulated timeframes is required, a request must be made by the director or designee of the reviewing department to the SPD Director, and the SPD Director may allow a reasonable time extension when appropriate.

4.9.2. Consultant Consideration

In the procurement planning stage, the County shall conduct diligent inquiry whether the services to be performed by a consultant can be performed by County employees prior to the retention of a professional consultant, other than one required by law or for independent opinion, or one retained as a cost-saving measure. **[R-1204-05]**

4.9.3. Addendum to Extend Due Date

The County shall provide bidders a minimum of 10 business days before the response deadline to a solicitation when an issued addendum includes changes that materially affect pricing or technical requirements**. [Ord. 26-63 STRIP]** The County, acting through its SPD Director, retains the discretion to waive or shorten this period for good cause and in the best interest of the County.

4.9.4. Equal Pay Act

Goods and services contracts shall include that a violation of the Equal Pay Act of 1963 is a breach of agreement and render contract voidable. **[R-1072-17]**

4.9.5. Required Experience

For County construction contracts and purchases of goods or services (except professional services covered by Fla. Stat. §287.055) requiring a certain number of years of experience or completion of similar projects, vendors can qualify for minimum experience requirements based not only on the vendor's past work, but also on the prior experience of their key personnel, if applicable and included in the solicitation. **[R-1122-21]**

4.10. Procurement Academy

The Procurement Academy provides education about the procurement process and applicable rules to certain County employees. Mandatory procurement training courses offered both in-person and online, on applicable federal, state, and County procurement laws, and required refresher courses are provided through the academy for County employees. The Procurement Academy courses and refresher courses shall be made available to other local governments pursuant to interlocal agreements which shall compensate the County for providing such courses. **[R-251-25]**

The Procurement Academy launched the Miami-Dade County Certificate in Public Procurement which focuses on the fundamentals of public procurement, the legislative

framework that governs the County's procurement process, competitive and noncompetitive procurement methods, procurement planning, sourcing and contract administration. This certification program provides participants with the knowledge and skills to develop solicitations, evaluate responses, and effectively manage awarded contracts. Further details and registration information can be found on the County's **[website].**

Each Commissioner shall designate one (1) member of his or her staff to be trained and certified in procurement matters, which training and certification shall be provided by SPD. **[Ord. 26-63 STRIP]**

5. Goods and Services Procurements

5.1. Competitive

A competitive procurement is the formal process in which the County invites vendors to compete for a contract to provide goods or services. The process involves publicly soliciting bids or proposals, evaluating vendors based on established criteria, and selecting the offer that provides the best price or best value while ensuring fairness, transparency, and compliance with applicable laws and policies. Competitive procurements by the County include an Invitation to Bid (ITB), RFP, and Request for Qualifications (RFQ). The County also issues a Request to Qualify (RTQ) to establish a Prequalification Pool for future competitive bidding such as via an Invitation to Quote (ITQ). The County may use Competitive Accessing under certain conditions. These processes are further explained below.

5.1.1. Invitation to Bid

The ITB is the County's standard method for the procurement of goods and services and is used to solicit bids when a complete and adequate specification or scope of work is available, and multiple bidders are expected to compete. Contract award under an ITB is principally based on price to the responsive and responsible bidder, but may include other factors such as delivery times.

5.1.2. Request for Proposals

An RFP is a formal written solicitation issued for the purpose of seeking responses from proposers. An RFP is used when 1) The scope of services cannot be completely defined by the County; 2) The required goods or services can be provided in several different ways; 3) Qualifications, experience or the quality of the goods or services to be delivered are significant factors of consideration; or 4) The responses may contain varying levels of service or alternatives which lend themselves to negotiation.

An RFP may include, but is not limited to, scope of services, proposer qualifications, proposal instructions, terms and conditions of the contract, and selection criteria. Contract award is not based solely upon price; rather, there is an evaluation which includes criteria such as qualifications and experience of proposer, principals, staff, and subcontractors; methodology; understanding of the project and the County's objective; technical ability; financial stability; pro forma statements; and pricing or revenues.

5.1.3. Request for Qualifications

An RFQ is a formal written solicitation issued for the purpose of seeking responses from proposers. An RFQ is used to obtain statements of qualifications from

proposers when the scope of services cannot or has not been completely established by the County, and there are specific qualifications to be considered for contract award. An RFQ may include, but is not limited to, scope of services, proposer qualifications, proposal instructions, terms and conditions of the contract, and selection criteria. Contract awards are generally not based solely upon price, rather, there is an evaluation which is primarily focused on qualifications and experience of proposer and may also include qualifications of principals, staff, and subcontractors. Other evaluation factors may be included, but pricing and revenues is generally not the most important factor.

An RFQ may be used, for example, when 1) Creating a pool of prequalified vendors to be used on an as needed basis; or 2) In a two-step process where the scope of services is incomplete and only those firms selected in the qualification phase compete in the second step when a particular work order or scope of services is established.

5.1.4. Request to Qualify - Prequalification Pool

An RTQ is used to establish a pool of vendors capable of providing goods and services in future spot market competitions. Entry into the prequalification pool is not a contract between the County and any vendor, but an acknowledgement that the vendors meet the qualifications as outlined in the RTQ. Generally, prequalification pools are open for submitters to qualify at any time after the initial RTQ opening date.

Prequalified vendors are invited to participate in future spot market competitions via the ITQ or Work Order Proposal Request (WOPR) processes. Award under an ITQ is based on price and award under a WOPR is on the basis of best value.

The authority to award contracts resulting from spot market competitions issued by departments under prequalification pools is delegated to the department directors or their authorized designees. Any contract award for goods or services exceeding the County Mayor's delegated authority under an approved prequalification pool is subject to ratification by the Board.

5.1.5. Competitive Access (Piggybacking)

The County may award a contract by accessing the competitively solicited contract of any other governmental or quasi-governmental entity or not-for-profit organization, provided the goods or services are not available through an existing County contract at same or lower price. The County shall verify that the contract is accessible and that the original competition meets the County standards for a competitive procurement.

When accessing a contract of another entity consisting of a pre-qualified vendor pool, the County shall conduct a competitive selection process among the pool members, or may follow the method of selection prescribed by such contract so long as it complies with County competitive procurement requirements.

The County shall maximize the use of accessing competitive contracts of other governmental entities, when practicable, for the purchase of goods and services. **[R-252-25]**

5.2. Noncompetitive

The Code allows certain purchases to proceed without full competition when competitive bidding is not practicable or is necessarily justified. Noncompetitive procurements include a bid waiver and sole source. An unauthorized (confirmation) purchase is also a noncompetitive action.

When a County department recommends to SPD the use of other than full and open competition, the appropriate justification for that recommendation must be submitted to SPD for evaluation and analysis via a Noncompetitive Allocation Request Form.

5.2.1. Bid Waiver

A bid waiver is a purchase of a good or service without formal competitive bidding when it is determined to be in the best interest of the County. Formal competition may be waived by SPD for expenditures up to the County Mayor's delegated authority and by the Board for awards greater than that amount. Bid waiver requests shall be prepared by the user department and submitted to the SPD Director or authorized designee for evaluation and analysis. When the expenditure exceeds the County Mayor's delegated authority, and it is determined to be in the County's best interest to waive competitive procedures, the SPD Director shall consider and may present the recommendation to the County Mayor.

The County Mayor shall consider and may present a recommendation to the Board for award. Additional funds or extensions of time that may be requested during the contract period are subject to current authority limits for contract modification.

5.2.2. Designated Purchase

Designated Purchase shall mean a purchase when the purchase through the use of formal sealed bids is not practicable, including, but not limited to: (i) sole source purchases, (ii) services where no competition exists such as public utility services, (iii) where purchases or rates are fixed by law or ordinance, (iv) unique professional or artistic services not governed by the Consultants' Competitive Negotiations Act, Section 287.055, Florida Statutes, (v) purchases of goods and services necessary to address an emergency, or where additional formal competition would not be practicable, and (vi) solicitations where only a single proposer has responded to a competitive solicitation but such response contains material defects and the County still desires to enter into a contract with such proposer. Where appropriate in a Designated Purchase, the County shall pursue the maximum amount of competition available under the circumstances, which may include telephonic bids and informal price quotations. Any recommendation by the Mayor for the award of a Designated Purchase shall, at a minimum, provide: (i) a written explanation of why the purchase through formal sealed bids would not be practicable under the circumstances and that the recommended noncompetitive purchase is in the best interest of the County, and the steps taken to reduce or eliminate the future need for a Designated Purchase for the particular good or service; and (ii) a written description and summary of the findings of any market research or cost-benefit analysis conducted by the County Mayor for a Designated Purchase as the preferred method of procurement, including any informal competition conducted and any and all efforts to obtain a valuation of the recommended purchase. The Board shall adopt any resolution authorizing a Designated Purchase by a two-thirds vote of the members present.

5.2.3. Legacy Purchase

Legacy Purchases shall mean the purchase of goods and services where competition is unavailable, impractical or constrained as a result of the need to continue to operate an existing County system which may not be replaced without substantial expenditure. Such Legacy purchases may be awarded by the Board upon a majority vote of those Board Members present, where the amount of such award exceeds the threshold for purchases by the County Mayor set forth in the Code. Any recommendation by the County Mayor for a Legacy Purchase shall, at a minimum, provide: (i) a written explanation of why a Legacy Purchase is necessary and the steps taken to reduce or eliminate the future need for Legacy Purchases for the particular good or service; and (ii) a written description and summary of the findings of any market research or cost-benefit analysis conducted by the County Mayor supporting the recommendation of a Legacy Purchase, including any informal competition conducted and any and all efforts to obtain a valuation of the recommended purchase.

5.2.4. Sole Source

A sole source purchase is the procurement of a good or service for which there is no other vendor who can compete to provide the good or service, and an equal product or service is not available from any other supplier. When the SPD Director or authorized designee is satisfied that there is only one (1) source of supply or determines that a noncompetitive situation exists for the required goods or services, full and open competition may be waived by the SPD Director. When the expenditure exceeds the County Mayor's delegated authority, the SPD Director shall prepare a recommendation for the County Mayor. The County Mayor shall consider and may present the recommendation to the Board for award. Additional funds or extensions of time may be requested during the contract period and are subject to the current authority limits for contract modifications.

An appropriate justification for that recommendation must be submitted to SPD for evaluation and analysis. Using the appropriate document, the user department shall, as a minimum, indicate the purpose of the acquisition, the uniqueness of the item or service, the reason waiver of the competitive process is in the County's best interest, the market research that has been performed to support such actions and the actions proposed to enhance competition in future acquisitions.

5.2.5. Unauthorized (Confirmation) Purchase

An unauthorized purchase is a purchase or commitment of funds by an employee that does not have the authority to do so, or a purchase or commitment of funds by an authorized employee but not in accordance with County legislation or the procedures. The ratification of an unauthorized purchase requires retroactive approval by the respective department director or authorized designee for commitments up to the County Mayor's delegated authority, SPD Director for commitments up to the County Mayor's delegated authority, and by the Board for commitments of more than the County Mayor's delegated authority.

Payment for any unauthorized purchase may be deemed the responsibility of the employee that made the purchase or commitment and shall subject said employee to disciplinary action up to and including termination. The department director is responsible for the unauthorized purchase and shall respond to the County Mayor

in writing with complete justification for all inappropriate activity, to include the disciplinary action taken, if appropriate, and the corrective action(s) implemented to prevent recurrence.

5.3. Other Procurement Methods

The County reserves the right to utilize any legally available competitive purchasing methods used by any Florida or federal agency as the County deems warranted in instances when such methods are not expressly provided in the Code. These include but are not limited to 1) Request for Letters of Intent which consist of a document stating the preliminary commitment of a party to do business with another party and outlines the main terms of the prospective deal; and 2) Invitations to Negotiate which consist of a solicitation for competitive sealed proposals to select one (1) or more vendors with which to commence negotiations for the procurement of goods or services.

6. Architecture, Engineering and Design-Build Projects

6.1. General Overview

The County shall in all appropriate contracts for professional, architectural, engineering, landscape architectural or lands surveying services, require the identification and continued engagement of specific technical or professional personnel which may affect the firm's qualifications or capabilities to perform the necessary services. The contract shall also provide that such personnel shall not be replaced except when the County determines, in its discretion, that the proposed replacement personnel has equal or greater qualifications or capabilities to perform the necessary services. **[R-744-00]**

6.2. Equitable Distribution Program

The EDP is designed to increase contracting opportunities for local architecture and engineering firms, particularly by distributing smaller professional-service projects among qualified firms through a structured process. The program gives departments access to qualified professionals for smaller projects without requiring a formal solicitation for each individual assignment. Provisions and procedures can be found in attached **[IO 3-39, and Fla. Stat. §287.055 (2026). [R-667-03 (superseded the original R-631-01)]**

The objective of the EDP is to procure professional services for architecture, engineering, landscape architecture or surveying and mapping firms through a continuing contract for County departments and agencies.

Consultants may apply to participate in the EDP only via the automated Contract Compliance Software. Provisions and procedures can be found in [**Sections 2.8.1, 2-8.8 and 10.34 of the Code].**

6.3. Capital Improvements Project Tracking and Reporting Requirements

The County departments responsible for a capital project shall establish and maintain project information and schedules from initial planning through the construction phase. Provisions and procedures can be found in **[IO-3-39].**

The County implements a Public Improvement Plan (PIP) as part of major capital improvement projects that may adversely impact neighboring business, schools and residents. Provisions and procedures can be found in attached **[IO 10-13].** The PIP applies to construction contracts and joint participation agreements greater than $1,000,000 that adversely impact neighboring businesses. **[R-273-05]**

6.4. Acquisition of Professional Services

The County shall acquire professional services through fair, competitive, transparent and properly documented procurement processes. The procurement method shall be based on the type and estimated value of the services and the applicable legal requirements. Professional services include those services within the scope of practice of architecture, professional engineering, landscape architecture, registered land surveying and mapping, or those performed by any registered architect, professional engineer, registered landscape architect or registered land surveyor in connection with his professional employment or practice. Provisions and procedures can be found in **[Section 2-10.4 of the Code] and Fla. Stat. §287.055 (2026).**

6.5. Design-Build Services (Capital Construction Contracting)

A Design-Build services contract is a capital project delivery method under which the County contracts with one (1) qualified design-builder to provide both professional design and construction services for a project in accordance with the County's design criteria and contractual requirements**.** Provisions and procedures can be found in attached **IO 3-39, and in [Section 2-10.4 of the Code and Fla. Stat. §287.055].**

7. Construction

7.1. General Overview

Standard construction general conditions to be used by all County departments, along with construction provisions and procedures can be found in attached **[IO 3-57]**.

7.2. Miscellaneous Construction Contracts Program

The Miscellaneous Construction Contracts (MCC) Program is designed to expedite the award of certain construction projects while creating contracting opportunities for local and small construction firms. It consists of two (2) plans: 1) 7360 Plan, which is open to all eligible contractors; and 2) 7040 Plan, which provides a 100% set-aside for certified Small Business Enterprise–Construction (SBE-CON) firms and may be used only when permitted under state and federal law. . Provisions and procedures can be found in **[Section 2-8.1(b) of the Code]** and in attached **[IO 03-53}, R-1139-07 and R-597-08].**

7.3. Other Construction Practices

Departments shall review the Countywide ACT Viewer at various stages throughout construction project lifecycles to identify and respond to any potential construction conflicts. Provisions and procedures can be found in attached **[IO 10-16]**.

The County shall establish a clearing house for posting notice of job opportunities resulting from the construction of improvements on County property, including those improvements that are privately funded. **[R-937-98]**

It is the policy of the Board regarding claims by construction contractors on County projects for additional compensation for changes on the work arising out of events that occurred prior to the date the contractor executed the change order, that those claims which contractors make after the Board has approved the change in the work shall not be considered unless the Board is specifically informed that the claim was not submitted timely. The County shall place a notice on all claims or requests for additional compensation which were submitted untimely as follows:

"THE CONTRACTOR DID NOT SUBMIT THIS CLAIM DURING THE TIME PROVIDED IN THE CONTRACT FOR MAKING CLAIMS. THE BOARD OF COUNTY COMMISSIONERS HAS NO LEGAL OBLIGATION TO CONSIDER THIS CLAIM." **[R-1403-97]**

The County shall consider the safety records of prospective contractors and their first-tier subcontractors as part of the due diligence investigation performed to determine contractor responsibility for the construction or improvement of a public building, structure or other public construction project that will be presented to the Board for contract award or ratification of an award. Such investigation shall include reviewing available relevant information, for at least the previous three (3) years, from the United States Department of Labor Occupational Safety and Health Administration (OSHA) or other sources. OSHA logs of work-related injuries and illnesses (Form 300) and OSHA inspection data shall be initially provided by prospective contractors and first-tier subcontractors. The County shall include that the safety record was considered as part of the due diligence required, including reporting to this Board any instance where the safety record may adversely affect a finding of contractor responsibility in memoranda to the Board. **[R-1181-18]**

Contractors and subcontractors shall provide written notice to all their workers on how to report suspected workers' compensation fraud to the State of Florida Bureau of Workers' Compensation Fraud. **[R-919-18]**

8. Leases and Permits and Infrastructure and Development Projects

8.1. Housing

A standardized master development agreement or similar instrument with all competitive solicitations related to the development of County property with affordable and workforce housing shall be included in all competitive solicitations with the following requirements, that 1) Each proposer include in their response any concerns they may have related to the terms set forth in the agreement including any term that may limit the ability of the developer to obtain financing opportunities for the proposed project; (2) Negotiations are completed within a specific time; and (3) Include a provision in each competitive solicitation that limits the scope of the negotiations including the terms of the agreement. However, if in the best interest of the County not to do so, a justification explaining the reason for a material deviation of the above requirements (not to include or to exclude terms required or prohibited by federal, state or local laws, regulations, orders, or directives) shall be included in the award recommendation memorandum to the Board **[R-446-25].**

All legislation brought before the Board related to affordable or workforce housing that references area median income shall include the income limits chart that is published by the Florida Housing Finance Corporation or the United States Housing and Urban Development for the County, or similar information relevant to the item in dollar amounts. **[R-317-25].**

8.2. Procedures for the Sale, Lease, Easement and Conveyance of County Real Property

The provisions and procedures for the sale, lease, and conveyance of County real property can be found in attached **[IO 8-04]**.

Any future legislative item submitted to the Board for the approval of a lease of County-owned property, shall be inclusive of property which is part of the designated facilities of the Public Health Trust, for the development of any facilities, including but not limited to, affordable or workforce housing, shall include a provision delegating to the County Mayor

or County Mayor's Designee the authority to approve and execute non-exclusive utility easements for the purpose of providing utility services to such development. **[R-684-25]**

A minimum of 25% of the proceeds from the sales of County-owned properties shall be deposited into the County Trust Fund for the purpose of increasing and improving the supply of affordable housing to households in the affordable target income groups, including, but not limited to acquisition of property and property rights, covering the cost of construction including costs associated with planning, administration, design, building or installation, as well as any other costs associated with the construction or financing of affordable housing, and reimbursement to the County for such costs if funds were advanced by the County from other sources. The proceeds from the sales of County-owned properties for the purpose of constructing, acquiring, or rehabilitating affordable housing, such as through the County's Infill Housing Initiative and the public housing mixed-finance development concept programs are exempt from these requirements. Additionally, the proceeds from the sales of County-owned properties, which are funded through the County's affordable housing funding programs, such as Documentary Surtax, State Housing Initiatives Partnership, HOME Investment Partnerships, Community Development Block Grant, General Obligation Bond programs, or other similar programs, are also exempt from these requirements. Additionally, the proceeds received by the County from the sales of County-owned properties, where the use of such proceeds is restricted by federal or state laws, grants or agreements, are exempt from these requirements **[R-138-16]**.

Prior to conveyance of an easement or license to any utility company for the installation of utility lines or equipment on County-owned property, reasonable attempts and measures should be undertaken by the County to minimize negative aesthetic impact to the public of such installations including 1) Requiring the placement of such equipment and lines underground or in less visible locations if same are available, practical, and feasible; 2) Review of any existing development, as well as any potential development to be constructed in the immediate area, to consider compatibility with the proposed installation; and 3) Consideration of potential means by which such lines and equipment may be concealed or camouflaged, such as an architectural feature and/or vegetation cover. Therefore, the County shall 1) Analyze such factors and engage in negotiation with such utility companies prior to such conveyance, in an effort to minimize negative visual impact to the public wherever possible; and 2) Identify the reasonable attempts and measures undertaken by the County administration to comply with the Board's policy in any agenda item conveying an easement or license which would allow the placement of utility lines and equipment on County-owned property. **[R-504-15]**

A resolution authorizing the improvement, rehabilitation or conveyance of County-owned real property appropriate for or to be used for affordable housing shall include 1) Background information explaining how, when and why the County acquired the property; 2) An itemized accounting of the County's past and proposed future investment in the property, including acquisition, rehabilitation, and maintenance costs; 3) The amount and an explanation of any mortgages, fines, liens or other costs paid by the County in acquiring the property; 4) The location of the property, including the commission district; 5) The assessed value of the property; 6) A summary of the terms, duties and responsibilities to be imposed upon the recipient of the property pursuant to any agreements; 7) A summary of remedies available to the County in the event that the proposed recipient does not fully comply with said agreements; and (8) A summary of future controls and transfer restrictions on the property or, in lieu of a summary, a copy of any restrictive covenant, restrictive deed

or other controls to be placed upon the property by the County at the time of transfer or sale. **[R-376-11]**

Anytime the County becomes aware that a parcel of vacant, undeveloped land adjacent to an existing County park is being offered for sale, the County Mayor or County Mayor's designee shall consider and analyze whether such parcel could be purchased and used to expand the park and, if so, to make good faith attempts to acquire the parcel. The consideration and analysis performed should include, but not be limited to, determining whether the expansion of the park in question is necessary to serve an increased population, whether the expansion of the park in question would contribute to the environmental, social and economic well-being of the surrounding neighborhood and community and whether funds are available to acquire the parcel. **[R-953-12]**

8.3. Unsolicited Proposals for Qualifying Projects and Resulting P3 Projects

An unsolicited proposal for a Qualifying Project is a formal, detailed proposal submitted to the County that includes all legislative requirements. SPD establishes and maintains procurement policies and standard documents, guiding departments through the procedures for the compliance assessment, initial review and evaluation of this type of unsolicited proposal. Provisions and procedures for this type of unsolicited proposal can be found in **[Section 2-8.2.6 of the Code] and 255.065 of the Florida Statutes.**

A Public Private Partnership (P3) project resulting from an unsolicited proposal for a Qualifying Project have unique requirements per the Code and are best accomplished by the County building consensus among elected officials, stakeholders, facility users, neighbors and other interested parties on the project's scope and affordability and conducting an open and competitive procurement process.

9. Department Delegated Procurements

9.1. Invitation to Quote

An ITQ is a procurement method used to solicit from a pool of prequalified vendors. An ITQ is generally awarded to the lowest responsive and responsible bidder. Another method of award may be used if specified in the prequalification pool such as rotation.

9.2. Small Purchase Orders – purchases up to $25,000

The Small Purchase Order (SPO) is a procurement method that represents the decentralized delegation of purchase authority to authorized personnel in County departments. SPO's may not exceed $25,000 per purchase and can be used only if the goods or services are not available from any other County source.

SPOs can be accomplished through competitive or noncompetitive procurement methods. A competitive SPO is accomplished through a spot market competition. A noncompetitive SPO must meet the County's criteria for noncompetitive acquisitions (bid waiver or sole source) and may also be used to process a payment for an unauthorized (confirmation) purchase. A justification must be approved by the department's director, or designee, and all supporting documentation must be maintained with the SPO file and be available for audits and inspections.

Department directors or their authorized designees are responsible for and will be held accountable for their department's appropriate use of SPO's. Departments must ensure compliance with the appropriate competitive and administrative requirements. The County

shall track the use of SPO's to ensure economies of scale and the benefits of leveraging the organization's spending is deriving a benefit to the taxpayers by consolidating commonly used goods and services into annual County contracts, as needed.

9.3. Emergency Purchases

An emergency purchase is an unforeseen or unanticipated urgent and immediate need for goods or services where the protection of life, health, safety or welfare of the community or the preservation of public properties would not be possible using any of the other purchasing methods described in this IO.

In the event a department director or authorized designee determines that an emergency purchase is necessary, a contract may be awarded without utilizing the competitive bid procedures regardless of the amount of expenditure. Within five (5) working days after the purchase, the County department shall submit the documentation to SPD specifying the circumstances which justified the emergency contract award. When the expenditure is greater than $250,000, the SPD Director shall forward the documented circumstances to the County Mayor for presentation to the Board for ratification.

9.4. Subscriptions and Direct Payments

Certain purchases made by the County are considered appropriate for direct payment and are therefore excluded from procurement processes. To be eligible for direct payment, the item being purchased must not be available under an existing contract. The following items are authorized for direct payment and are exempt from the application of other procurement methods.

- Books valued at under $750
- Commodity Purchases under $100
- Films
- Freight
- Gasoline Credit Cards
- Memberships
- Mileage
- Miscellaneous Refunds
- Newspaper and Magazine Advertising
- Newspaper and Magazine Subscriptions
- Notary Fees
- Permits
- Petty Cash
- Postage
- Publications
- Registration Fees
- Special Assessment Bills
- Tax and Law Service
- Tax Bills
- Tuition
- Utilities
- Training
- Veterinary Services

Note: The County shall obtain veterinary services through direct noncompetitive purchases, negotiate, approve and execute contracts with veterinary service providers, pay for the services, and exercise all provisions of any resulting contracts or agreements, including any cancellations, renewals, and extensions. The County shall, to the extent possible, rotate the veterinary services among providers by considering the rates, availability, urgency, proximity and specializations offered and to continue to work with small and local veterinary providers for the provision of the services. **[R-396-26]**

9.5. Purchasing Cards

Purchasing cards may be used for certain small purchases by authorized County personnel subject to the specific dollar limitations and requirements. Provisions and procedures can be found in the Purchasing Card Program and Finance Department's Guidelines for the Use of Purchasing Cards.

9.6. Miami International Airport

Solicitations, such as RFPs or ITBs, for food and beverage, retail, news, gifts and hotel services at MIA shall require the proposer to sign a labor peace agreement with the labor organization(s) that seeks to represent the proposer's employees and submit such agreement as part of its proposal to assure that no labor dispute will disrupt their operations at MIA. As such, all contracts for such concessions at MIA shall include a provision giving the County the right, in the event of a labor disruption, to suspend the County's obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a proposer is unable to reach an agreement with a labor organization regarding the terms of a labor peace agreement, the dispute between the proposer and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within 10 days of the request for arbitration but no later than five (5) days prior to the date the proposal is due. The proposer and the labor organization shall equally share the costs of arbitration. The proposer shall ensure that all sub-tenants also sign a labor peace agreement. **[R-148-07]** This application of a labor peace agreement shall be a condition of determining proposer responsibility rather than proposal responsiveness.

Local Developing Business Program shall apply to General Aeronautical Service Permits at MIA. **[R-1302-02]**

10. Contract Modifications and Renewals

10.1. Contract Modifications

A contract modification is a formal, written change to an existing contract that alters its terms, scope, pricing or other contractual elements during the contract's performance. Generally, contract changes must either be within the scope of the original contract or have been contemplated in the contract, such as amending the scope to add related services or locations.

10.1.1. Federal Grants

The County is a Non-Federal Entity (NFE) that may carry out a federal award as a recipient or sub-recipient. NFEs may make minor adjustments contemplated fairly and reasonably by the parties when they entered the contract. A major deviation in contract work is considered a cardinal change. A cardinal change is prohibited where 1) Contract work to property or services, costs, or time causes a major deviation from the original purpose of the work or the intended method of

achievement; and 2) A revision of contract work, costs, or time so extensive, significant, or cumulative that the contractor is required to perform very different work from that described in the original contract.

Generally, federal grants will view a significant change to a contract as a noncompetitive award and evaluate whether the NFE meets the necessary conditions for using the procurement through noncompetitive proposal method. However, if an NFE performs a significant change without meeting the exceptions to competitive procurements, then the NFE is noncompliant with the federal requirements.

10.2. Change Orders

A Change Order is a written amendment executed by the County and the contractor covering modifications to a contract. Provisions and procedures can be found in attached **[IO 3-39]**

10.3. Options-to-Renew and Contract Extensions

Options-to-renew refer to contractual provisions which provide one (1) or both parties to the contract with the right to renew a contract to continue beyond its initial term and should be included in a contract for a specific, anticipated reason.

Contract extensions refer to contractual provisions which provide one (1) or both parties to the contract with the right to extend a contract to continue beyond its term, which may include the initial term and any option-to-renew terms. Extensions are used to continue the contract for an unanticipated reason, such as to complete the reprocurement action or to finish a project.

Although option-to-renew terms and extensions usually represent different types of authority to continue a contract, the terms are often referred to interchangeably. Therefore, use of either type of provision should be tied to specific clauses in the contract with certain conditions which must be adhered to, including any notice requirements.

11. Vendor Participation and Programs

11.1. Vendor Registration

To enter into contract with the County, a firm must be fully registered with the County. Vendor registration is free. Registration can be completed through the County's Vendor Portal system. The link to the Vendor Portal is available on SPD's **[webpage]**. Once registered, a firm will receive alerts to procurement opportunities to submit bids or proposals. SPD is responsible for determining the criteria for vendor registration.

11.2. Vendor Academy

SPD provides County vendors and aspiring County vendors with timely, accessible procurement-related information through its Vendor Academy. Resources include virtual instructor-led workshops, INFORMS materials, links to instructional videos, and information about upcoming outreach and vendor onboarding events.

11.3. Expedited Purchasing Program

The Expedited Purchasing Program (EPP) includes competitively designated purchases of supplies, materials, and services, including professional services which are estimated to cost up to the County Mayor's delegated authority and where time delivery is essential

shall be designated as an EPP. Provisions and procedures can be found in **[Section 2-8.1.6 of the Code]**.

11.4. SBE Programs

11.4.1. SBE-Goods and Services

The SBE-Goods and Services applies to all County contracts for the purchase of goods and services, including certain professional services and construction. The SBE Program shall not apply to construction or construction management services of $700,000 or less; purchase, leases or rental of real property; licenses and permits; concessions; franchise agreements; or contracts for investment banking services. Provisions and procedures can be found in attached **[IO 3-41].**

11.4.2. SBE-Architecture and Engineering

The SBE-Architecture and Engineering establishes that 10% or more of the County's total annual expenditure on all projects specific to contracts for professional services such as architectural, landscape architectural, engineering and surveying and mapping services, must go to firms certified as Community Business Enterprise (CBE). Provisions and procedures can be found in attached **[IO 03-32]**.

11.5. Miscellaneous Construction Contracts Program (MCC)

The MCC is a County contracting program established to facilitate and expedite the award of qualifying construction contracts and enhance contracting opportunities for certified SBE-CON firms. The Program includes the MCC 7040 Plan, MCC 7360 Plan, and authorized department specific plans and is administered in accordance with provisions and procedures which can be found in **[Section 2-8.2.7.01 of the Code].**

11.6. Local Preference and Locally Headquartered Preference

Local Preference provides an advantage to eligible local businesses competing for County contracts. Provisions and procedures can be found in **[Section 2-8.5 of the Code and IO 3-39].**

The County shall promote the use of locally headquartered businesses in the purchase of services consistent with a fair and transparent procurement process, all in accordance with the requirements of law. Provisions and procedures can be found in **attached [IO 3-68]**.

It is County policy to encourage and employ locally based small firms and employees. **[R-1106-15]**

11.7. Veterans Preference

Local Certified Veterans Business Enterprise Preference provides an advantage to eligible local businesses certified by the State of Florida Department of Management Services as a veteran business enterprise competing for County contracts. Provisions and procedures can be found in **[Section 2-8.5 of the Code and IO 3-39].**

11.8. Purpose Driven Procurement

Purpose Driven Procurement is a Countywide procurement framework intended to ensure that the County considers not only price, quality, and competition, but also broader objectives when acquiring goods and services. **[AO 3-67]**

11.9. Enhancing Opportunities for Individuals with Disabilities

The County shall enhance employment opportunities, workforce training, and support services for individuals with disabilities, including neurodivergent individuals. The County shall promote inclusive hiring practices among County vendors by incorporating scoring incentives that reward comprehensive plans to recruit, hire and support employees with disabilities**. [R-230-22]**

11.10. Sustainability

11.10.1. Energy Efficiency

For County-funded civil infrastructure projects, the County shall incorporate the Institute for Sustainable Infrastructure "Envision" sustainable infrastructure rating system into the planning, design, construction, and operation of County-funded civil infrastructure projects, where practicable and feasible. **[IO 8-8 and R-617-17]**

The County shall include a requirement for energy-efficient reflective roofs or green roofs in all solicitations for new construction for public and affordable housing. **[R-1103-10]**

Nothing in this IO is intended to support, implement or advance a net zero policy, require any contractor or person to support a net zero policy, or provide a procurement or purchasing preference for a product or vendor on the basis that the procurement or purchase of such product or from such vendor will advance or support a net zero policy as "net zero policy" is defined in section 377.816, Florida Statutes, as may be amended from time to time, or in any way violate any applicable provision of section 377.816, Florida Statutes.

11.10.2. Green Program

The County has a written proposed "green" preference procurement program which provides a preference for the purchase of environmentally responsible products and services. **[R-1053-09]**

11.10.3. Plastics and Polystyrene

To the greatest extent possible, the County shall require new concessionaire contracts on County property to prohibit distributing single-use plastics and polystyrene (e.g., straws, containers, utensils, bottles, stirrers, bags), except for prepackaged foods. The County shall also negotiate voluntary compliance at contract renewals. **[R-1030-24]**

The County shall, whenever possible, eliminate the purchase of disposable polystyrene products. **[R-500-16]**

11.10.4. Products Containing Glyphosate

The County prohibits the use of products containing glyphosate, including but not limited to RoundUp, by the County and by County contractors. **[R-621-19]**

11.10.5. Sea Level Rise

All County infrastructure projects, including but not limited to, County building elevation projects, County installation of mechanical and electrical systems, County infrastructure modifications, and County infrastructure renovations shall consider sea level rise projections and potential impacts as best estimated at the time of the project, using the regionally consistent unified sea level rise projections, during all project phases including but not limited to planning, design, and construction, in order to ensure that infrastructure projects will function properly for 50 years or the design life of the project, whichever is greater. **[R-451-14]**

11.10.6. Pink Slime

The County and the Public Health Trust shall not to enter into, renew or extend any contracts for food services related to a County or Public Health Trust funded or operated food program unless the contractor, vendor, supplier or grantee agrees in writing as part of the contract, renewal or extension that it will not use meat products containing "pink slime" in food that is provided or served as part of a County or Public Health Trust operated or funded food program, including but not limited to Head Start / Early Head Start Program, Meals for the Elderly and Elderly Meals on Wheels. **[R-478-12]**

11.11. Pilot Programs

The County Mayor or the County Mayor's Designee may enter into pilot project and product demonstration agreements with County registered vendors for the purpose of testing and evaluating technology, products and services. Any such agreements are 1) For a period not to exceed 12 months from the initiation of the pilot project or demonstration; 2) Must be at no cost to the County with the exception of any ordinary cost the County incurs for employees or consultants to review such technology, products or services; 3) Do not contain any exclusive dealing, in-kind or advertising commitments by the County; 4) Provide for indemnification of the County; 5) Provide for County ownership of any data generated during the testing and observation period; and 6) Are terminable at will by the County without any consequences.

Each pilot project or product demonstration agreement shall be subject to review and approval by the County Attorney's Office for legal sufficiency prior to execution. In the event that the County seeks to procure a similar technology, product or service through the County's competitive process, any solicitation document shall include all information regarding the pilot project and the technology, product or services tested. Pilot project and product development agreements may not serve as a basis for any noncompetitive purchase other than a bid waiver or sole source purchase and may not serve as the sole basis of the public interest justification of any bid waiver.

11.12. Janitorial and Landscaping Services

The Janitorial and Landscaping Services Purchasing Program facilitates and expedites the award of contracts for janitorial or landscaping services to firms certified as SBE's. Consists of two pools set aside for prequalified SBE firms.

The County shall install and maintain, where appropriate, Florida friendly landscaping in solicitations published and noncompetitive contracts which provide for the construction, leasing, or redevelopment of County-owned or operated properties**. [R-784-23]**

11.13. Cybersecurity and Information Technology Procurement and Protection Program
The Cybersecurity and Information Technology Procurement and Protection Program establishes cybersecurity requirements that apply when the County purchases certain cybersecurity software or hardware and when vendors have access to the County's cybersecurity systems. Provisions and procedures can be found in **[Section 2-8.2.6.2 of the Code].**

11.14. First Source Hiring Referral Program
The First Source Hiring Referral Program gives County residents first opportunity to be considered for employment by vendors receiving County contracts in certain circumstances. Provisions and procedures can be found in attached **[IO 3-58].**

12. Qualitative Evaluations and Recommendations

12.1. Competitive Selection Committees
The County shall utilize Competitive Selection Committees that are comprised of fair, impartial, objective and qualified individuals capable of evaluating the subject matter area in a competitive procurement process for the evaluation of offers, proposals, and qualifications. Provisions and procedures can be found in attached **[IO 3-34]**.

Oral presentations shall be held by competitive selection committees when evaluating proposals received in connection with contracts under procurement with an estimated fiscal impact exceeding $25,000,000 annually, including contracts having such fiscal impact in a single year or on a recurring basis over multiple years. In each case, oral presentations shall be held for the three (3) highest ranked bidders or proposers or, if fewer than three bidders or proposers are ranked, for all bidders and proposers. If the score difference between the top two exceeds 10%, oral presentations shall be optional. **[R-208-25]**

12.2. Negotiations on Existing Agreements
The County Mayor or County Mayor's Designee is authorized to negotiate better pricing on awarded contracts while retaining any existing authority to exercise the renewal if better pricing was not secured and may amend or modify an existing contract to reduce price or cost. **[R-98-12]**

The County Mayor or County Mayor's Designee shall negotiate changes in contracts, permits and concessions that are about to expire to ensure that the County does not lose revenue opportunities due to delays in obtaining a successor contract, permit or concession. Where Commission approval or action is required to effectuate such changes, the changes shall be submitted for the next available Commission meeting. **[R-234-01]**

13. Competitive Award Protest Procedures

It is the policy of the County to provide a participant in any competitive process with the opportunity to protest an award recommendation with respect to County contracts valued at specified amounts. Provisions and procedures can be found in attached **[IO 3-21 and in Section 8.4 of the Code]**. Solicitation documents shall contain notice of these protest provisions.

14. Vendor Responsibility and Due Diligence

14.1. Vendor Due Diligence

A vendor desiring to do business with the County shall, as a condition of award, certify that the firm is in compliance with the Domestic Leave Ordinance, Ordinance 99-5, codified at 11A-60 et. seq. of the Code. All County contracts shall include a provision requiring compliance with the Domestic Leave Ordinance. Failure to comply with this requirement or the Domestic Leave Ordinance may result in the contract being declared void, the contract being terminated and/or the firm being debarred. **[R-185-00]**

The County shall disclose any past or present lawsuits which allege discrimination against any vendor considered for contract award (competitive or noncompetitive), or a statement that there are no such lawsuits for a period of 10 years prior to the date of solicitation or award recommendation. **[R-828-19]**

14.2. Vendor Responsibility

Vendor responsibility refers to whether the vendor can deliver the goods or perform the work as provided in the solicitation. A responsible vendor is one who has the ability, capacity, and skill to perform under the terms of the solicitation, can provide the materials or service within the specified time and has a satisfactory record of integrity and business ethics, as determined by the County. **[IO 2-13]**

14.3. Vendors in Arrears

Contractors that are in arrears to the County shall not be awarded new County contracts or receive extensions of contracts or new purchase orders, until the arrearage has been paid in full or the County has agreed in writing to an approved payment plan. **[Section 2-8.1 of the Code and R-531-00]**

15. Vendor Performance and Compliance

15.1. Communication and Reporting throughout Procurement Process

The County Mayor or County Mayor's designee shall provide notice to the Committee of the Board, within five (5) business days of waiving a material breach of contract awarded by the Board or allows a vendor more than 30 days to cure a material breach of a contract awarded by the Board. **[R-749-09]**

15.2. Disciplinary Actions

The County's procurement disciplinary actions against vendors includes debarment, supplemented by contract-specific sanctions such as suspension, termination, work stoppage and payment withholding.

15.2.1. Debarment or Suspension

Debarment is imposed only when it is in the public interest for the County's protection, and not for purposes of punishment. Provisions and procedures can be found in **[Section 10-38 of the Code]**.

15.2.2. Evaluation and Suspension for Construction Contractors, Engineering, Architecture, Landscape Architecture, Land Surveying, and Mapping Firms, Design-Build and Construction Manager at Risk Companies

As an alternative to the debarment process, which eliminates a firm from all County work, the County may suspend a firm from specific segments of County work

where it has been determined that the firm has performed inadequately. This determination shall be made when it is in the best interest of the County to discontinue doing business with the firm on specific types of contracts. Placing a firm on watch or suspended status is intended to protect the County from firms who perform inadequately and not for the purpose of punishment.

16. Contract Monitoring, Evaluation and Audits

16.1. Contract Administration, Oversight and Financial Management

County contracts and payments shall be managed through effective internal controls that promote accountability, transparency, compliance, and fiscal responsibility. Department directors shall designate qualified staff to manage contracts and payments and ensure that those employees complete the required annual training. Designated contract staff shall monitor contractor performance, deliverables, contract terms, expenditures, invoices, payments, amendments, extensions and reporting requirements. Before approving a payment, staff shall verify that the contract has been properly executed, the goods or services have been received, the invoice is accurate, the payment is authorized and all required supporting documentation has been provided.

Departments shall maintain a complete audit trail for each contract and payment and record applicable transactions in INFORMS. Contracts shall undergo documented financial and operational risk reviews before execution, and proposed amendments, modifications, extensions, or waivers shall be reviewed and approved in accordance with County requirements.

16.2. Vendor Performance Evaluation System / Capital Improvements Information System

County departments shall monitor and document vendor and firm performance throughout the contract term. Performance evaluations shall be fair, accurate, supported by contract records, and entered into the system applicable to the type of contract.

Performance shall be documented through the Vendor Performance Evaluation System, once implemented, or through the vendor-performance process designated by SPD. The project manager shall notify the vendor in writing of performance concerns, request corrective action and maintain supporting documentation.

Performance evaluations shall be completed in CIIS or the County's successor system. This includes construction contractors, architectural and engineering consultants, design-build firms, and construction-manager-at-risk firms.

16.3. Prompt Payment

County departments and agencies, including the Public Health Trust, shall process and pay proper invoices in a timely manner in accordance with the Sherman S. Winn Prompt Payment Act. Standard payment of an undisputed proper invoice shall generally be paid within 45 calendar days from the applicable invoice-receipt, delivery, acceptance, or service-completion date established. Provisions of prompt payment can be found in **[Section 2-8.1.4].**

For goods and services contracts with the County or Trust, invoices from SBE prime contractors, or in certain circumstances where the prime contractor must pay the SBE

subcontractor, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within 14 calendar days of receipt of such billing by the County or the Trust. **[Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code]**

16.4. Accounts Receivable Adjustments

County departments shall establish appropriate controls for recording, monitoring, collecting, settling, and adjusting accounts receivable. Primary responsibility for collection of accounts receivable rests with the department or agency under which the receivable or claim originated. This responsibility includes the development and updating of departmental policies and procedures to ensure the timely collection of debt, and the ongoing analysis of the collectability of associated accounts receivable. Provisions and procedures can be found in attached **[IO 3-09].**

16.5. Amendments and Extensions

SPD and, as applicable, County departments, shall manage contract amendments, modifications, renewals and extensions in accordance with the contract, applicable delegated authority, Code and the governing procurement implementing order. **[R-391-17]**

16.6. Documentation and Record Keeping

All County departments shall create, maintain and preserve complete procurement and contract records sufficient to document each decision, authorization, transaction, and expenditure. Provisions and procedures can be found in **[Fla. Stat. Chapter 119 (2026)].**

16.7. Audits

The Office of the Commission Auditor in the County is an independent agency created by voters through a Home Rule Charter Amendment. The Commission Auditor shall on an annual basis conduct random reviews of prequalification pools and competitive advertisements and awards under such prequalification pools. **[R-253-25]**

17. Reports

17.1. Vendors Added to Pools

Requiring SPD to notify the Board, on a biannual basis, vendors added to open pool contracts. **[R-395-12]**

17.2. Replacement Contracts Report

Requiring a notification to the Board when advertising of a replacement contract and received competitive proposals and bids is later than one (1) year prior to expiration of the existing contract (or) in jeopardy of not being completed prior to the expiration of the existing contract, specifying reasons for the delayed procurement and disclosing all instances where, after conducting market research SPD has determined that a competitive procurement is impracticable or unavailable due to a lack of vendors showing interest in participating and competing in the replacement procurement**. [R-718-17]**

17.3. Renegotiate Contracts Two Years Before Contract Expiration

The Commission Auditor, on a quarterly basis, shall be provided a report of contracts for the purchase of goods and services that are subject to Board approval set to expire no later than two (2) years prior to their expiration, inclusive of option-to-renew. **[R-658-23]**

17.4. Relating to Noncompetitive Purchases
Report, on a quarterly basis, each instance where the County Mayor anticipates recommending the Board's approval of a bid waiver, sole source or unauthorized (confirmation) purchase, including 1) the monetary value of the anticipated purchase; 2) the justification for the anticipated noncompetitive purchase; and 3) whether the County anticipates following a noncompetitive solicitation for the subsequent purchase of the same or similar good or service per **[Section 2-8.1 of the Code].**

17.5. Prequalification Pool
Report to the Board, on a bi-annual basis, of all contracts advertised with the measures included, and other steps taken to foster small and community business programs, identifying 1) The specific prequalification pools approved by the Board under which the contract awards apply; 2) The vendors awarded the contracts; 3) Whether or not the awarded vendors are local or small businesses; 4) The amounts of the contract awards, 5) Total contract amount spent per vendor; and 6) The pricing, including unit pricing, for the goods or services being purchased through the prequalification pool per **[Section 2-8.1 of the Code].**

17.6. Janitorial and Landscaping Services Purchasing Program
Report to the Board, on an annual basis, on the Janitorial and Landscaping Services Purchasing Program contracting activities during the previous year per **[Section 2-8.2.7.02 of the Code].**

17.7. County-owned Properties Conveyed or Leased with Restrictions or Requirements
Report to the Board, on a quarterly basis, County-owned properties which were conveyed or leased with restrictions or requirements in the deed of conveyance, declaration of restrictions, or lease. The report shall identify: 1) Any properties which are in non-compliance or default status; 2) The nature of the non-compliance; 3) The amount of time such property has been in non-compliance; 4) Any steps which have been taken to enforce compliance; and 5) Any available remedies and recommendations. The report shall also identify 1) Any properties which are 30 days away from approaching a milestone or potential event of default; and 2) Any properties that have reverted or that the lease has been terminated due to non-compliance. **[R-992-24]**

17.8. Red Flag Reports
A red flag report shall be provided to the Board where a County contract, grant, project, program, initiative, department or entity created or funded in whole or in part by the County is at risk where 1) Milestones are not or are in jeopardy of being reached; 2) Not sufficiently or in jeopardy of not being funded; 3) Does not have adequate personnel; and 4) There is negative information which may have a significant operational impact. The report shall include details as to why it may be at risk, dates of occurrence of events, date of learnt risk and course of action to address the problem(s). **[R-835-07]**

17.9. Unanticipated or Catastrophic Events

The County Mayor or County Mayor's Designee shall inform the Board, verbally or in writing, as soon as practicable when an unanticipated or catastrophic event has occurred, which may have a significant operational impact on a County contract, grant, project, program, imitative, department or entity created or funded in whole or in part by the County. **[R-90-11]**

17.10. Periodic Reports to the Board

Report to the Board, on an annual basis, identifying any contracts approved by the Board which have not yet been executed by the County Mayor or which a work or purchase order have not been issued and, in any two step procurements, when the proposers have been shortlisted but not evaluated during the second step. **[R-224-22]**

The report shall, at a minimum, identify the awarded vendor or shortlisted proposers; the date of award or anticipated date of award; the dollar value or expected dollar value of the contract; the reason for any delay in the execution of the contract, issuance of a work or purchase order, or second step evaluation; and any recommended action necessary to resolve any delays.

17.11. Identifying County Employees for Procurement Academy

The County Mayor shall identify County employees and positions that are required to attend the Procurement Academy and shall update such a list on an annual basis. Further, a report consisting of the frequency of required refresher courses for those employees identified by the County Mayor shall be prepared in the form of a status report annually. **[R-251-25]**

18. Other County Policies and Programs

18.1. User Access Program

The User Access program (UAP) is a procurement program that allows eligible governmental, quasi-governmental, and nonprofit entities to purchase goods and services using competitively procured County contracts, while providing a revenue-sharing mechanism associated with those purchases. County contracts for goods and services include a two percent (2%) UAP fee per **[Section 2-8.10 of the Code].**

18.2. Cone of Silence

The Cone of Silence limits certain communications concerning a competitive solicitation while the procurement is pending. Its primary purpose is to protect the integrity, fairness, and independence of the County's competitive procurement process by preventing undue influence on County staff, selection committees, and decision-makers. A complete description of the Cone of Silence can be found in **[Section 2-11.1 of the Code]**.

18.3. Conflict of Interest and Code of Ethics

The County's lobbying and ethics framework is governed by the Conflict of Interest and Code of Ethics Ordinance under **[Section 2-11.1 of the Code]** and related sections, administered by the COE.

18.4. Lobbying Contracts

All lobbying contracts require approval by the Board. **[Reso R-1236-99]** Lobbying contracts are governed by County legislation including the below list and are managed by SPD in close collaboration with the County Attorney Office.

18.5. County Attorney

Except in cases of conflict, legal advice and duties on behalf of the County shall be provided and performed by the County Attorney's Office in accordance with **[R-633-24].**

18.5.1. Responsiveness Opinions

The CAO conducts responsiveness reviews to determine whether a bidder or proposer's submission meets the material terms of a solicitation in form and content. A responsive bidder is one who makes an unequivocal promise (as shown on face of the response to the solicitation) to provide the items or services called for by the material terms of the solicitation. Provisions and procedures can be found in attached **[IO 2-13].**

18.5.2. Responsibility

SPD conducts responsibility reviews to determine whether vendors can deliver the goods or perform the scope of work, as provided in the solicitation document. A responsible vendor is one who the County affirmatively determines has the ability, capacity, and skill to perform under the terms of the solicitation, can provide the materials or service within the specified time, and has a satisfactory record of integrity and business ethics. Provisions and procedures can be found in attached **[IO 2-13].**

19. Federal and State Legislation

19.1. Federal Legislation

The County follows federal legislation. The federal procurement code is primarily codified in 41 U.S. Code Subtitle I (Federal Procurement Policy) and implemented through the Federal Acquisition Regulation (FAR) and related CFR provisions, including 2 CFR Part 200 Subpart D for procurement standards.

19.2. State of Florida Legislation

The County's Board is an entity governed in accordance with the State of Florida Constitution. The State of Florida's procurement law is codified in Chapter 287 of the Florida Statutes, supplemented by Florida Administrative Code rules, and administered by the Department of Management Services.

20. Policy Review and Revision

20.1. Material revisions to this Manual shall require Board approval. Non-material updates and amendments to incorporate reference to any Board adopted ordinance or resolution shall be completed by SPD, without the need for further Board action.

20.2. Procurement Policy shall be reviewed continuously as required due to changes in applicable laws, organizational structure, or operational needs.

20.3. SPD may also issue procurement procedures for Countywide use, internal procedures, templates for use by County staff, and other documents required to control and effectuate the County procurement processes.

21. Attachments

Former IO No.	Title	Summary	Cross-reference
IO 02-13	Guidelines and Procedures Regarding Legal Opinions with Respect to County Competitive Processes	Establishes the administrative requests for and opinions rendered by the CAO in connection with any competitive process of the County.	Attachment 1
IO 03-21	Bid Protest Procedures	Establishes that a participant can protest a competitive award recommendation with respect to County contracts valued at specified amounts.	Attachment 2
IO 03-32	Small Business Enterprise Architecture and Engineering Program (CBE-A/E)	Establishes that 10% or more of the County's total annual expenditure on all projects specific to contracts for professional services such as architectural, landscape architectural, engineering and surveying and mapping services, must go to firms certified as a CBE.	Attachment 3
IO 03-34	Formation and Performance of Competitive Selection Committees	Establishes procedures for the formation and performance of competitive selection committees in County's competitive procurement process.	Attachment 4
IO 03-39	Standard Process for Construction of Capital Improvements Acquisition of Professional Services Construction Contracting Change Orders and Reporting	Establishes the implementation, classification, tracking, acquisition, monitoring and reporting of professional architectural engineering, landscape architecture, land surveying, and mapping services.	Attachment 5
IO 03-41	Small Business Enterprise (SBE) Program for the Purchase of Goods and Services	Establishes the procedures of the SBE Program for the purchase of goods and services	Attachment 6
IO 03-48	Miami International Airport North Terminal Development Procurement	Establishes procedures to expedite administration of contracts for the design, construction and installation of goods and materials related to the North Terminal Development Program.	Attachment 7
IO 03-53	Miscellaneous Construction Contracts Program	Establishes the policy for administration of the MCC Program.	Attachment 8
IO 03-54	Wage Theft Program	Establishes the procedures for the Wage Theft Program.	Attachment 9
IO 03-57	Adoption of Standard Construction Contract	Establishes standard construction general conditions to be used by all County departments.	Attachment 10
IO 03-58	First Source Hiring Referral Program	Establishes the procedures for the First Source Hiring Referral Program.	Attachment 11

Former IO No.	Title	Summary	Cross-reference
IO 03-68	Use of Locally Headquartered Businesses for the Performance of Professional Architectural Landscape Architectural Engineering or Surveying and Mapping Services	Establishes the use of locally headquartered businesses in the purchase of services with a fair and transparent procurement process all in accordance with the requirements of law.	Attachment 12
IO 08-04	Guidelines And Procedures for The Sale or Lease of County Real Property	Establishes the authority to sell, lease or otherwise dispose of County-owned real property with the Board.	Attachment 13
IO 10-13	Public Involvement Plan	Establishes PIPs as part of major capital improvement projects that may adversely impact neighboring businesses, schools and/or residents.	Attachment 14
IO 10-16	Use of the Countywide Approaching Construction Together (ACT) Viewer as a Unified Approach to Construction Work within Miami-Dade County	Establishes procedure requiring that departments review the Countywide ACT Viewer at various stages throughout construction project lifecycles to identify and respond to any potential construction conflicts.	Attachment 15

Implementing Order No.: IO 2-13

Title: GUIDELINES AND PROCEDURES REGARDING LEGAL OPINIONS WITH RESPECT TO COUNTY COMPETITIVE PROCESSES

Ordered: 7/6/2023 **Effective:** 7/16/2023

AUTHORITY:
Section 1.01 and 5.03(D) of the Miami-Dade County Home Rule Charter and Section 2-8.4 of the Code of Miami-Dade County.

SCOPE:
Notwithstanding any contrary provision of any other Administrative Order or Implementing Order, it is the policy of the Board that the procedures expressed in this Implementing Order shall be applicable to and shall govern administrative requests for and opinions rendered by the County Attorney's Office in connection with any competitive process of the County, its agencies, and administrative boards, including the Public Health Trust. The opinions covered shall include any relating to the responsiveness of any bidder or proposer where the determination may affect the outcome of the solicitation. This Implementing Order is directory in nature only, designed to guide the administration and the County Attorney's Office in the rendering of such opinions, and is not intended to create any rights for any participant in a bid contest or other proceeding.

DEFINITIONS:
Responsiveness: Responsiveness deals with a bidder or proposer's unequivocal promise, as shown on the face of the response to the solicitation, to provide the items or services called for by the material terms of the solicitation. Responsiveness typically involves matters of form; a responsive bid or proposal means one submitted at the correct time and place, in the correct forms, containing all required information and signatures. Responsiveness deals with whether the effect of a deviation from a solicitation would deprive the County of its assurance that a contract will be entered into, performed, and guaranteed according to the County's specified requirements and whether a deviation would adversely affect the competitive process by placing a bidder or proposer in a position of advantage over other bidders or proposers or by otherwise undermining the necessary common standard of competition. Examples of issues involving responsiveness include whether a bid or proposal was signed, whether a bid or proposal bond was posted, and whether a bidder or proposer qualified a response by stating that it would provide something less than what was called for. Responsiveness issues are generally not curable after bid or proposal submission as the bidder or proposer could opt in or out of the process at its will, depriving the County of a valid offer and placing that bidder or proposer at a material advantage over other responders who have made firm offers.

Section 2-8.4(a) of Code of Miami-Dade County provides that before the Board or any committee hears any protests of a competitive bid or request for proposal, or request for qualifications, administrative staff shall request the County Attorney to determine whether the bid or proposal in question is responsive. Sec. 2-8.4(a) further provides that the Board

and any committee shall be bound by the determination of the County Attorney with regard to the issue of responsiveness.

Responsibility: Responsibility deals with whether the bidder or proposer can perform as provided in the solicitation. In general, solicitation requirements for information relating to a bidder or proposer's financial condition, capability, experience, and past performance pertain to responsibility. The term responsible is not limited in its meaning to financial resources and capabilities but include a bidder or proposer's honesty and integrity, skill and business judgment, experience, and capacity for carrying out the proposed work, previous conduct under other contracts and the quality of previous work performed. The terms of a solicitation document cannot ordinarily change an issue of responsibility into one of responsiveness. A bidder or proposer need not demonstrate compliance with solicitation requirements pertaining to its responsibility in order for its bid or proposal to be deemed responsive and evaluated. Information regarding a bidder or proposer's responsibility may be furnished up to the time or award.

Determinations of bidder or proposal responsibility are ultimately made by the Board of County Commissioners, or in those instances of delegated authority, by the County Mayor or Mayor's designee, with the advice of the County's professional staff and/or selection and negotiation committees. Issues of responsibility are fundamentally ones of business judgment and policy and should not be covered in responsiveness determinations of the County Attorney's Office.

POLICY:
The County Mayor or Mayor's designee or other person authorized by the Public Health Trust, or an agency or administrative board of the County may issue a written request for a Responsiveness Opinion to the County Attorney's Office when an issue of responsiveness is identified in response to a solicitation that will affect the ultimate award of the solicitation. For any contract in an amount which exceed the threshold for award by the Board of County Commissioners set forth in Section 2-8.1 of the Code of Miami-Dade County, or any contract matter which will be considered by the Board of County Commissioners or the Public Health Trust the County Attorney's Opinion shall be in writing and submitted to the Board, the Public Health Trust or other body along with the award recommendation. Informal opinions in contract matters that do not exceed the threshold amount or that may be awarded pursuant to delegated authority may be issued by the County Attorney's Office.

Questions relating the Conflict of interest and Code of Ethics Ordinance, including any concerning the application of the Cone of Silence, shall be referred to the Executive Director or legal staff of the Miami-Dade County Commission on Ethics & Public Trust.

PROCEDURES FOR REQUESTING RESPONSIVENESS OPINIONS:
The County Mayor or Mayor's designee or other authorized person, shall prepare a written request for opinion. At a minimum, the request shall describe the specific issue raising the question of responsiveness, identify the relevant provisions of the specification documents which bear on the issue, and be accompanied by all relevant documentation including the solicitation and the responses under investigation. Staff shall meet with the County Attorney's Office as necessary to understand and address the issue. In the event that the County Mayor or Mayor's designee or other person authorized to request a Responsiveness Opinion cannot deliver a written request of opinion with sufficient time for

the County Attorney's Office to issue an opinion on a timely basis, the Responsiveness Opinion shall so state and shall identify the factual basis for the opinion.

TIMING AND SCOPE OF REQUESTS FOR RESPONSIVENESS OPINIONS:
For Requests for Proposals and other solicitation processes utilizing selection committees, negotiating committees or similar selection processes, the County Mayor or County Mayor's designee or such other authorized person shall review all proposals upon receipt to identify potential responsiveness issues and submit in writing any identified questions to the County Attorney's Office for a Responsiveness Opinion within ten (10) calendar days following the deadline for submitting proposals or bids. The County Attorney's Office shall provide any applicable Responsiveness Opinion within thirty (30) calendar days after receiving the written request for an opinion accompanied by all pertinent documentation from the County Mayor or County Mayor's designee.

For Invitations to Bid and other solicitation processes relying exclusively on price that do not utilize a selection committee as the selection criteria, Responsiveness Opinions shall be requested of the top bidder recommended for award where the administrative staff has identified a potential responsiveness issue.

The County Mayor or County Mayor's designee shall not submit responsiveness inquires when the issue of responsiveness is irrelevant to the proposed action or to the type of solicitation involved. Ordinarily, for example, the County Mayor or Mayor's designee need not request responsiveness determinations in connection with a recommendation of rejection of all bids because the low bid exceeds the project budget, or in instances where the County seeks to establish open pools based on qualifications alone.

The failure to submit such inquiries to the County Attorney's Office in accordance with this Implementing Order shall not constitute a waiver of any non-conformity. In the event the County Mayor or County Mayor's designee fails to timely submit a responsiveness inquiry as provided herein, the County Mayor shall include a written explanation of such failure and the causes in the Mayor's recommendation to the Board on the solicitation. The deadlines in this Implementing Order address the County's internal administrative processes and are not intended to serve as a basis to challenge the ultimate selection or contract award recommendation in any particular procurement action or to create any rights for any participant in a bid contest or other proceeding.

PRESENTATION OF RESPONSIVENESS OPINION TO THE BOARD:
Written Responsiveness Opinions shall be contained in the agenda package where the related matter is presented to the Board for consideration. In addition, if any of the deadlines established in this Implementing Order are missed, then the County Mayor shall disclose the missed deadlines and the department that missed the relevant deadline in the County Mayor's memorandum contained in the agenda package where the related matter is presented to the Board for consideration. If new facts are discovered or a mistake is made, or any other change is made to an opinion, the County Attorney's Office shall issue a revised opinion, stating expressly that the prior opinion has been revised and superseded and the latest opinion shall be made available to the County Mayor and Board of County Commissioners.

The County Attorney's Office shall maintain a record of all written Responsiveness Opinions rendered.

EFFECTIVE DATE:
This Implementing Order shall be effective after approval by the Board of County Commissioners.

Implementing Order

Implementing Order No.: 3-21

Title: Bid Protest Procedures

Ordered: 9/1/2026 **Effective:** 9/11/2026

AUTHORITY:
Section 4.02 of the Miami-Dade County Home Rule Amendment and Charter and Section 2-8.4 of the Code of Miami-Dade County.

SUPERSEDES:
This Implementing Order supersedes previous Implementing Order No. 3-21, ordered June 26, 2025 and order and effective July 6, 2025.

POLICY:
It is the policy of Miami-Dade County (the "County") to provide a participant in any competitive process the opportunity to protest an award recommendation with respect to County contracts and purchases involving the expenditure of over $250,000.

SCOPE:
This Implementing Order ("IO") establishes the requirements and procedures governing a bid protest brought by a participant in any competitive process utilized for selection of a person or other entity to construct any public improvement, to provide any supplies, materials or services (including professional or management services other than professional services whose acquisition procedure is governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes), or to lease any County property. This IO covers those professional services selections funded by the Federal Transit Administration.

Under this Implementing Order, a "formal" bid protest is a bid protest with respect to the recommended award of a County contract or purchase involving the expenditure of over $5,000,000. An "informal" bid protest is a bid protest with respect to the recommended award of a County contract or purchase involving the expenditure of over $250,000 up to and including $5,000,000.

The Bid Protest Procedure set forth in this Implementing Order does not apply to any procurements conducted by the Strategic Procurement Department exclusively on behalf of the constitutional offices of Clerk of the Court and Comptroller, Property Appraiser, Sheriff, Supervisor of Elections, and Tax Collector pursuant to an interlocal agreement. For such procurements, the bid protest procedures, if any, shall be established by the respective constitutional office.

SECTION I

GENERAL PROVISIONS

A participant in any competitive process wishing to file a “formal” or “informal” bid protest within the scope of this Implementing Order shall file the protest in accordance with the procedures and requirements described herein.

No provision of this Implementing Order shall preclude the Director of the Strategic Procurement Department or successor department, the Director of the issuing department, or the County Mayor from changing his or her recommendation. In cases of either “formal” or “informal” protests, if the award recommendation is changed in favor of the protester not later than five (5) working days following the filing of the bid protest, the filing fee shall be refunded to the protester.

BID PROTEST FEE

As a condition of initiating any bid protest within the scope of this Implementing Order, the protester shall present to the Clerk of the Board a nonrefundable filing fee (the “Filing Fee”), payable to the Clerk of the Board in accordance with the schedule provided below.

For formal bid protests, a separate Administrative Fee shall be collected in the amount of fifty percent (50%) of the applicable Filing Fee reflecting the costs of the County’s participation in the process, including legal fees and costs; this fee shall be retained by the County in the event the hearing examiner determines the protest is frivolous as provided under Section 2-8.4 of the Code of Miami-Dade County, or shall otherwise be refundable to the protester at the conclusion of the process. There shall be no administrative fee for the County’s participation in the process for informal bid protests, as defined in this Implementing Order.

Contract Award Amount	Filing Fee*	Administrative Fee*
$250,001-$500,000	$1,000	n/a
$500,001-$5 million	$3,000	n/a
Over $5 million	$5,000	$2,500

*The Filing Fee and Administrative Fee for a certified Small Business Enterprise (“SBE”) firm shall be fifty percent (50%) of the fees above, for such contracts set-aside for bidding solely by SBEs. To be entitled to the reduced Filing Fee, the SBE must be certified with the Office of Small Business Development or successor division or department, at the time of filing of the bid protest.

Filing Fees, or any other monies received as payment of protest costs, shall be deposited in a special account administered by the Clerk of the Board and shall be used by the Clerk solely for the purpose of defraying the cost of the hearing examiner and the Clerk’s costs of administering the bid protest program. If, at any given time, there are insufficient funds

available in said special account to pay protest costs the requesting department shall be responsible for reimbursement of any shortage to the Clerk of the Board. In the event that there is more than one requesting department, the department with the largest allocation shall bear the cost of any shortage. For formal bid protests (valued at greater than $5,000,000), the requesting department, or the department with the largest allocation, shall bear the cost of the court reporter and any transcript of the bid protest hearing.

Notwithstanding the foregoing, Filing Fees shall not be required for projects when such Filing Fee requirement may jeopardize federal and/or state funding.

PROCEDURE

All bid protests shall be filed with the Clerk of the Board within the applicable time periods established in this Implementing Order. Protests must be submitted to the Clerk of the Board during the operating hours of 8:00 AM through 4:30 PM, Mondays through Fridays, except for any observed holidays.

All bid protests shall be submitted in writing to the Clerk of the Board and shall state with particularity the specific facts and grounds on which they are based, include all pertinent documents and evidence and be accompanied by the corresponding filing fee. This shall form the basis for review of the protest and no other facts, grounds, documentation or evidence not contained in the protester's submission to the Clerk of the Board at the time of filing the protest shall be permitted in the consideration of the protest, except for such additional evidence as is allowed during the course of the protest proceedings.

Failure to file the written protest within the required time limits established in this Implementing Order shall constitute a waiver of the right to protest the award recommendation.

Any question, issue, objection or disagreement concerning, generated by, or arising from the published requirements, terms, conditions or processes contained in the solicitation document shall be deemed waived by the protester and shall be rejected as a basis for a bid protest, unless it was brought by that bidder or proposer to the attention, in writing, of the procurement agent, buyer, contracting officer or other contact person listed in the solicitation from the County department that issued the solicitation document, at least two (2) working days (not less than 48 hours) prior to the hour of bid opening or proposal submission. This allows the issuing department the opportunity to consider, and to resolve or clarify in a timely fashion, through the issuance of an addendum, any such matter that is apparent on the face of the solicitation document, including but not limited to ambiguities or inconsistencies within the document.

Any question, issue, objection or disagreement concerning, generated by, or arising from the rankings, scoring or recommendations of a selection committee in a competitive procurement process shall be deemed waived by the protestor and shall be rejected as a basis of a bid protest, unless it was brought by that proposer to the attention of the procurement agent or contracting officer identified in the competitive solicitation responsible for administering the procurement process, in writing with a copy to the Clerk of Board and in compliance with the

Cone of Silence provisions in section 2-11.1 of the Code, within five (5) working days of the date the proposers have received the Selection Committee Coordinator report referred to in Implementing Order 3-34. Additionally, for two-step qualification-based competitive procurements, any question, issue, objection or disagreement concerning, generated by, or arising from the rankings, scoring or recommendations of a selection committee within the first step of the procurement process shall be deemed waived by the protestor and shall be rejected as a basis of a bid protest unless it was brought by that proposer to the attention of the procurement agent or contracting officer identified in the competitive solicitation responsible for administering the procurement process, in writing with a copy to the Clerk of Board and in compliance with the Cone of Silence provisions in Section 2-11.1 of this Code, within five (5) working days of the date the proposers have received either the Selection Committee Coordinator report referred to in Implementing Order 3-34 for the first step or a notification of shortlisted proposers. Such written objections shall state with particularity the basis of the objection and with sufficient information to allow the County's procurement professionals to consider, evaluate and address the issues raised in the objection promptly in a manner that does not delay the completion of the procurement process.

The foregoing notwithstanding, a bid protest may not challenge the relative weight of the evaluation criteria or the formula specified for assigning points therefore contained in the solicitation document.

All references to "working days" herein exclude Saturdays, Sundays and legal holidays. If the last day of the filing period is a Saturday, Sunday or legal holiday, the period shall run through the end of the next working day. As used in this rule, "legal holiday" shall mean those days designated by Miami-Dade County as such. No time will be added to the above time limits for mail service.

Upon receipt of any properly filed bid protest under this Implementing Order, the Clerk of the Board shall promptly distribute a brief written notice of the protest to the following individuals: the Director of the issuing department, each member of the Board of County Commissioners (the "Commission"), the County Mayor, and the Director of the Strategic Procurement Department or successor department.

The County's solicitation documents for contracts or purchases involving the expenditure of over $250,000 shall contain provisions advising bidders and proposers of their rights and responsibilities established under Section 2-8.4 of the Code of Miami-Dade County and this Implementing Order concerning the presentation and administration of bid protests.

SECTION II

"FORMAL" BID PROTESTS: CONTRACTS AND PURCHASES INVOLVING THE EXPENDITURE OF OVER $5,000,000

FILING OF PROTESTS

For the recommended award of a contract or purchase involving the expenditure of over $5,000,000, an award recommendation letter shall be dated and transmitted by the issuing department to each competing bidder or proposer announcing the proposed award, and a copy thereof shall be deposited with the Clerk of the Board on the same day it is transmitted.

A written intent to protest an award recommendation under this section shall be filed by a protester with the Clerk of the Board and mailed to each bidder or proposer in the competitive process and to the County Attorney within three (3) working days of the filing of the award recommendation with the Clerk of the Board. This three (3) day period is determined by counting working days from the day after the award recommendation is filed with the Clerk of the Board. The written intent to protest shall state with particularity the specific facts and grounds on which the protest is based and be accompanied by the corresponding filing fee.

Within three (3) working days of the filing of the written intent to protest, the protester shall file the bid protest, including pertinent documents and supporting evidence with the Clerk of the Board and send copies to each bidder or proposer in the competitive process and to the County Attorney. Furthermore, if the protester makes a public record request within the three (3) working day period in which to file an intent to protest, the protester may use the information obtained from this records request to support the bid protest so long as the protester has complied with bid protest procedure deadlines established herein and the protester has made a supplementary bid protest filing with the Clerk of the Board within forty-eight (48) hours of receiving the items requested by the public records request.

The intent to protest, bid protest, and any timely filed supplement shall form the basis for review of the protest and no other facts, grounds, documentation or evidence not contained in the protester's submission(s) to the Clerk of the Board shall be permitted in the consideration of the protest, except for such additional rebuttal evidence as is allowed during the course of the protest proceedings.

Protests filed in accordance herewith shall be referred to a hearing examiner. A hearing examiner shall be appointed by the Clerk of the Board no later than five (5) working days following the filing of a bid protest. Within five (5) working days following the appointment of the hearing examiner, the County may move for dismissal of a protest for failure of a protester to comply with the rules set forth herein or in the Code. The County may also move for dismissal of a protest where there is no genuine dispute as to any material fact and the County is entitled to a decision in its favor as a matter of law. The hearing examiner must issue a written decision on such motion within five (5) working days of receiving the County's filing. If granted, such dismissal shall be final and binding on all parties. If the County does not move for dismissal of the protest or the hearing examiner denies the County's motion, the hearing examiner shall conduct a hearing in connection with the bid protest, which shall be completed within fifteen (15) working days following his or her appointment. The hearing examiner may extend the deadline for completion of the hearing upon the written petition for good cause shown, but in no event shall the total, cumulative time extension exceed five (5) working days for completion of the hearing, regardless of the number of requests or requests from multiple parties. The hearing examiner shall within five (5) working days of the hearing, file written

findings and recommendations with the Clerk of the Board and shall submit or mail a copy of same to all participants in the competitive process and to the County Attorney.

The hearing examiner shall consider the written protest and supporting documents and evidence appended thereto, the County Mayor's or issuing department Director's recommendation, and supporting documentation, and all evidence presented at the hearing. The hearing examiner may also require written summaries, proffers, affidavits, and other documents the hearing examiner determines to be necessary to conclude the hearing and shall issue the report and recommendation within the strict time limits set forth herein. No grounds will be considered from the protester that were not contained in the protester's written submission to the Clerk of the Board at the time of filing the intent to bid protest. The hearing examiner shall be entitled to rely on evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, whether such evidence would be admissible in a trial in the courts of Florida. The hearing examiner shall determine, for each protest, whether the legal or factual grounds for the protest are frivolous; in making such determination, the hearing examiner shall consider whether or not the protest was supported by material facts necessary to establish the claim, or if the claim was supported by the application of then-existing law to those material facts as provided under Section 2-8.4 of the Code of Miami-Dade County. For procurements valued at over twenty-five million dollars ($25,000,000), if the hearing examiner determines that the factual or legal grounds for the protest are frivolous, the hearing examiner shall award attorney's fees to the County and/or any party defending the County Mayor's award in the protest if the County or the defending party filed a notice of intent to seek attorney's fees for a frivolous protest within five (5) working days of the protest being filed and the protestor did not withdraw the protest prior to the commencement of the hearing.

The hearing examiner shall allow a maximum of two (2) hours for the protester's presentation of its protest and a maximum of two (2) hours for the County's response to each protest. In the event of multiple protesters, the hearing examiner shall allocate the time as necessary to ensure that the hearing shall not exceed one day.

The Clerk of the Board is responsible for appointing a hearing examiner within the stipulated timeframe and advising the hearing examiner of his or her responsibilities established under Section 2-8.4 of the Code of Miami-Dade County and this Implementing Order. Upon making the appointment, the Clerk shall furnish the hearing examiner a copy of all submissions filed by the protester as well as a copy of the County Mayor's or issuing department Director's award recommendation memorandum and award recommendation letter. The Clerk is responsible for monitoring the timely advancement and completion of the bid protest process and shall issue payment to the hearing examiner upon the hearing examiner's submission of his or her completed report and recommendation.

The Clerk of the Board, in coordination with the hearing examiner, is responsible for obtaining an adequate facility for the conduct and completion of the bid protest hearing within the stipulated time period.

The hearing examiner is responsible for performing in accordance with the provisions of Section 2-8.4 of the Code of Miami-Dade County and this Implementing Order and completing

the bid protest hearing and preparing and submitting his or her report and recommendation within the stipulated time periods.

The hearing examiner shall be paid a fee of $200.00 per hour and in no event to exceed $2,500.00 per completed hearing.

In the event the hearing examiner fails to abide by the time limitations set forth in Section 2-8.4 of the Code of Miami-Dade County and this Implementing Order, that is, does not submit his or her completed report and recommendation to the Clerk of the Board within twenty (20) working days of his or her appointment, or twenty-five (25) working days in the event five (5) additional working days are allowed by the hearing examiner for completion of the bid protest hearing, a reduction in the hearing examiner's fee shall be assessed by the Clerk of the Board at a rate of $100 per working day late. In no event, however, shall the hearing examiner's fee be less than $1,300.00 per completed hearing.

The Clerk of the Board shall render payment of the hearing examiner's fee within ten (10) working days of the Clerk's receipt of the completed report and recommendation, and an itemized hourly invoice, from the hearing examiner.

Prior to the Board of County Commissioners or any committee thereof hearing any protest relating to a competitive contract award recommendation, the County Mayor shall request the County Attorney to certify whether the bid or proposal in question is responsive. Upon receiving such request, the County Attorney shall, in consultation with the County Mayor, if necessary, determine whether the bid or proposal is responsive. The Board of County Commissioners and any committee thereof shall be bound by the determination of the County Attorney with regard to the issue of responsiveness.

The hearing examiner's findings and recommendation shall be presented to the Commission by the County Mayor together with the recommendation of the County Mayor. Notice shall be mailed by the issuing department to all participants in the competitive process at least five (5) days in advance of such presentation. If the hearing examiner concurs in the County Mayor's recommendation, the Commission shall not allow presentations by any participants in the competitive process or their representatives at the time the matter is presented to the Commission. A two-thirds (2/3) vote of the Commission members present shall be required to take other than the recommended action. Provided, however, that a two-thirds (2/3) vote shall not be required to reject all bids. If the hearing examiner does not concur in the County Mayor's recommendation, the participants in the competitive process and their representatives may make presentations to the Commission and the Commission shall decide the matter by majority vote.

SECTION III

"INFORMAL" BID PROTESTS: CONTRACTS AND PURCHASES INVOLVING THE EXPENDITURE OF OVER $250,000 UP TO $5,000,000

POSTING AWARD RECOMMENDATIONS

Award recommendations for contracts and purchases involving the expenditure of over $250,000 up to $5,000,000 shall be posted on the Strategic Procurement Department or successor department website.

A written intent to protest an award recommendation under this section must be filed by a protester with the Clerk of the Board and sent to each bidder or proposer in the competitive process and to the County Attorney within three (3) working days of the posting of the award recommendation. This three (3) day period is determined by counting working days from the day after the award recommendation is posted. The written intent to protest shall state with particularity the specific facts and grounds on which the protest is based and be accompanied by the appropriate Filing Fee.

Within three (3) working days of the filing of the written intent to protest, the protester shall file the bid protest, including pertinent documents and supporting evidence with the Clerk of the Board and mail copies to each bidder or proposer in the competitive process and to the County Attorney. Further, if the protester makes a public record request within the three (3) working day period in which to file an intent to protest, the protester may use the information obtained from this record request to support the protest so long as the protester has complied with bid protest procedure deadlines established herein or the protester has made a supplementary filing with the Clerk of the Board within forty-eight (48) hours of receiving the items requested by the public records request.

The Clerk of the Board shall immediately forward to the Director of the issuing department the intent to protest, the protest, any supplementary bid protest, and any other material presented by the protester.

Contracts for which an informal protest is not received within the three (3) working day period referenced above shall be awarded in accordance with the department's recommendation.

For bid protests under this section, the Department Director or designee shall, after reviewing the written recommendation for award and the written protest, and after consultation with the County Attorney, issue a report stating the department's recommendation and a summary of the factual and contractual grounds for such decision. The department Director's findings shall be forwarded to the County Mayor, or County Mayor's designee, for the County Mayor's final determination and disposition of the protest.

When an informal protest is filed, the department shall provide an opportunity to settle the protest by mutual agreement. This should take place within five (5) working days of the filing of the protest. Failing resolution of the protest within said time period, the department Director or designee shall issue a report and recommendation to the County Mayor not later than twenty (20) working days from the filing of the protest.

SECTION IV

CONTRACTS AND PURCHASES INVOLVING EXPENDITURES OF $250,000 OR LESS

(a) Award recommendations for contracts and purchases involving the expenditure of $250,000 or less are considered final and may not be protested.

(b) Bid Award Recommendation of $250,000 or less for Transit-related contracts using federal funds, in whole or in part, only (Miami-Dade Department of Transportation and Public Works (DTPW), or successor department).

For those protests described in Section IV(b), bidders may submit a written protest to the DTPW Director, or its successor department, at 701 NW 1st Court, Suite 1700, Miami, FL 33136, for any contract with a value of $250,000 or less, with a copy to the Clerk of the Board, within five (5) working days of the recommendation for award. No Filing Fee is required. The protest letter sent to the DTPW Director must indicate that a copy has been sent to the Clerk of the Board. The decision by the DTPW Director shall be final.

SECTION V

ARCHITECTURAL/ENGINEERING CONSULTANT SELECTIONS (DTPW, OR SUCCESSOR DEPARTMENT, ONLY)

For all Architectural/Engineering Consultant Selections funded in whole or in part by federal funds or where it has been determined by the DTPW Director that federal funding requirements apply, any proposer may submit a written protest to the County Mayor, 111 N.W. 1st Street, 29th Floor, Miami, Florida 33128, with a copy to the Clerk of the Board, within five working days of the County Mayor's filing of an authorization to negotiate. The decision of the County Mayor shall be final and conclusive on these matters.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

County Mayor

Approved by the County Attorney as
to form and legal sufficiency

Implementing Order

Implementing Order No.: 03-32

Title: SMALL BUSINESS ENTERPRISE ARCHITECTURE AND ENGINEERING PROGRAM ("CBE-A/E")

Ordered: 10/20/2020 **Effective:** 10/30/2020

AUTHORITY:

Sections 1.01, 2.02 and 5.02 of the Miami-Dade County Home Rule Amendment and Charter; Sections 2-10.4.01, and 10-38 of the Code of Miami-Dade County.

SUPERSEDES:

This Implementing Order supersedes previous Administrative Order 3-32, ordered May 1, 2018 and effective May 11, 2018.

POLICY:

A. It is the policy of Miami-Dade County that not less than 10% of the County's total annual expenditures of all project specific contracts for professional architectural, landscape architectural, engineering, and surveying and mapping services, shall be expended with CBE-A/Es certified under the CBE-A/E ordinance.

B. Except where federal or state laws or regulations mandate to the contrary, this Implementing Order applies to all project specific awards, and multiple project contracts as mandated in the CBE-A/E ordinance.

C. APPLICABILITY TO THE PUBLIC HEALTH TRUST:
The application of contract measures to professional architectural, landscape architectural, engineering, or surveying and mapping services purchased by the Public Health Trust shall be governed by this Implementing Order.

I. DEFINITIONS

This Implementing Order incorporates completely the definitions listed in the CBE–A/E Ordinance. Those definitions, as well as additional terms necessary for the understanding of this Implementing Order, are listed below:

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, or 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 sub consultant agreement by having: reasonably estimated, uncommitted capacity and expertise; all licenses, permits, registrations, insurances and certifications; that are reasonably required to perform the

agreement or subconsultant agreement consistent with normal industry practice; and the ability to otherwise meet all the proposal specifications.

C. "Bonding Assistance" may include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes.

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.

E. "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.

F. "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.

G. "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:

the evaluation of the amount of work contracted to subconsultants; normal industry practices; the skills, qualifications, or expertise of the firm to perform the work; whether the firm's own personnel perform, manage, and/or supervise the work involved; and other relevant factors.

H. "Community Business Enterprise (CBE-A/E)" means a firm providing architectural, landscape architectural, engineering, or surveying and mapping professional services, including a design-build firm, 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, two million ($2,000,000) dollars for all Tier 2 CBE-A/Es, four million five hundred thousand ($4,500,0000) dollars for Tier 3 CBE-A/Es in the case of architectural services, or six million ($6,000,000) dollars for Tier 3 CBE-A/Es in the case of landscape architectural, engineering or surveying and mapping services. A CBE-A/E will graduate out of the Program once it has exceeded these Tier 3 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 Section II E. Representations as to gross revenues 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 professional 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 professional services – 3 year average annual gross revenues of $2,000,000.01 to $6,000,000.00.

The County Mayor or designee shall be authorized to adjust the CBE-A/E size limits every five (5) years based on the Consumer Price Index calculated by the U.S. Department of Commerce as applied to Miami-Dade County for the preceding five (5) years. The first indexing adjustment shall occur for the 2013- 2014 calendar year using the Consumer Price Index figures provided for the calendar year ended December 31, 2012, and every five (5) years thereafter. The County Mayor or designee shall advise the Board of any such adjustment.

I. "Compliance Audit" is generated the month after payment is made from the County to the Successful Bidder/Proposer and requires the Successful Bidder/Proposer to report payments made to subcontractors, and for the subcontractors to confirm receipt of these payments, via the County's web-based system within the timeframe specified by SBD.

J. "Construction" means the building, renovating, retrofitting, rehabbing, restoration, painting, altering, or repairing of a public improvement.

K. "Continuing Contract" shall have the definition provided at Sec. 2-10.4(1)(f), Code of Miami-Dade County.

L. "CBE-A/E Program" is the Small Business Enterprise Architecture and Engineering Program and Mapping Professionals.

M. "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. "Design-build contract" means a single contract with a design-build firm for the design and construction of a public construction project.

O. "Design-build Firm" means a partnership, corporation, or other legal entity with the following characteristics:

1. A 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 to practice architecture; or certified under Section 481.319 to practice landscape architecture.

2. An individual or corporation 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 to practice architecture; or certified under Section 481.319 to practice landscape architecture.

P. "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/or land surveying and mapping services.

Q. "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. "ISD" means the Internal Services Department.

S. "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.

T. "Make-up Plan" means a plan whereby a bidder submits via the County's web-based system its commitment that if awarded the contract, it will fulfill all or a portion of any pending Small Business Enterprise Architecture and Engineering makeup requirement and identify 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.

U. "Mentor" means a firm with an established business which has applied for and been approved by SBD, in accordance with applicable procedures, for participation as a mentor in the Mentor-Protégé Program. A Mentor may not

provide mentoring services to more than one (1) Protégé firm at any one time, but is allowed to serve as a Mentor for an unlimited number of times (pursuant to SBD approval).

V. "Mentor-Protégé Program" means 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. Specific details of this program are provided in this Implementing Order.

W. "Mentor-Protégé Program Coordinator" means the Small Business Development staff designated as the individual(s) responsible for coordinating and administering the

various activities of the Mentor-Protégé Program.

X. "Mentor-Protégé Project Plan" means a description of the type of training the Mentor will provide to the Protégé during the identified project. This document will be developed by the Mentor with the Protégé's input and submitted along with a signed Mentor-Protégé Development Agreement; all to be reviewed and approved by Small Business Development.

Y. "Mentor-Protégé Development Agreement" means a signed agreement between a Mentor (prime) and a certified CBE-A/E firm (subcontractor/sub-consultants) Protégé.

Z. "Multiple Projects Contract" is a contract for a "project" which constitutes a grouping of minor or substantially similar study of activities or substantially similar construction, rehabilitation or renovation activities as defined in Section 2-10.4(1)(e)(1) and (2), Code of Miami-Dade County.

AA. "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.

BB. "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.

CC. "Project Specific Awards" are contracts for professional services between Miami- Dade County and a firm whereby the firm provides professional services to the County agency for work of a specified nature for a fixed capital study or planning activity.

DD. "Prompt Payment" – it is the intent of the County that all firms 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 with Miami-Dade County, Fire 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, Fire, or the Trust.

2. Small Business Development may investigate reported instances of late payments to CBE-A/Es.

3. The County Mayor or designee shall establish an administrative procedure for the resolution of written complaints pertaining to underpayment of professional services.

EE. "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.

FF. "Proposer" means any firm that submits a proposal to provide professional services.

GG. "Protégé" means a firm: (i) certified as a CBE-A/E with SBD; (ii) actively conducting business for a minimum of two (2) years; (c) maintaining an actual place of business where it provides its products and services, in Miami-Dade County; (d) in good legal standing with the State of Florida, Miami-Dade County, and all other local jurisdictions; and (e) without any SBE violations within the preceding two (2) year period from its application to the MPP. Such participation cannot exceed two (2) years, and a firm may only be a Protégé one time. A Protégé agrees to follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD.

HH. "Qualifier" means the individual who qualified the firm license holder as required by Florida Statutes.

II. "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.

JJ. "SBD" means the Division of Small Business Development or successor division or department.

KK. "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.

LL. "Suspension" means temporary debarment for a period not to exceed two (2) years.

MM. "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 fees are $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.

NN. "Tier 2 Set-Aside" means reservation for competition solely among 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 $500,000.01 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.

OO. "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 $2,000,000.01 or greater. Tier 1 and Tier 2 CBE-A/Es may compete for Tier 3 CBE-A/E set-asides as prime consultants.

PP. "Technical Certification" means a certification approved by the Miami-Dade County Technical Certification Committee which establishes minimum qualifications of the firm to perform the specific services to be eligible 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.

QQ. "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 and identify certified firms to fulfill goal(s) and percentages, dollar value, and description of the work to fulfill the SBE goal within the time frame specified by SBD.

RR. "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.

II. CERTIFICATION

A. SBD RESPONSIBILITIES

1. SBD is the County agency responsible for certifying applicants, decertifying and recertifying CBE-A/Es, SBD shall maintain an updated list of CBE-A/Es, identifying each listed CBE-A/E based on each Standard Industry Classification/North American Industry Classification System (SIC/NAICS) category, and each Technical Certification Category.

2. SBD shall collect, assemble and verify all information needed to establish the eligibility of an applicant and continued eligibility of a CBE-A/E. SBD shall attempt to make a certification decision within ninety (90) days of receipt of a complete application via the County's web-based system. An application is complete when it includes all required supporting documents.

3. SBD shall not certify an applicant, shall not recertify a CBE-A/E, and shall decertify a CBE-A/E that fails to comply with the criteria or procedures of Section 2-10.4.01 of the Code of Miami-Dade County, as amended, in this Implementing Order and/or participation provisions. SBD shall have authority to suspend the certification of a CBE-A/E during any appeal of a certification decision.

4. SBD shall certify each CBE-A/E by the type of professional service it performs in accordance with the applicable SIC and/or NAICS code(s) and the Technical Certification Categories for which the CBE-A/E is licensed. A CBE-A/E can be certified in an unlimited number of applicable SIC/NAICS codes and Technical Certification Categories.

5. SBD shall make available a re-certification application via the County's web-based system.

6. To decertify a CBE-A/E, SBD shall either:

    a. give notice to the CBE-A/E that the decertification decision will be effective at the completion of any appeal under this Implementing Order; or
    b. suspend the certification of the CBE-A/E during any appeal of the certification decision.

7. SBD shall give written notice, including the reasons for its decision, to applicants who are denied certification and to CBE-A/Es who are decertified, denied recertification or who have graduated.

8. SBD may require applicants and CBE-A/Es to submit information regarding their business operations including, but not limited to, a breakdown of the applicant's or CBE-A/E's ownership, and/or workforce as to race, national origin, gender, and gross annual sales receipts.

B. CERTIFICATION PROCESS

1. Interested parties shall complete an SBE certification application via the County's web-based system. An explanation of the certification requirements is also available on SBD's Web Page at www.miamidade.gov/smallbusiness.

2. The applicant shall complete the certification application and submit it online with all requested documentation to SBD.

3. All applicants, including CBE-A/Es seeking continuing eligibility, shall attend, if requested by SBD staff, an Eligibility Review Meeting to clarify information that was submitted in the application and accompanying documents or to gain additional information regarding the applicant's eligibility for certification. SBD shall notify the applicant if an eligibility review meeting is required.
4. All applicants, including CBE-A/Es seeking continuing eligibility, shall allow site visits by SBD staff to gain additional information regarding compliance with eligibility requirements. SBD shall notify the applicant if a site visit is required and shall schedule the site visit at a mutually convenient time.
5. Applicants and CBE-A/Es shall provide SBD with all information that SBD reasonably requests to determine eligibility for certification.
6. All information submitted to SBD shall be subject to random audit. If CBE-A/E does not submit documentation requested as part of random audit by the time frame specified by SBD, SBD shall initiate the decertification process as provided in Section II C (3) below.

C. TERMS OF CERTIFICATION

1. Certification is valid for a three (3) year period. To validate continuing eligibility SBD may conduct random audit(s) within the three (3) year certification period. The re-certification application shall include:

    a. The prior three (3) years of federal business tax returns based upon the year that the CBE-A/E application is submitted. The tax returns must be signed, completed and submitted for the firm and all affiliates.

    b. Current business, professional license, Local Business Tax Receipt issued by

Miami-Dade County and certifications issued by the State of Florida and Miami-Dade County.

c. Current lease agreement or warrantee deed for the firm's actual place of business.

d. Notarized, sworn affiliation affidavit.

e. Current personal financial statements for each direct or indirect owner.

2. Additional supporting documentation may be required by SBD to verify re-certification and continuing eligibility. The re-certification application shall be submitted at least one hundred and eighty (180) days prior to the end of the three (3) year certification term to ensure sufficient time for processing by SBD. If the application is not approved by the end of the three (3) year certification period, and such application was not submitted at least ninety (90) days prior to end of the three (3) year certification term, the certification of the firm shall expire and not be in effect until a new application is approved by SBD. A firm whose certification expires because the re-certification application is not approved by SBD. A firm whose certification expires because the re-certification application is not approved as of the last day of the three (3) year certification period pursuant to the above, shall no longer be eligible to participate in the CSBE program, however the firm may complete any existing contracts and continue counting towards any measures on existing contracts.

3. SBD will take the following action if a CBE-A/E firm's does not continue to meet the eligibility criteria for the CSBE program given a failure to provide either required audit or re-certification documentation:

a. SBD shall provide written notice via the County's web-based system (the "Decertification Notice") to the CBE-A/E firm that the firm will be decertified as of the date specified in the Decertification Notice.

b. SBD shall allow the CBE-A/E firm (15) days from the date of the Decertification Notice to submit the required audit or re-certification documentation.

c. If the CBE-A/E firm does not provide the documentation within the timeframe stipulated in the Decertification Notice, the CBE-A/E shall be decertified as of the date stipulated in the Decertification Notice.

d. Effective the date specified in the Decertification Notice, the firm shall no longer be a CBE-A/E, however the firm may complete any existing contracts and continue counting towards meeting any measures on existing contracts.

4. A CBE-A/E firm, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses that has been denied certification is not eligible to apply for certification for twelve (12) months from the time of the denial. Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD. Graduating firms may be eligible to reapply for certification, after filing and submitting their most recent corporate tax return subsequent to graduation, if and only if, said tax return was not previously considered.

5. A business owner, alone or as a member of a group, shall own or control only one CBE-A//E at a time. A business owner, alone or as a member of a group, and any CBE-A/E, may not hold more than a ten (10) percent equity ownership in any other CBE-A/E in the same or similar line of business. If a non-CBE-A/E in the same or similar line of business as a CBE-A/E has an equity ownership of such CBE-A/E that exceeds ten (10) percent, the CBE-A/E shall not be certified or recertified.

6. CBE-A/Es shall provide written notice to SBD of any changes that affect their business structure or eligibility as CBE-A/Es. CBE-A/Es shall complete and submit required and supporting documentation describing the nature of the change, and the effective date of the change(s) to SBD within thirty (30) calendar days of the effective date of the change(s) via the County's web-based system. SBD shall review and determine if the said change(s) effect the firm's CBE-A/E certification.

7. A CBE-A/E must have a valid certification in effect at time of proposal submittal. For successful proposers, certification must be maintained throughout the selection process and contract award. With the exception of provisions described in Section 2-10.4.01 of the Code of Miami-Dade County, for graduation from the CBE-A/E program, loss of CBE-A/E certification may lead to removal of the firm from continued participation in the CBE-A/E program. CBE-A/Es shall allow site visits by County staff to determine continuing compliance with certification requirements. However, a graduated CBE-A/E shall be eligible to complete any existing contracts and continue counting towards meeting any measures on existing contracts, as well as be eligible to be awarded contracts as primes or subcontractors for bids/proposals submitted prior to the notice of graduation.

8. A CBE-A/E must be certified in accordance with Section II A (3) above.

9. Applicants and CBE-A/Es must be properly licensed to conduct business in Miami-Dade County, must perform a commercially useful function with an actual place of business in Miami-Dade County, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified.

10. The qualifier of the CBE-A/Es must own at least twenty-five percent (25%) of the certified firm's issued stock or have at least twenty-five percent (25%) ownership interest in the certified firm.

11. SBD shall suspend a CBE-A/Es certification when an owner or a qualifier necessary to the firm's certification dies or is incarcerated. A firm's certification may also be suspended when there is adequate evidence that there has been a material change in circumstances that affects the CBE-A/E's eligibility, or when the CBE-A/E fails to notify SBD in writing of any material change in circumstances as required. SBD shall provide written notification of the suspension and a time frame for the CBE-A/E to demonstrate the firm's certification eligibility before SBD initiates the decertification process as provided in Section II (C0 (3) above. During the period of suspension, the CBE-A/E may complete any existing contracts and continue counting towards meeting any measures on existing contracts as long as all other certification requirements are met but will not be eligible for new awards under the CBE-A/E program.

D. ELIGIBILITY REQUIREMENTS

1. Applicants and CBE-A/Es must be profit-motivated businesses. (Note: not-for-profit or non-profit corporations are not eligible for certification).

2. CBE-A/Es must have an actual place of business in Miami-Dade County and may be registered as a vendor with ISD.

    a. When determining whether the applicant has an actual place of business in Miami-Dade County, SBD shall consider evidence such as, but not limited to:

        1. Local Business Tax Receipt issued by Miami-Dade County.

        2. The existence of a Miami-Dade County telephone number in the name of the CBE-A/E or the name with which the CBE-A/E is doing business.

        3. Offices, premises related to business, or other facilities within the geographic boundaries of Miami-Dade County at which the services to be provided are produced or performed.

        4. The existence and location of secretarial or other administrative staff.

        5. The existence of other offices or premises at which the same business is conducted.

        6. The possession of professional licenses and/or competency certificates required to conduct the business in Miami-Dade County.

3. An individual, alone or as a member of a group, shall own or control only one (1) CBE-A/E firm.

4. A firm's eligibility to participate in the CBE-A/E program shall be determined based on the average annual adjusted gross revenues for the last three (3) years, in combination with that of all of the firm's affiliates, if any. Representations as to gross revenues shall be subject to audit.

5. Applicants and certified CBE-A/Es must be properly licensed to conduct business in the State of Florida and in Miami-Dade County and must perform a commercially useful function with an actual place of business in Miami-Dade County.

6. The applicant qualifier of the firm must own at least twenty-five percent (25%) of the certified firm's issued stock or have at least a twenty-five (25) percent ownership interest in the certified firm. A CBE-A/E firm may be certified in other technical categories for which the firm has received Technical Certification in accordance with Section 2-10.4 of the Code of Miami-Dade County through a non-owner qualifier.

7. Nothing shall prohibit CBE-A/Es from competing for contracts under the Federal Disadvantaged Business Enterprise (DBE) program or any other business assistance program if the CBE-A/E is also certified for the programs under this Implementing Order by SBD or certified by any other agency or organization.

8. When investigating the ownership and control of an applicant or a CBE-A/E, SBD shall consider factors including, but not be limited to the following:

a. All securities constituting ownership and/or control of a business for purposes of establishing the business as a CBE-A/E shall be held directly by the owners. No securities held in trust shall be considered.

b. The contributions of capital and expertise by the qualifying agent to acquire interest in the business shall be real and substantial. Examples of insufficient contributions may include, but are not limited to, a note payable to the business or to those of its part owners, or the mere participation of the qualifier as an employee, rather than as a manager.

9. A CBE-A/E shall not be subject to any formal or informal restrictions that limit the customary discretion of the owner.

10. An applicant that has undergone a recent change in ownership, control or reported income level will be carefully scrutinized. Factors such as, but not limited to, the following shall be considered:

    a. The reasons for the timing of the change in ownership of the business relative to the time that the contracts in the applicant's trade, SIC/NAICS, or service area are advertised;

    b. Whether an individual identified as an owner who had a previous or continuing employee-employer relationship with present owners has actual management responsibilities and capabilities;

    c. The participation of one or more of the owners of the applicant firm in another firm in the same trade, SIC/NAICS, or service area;

    d. Whether reported income levels indicate a severe decline to possibly attempt to qualify the firm for CBE-A/E certification; and

    e. Whether affiliation as described herein exists or once existed between the applicant firm and a non-CBE-A/E firm.

11. To remain eligible for certification, CBE-A/Es must perform a commercially useful function.

12. No firm shall be certified as a CBE-A/E where the individual net worth of any of its owner is more than one million five hundred thousand dollars ($1,500,000). Representatives as to gross revenues and net worth of owners shall be subject to audit.

E. SIZE ELIGIBILITY AND AFFILIATION DETERMINATION

A. General: Only small firms that meet size limits of Tier 1 and Tier 2 CBE-A/Es as to average annual adjusted gross revenues for the last three years may be certified as CBE-A/Es. Size determinations for Tier 1 and Tier 2 CBE-A/Es certification eligibility shall take into account the combined gross revenues of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included.

B. Affiliation: Firms are considered affiliates of each other when either directly or indirectly:

1. One concern controls or has the power to control the other, or

2. A third party or parties controls or has the power to control both, or

3. An identity of interest between or among parties exists such that affiliation may be found.

C. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, common facilities, related business lines or related scopes of work, and contractual relationships. Examples of affiliation include:

1. Nature of control in determining affiliation.

   Every firm is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

2. Identity of interest between and among persons as an affiliation determinant.

   Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one firm. In determining who controls or has the power

   to control firm, persons with an identity of interest may be treated as though they were one person.

3. Affiliation through stock ownership.

4. Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another firm.

5. Affiliation through common facilities. Affiliation generally arises where one firm shares office space and/or employees and/or other facilities with another firm, particularly where such firms are in the same or related industry or field of operations, or where such firms were formerly affiliated.

6. Affiliation with a newly organized firm. Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one firm organize a new firm in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the firm is furnishing or will furnish the other firm with subconsulting agreements, financial or technical assistance, proposal or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.

7. Affiliation through contractual relationships. Affiliation generally arises where one firm is dependent upon another firm for consulting agreements and business to such a degree that its economic viability would be in jeopardy without such agreements/business.

8. Affiliation under joint venture arrangements.

D. Gross Annual Revenues.

1. In size determinations, size eligibility requires that the firm may not exceed the three year average gross annual revenues in the applicable standard.

2. Definitions. For the purpose of determining annual gross revenues of a firm:

a. “Accrual Basis” means a method of accounting in which accounts and notes receivable are recorded in the regular books of account for the period in which the firm first has a claim of right to them.

b. “Claim of Right” has the meaning attributed to it by the U.S. Internal Revenue Service (IRS).

c. “Gross Revenues” is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term revenues excludes proceeds from sales of capital assets and investments, proceeds from transactions between a firm and its domestic and foreign affiliates, amounts collected for another by a travel agent or real estate agent, and taxes collected for remittance to a taxing authority.

d. “Regular Books of Account” means the general ledger or other book of final entry and, if used, the journals or other books of original entry.

e. “Completed Fiscal Year” means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.

f. Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

3. Period of measurement.

a. Annual Gross Revenues of a firm which has been in business for three (3) or more completed fiscal years means the arithmetic annual average revenue of the firm over its last three (3) completed fiscal years (total revenue compiled over the entire three (3) year period would be divided by three).

b. Annual Gross Revenues of a firm which has been in business for less than three (3) fiscal years means the arithmetic annual average revenue over the time period the firm has been in business (total revenues compiled over the period the firm has been in business, divided by the number of weeks, including fractions of a week, the firm has been in business, multiplied by (52).

c. Annual Gross Revenues of a firm which has been in business three or more years but has a short year in the last three years will be the arithmetic annual average revenue over the two full years and the short year. The short period may appear at the beginning, middle or end of the three year calculation period.

4. Method of determining annual gross revenues.

    a. Revenue may be taken from the regular books of account of the firm. If the firm so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the firm, then revenues shown on the federal income tax return of the firm may be used in determining annual gross revenues. Revenue shown on the regular books of account or the Federal Income tax return on a basis other than accrual must be restated to show revenue on an accrual basis for all fiscal years.

    b. Where the federal income tax return of a firm shows its annual gross revenues to be less than seventy-five (75) percent of the applicable size standard, the firm need not restate its revenue to an accrual basis prior to determining annual revenues.

    c. Where a short period is included in the firm's most recent three (3) years, annual gross revenues are calculated by dividing the sum of the revenues of the short year and the revenues of the two (2) full fiscal years by the sum of

    the number of weeks in the short fiscal year and the number of weeks in the two full fiscal years, and multiplying that figure (the weekly average revenues) by fifty-two (52).

5. Annual gross revenues of affiliates.

    a. If a firm has acquired an affiliate or been acquired as an affiliate during any portion of the applicable averaging period used to calculate, the annual gross revenues to determine size status (including before certification), the revenues of both the firm and the affiliate(s)/acquirer will be aggregated to compute size. Such aggregation of revenues will occur for each entire fiscal year of both the applicant and the affiliate(s)/acquirer, irrespective of the length of time the affiliation existed during said fiscal year, as long as an affiliation existed at any point during that fiscal year.

E. Annual gross revenues and adjusted gross revenues of affiliated.

1. The annual gross revenues and adjusted gross revenues of affiliates shall be included in determining size status of the applicant.

2. Payments to an affiliate that has been used as a subconsultant by the applicant shall not be counted as documented payment used to adjust the gross revenues of the applicant.

F. JOINT VENTURES

A. Only joint ventures registered with SBD in accordance with this Implementing Order are eligible to participate as joint ventures in the CBE-A/E program. Joint ventures must be lawfully established. At least one member of the joint venture must be certified as a CBE-A/Es before the joint venture can be approved. Joint ventures can participate under the CBE-A/E program on contracts with CBE-A/E set-asides, selection factors, or subconsultant goals.

B. PROGRAM REQUIREMENTS AND INCENTIVES

Joint Ventures must submit their joint venture agreements for approval by SBD, no later than thirty (30) calendar days prior to the date set for receipt of bids on an eligible project. SBD shall review the joint venture agreements for approval by considering the following factors:

a. Allocation of profits and losses to each venture partner;
b. allocation of the management and control; and
c. capital investment from each venture partner.

As a Joint Venture under the SBE programs, a written joint venture agreement must be completed by all parties, lawfully established with the State of Florida, and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner. The agreement must state that the Joint Venture will continue for the duration of the project, at minimum.

A proposal/bid submitted by a Joint Venture that does not include a written joint venture agreement approved by SBD in accordance with the requirements of this IO, shall be deemed a non-qualified Joint Venture, and ineligible to participate in the CBE-A/E Program. An eligible Joint Venture may bid on County projects. Upon the approval of the contracting department and SBD, all projects valued over $5,000,000 shall require each bidder to be a Joint Venture, as long as availability exists.

Joint Ventures will receive a Bid Preference or Selection Factor based on the percentage ownership of the CBE-A/E, as follows:

a. Less than ten percent (10%) CBE-A/E ownership will result in a 0% bid preference or 0% selection factor.
b. Between ten percent (10%) to twenty percent (20%) CBE-A/E ownership will result in a 3% bid preference or 3% selection factor.
c. Between twenty-one (21%) to fifty percent (50%) CBE-A/E ownership will result in a 5% bid preference or 5% selection factor.
d. Fifty-one percent (51%) and greater CBE-A/E ownership will result in a 10% bid preference or 10% selection factor.

The Joint Venture will receive credit towards any CBE-A/E measures based on the percentage ownership of the SBE that is part of the joint venture. A Joint Venture that includes fifty-one percent (51%) or above CBE-A/E ownership may also bid on set-aside contracts.

C. JOINT VENTURE RESPONSIBILITIES

Joint ventures must submit, prior to proposal submission, a Joint Venture Agreement containing the following information:

1. A description of the financial contribution of each member;

2. A list of the personnel and equipment used by each member;

3. A detailed breakdown of the responsibility of each member and the work to be

performed by each member;

4. An explanation of how the profits and/or losses will be distributed;

5. The bonding capacity of each member;

6. A description of any management or incentive fees for any of the members;

7. A statement of the percentage of the joint venture that is owned and controlled by the qualifying member(s) and the basis for claiming such percentage; and

8. A copy of any required State of Florida certificates or registrations.

D. SBD RESPONSIBILITIES
SBD shall collect, assemble and verify all information needed to determine if at least one of the members of a joint venture is a CBE-A/E, and to approve the joint venture agreement and register said Joint Venture, as applicable. A Joint Venture Agreement is complete when it includes all required supporting information.

G. DEPARTMENT/AGENCY RESPONSIBILITIES

A. Each department and agency, in conjunction with the annual budget process, shall compile a list of its proposed capital projects, renovations, and major repairs for the fiscal year. Each department and agency shall forward the list by August 1 of each year to SBD for use in the formulation of the CBE-A/E objectives.

B. Each department and agency, in conjunction with its contracting and purchasing activities, shall ensure its consultants provided ownership demographics as required by the Code of Miami-Dade County. Contract documents shall require that all requests for payment by the prime consultants include a list of all subconsultants who have performed work, and shall contain the prompt payment provisions outlined in the CBE-A/E ordinance.

C. SBD shall prepare standard proposal participation provisions. Each issuing department including the Public Health Trust must use these standard proposal participation provision documents for all agreements with agreement set-asides or subconsultant goals unless SBD approves substitute proposal documents. When proposal documents for agreements with set-asides or subconsultant goals are advertised, they shall include a web link to the CBE-A/E Certification List.

D. SBD shall notify departments of the recommended agreement set-aside, or subconsultant goal.

E. Subsequent to a recommendation and prior to agreement advertisement, each department shall advise SBD of any change in the scope of work of an agreement. SBD shall review the change and recommend to the County Manager whether the agreement requires further review due to the change in the scope of work. Each department shall advise SBD of post-award changes in scope and all change orders that require Board of County Commissioners' approval shall be submitted to SBD. SBD shall review the changes and change orders and recommend to the County Manager whether the agreement requires further review due to the change in the scope of work, and report on

the prime consultant's current status of CBE-A/E compliance.

F. Each department shall advise SBD of any agreement advertisement dates that are in excess of one hundred twenty (120) days of the initial recommendation to apply a set-aside or a goal in order to allow SBD to identify any changes in availability. Each department shall advise SBD of any agreement cancelled or not advertised within one hundred eighty (180) days after review and the agreement must be resubmitted to SBD to re-establish availability.

H. PROCEDURE FOR RECOMMENDATION OF AGREEMENT SET-ASIDES OR SUBCONSULTANT GOALS

Each individual project specific award and multiple project contracts (if the multiple projects contract 10% utilization objective has not been met) as mandated by the CBE- A/E ordinance for the purchase of architectural, landscape architectural, engineering, or

surveying and mapping services, shall be reviewed for application of Tier 1 CBE-A/E set-asides or subconsultant goals. The procedure for applying Tier 1 CBE-A/E set-asides or subconsultant goals on such services are as follows:

A. Each department, as applicable, shall review anticipated agreements for application of Tier 1, Tier 2, and/or Tier 3 CBE-A/E set-asides or subconsultant goals.

B. Departments shall work in conjunction with SBD in recommending whether agreements should be set-aside for Tier 1, Tier 2, and/or Tier 3 CBE-A/Es or have subconsultant goals applied. The department shall submit the appropriate items from the following to the Director of SBD:

1. For each recommendation to have an agreement set-aside for Tier 1, Tier 2, and/or Tier 3 CBE-A/Es or to have a subconsultant goal applied, a memorandum should be included providing an appropriate brief description as follows:

   a) Project title and number;

   b) A complete breakdown of all the required professional services, including identification by their respective technical certification categories;

   c) Estimated percentage of work for each of the required professional services;

   d) A history of previous purchases to include the sizes of the previously successful consultants as appropriate for the previous three (3) years; and

   e) The recommendation as to whether to set-aside the agreement or to place a subconsultant goal on the agreement.

2. An agreement may be set-aside for Tier 1, Tier 2, and/or Tier 3 CBE-A/Es or may have subconsultant goals applied to a given agreement when availability has been established for the Standard Industry Classification/North American Industry Classification System (SIC/NAICS) category in which the agreement is classified and the forecast of future expenditures by program area indicates that an agreement set-aside for Tier 1, Tier 2, and/or Tier 3 CBE-A/Es or a subconsultant goal will be appropriate.

A. GENERAL GUIDANCE

1. The selection of an agreement for Tier 1 set-aside and/or Tier 2 subconsultant goal shall include consideration of the following:

   a. The impact of the project as it relates to the CBE-A/E objective;

   b. The previous agreements used in the particular SIC/NAICS category;

   c. The relative impact of economic incentives;

   d. The effects of other agreement set-asides or subconsultant goals taken or reasonably expected to be taken in the SIC/NAICS category and their expected effects during the life expectancy of the agreement;

   e. The impact of the agreement set-aside or subconsultant goal on potential competitors; and

   f. Consideration of selection among various programs as set forth by the Review Committee.

   g. Availability of certified CBEs (3 or more) for each of the technical certification categories assigned to the project.

B. AGREEMENT SET-ASIDES

1. A recommendation of a set-aside is appropriate when:

   a. The estimated professional services fee is $1 - $500,000.00 for Tier 1 CBE-A/Es, between $500,000.01 and $2,000,000.00 for Tier 2 CBE-A/Es, and $2,000,000.01 or greater for Tier 3 CBE-AEs for architectural, landscape architectural, engineering, or surveying and mapping professional services;

   b. The quality, quantity and type of opportunities provided by the agreement are appropriate for applying a Tier 1, Tier 2, and/or Tier 3 set-aside(s);

   c. Three (3) or more Tier 1, Tier 2, and/or Tier 3 CBE-A/Es as appropriate are available to provide the quality, quantity and type of opportunities afforded by the proposed agreement.

2. Set-asides should be used to provide large economic incentives. When possible, consideration should be given for splitting large agreements into smaller agreements to allow for greater program participation.

C. SUBCONSULTANT GOAL

1. A recommendation to apply a subconsultant goal to a particular agreement is appropriate when:

a. The agreement has identifiable opportunities, which, according to normal industry practice, are appropriate for subconsulting in a specific professional service area within SIC/NAICS and technical certification category;

b. The quality, quantity and types of opportunities provided are appropriate for applying a subconsultant goal.

2. Effective competition exists for setting a particular subcontractor goal in that three (3) or more CBE-A/Es certified within the applicable professional service area within SIC/NAICS and technical certification category are available.
3. A memorandum identifying and briefly describing all agreements or proposals, including justification for sole source, for which a recommendation is being made not to set aside the agreement or not to place a subconsultant goal on the agreement, and information to support such a recommendation.

D. REVIEW PROCESS

1. SBD shall publish a list of projects under review daily on the department's webpage. SBD shall review the proposed contracts and the departmental recommendations. Should SBD and the Department(s) not agree on recommended measures or goals, then the contract will go through the Review Committee Process, as detailed below. Upon obtaining departmental concurrence with the recommended measure, SBD shall post projects and recommended goals daily on the SBD web page.

2. SBD shall consider public comments in writing on projects pre- and post measure or goal recommendations.

3. All projects with recommended measures shall contain language to allow for public comment to be submitted to SBD within 36 hours of posting via a designated email address or mail.

4. All advertised projects shall contain language to allow for public comments to be submitted to SBD within 36 hours of date of advertisement via a designated email address or mail. SBD and the contracting department shall review comments and make recommendations, as applicable, to the Mayor or designee.

5. Changes to goal recommendations, approved by the Mayor or designee, as a result of public comment shall require issuance of an addendum to the project advertisement.

I. DOCUMENTATION TO ESTABLISH SET ASIDES OR SUBCONSULTANT GOALS

The County Mayor or designee shall establish a standing Review Committee (RC) to consider documentation for the establishment of set-asides or subconsultant goals where SBD and the contracting department have not established consensus. SBD shall consider the following when recommending a set-aside or subconsultant goal:

A. For each recommendation of an agreement set-aside or subconsultant goal, a copy of the department's recommendation; a memorandum briefly describing the analysis of the agreement and basis for providing a recommendation; verification of ability to submit a proposal for Tier 1 or Tier 2 set-aside agreements and a recommendation report that includes a listing of all professional service areas on which availability was established and subconsultant goals were based.

B. A brief memorandum identifying all services for which a recommendation of no agreement set-aside or no subconsultant goal is being made and providing information to support the recommendation.

J. REVIEW COMMITTEE PROCESS

SBD is responsible for recommending to the Mayor or designee whether to apply CBE- A/E set-asides, or subconsultant goals to a contract. The Mayor or designee may accept, reject, modify or otherwise alter SBD's or Review Committee's recommendation.

A. All recommendations shall be agreed upon between SBD and the contracting department, prior to final recommendation to the Mayor or designee.

B. The Mayor or designee shall establish a standing Review Committee (RC) to meet periodically, or as often as needed, to review when consensus is not reached between SBD and the contracting department. The RC will make recommendations to the Mayor or designee.

C. The RC shall conduct public deliberations and make recommendations whether to apply CBE-A/E, set-asides or subconsultant goals to a contract. The Mayor or designee may accept, reject, modify or otherwise alter SBD's or Review Committee's recommendation.

D. The standing members of the RC shall be: Director, Public Works Department; Director, Office of Capital Improvements; Director, Department of Procurement Management; a rotating Director of the County's capital departments or their designees; and a County Manager appointed Chairperson. A quorum of the RC shall be three (3) members. Staff support shall be provided to the Review Committee by SBD.

E. SBD shall staff the RC and make recommendations of measures to the RC and County Mayor or designee.

F. The RC shall meet as needed. SBD shall timely publish meetings, listing the meeting location, date and time. All RC meetings are subject to Government-in-the-Sunshine requirements. The chair shall allow participation of the public at RC meetings consistent with accomplishing the agenda of the RC.

G. The RC shall have authority to promulgate rules of general application to carry out its responsibilities, which rules are subject to review and approval by the County Mayor or designee.

H. The RC may, after public deliberation and consideration of alternatives, accept, reject, modify or otherwise alter the staff recommendation. The County Mayor or designee may accept, reject, modify or otherwise alter SBD's recommendations. The Board of County Commissioners may accept, reject, modify or otherwise alter the County Manager's

recommendations. The Mayor may accept or veto the Board of County Commissioners' recommendations. In accordance with the policy established by the Board of County Commissioners, the Board of County Commissioners may overrule the Mayor's veto.

K. AGREEMENT ADMINISTRATION - AGREEMENT SET-ASIDES

A. Solicitations for County professional services agreements that are set-aside under the CBE-A/E program shall consider proposals solely from CBE-A/Es. In order to submit a proposal on a set-aside agreement, the proposer must be certified as a CBE-A/E prior to proposal submission date. A CBE-A/E awarded a set-aside agreement shall not transfer to a non-CBE-A/E, through subconsulting or otherwise, any part of the actual work of the agreement unless the proposal documents expressly and specifically permit such transfer as consistent with normal industry practice or the CBE-A/E requests and receives prior to agreement award, an approval letter from SBD.

B. A CBE-A/E that performs the work of a set-aside agreement with its own forces may count such work towards reducing the CBE-A/E goal applied to the agreement by a maximum of one hundred (100) percent.

C. Respondent's Responsibilities for CBE-A/E Set-Asides

1. Proposals documents shall require proposers to submit a Certificate of Assurance at time of proposal submission. Upon request, proposers must submit a Utilization Plan via the County's web-based system within the time frame specified by SBD. Failure to submit the required Certificate of Assurance at the time of proposal submission or a Utilization Plan upon request within the time frame specified by SBD shall render the proposal non-compliant.

D. The following shall constitute a violation of this Implementing Order as they relate to an agreement that is set-aside:

1. Submission of a Utilization Plan of CBE-A/E subconsultants that the respondent knew or should have known is incomplete or inaccurate, or failure to maintain certification as a CBE-A/E;

2. Deviation from the Utilization Plan without prior approval of SBD;

3. The utilization of a non-certified CBE-A/E, or a prime successful proposer not meeting CBE-A/E Program set-aside requirements;

4. 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;

5. Not obtaining or retaining CBE-A/E certification while performing work designated for CBE-A/E firms;

6. Failure to report payments to subconsulants or subcontractors via the County's web-based system, or failure of subcontractors or subconsultants to confirm payments upon notification by the prime contractor, within the specified time frame;

7. 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;

8. Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from SBD;

9. Failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a Utilization Plan;

10. Termination of the CBE-A/E's agreement without prior written approval from SBD;

11. Reduction of the scope of work of a CBE-A/E subconsultant agreement without prior approval from SBD; or

12. Failure to pay subconsultants promptly and in accordance with Section 2-10.4.01 of the Code of Miami-Dade County.

L. AGREEMENT ADMINISTRATION - SUBCONSULTANT GOALS

A. SUBCONSULTANT GOALS

The purpose of a subconsultant goal is to have portions of the work under the prime consultant performed by available subconsultants that are certified CBE-A/Es for agreement values totaling not less than the percentage of the prime agreement value set out in the proposal form. Subconsultant goals may be applied to an agreement when estimates made prior to proposal advertisement identify the quality, quantity and type of opportunities in the agreement and CBE-A/Es are available to afford effective competition in providing a percentage of these identified services.

After a proposal is advertised or other formal public notice given, the established subconsultant goal may be reduced only with the approval of the County Commission or the Public Health Trust. Proposal documents shall include documentation demonstrating the basis for the subconsultant goal established in the agreement.

A Small Business Enterprise Goods Program and Small Business Enterprise Services Program goal(s) may be applied to any project with an estimated value over $700,000.00.

1. RESPONDENT RESPONSIBILITIES FOR SUBCONSULTANT GOALS

Respondents must submit a completed Certificate of Assurance at the time of proposal submission and a Utilization Plan via the County's web-based system within the time frame specified by SBD. The Utilization Plan constitutes a representation by the respondent that, to the best of the respondent's knowledge, the CBE-A/Es listed are qualified and available to perform as specified. The Certificate of Assurance is a commitment by the respondent that, if awarded the agreement, it will enter into written subconsultant agreements with the identified CBE-A/Es for the scope of work at the price or percentage set forth in the Utilization Plan. Failure to submit the required documents within the required time frames may render the proposal non- compliant or be subject to sanctions or penalties as outlined in the contract or in this Implementing Order.

a. All such subconsultant agreements shall be in writing and shall be executed by the prime consultant and the CBE-A/E subconsultant utilized to meet the subconsultant goal.

b. Respondents who fail to submit the required Certificate of Assurance at the time of proposal submission or a Utilization Plan upon request within the time frame specified by SBD shall be considered non-compliant.

c. Proposals that include a defective Certificate of Assurance or Utilization Plan may be voidable. Examples of defects include, but are not limited to, the listing of an unidentifiable CBE-A/E, and percentage miscalculations that are not mere clerical errors apparent on the face of the Utilization Plan.

d. A successful respondent that is a CBE-A/E or a CBE-A/E joint venture may perform up to one hundred percent (100%) of a CBE-A/E subconsultant goal with its own forces. The remaining subconsultant goal work shall be performed by other CBE-A/Es.

e. Expenditures to subconsulting CBE-A/Es shall be counted toward meeting specified subconsultant goals as follows:

(1) One hundred percent (100%) of the expenditures to a CBE-A/E that performs a commercially useful function in the supply of services required for the fulfillment of the agreement;

(2) One hundred percent (100%) of the expenditures to CBE-A/Es that subconsult work further to non-CBE-A/Es, only if the proposal documents expressly and specifically permit such subconsulting as consistent with normal industry practice, or if the respondent or CBE-A/E requests and receives prior to agreement award an approval letter from SBD;

(3) One hundred percent (100%) of the expenditures to CBE-A/Es that perform actual work with their own forces;

(4) None of the expenditures to a CBE-A/E that acts essentially as a conduit to transfer funds to a non-CBE-A/E unless the proposal documents expressly and specifically permit such transfers as consistent with normal industry practice or the respondent or CBE-A/E requests and receives prior to agreement award an approval letter from SBD; and

(5) Only expenditures to CBE-A/Es made under a written subconsultant agreement executed by both the prime consultant and the CBE-A/E shall be counted towards meeting the subconsultant goal.

f. In order to assure at the time of proposal submission, agreement upon the above information between the prime consultant and the CBE-A/E subconsultant so identified, proposal documents shall require the prime consultants to submit a Certificate of Assurance acknowledging all Small business Enterprise 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. 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 the percentage that 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 a Utilization Plan via the County's web-based system within the time frame specified by SBD, shall render the proposer non-complaint. A CBE-A/E firm may fulfil a subconsultant goal in only one (1) goal type per contract.

g. To prove lack of availability, respondents must submit the following:

(1) Unavailability Certificates either completed and signed by all of the CBE- A/Es available to perform the scopes of work are completed and signed by the respondent explaining the contacts with all of the CBE-A/Es available to perform the scopes of work, statements or actions of the CBE-A/Es showing unavailability, and the reason(s) why the CBE-A/Es' signature could not be obtained;

(2) A listing of any proposals received from a CBE-A/E, the scope of work and percentage of work, and the respondent's reasons for rejecting each proposal;

(3) A statement of the respondent's contacts with SBD for assistance in determining available CBE-A/Es;

(4) A description of the respondent's process for soliciting and evaluating proposals from CBE-A/Es, including copies of telephone logs detailing time, date and name of contacts with potential subconsultants;

(5) Respondents may establish a CBE-A/E as unavailable if its proposal is not reasonably competitive with comparable proposals of non-CBE-A/Es for the same scope of work. To establish a CBE-A/E as unavailable if its proposal is not considered reasonably competitive, the prime consultant must furnish SBD with copies of all proposals received from all firms, both CBE-A/Es and non-CBE-A/Es, for each specific scope of work for which they are claiming that the proposal is not reasonably competitive. A CBE- A/E's proposal will be considered reasonably competitive if its proposal, for the same scope of work, is within 25% of the proposal of comparably sized non-CBE-A/E firms;

Respondents whose proposals do not meet the specified goal, and who do not prove lack of availability as indicated in 1(g) above, are not in compliance with this Implementing Order.

The following shall constitute a violation of this Implementing Order as it relates to an agreement which has a CBE-A/E subconsultant goal:

1) The utilization of a non-certified CBE-A/E, or failure to maintain certification as a CBE-A/E;
2) 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;

3) A prime consultant not meeting CBE-A/E subconsultant goal requirements;

4) Not obtaining or retaining CBE-A/E certification while performing work designated for CBE-A/E firms;

5) Failure to report payments to subconsultants or subcontractors via the County's web-based system, or failure of subcontractors or subconsultants to confirm payments upon notification by the prime contractor, within the specified time frame;

6) Deviation from the Utilization Plan without prior approval from SBD;

7) Termination of the CBE-A/E's agreement without prior approval from SBD;

8) Reduction of the scope of work of a CBE-A/E subconsultant without prior approval from SBD;

9) Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from SBD;

10) Failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a Utilization Plan;

11) 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; or

12) Failure to pay subconsultants promptly and in accordance with Section 2-10.4.01 of the Code of Miami-Dade County.

B. COUNTY RESPONSIBILITIES

1. After considering the quality, quantity and type of opportunities provided by the agreement, and the availability of CBE-A/Es to afford effective competition in providing the professional services required under the agreement, each department or ISD will recommend to SBD the type and level of agreement set- aside, or subconsultant goal that could be applied.

2. SBD shall review the Certificates of Assurance or equivalents, and Unavailability Certificates to determine compliance with the agreement set-aside, or subconsultant goal stated in the proposal documents. The Compliance Monitor may meet with a respondent before recommending that the Contract Officer determine noncompliance. This written recommendation shall be forwarded to the respondent and the Contract Officer.
3. In the event that the Contracting Officer receives a recommendation of non-compliance from the Compliance Monitor, he or she may conduct a meeting or hearing at which the respondent shall be afforded an opportunity to present data supporting its compliance with the goal. The Contracting Officer shall consider the evidence and make a determination as to compliance.

M. DESIGN-BUILD CONTRACTS

The design portion of the design-build contract is subject to the procedures outlined in this Implementing Order.

N. PROMPT PAYMENT

It is the County's intent that all firms, including CBE-A/Es providing professional services to the County, shall receive payments promptly in order to maintain sufficient cash flow.

A. PRIME CONSULTANT RESPONSIBILITIES

1. A prime consultant shall include in its billing to Miami-Dade County or the Public Health Trust copies of those portions of the billings from CBE-A/E subconsultants utilized to meet the subconsultant goal applicable to the agreement which the prime consultant approves and whose cost is included in the payment amount requested from Miami-Dade County or the Public Health Trust.

2. Prime consultant agreements to which a CBE-A/E subconsultant goal has been applied shall require that billings from CBE-A/Es be promptly reviewed and payment made to such CBE-A/Es on those amounts not in dispute within two (2) business days of receipt of payment therefore. The foregoing notwithstanding, the prime consultant shall pay billings from CBE-A/E subconsultants with whom they are in direct privity that are not in dispute within the timeframe and implemented by this Implementing Order.

3. The prime consultant on an agreement to which a CBE-A/E subconsultant goal has been applied shall inform SBD, the Contracting Officer, and the CBE-A/E subconsultant, in writing, of those amounts billed by the CBE-A/E which are in dispute, and the specific reasons why they are in dispute, within seven (7) calendar days of submittal of such billing by the CBE-A/E subconsultant to the prime consultant.

4. Failure of the prime consultant to comply with the applicable requirements of Section XI (A) (3) above shall result in the prime consultant's forfeiture of the right to use the dispute as justification for not paying the CBE-A/E subconsultant and payment shall be forthcoming from the prime consultant.

B. COUNTY RESPONSIBILITIES

1. Proposal documents for agreements with CBE-A/E agreement set-asides, or subconsultant goals shall require that billings from subconsultants under prime consultant agreements with Miami-Dade County or the Public Health Trust that are a CBE-A/E agreement set-aside or which contain a 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. SBD may investigate reported instances of late payment to CBE-A/Es.

C. FINANCE DEPARTMENT RESPONSIBILITIES

The Finance Department shall review billings from prime consultants under prime consultant agreements with Miami-Dade County or the Public Health Trust that are a CBE-A/E agreement set-aside or which contain a subconsultant goal and make payment on those amounts not in dispute within fourteen (14) calendar days of receipt of billing.

O. AGREEMENT ADMINISTRATION - COMPLIANCE AND MONITORING

A. Compliance Review

1. The Compliance Monitor shall review respondent's submission for compliance with this Implementing Order on every agreement to which a CBE-A/E agreement set-aside, or subconsultant goal has been applied. The purpose of this review shall be for the Compliance Monitor to consider whether to recommend the respondent's proposal is determined to be in compliance or noncompliance with the requirements of this Implementing Order. The Compliance Monitor may consider relevant information from any person in making this decision. The Compliance Monitor may require the respondent to produce information deemed pertinent and appropriate and may obtain further information from whatever sources the Compliance Monitor deems appropriate.

2. The Compliance Monitor shall notify the respondent in writing stating the facts and the reasons on which the non-compliance is based. The respondent may request a meeting within five (5) business days from the date of the notification of non-compliance. The respondent shall supply further relevant information as required by the Compliance Monitor. No new altered Utilization Plan will be accepted.

3. The Compliance Monitor shall make a written recommendation to the Contracting Officer, which shall include a statement of the facts and reasons for which the non-compliance is based.

4. Following receipt of a recommendation of non-compliance from the Compliance Monitor, the Contracting Officer shall review the Compliance Monitor's recommendation of respondent's noncompliance with this Implementing Order. The Contracting Officer shall notify the respondent of such non-compliance. The respondent may request a meeting within five (5) business days from the date of notification of non-compliance with the Contracting Officer if the Contracting Officer was not present at the first meeting referenced in Subsection (A)(2) above. The respondent shall supply further relevant information as required by the Compliance Monitor. No new altered Utilization Plan will be accepted.

5. The Contracting Officer, in conjunction with the Compliance Monitor, may conduct an informal meeting with the respondent. Other parties may be invited to offer information relevant to the issue of the respondent's non-compliance.

6. The Contracting Officer shall provide a written determination of the respondent’s compliance with this Implementing Order, along with a recommendation whether to award the agreement to the respondent, to the County Manager. A copy of such recommendation shall be sent to the respondent. Such recommendation shall not affect the power of the Board of County Commissioners to reject the respondent's bid for any other reason or to take such action on the recommendation of the

Contracting Officer as the Board deems appropriate.

7. Consideration of other proposals. If the Contracting Officer or Compliance Monitor deems it advisable in the interest of expediting the award of the agreement, the procedures set forth in this subsection may be carried out with respect to the proposals of one or more additional respondents at the same or different time with each such proceeding to be separately conducted.

8. Failure of respondent to participate. The respondent will be bound by the proceedings under this subsection to which they have been given required notice without regard to their participation or lack of participation. A lack of participation upon receiving notices and requests pursuant to this Implementing Order shall not be grounds for reconsideration of any action taken in the proceedings.

9. Miami-Dade County shall not award an agreement to any respondent which, in its determination, fails to comply with the applicable requirements of this Implementing Order. Nothing herein shall relieve any respondent from any of the terms, conditions or requirements of the contract or modify Miami-Dade County's rights as reserved in the agreement document.

B. Post-Award Compliance and Monitoring

1. Approval of Subconsultant Agreements

The Successful Respondent shall submit to the Contracting Officer, for approval, written subconsultant agreements corresponding in all respects to the Successful Respondent's Certificate of Assurance. The Successful Respondent shall enter into a written subconsultant agreement with each listed CBE-A/E subconsultant and shall thereafter neither terminate any such subconsultant agreement, nor reduce the scope of work to be performed by, or decrease the price to be paid to the CBE-A/Es thereunder, without in each instance obtaining prior written approval of the Contracting Officer. The Contracting Officer shall not give a final written determination without a recommendation from the Compliance Monitor.

2. Access to Records

Successful respondents and CBE-A/Es shall permit the County to have access during normal business hours to books and records relating to the respondent's compliance with the agreement set-aside, or subconsultant goal applied to the agreement or relating to CBE-A/E compliance with certification requirements. Such books and records include but are not limited to corporate documents,

charters, organizational filings, tax filings, registrations, licenses, stock registrations, partnership agreements, contracts, subcontracts, joint venture agreements, telephone logs, checking accounts, journals, ledgers, correspondence, pension and benefits documents, and documents and records between the respondent or the CBE-A/E and other entities. This right of access shall be granted for one year after completion of the work or full payment of the agreement obligations, whichever comes last, or for one year after the expiration of CBE-A/E certification.

3. Access to Job Site

Successful respondents and CBE-A/Es shall permit the County to have access to project locations during normal business hours in order to conduct visual inspections and employee interviews.

4. Utilization Reporting

   The successful respondent on a project that is a CBE-A/E agreement set-aside or on a project with CBE-A/E subconsultant goals shall complete all required Compliance audits. Where a subconsultant goal has been imposed, the Utilization Report shall include information on CBE-A/Es utilized to meet such subconsultant goal. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County.

5. Deviations from the Utilization Plan

   a. In the event that, during the performance of an agreement, the CBE-A/E is not able to provide the services specified on the Utilization Plan, the successful respondent must locate a CBE-A/E to substitute for the unavailable CBE-A/E, unless the respondent can prove the lack of an available CBE-A/E to provide the services to be provided by the prior CBE- A/E. The successful respondent must receive approval for substitution from SBD by submitting a request in writing addressed to the Director of SBD through the Contracting Officer. The request must include a revised Utilization Plan to include the substitute CBE-A/E. The Compliance Monitor will review the request and make a recommendation regarding the substitution to the Contracting Officer. A successful respondent that cannot secure a substitute CBE-A/E must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, and telephone numbers of all CBE-A/Es contacted, and the date of contact for each CBE-A/E. All certified CBE-A/Es certified in the appropriate professional service area under the technical certification categories must be contacted in order to prove lack of an available CBE-A/E.

   b. The Compliance Monitor shall be responsible for monitoring the performance of the successful respondent regarding compliance with agreement set- asides, or subconsultant goals applied to the agreements. The Compliance Monitor may, at his or her discretion, investigate deviations in the utilization of CBE-A/Es from that described on the Letter of Agreement, and make recommendations regarding compliance to the Contracting Officer. The

      Contracting Officer shall not make a final determination without a recommendation regarding compliance from the Compliance Monitor. Deviations from the goal stated in the agreement that shall be monitored include, but are not limited to:

      (1) Termination of a CBE-A/E's subconsultant agreement;

      (2) Reduction in the scope of work to be performed by a CBE-A/E;

      (3) Modifications to the terms of payment or price to be paid to a CBE-A/E; or

      (4) Failure to enter into a subconsultant agreement with a CBE-A/E being utilized to meet a subconsultant goal.

c. Excuse from entering into subconsultant agreements:

If, prior to execution of a subconsultant agreement required by this Implementing Order, the successful respondent submits a written request to the Contracting Officer demonstrating to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not reasonably have been aware until subsequent to the date of the award of the agreement, a CBE-A/E who is to enter into such subconsultant agreement has unreasonably refused to execute the subconsultant agreement, or is not available, the successful respondent shall be excused from executing such subconsultant agreement. The procedures of paragraphs (e) and (f) below shall apply to this paragraph.

d. Termination of Subconsultant Agreements:

If, after execution of a subcontract required by this Implementing Order, the successful respondent submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not be reasonably have been aware, until subsequent to the date of execution of such subconsultant agreement, a CBE-A/E, who entered into such subconsultant agreement has committed a material breach of the subconsultant agreement, the successful respondent shall be entitled to exercise such rights as may be available to him/her to terminate the subconsultant agreement. The procedures of paragraphs (e) and (f) below apply to this paragraph.

e. County's Determination of Respondent's Excuse or Termination:

If the successful respondent at any time submits a written request to the Contracting Officer under the prior two paragraphs, the Contracting Officer as soon as practicable, shall determine whether the Successful Respondent has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the successful respondent, upon notice, an opportunity to present pertinent information and arguments. The procedures of paragraph (f) below apply to this paragraph.

f. Alternative Subconsultant Agreements:

1) If the successful respondent is excused from entering into a subconsultant agreement or rightfully terminates a subconsultant agreement under this Implementing Order and without such subconsultant agreement, the Successful Respondent will not achieve the level of CBE-A/E participation upon which the agreement was awarded, the Successful Respondent shall make every reasonable effort to propose and enter into an alternative subconsultant agreement or subconsultant agreements for the same work to be performed by another available CBE-A/E as appropriate, for a subconsultant agreement price or prices totaling not less than the subconsultant agreement price under the excused or terminated subconsultant agreement, less all amounts previously paid thereunder.

2) The Successful Respondent must submit to the Compliance Officer a revised

Utilization Plan to include the substitute CBE-A/E.

3) A successful respondent that cannot secure a substitute CBE-A/E must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, telephone numbers, and the date of contact for each CBE-A/E. All CBE-A/Es certified within the appropriate professional service area under the technical certification categories must be contacted.

4) The Compliance Monitor may require the successful respondent to produce such information as the Compliance Monitor deems appropriate and may obtain further information from other sources. The Compliance Monitor shall make his/her recommendation under this paragraph to the Contracting Officer and forward a copy to the respondent.

5) The Contracting Officer will consider objections to the Compliance Monitor's recommendation only if such written objections are received by the Contracting Officer within five calendar days from the successful respondent's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, and as he/she in his/her discretion may determine, will reply to the successful respondent's written objection within ten (10) days of receipt of these objections.

P. SANCTIONS FOR AGREEMENT VIOLATIONS

Proposal and agreement documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a respondent's violation of or failure to comply with Section 2.10.4.01 of the Code of Miami-Dade County or this Implementing Order may result in the imposition of one or more of the following sanctions:

A. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;

B. Work stoppage;

C. Issuance of fines of up to two (2%) percent of the contract amount, said fines to be deducted from invoices;

D. Termination, suspension, or cancellation of the agreement in whole or part;

E. In the event a respondent or CBE-A/E attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Miami-Dade County Code, the County shall, whenever practicable, terminate the agreement or require the termination or cancellation of the subconsultant agreement for the project on which the respondent or CBE-A/E committed such acts. In addition, and as a further sanction, the County Manager or his or her designee may impose any of the above-stated sanctions on any other agreements or subconsultant agreements the respondent or CBE-A/E has on County projects. In each instance, the respondent 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 respondent or CBE-A/E may also be subject to debarment.

F. In the event that a respondent fails to achieve the CBE-A/E measures after the agreement completion, the respondent will be required to make up the CBE-A/E deficit for an amount equal to double the amount of the CBE-A/E measure deficiency. The procedures for making up the CBE-A/E deficit are as follows:

1. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to 20% of the amount thereof; for the second deficit, a penalty in an amount equal to 40% thereof; for the third and successive deficits, a penalty in an amount equal to 60% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 2-10.4.01 of the Code of Miami-Dade County.

2. If the respondent has not met the CBE-A/E measures, the compliance officer will notify the respondent in writing of the CBE-A/E deficit.

3. If the respondent is found in non-compliance with the CBE-A/E measures, the compliance officer may issue a letter of noncompliance requesting that the respondent make up the CBE-A/E deficit on an existing or future County agreement for double the amount of the deficit on the agreement in question. The respondent will also be required to submit a Make-up Plan indicating any current or future County agreements in which the CBE-A/E deficit will be remedied.

4. The respondent must respond to SBD in writing within ten business days from the date of the non-compliance letter. The respondent must acknowledge receipt of the non-compliance letter and provide a plan to make up the CBE- A/E measure.

5. The compliance monitor will review the Make-up Plan for approval.

6. When an agreement is identified in which the CBE-A/E measure deficit will be remedied, the respondent will provide a Letter(s) of Agreement for the CBE- A/E firm(s) that will be utilized in making up the deficit.

7. For any future contracts, a Make-up Plan must be submitted as part of the Utilization Plan for any proposal at the time of proposal submittal. The Utilization Plan must identify all CBE-A/Es to be utilized to meet the first tier subconsultant goal in satisfaction of the make-up, in addition to any other goals that may be applicable. Failure to include the required Make-up plan with proposals for any future contracts shall result in the submittal being deemed non-compliant.

8. Any respondent 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.

9. A respondent that fails to comply with any of the materials 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.

10. A respondent that fails to comply with any of the material terms of a third Make- up plan, without good cause, may be subject to debarment and shall automatically be evaluated for debarment. After serving a debarment for failure to satisfy a Make-up plan for no good cause, the subject firm shall be deemed ineligible for bidding on county contracts with measures for 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.

11. The respondent will remain in a non-compliance status until the CBE-A/E make-up goal has been achieved.

12. Failure of the respondent to make up the CBE-A/E measure when opportunities are available on existing or future County agreements, will result in the sanctions or the imposition of other penalties, or as referenced in Sections XIII and XIV.

Some of the agreement violations that may result in the imposition of the sanctions listed in Section XIII above include, but are not limited to, the following:

a. 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;

b. A prime consultant not meeting CBE-A/E Program subconsultant goal requirements;

c. Not obtaining or retaining CBE-A/E certification while performing work designated for CBE-A/E firms;

d. Failure to report payments to subconsultants or subcontractors via the County's web-based system, or failure of subcontractors or subconsultants to confirm payments upon notification by the prime contractor, within the specified time frame;

e. 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;

f. Failure to maintain certification as a CBE-A/E;

g. Deviation from the Utilization Plan without prior approval from SBD;

h. Termination of the CBE-A/E's agreement without prior approval from SBD;

i. Reduction of the scope of work of a CBE-A/E subconsultant agreement without prior approval from SBD;

j. Modifications to the terms and/or prices of payment to a CBE-A/E without prior

approval from SBD; or

k. Failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a Utilization Plan to meet a subconsultant goal; or

l. Failure to pay subconsultants promptly and in accordance with the administrative procedures in Section 2-10.4.01 of the Code of Miami-Dade County.

Q. ADMINISTRATIVE PENALTIES

A. DEBARMENT

1. The County may debar a CBE-A/E or a non-CBE-A/E for violation of, or non-compliance with, the provisions of the County Code governing the program, this Implementing Order, or implementing proposal documents.

2. Causes for debarment are as noted in Section 10-38 of the Code. These include but are not limited to, a preponderance of evidence that the CBE-A/E has forfeited a bond or defaulted on financial assistance, either of which was provided under the CBE-A/E program; or if any individual or corporation, partnership or other entity, or any individual officer, shareholder with a significant interest, director or partner of such entity, qualifying agent or affiliated business of such entity attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement.

B. DECERTIFICATION

Violations of certification requirements are addressed in Section II of this Implementing Order.

C. SUSPENSION

If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the non-complying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County construction contracts for a period not exceed three (3) years.

D. MONETARY PENALTIES

1. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to 20% of the amount thereof; for the second deficit, a penalty in an amount equal to 40% thereof; for the third and successive deficits, a penalty in an amount equal to 60% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed

hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 2-10.4.01 of the Code of Miami-Dade County.

2. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal there from, the non-complying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.

R. APPEALS PROCESS

A. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this Implementing Order and Section 2- 10.4.01, Code of Miami-Dade County may appeal such action. The Compliance Monitor shall notify the affected party, in writing, setting forth the reasons for the determination and advising of this appeals process. The affected party may appeal the determination by filing a written appeal with the Director of SBD within thirty (30) days of receipt of the notice. This appeals process does not apply to appeals of decisions made pursuant to bid documents implementing the CBE-A/E program when such proposal documents provide procedures for appeals of such decisions.

B. Decisions by the County Mayor or designee shall be final.

C. PROCEDURES FOR ADMINISTRATIVE HEARING:

The procedure for administrative hearings shall provide that:

1. SBD will schedule a hearing date before a hearing officer, upon timely receipt of a request for an administrative hearing along with a $250 nonrefundable filing fee to appeal a determination of non-compliance with the requirements of this Implementing Order, section 2-10.4.01, Code of Miami-Dade County, as amended, or implementing bid documents.

2 The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal

3. SBD shall serve upon the firm, consultant (or subconsultant) and/or lessee a notice of hearing within five (5) working days of the appointment of the administrative hearing officer. Such notice shall include:

   a. A copy of SBD's determination of non-compliance, outlining alleged prohibited practices upon which it is based;

   b. A description of the administrative penalties being considered;

4. An administrative hearing shall be scheduled to be heard before an administrative hearing officer within twenty (20) days after service of the notice. The notice shall also advise the appellant that he or she may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them.

5. Within five (5) days after completion of the administrative hearing, the administrative hearing officer shall transmit his/her findings of fact, conclusions, and recommendations together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the Mayor or designee, who (i) may sustain, reverse or modify the hearing officer's recommendations and (ii) shall render a final decision, in writing. The determination of the Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

D. QUALIFICATIONS OF HEARING OFFICERS:

1. Administrative hearing officers shall be residents of Miami-Dade County who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the County Manager or his or her designee. The list of administrative hearing officers should include retired judges who are licensed and admitted to practice law in the State of Florida, or arbitrators or mediators certified by the Eleventh Judicial Circuit or State Bar Association. Appointees should become acquainted with this Implementing Order and the provisions of section 2-10.4.01, Code of Miami-

   Dade County, as amended, applicable to the particular violation(s) to be heard. Additional qualifications include, but are not limited to, experience in equal opportunity, anti-discrimination, contacting, procurement, bonding or financial services activities. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk. The Clerk shall submit an annual report to the Board on the number of women who have served as administrative hearing officers.

2. The County Mayor or designee shall appoint as many administrative hearing officers as are deemed necessary. Every effort will be made to ensure that the appointment of hearing officers reflect the diversity of the demographics of Miami-Dade County. Appointments shall be made for a term of one (1) year. Any administrative hearing officer may be reappointed at the discretion of the County Mayor, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual administrative hearing officer; provided, however, that a determination as to reappointment must be made for each administrative hearing officer at the end of his or her one-year term. The County Mayor shall have the authority to remove administrative hearing officers at any time. Appointments to fill a vacancy shall be for the remainder of the unexpired term.

3. Administrative hearing officers shall not be County employees but shall be compensated at a rate to be determined by IO.

4. The Miami-Dade County Attorney's Office shall serve as general counsel to the administrative hearing officer.

S. MENTOR-PROTÉGÉ PROGRAM:

a. Program Mission

Miami-Dade County seeks to build effective working relationships between leaders

of mature established companies and emerging small business enterprises for the latter to benefit from the knowledge and experience of the established Mentor firms. Mentors will assist with the development of the Protégé's business plan by identifying the most critical needs to achieve the plan, and implementing the actions to obtain the desired results.

The Mentor-Protégé Program ("MPP") is a community-based effort, involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The MPP was created to assist in overcoming barriers that typically inhibit or restrict the success of small businesses. The program is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. As a result of the MPP, Protégés will experience a greater than industry average success rate and realize the growth and profitability objectives of their business plans, as well as long range stability. By implementing the MPP, Miami-Dade County will provide a community benefit by strengthening emerging businesses and providing them with the tools to benefit from opportunities in Miami-Dade County's economic development.

b. General Objectives

The primary objectives of Miami-Dade County's CBE-A/E MPP are

i. To develop and strengthen Protégé firms through coaching and counseling from Mentors.

ii. To expand business opportunities for Protégé firms.

iii. To enable Protégés to become competent and viable well managed businesses subsequent to graduation.

iv. To assist mentoring companies in carrying out their civic and corporate responsibilities by furnishing opportunities to provide development assistance to other emerging Miami-Dade County firms.

v. To enhance Miami-Dade County's overall business and economic environments.

vi. Incentives – In addition to the benefits provided in the Program Mission section above, Mentors can be compensated for their participation in the MPP for one year (the "Commitment Period"), and will be eligible for an incentive on bidding on Miami-Dade County contracts for one year after completion of the Commitment Period. This incentive shall consist of either a (i) two percent (2%) bid preference or (ii) ten percent (10%) selection factor, for bid/proposal evaluation purposes only. The incentive may only be used for one contract award per Commitment Period, and must be utilized within one (1) year from the end of the Commitment Period. A Mentor claiming an incentive on bidding on Miami-Dade County contracts based on the MPP must continue to meet the eligibility requirements in this Implementing Order.

c. Measurable Objectives

i. To create an environment that promotes a firm's ability to increase its capital, net

earnings and profit margins; therefore, increasing its bonding capacity and credit rating.

ii. Increase in Protégé firm's capacity to perform as depicted in equipment owned or leased, size of payroll, materials purchased, and overhead costs.

iii. Identify tools to increase the volume and value of Protégé's current and future work.

iv. Increase in Protégé's longevity and viability during and after concluding MPP participation.

v. Achievement of goals outlined in the Protégé's business plan.

d. MPP Eligibility Requirements

A. Mentor Eligibility Requirements

1. The Mentor shall be a company which is successful and productive in its area of work or services with a minimum of five (5) years of experience in its principal industry and which agrees to provide development assistance through the MPP.

2. The Mentor must be, and remain in good legal business standing with the State of Florida, Miami-Dade County and all other local jurisdictions. Mentors must be solvent and licensed to do business in Miami-Dade County.

3. The Mentor shall follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibilities as a Mentor, including attending all meetings scheduled with Protégé and/or SBD. Additionally, Mentors shall not have any SBE violations within the preceding two (2) years from its application to the MPP.

B. Protégé Eligibility Requirements

1. The Protégé shall: (a) be a company certified as a CBE-A/E with SBD; (b) have been actively conducting business for a minimum of two (2) years; (c) be ready for expansion; and (d) agree to participate fully in the MPP.

2. The Protégé must maintain an actual place of business where it provides its products and services, in Miami-Dade County throughout the duration of its MPP participation.

3. The Protégé firm must be and remain in good legal standing with the State of Florida, Miami-Dade County, and all other local jurisdictions. Protégés must be solvent and licensed businesses when applicable.

4. The Protégé agrees to follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD. Additionally, Protégés shall not have any SBE violations within the preceding two (2) years from its application to the MPP.

C. Mentor Application Process

1. The Mentor shall complete the application process to participate in the MPP. SBD may request additional documentation to ensure that eligibility requirements are met.

2. All documentation and information provided by the Mentor throughout the application process is subject to verification by SBD.

3. SBD will assign one Protégé to one Mentor. Both parties must sign a Mentor-Protégé Development Agreement to formalize their commitment to the MPP. Pairing Mentors with Protégés with a current or previous working relationship with each other, will be strongly discouraged since

   an objective of the MPP is to establish new productive relationships in the architecture and engineering industry.

D. Protégé Application Process

1. The Protégé shall apply with SBD on the appropriate application form to be considered for program participation as a Protégé. Accompanying the application should be a completed business plan and all required documentation, which may be pertinent to the Protégé's current financial standing, bonding level, capacity, staffing, workload, and other key business indicators. SBD may request additional documentation to determine MPP eligibility requirements are met.

2. All documentation and information provided by the Protégé throughout the application process is subject to verification by SBD.

3. SBD will assign one Protégé to one Mentor and both parties must sign a Mentor-Protégé Development Agreement to formalize their commitment to the MPP.

E. Mentor Responsibilities

1. Meetings - The Mentor shall conduct monthly face-to-face coaching and counseling meetings with the Protégé and assigned SBD staff, to review the Protégé's strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings shall be conducted in Miami-Dade County. The Protégé will also be expected to provide reports using SBD’s approved format on its efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s). Both parties should establish target dates for any further improvements or enhancements.

2. Informal Contacts - The Mentor is encouraged to routinely communicate with the Protégé to discuss daily problems and situations encountered by the Protégé and to provide periodic review.

3. Introduction to Resources - The Mentor shall facilitate networking opportunities in the banking, bonding, management, and business industries.

4. Independence - The Mentor must not assume managerial or administrative control of the Protégé during or following the mentorship period.

5. Working Relationships - Nothing in Mentor-Protégé Program regulations shall prohibit Mentors and Protégés from working together on joint ventures or in contractor-subcontractor arrangements on architecture, landscape architecture, engineering, surveying and mapping, or other projects provided that control of the Protégé firm remains with the Protégé

   itself. Protégés may be used to meet subcontractor goals on which the Mentor bids.

F. Protégé Responsibilities

1. Goals and Objectives - The Protégé shall prepare and strive to achieve targeted goals and objectives, which shall serve as a guideline and benchmark for evaluating the Protégé's progress in the MPP.

2. Meetings - The Protégé shall take part in monthly face to face coaching and counseling meetings with the Mentor and assigned SBD staff to review its strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings shall be conducted in Miami-Dade County. The Protégé will also be expected to provide reports using SBD's approved format on its efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s). Both parties should establish target dates for any further improvements or enhancements.

3. Informal Contacts - The Protégé is encouraged to routinely communicate with the Mentor to discuss daily problems and situations encountered by the Protégé and to obtain periodic counseling and guidance as needed.

4. Use of Training Resources - In an effort to enhance its business and industry knowledge and effectiveness, the Protégé is encouraged to attend training conferences, coursework, or workshops that will assist them in reaching targeted goals and objectives.

5. Independence - The Protégé is not permitted to relinquish managerial or administrative control to the Mentor.

G. Program Coordination

1. SBD is responsible for the overall coordination and administration of the CBE-A/E MPP. SBD's duties will include:

   a. Advertising and promoting the MPP.

   b. Organizing related business events.

c. Identifying and approving Mentors.

d. Identifying and certifying Protégés.

e. Assigning Mentors to Protégés as available.

f. Informing and reminding Mentors and Protégés of their roles and responsibilities.

g. Attending Mentor-Protégé meetings to promote effective cooperation and participation.

h. Reviewing meeting and progress status reports.

i. Maintaining program records.

j. Attracting the support of larger corporate sponsors.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami- Dade County, Florida.

Implementing Order No.: 3-34

Title: FORMATION AND PERFORMANCE OF COMPETITIVE SELECTION COMMITTEES

Ordered: 9/1/2026 **Effective:** 9/11/2026

AUTHORITY:
Section 1.01 of the Miami-Dade County Home Rule Amendment and Charter and Section 1.01 of the Code of Miami-Dade County.

SUPERSEDES:
This Implementing Order (I.O.) supersedes and replaces previous I.O. 3-34 ordered May 7, 2024 and effective May 17, 2024.

SCOPE:
Notwithstanding any contrary provision of any other Administrative Order (A.O.) or Implementing Order, this Implementing Order establishes procedures for the formation and performance of competitive selection committees (Committees or Committee) in Miami-Dade County's competitive procurement process, including Committees utilized in the acquisition of architectural and engineering (A&E) professional services under Section 287.055 of the Florida Statutes.

POLICY:
The County shall utilize Committees that are comprised of fair, impartial, objective and qualified individuals capable of evaluating the subject matter area in a competitive procurement process for the evaluation of offers, proposals, and qualifications submitted by individuals and firms seeking contract award. The provisions of this Implementing Order address the County's internal administrative processes and are not intended to serve as a basis to challenge the ultimate selection or contract award recommendation in any particular procurement action or to create any rights for any participant in a bid contest or other proceeding. This Implementing Order governs all County procurement processes involving such Committees.

All Committee proceedings shall be audiotaped by the County Mayor's designee.

FORMATION OF COMPETITIVE SELECTION COMMITTEES:

Competitive Selection Committee Pool
A pool consisting of potential County Committee members shall be established and administered by the Office of Small Business Development (SBD) or such other County Mayor designee. The pool shall consist of the County's executives, professionals, and subject matter experts within the County or from the private or non-profit sectors, other governmental/quasi-governmental organizations, and retired executives.

Pool members, including members who are not County employees, as well as the non-voting technical advisor shall be required to attend a workshop prior to serving on any Committee facilitated by the Strategic Procurement Department or a County Mayor designee. The workshop shall train pool members on the Committee's role and responsibilities, the pertinent legislation (including Florida's Government in the Sunshine laws, the County's Conflict of Interest and Code

of Ethics Ordinance, and County procurement rules and regulations), and provide a forum for discussion regarding membership on a Committee.

For contract awards with an estimated value equal to or exceeding twenty-million dollars ($20,000,000.00), the Committee shall be composed of five voting members and shall include an assistant, deputy, or division director or similarly leveled positioned employee, where possible, from the affected County user department. The majority of the selection committee members for a five-member committee must come from the affected County user department and be named by the user department director with the remaining balance of the competitive selection committee members, if any, be named by the Strategic Procurement Department (SPD). For contract awards with an estimated value under twenty-million dollars ($20,000,000.00), the Committee shall be composed of three voting members. Two selection committee members of a three-member committee must come from the affected County user department and be named by the user department director, and the remaining member must be named by SPD and must be from outside the affected user department. For competitive selection committees used for the purchase of professional architectural, engineering, landscape architectural, or land surveying and mapping services, selection committee members from non-user departments shall be professionally licensed engineers or architects with such requirement being waivable by SPD for good cause. A simple majority of the voting members of a Committee shall constitute a quorum necessary to hold meetings and take any action. Unless an exception is made in writing by the County Mayor or County Mayor's designee, all voting members of a Committee shall attend all meetings at which vendor presentations are made and proposals are evaluated. Attendance at Committee meetings through the use of remote media technology, where otherwise permitted by State and County law, shall be permitted provided a physical quorum of voting members of a Committee are present.

Competitive Selection Committee Formation and Appointment
Committees shall be formed as follows:

A. The County Mayor or County Mayor's designee shall determine the composition of each Committee based on the appropriate expertise required for each acquisition. Committee members shall be subject matter experts from within the County or from the private or non-profit sectors, other governmental organizations, or retired executives. In forming a Committee to replace an established contract, the County should, when practicable and in the best interest of the County, appoint the County employee charged with managing the existing contract, as a non-voting technical advisor to the Committee. In forming the Committee primary consideration shall be given to appointing County and non-County members with appropriate experience, knowledge, and subject matter expertise. To the maximum extent practicable, the appointment of Committee members among those who hold the appropriate experience, knowledge, subject matter expertise should be balanced in its representation of the Miami-Dade County community with regard to ethnicity and gender. Except in the case of an assistant or deputy director serving on a five-member Selection Committee, where possible, County employee Committee members should not be appointed who are in the same department and are direct reports to other members of the Committee.

B. The Selection Committee Coordinator shall be a non-voting procurement professional employee of the department or agency issuing the solicitation. The Selection Committee Coordinator shall administer the process and shall not be a member of the Committee.

C. The County Mayor or County Mayor's designee may appoint non-voting technical advisors to supplement the technical expertise of selection committees. Technical advisors are official members of the Committee but may not cast a vote and are not counted for purposes of quorum.

D. The County Mayor or County Mayor's designee shall appoint two alternate voting members at the time the Committee is appointed. The County Mayor or County Mayor's designee may appoint more than two alternate members if the County Mayor or County Mayor's designee deems it in the best interests of the procurement process at issue. The Selection Committee Coordinator may convert alternate voting members to voting members in the event that substitution of a voting member is required. If the alternate voting member has not attended all prior meetings of the Committee, the substitution will only be allowed before any scoring meeting has occurred.

Upon notice, SBD or such other administrator designated by the County Mayor shall consult with the issuing department or agency and recommend Committee appointments to the County Mayor or County Mayor's designee within seven (7) calendar days.

PERFORMANCE OF COMPETITIVE SELECTION COMMITTEES:
Within ten (10) calendar days following the deadline for submitting proposals, the Selection Committee Coordinator shall prepare a list of respondents and subcontractors and transmit that list with an accompanying affidavit to Competitive Selection Committee members for completion. Each individual, including any non-voting technical advisors, appointed to a Committee shall sign the accompanying affidavit attesting to his/her neutrality in performing the duties of a Committee member ("Neutrality Affidavit") and acknowledge that his/her service on such committee shall be in compliance with the Conflict of Interest and Code of Ethics Ordinance (Sec. 2-11.1) and submit it to the Selection Committee Coordinator within three (3) business days. An individual who provides false information may be subject to investigation and prosecution under Florida law. County employees providing false information shall also be subject to disciplinary action up to and including dismissal from County employment. All Committee members shall affirm and acknowledge that service on the Committee is subject to the requirements and prohibitions of the County's Cone of Silence Ordinance and the State of Florida's Government in the Sunshine Law.

Moreover, and in accordance with the Resolution No. R-449-14, individuals appointed to the Committee must submit their updated resume, through the Selection Committee Coordinator, to the Commission Auditor at the same time as they submit their Neutrality Affidavit. Within five (5) business days following receipt of resumes by the Selection Committee Coordinator, the Commission Auditor shall conduct background checks for all Committee members verifying no family control, financial interest, and/or employment (past or present), with any vendor or proposed subcontractor under consideration by the Committee.

The Committee Auditor shall submit the results of the background check to the issuing department overseeing the competitive process. The Commission Auditor will also submit the results of the background checks to the Commission on Ethics and Public Trust for further review of the findings. The Commission on Ethics and Public Trust shall endeavor to provide any response within fourteen (14) calendar days.

Any request by County staff to be excused from Committee service must be in writing, delineating serious and legitimate reasons, and must be signed by the Department/Agency Director and sent to the County Mayor or County Mayor's designee through Small Business Development or other administrator. In the event that a Committee member is excused from service, an identified alternate shall assume the responsibilities of a voting Committee member.

SMALL BUSINESS ENTERPRISE COMPLIANCE REVIEW:
Within ten (10) calendar days following the deadline for submitting proposals, the County Mayor or County Mayor's designee or such other authorized person shall review all proposals and, if

necessary, request SBD or such other County Mayor designee to review any applicable proposal materials for compliance with or applicability of any relevant Small Business Enterprise Program goals, measures, or preferences. SBD or such other County Mayor designee shall conduct its review and provide any applicable response within ten (10) calendar days after receiving a request from the County Mayor or County Mayor's designee.

For the avoidance of doubt, the timelines provided here shall govern in the absence of any applicable deadlines provided elsewhere in the County Code, other County administrative/implementing orders, or other applicable law. In the event of a conflict between this implementing order and any deadlines provided elsewhere for review of Small Business Enterprise Program goals, measures, or preferences, the earlier deadline shall prevail.

SCORING GUIDELINES:
Except for Committees procuring "Professional Services" as defined by Section 2-10.4 of the Code of Miami-Dade County, Committee members shall be provided written guidelines and shall use the guidelines in preparing their scores for the evaluation of each criteria identified in the solicitation.

The guidelines shall be in substantially the form provided below:

Rating	Score as a Percentage of Total Available Points for Criteria	Guidelines
Excellent	90-100%	The proposal's response to the criteria is complete and well defined, providing relevant supporting details and examples. The response to this criteria indicates a high prospect for outstanding performance on the resulting contract. All or a majority of the expectations for this criteria are clearly met or exceeded.
Good	70-89%	The proposal's response to the criteria is generally complete and well defined, providing reasonably well-developed responses with a good amount of relevant supporting details and examples. The response to this criteria indicates a moderate to high prospect for good performance on the resulting contract. Most of the expectations are met for this criteria.
Fair	50-69%	The proposal's response to the criteria is fairly complete, but lacking some definition or clarity. The response is not well developed to address the criteria and provides limited supporting details and examples. The response to this criteria indicates a prospect of achieving satisfactory performance on the resulting contract, but there may also be some risk. Few of the expectations are demonstrated to be met for this criteria.

Poor	49% or below	The proposal's response to the criteria is not complete or provides minimal information, lacking sufficient details and examples. The response to this criteria indicates a moderate to high risk of not achieving satisfactory performance on the resulting contract. Does not demonstrate ability to meet expectations for this criteria.

The Selection Committee Coordinator shall schedule an initial scoring meeting to occur within thirty (30) calendar days after completion of all required background checks, SBE compliance reviews, responsiveness opinions in accordance with I.O. 2-13, or other applicable determinations. However, if the Selection Committee Coordinator reasonably determines a solicitation to be complex by virtue of its technical subject matter, contract award amount, or other relevant factors, then the initial scoring meeting shall be scheduled no later than sixty (60) days after completion of all required background checks, SBE compliance reviews, responsiveness opinions in accordance with I.O. 2-13, or other applicable determinations to provide Committee members sufficient time to review all proposal materials. If the Selection Committee determines that any additional meetings are required to, for example, receive oral presentations from prospective bidders or provide additional time to review proposals prior to scoring, then such meetings shall occur no later than fifteen (15) calendar days after the initial scoring meeting of the Selection Committee.

During the scoring meeting, the Selection Committee Coordinator shall monitor the points awarded to each vendor by each Committee members. In the event that a Committee members score for a criteria varies in excess of thirty-three percent (33%) of the average score award by all Committee members by criteria, the Selection Committee Coordinator shall request that such Committee member provide a verbal justification in the meeting for the score. The Selection Committee Coordinator should encourage Committee members to discuss this criteria including the justification provided. The Committee members may change their scores based on the specific discussion. Should the variation remain, the Selection Committee Coordinator shall confirm and state on the record the justification provided by the Committee member. This justification shall be included in the Selection Committee Coordinator's report to the County Mayor or County Mayor's designee. Upon review of such score and the justification, the County Mayor or County Mayor's designee may accept or reject that selection Committee member's score and a report of such decision shall be provided to the Board of County Commissioners for solicitations requiring approval of the Board. In addition, if any of the deadlines established in this Implementing Order are missed, then the County Mayor shall disclose the missed deadlines and the department that missed the relevant deadline in the County Mayor's memorandum contained in the agenda package where the related matter is presented to the Board for consideration.

SELECTION COMMITTEE CONSIDERATION OF REPORTS AND FINDINGS OF THE MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL OR MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST:

The County Mayor or County Mayor's Designee shall provide to the Committee all reports and findings of the Miami-Dade Office of the Inspector General ("OIG") or the Miami-Dade County Commission on Ethics and Public Trust ("COE") which find substantiated allegations or adverse findings, conclusions, or recommendations regarding any vendor or proposed subcontractor under consideration by the Committee within seven years of the submittal date of the proposals being evaluated (collectively, "Reports") for consideration in accordance with the evaluation of each applicable criteria identified in the solicitation. In the event the OIG or COE issues a Report after the Committee has scored and ranked the vendors the County Mayor or County Mayor's designee may re-empanel the Committee to consider if such Report would change the previous

rankings of the vendors. If the Committee determines that the Report would change the previous rankings of the vendor identified in the Report, then the Committee shall re-score the vendor identified in the Report solely based on the impact the information identified in the Report would have on the scoring of the vendor in accordance with the applicable criteria identified in the solicitation, re-rank the vendors, and submit a written justification for the revised rankings to the County Mayor or County Mayor's designee. Upon review of such re-ranking and the justification, the County Mayor or County Mayor's designee may accept or reject the new rankings and a report of such decision shall be provided to the Board of County Commissioners for solicitations requiring approval of the Board. The County Mayor shall, in any recommendation to the Board of County Commissioners, either attach all reports and findings issued by the OIG or the COE and considered by the Committee or provide a description of such reports and findings and a link to where such reports and findings may be viewed.

ADMINISTRATIVE LEAVE FOR SELECTION COMMITTEE MEMBERS:
County employees shall only be entitled to receive any applicable administrative leave for their work on Competitive Selection Committees if they serve as a scoring member and have timely completed all committee-related duties, and such administrative leave must be used within one year from the date that the employee completes his or her service as a scoring member of a Competitive Selection Committee.

EFFECTIVE DATE:
This Implementing Order shall become effective after approval by the Board of County Commissioners.

Implementing Order No.: 3-39

Title: Standard process for construction of capital improvements, acquisition of professional services, construction contracting, change orders and reporting

Ordered: 9/1/2026 **Effective:** 9/11/2026

AUTHORITY:
The Miami-Dade County Home Rule Amendment and Charter including, without limitation, among others, Sections 1.01 and 2.02 and Sections 255.20 and 287.055 of the Florida Statutes; Sections 2-8.1, 2-8.5, 2-8.2.7, and 2-10.4 of the Code of Miami-Dade County (Code); Resolution Nos. R-754-97, R-1403-97, and R-1404-97; and Ordinance No. 24-47. References to legislations will be deemed to include amendments to the legislations once adopted and effective, as applicable. All legislations and Administrative/Implementing Orders cited are deemed as being incorporated by reference in this Implementing Order. Any references to the County Manager in past legislations will mean, for the purposes of this Implementing Order, the Mayor, and his/her designee(s).

SUPERSEDES:
This Implementing Order (IO) supersedes Administrative Order (AO) No. 3-39, Standard Process for Construction of Capital Improvements, Acquisition of Professional Services, Construction Contracting, Change Orders and Reporting, ordered May 7, 2024, and effective May 17, 2024.

SCOPE:
This IO establishes the standard procedures for an orderly administrative process for the implementation, classification, tracking, acquisition, monitoring, and reporting of professional architectural, engineering, landscape architecture, and land surveying and mapping services, including design-build and general construction services either through the Miscellaneous Construction Contracts (MCC) or other alternative project delivery methods.

This IO shall be applicable to Miami-Dade County project solicitations seeking the acquisition of Professional Services and general construction services as described above, which are governed by the Consultants' Competitive Negotiation Act, Section 287.055 of the Florida Statutes ("the CCNA"), Local bids and contracts for public construction works", etc., Section 255.20 of the Florida Statutes, and Section 2-10.4 of the Code.

This IO does not apply when valid public emergencies have been formally declared pursuant to applicable laws and regulations.

DELEGATION OF AUTHORITY; RESPONSIBILITIES OF THE STRATEGIC PROCUREMENT DEPARTMENT (SPD):

With respect to Covered Services, the County Mayor hereby delegates to the SPD Director the authority and responsibility to:

1. Provide advice regarding different project delivery methods and make recommendations to the client department on contracting strategies.
2. Prepare the solicitation documents for acquisition with input from the client department and advertise each solicitation.
3. Schedule, advertise, record, coordinate and conduct the selection and negotiation committee meetings for the acquisition of Covered Services including, without limitation, Professional Services included in the CCNA.
4. Indicate, in applicable solicitation(s), any participation restrictions specific to the solicitation, and/or subsequent acquisition of Covered Services
5. Identify in the advertisement any restrictions, exclusions, and/or exemptions from consultant participation in the potential forthcoming services. Include clarification in the advertisement of who may or may not participate in the specific solicitation as a result of specific requirements, previous contractual engagements, conflict of interests, or competitive advantage.
6. Request and receive any additional/supplemental information from Proposers after submittal deadline.
7. Ensure compliance with this IO.
8. Issue waivers to the extent that the Mayor is allowed to issue waivers and subject to the Mayor's limitations in issuing waivers. Any waivers will be in conformity with applicable AOs and/or IOs. Waivers exceeding the Mayor's authority will be presented to the Board of County Commissioners (BCC) for their approval.

POLICY:
This IO shall govern all phases of the Miami-Dade County administrative process, through SPD, for the acquisition of Covered Services, unless otherwise provided. To the extent of the Mayor's authority, the County Mayor or Mayor's designee may grant written exemptions from the application of the IO where the County Mayor or Mayor's designee determines that it is in the best interest of the County. Waivers exceeding the Mayor's authority will be presented to the BCC for their approval.

DEFINITIONS:
This IO hereby incorporates by reference all definitions included in the CCNA, Section 287.055, Florida Statutes, in addition to the following:

Advancing Firms means proposers selected by the Competitive Selection Committee to advance to the next phase of the evaluation process.

Affiliates means two (2) or more related parties, business concerns, organizations, corporations, limited liability companies, professional associations, partnerships, other business entities, or individual relationships in which, directly or indirectly, (i) either one party controls or has the power to control the other, or (ii) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, the bidder or Proposer, the principals, corporate officers, and managers of a bidder or Proposer, or the spouse, domestic partner, parents, stepparents, siblings, children or step children of a bidder or Proposer or the principals, corporate officers, partners, and managers thereof, which have a direct or indirect ownership interest in another bidder or Proposer, shared facilities and equipment and common use of employees, or a business entity organized by a debarred entity, individual, or Affiliate(s) following the debarment of a Contractor that has the same or similar management, ownership, or

principal employees as the Contractor that was debarred or suspended, as defined in Section 10-38 of the Code, “Debarment of contractors from County work”.

Affirmative Action Plan (AAP) means a plan which sets forth the procedures the entity utilizes to demonstrate its track record in regard to equitable employment, promotion, and procurement practices.

Alternative Technical Concept (ATC) means a request by a shortlisted Design-Builder to have the County grant an exception to the Project’s advertised specifications for inclusion in a final submittal.

Amendment means a written supplemental agreement executed by the County and the vendor, covering Modifications to a Professional Services Agreement.

Average Dollar Value (ADV) means the calculation of the average of the total of the dollars awarded and paid by the County, for Professional Services, to the prime Firm and all sub-Consultants serving as prime firms in previous engagements, during the three-year period immediately preceding the submittal date.

BCC means the Miami-Dade County Board of County Commissioners.

Best Value means a process of selection in which the final selection criteria primarily includes qualitative subjective considerations in addition to price and not solely a low bid price.

Capital Construction Project or Capital Project means a grouping of activities from planning through construction uniquely identifying a constructed or modified fixed asset involving the construction trades.

Change Order means a written amendment executed by the County, the vendor, and the vendor’s Surety (if required by the Contract, required insurance certificate if required by the Contract, or the applicable bond), covering modifications to the Contract.

Client Department means the County department requesting the procurement of Covered Services.

Code of Miami-Dade County, Florida (Code) means the systematic and comprehensive compilation of Miami-Dade County laws, rules, and/or regulations that is consolidated and classified according to subject matter. References to the County Code are references to the codified ordinances of Miami-Dade County published online by Municode.

Consultants’ Competitive Negotiation Act (CCNA) means Section 287.055 of the Florida Statutes, as amended. The County may apply any state approved Professional Services solicitation methodology that complies with this Statute. The County may employ any solicitation or pricing methodologies used in the CCNA or used by the State of Florida or any of its agencies, departments, or instrumentalities.

Competitive Selection Committee (CSC) means the committee appointed by the County Mayor or Mayor’s designee to evaluate qualifications and performance of the firms requesting consideration for the specific project and to rank the firms in order of preference, as defined in Section 2-10.4(5) of the Code.

Construction Manager-at-Risk (**CM-at-Risk)** means a procurement method which allows for a firm, following a competitive selection process, to establish a maximum price, known as the Guaranteed Maximum Price ("GMP"), act as the general contractor, bid work to trade contractors, and work cooperatively through the design, bid, and construction phases within the GMP and schedule.

Consultant means an Architect or Engineer, or their authorized representatives identified in the Notice-to-Proceed letter including, but not be limited to, the resident Architect/Engineer, the Construction Manager, and the Architect/Engineer of Record.

Continuing Contract means a Contract for Professional Services entered into in accordance with all the procedures of the CCNA and Section 2-10.4(1)(f) of the Code.

Contract means an executed agreement between an entity and Miami-Dade County. This term is synonymous with Professional Services Agreement (PSA), Design-Build Contract, or Construction Contract, as applicable.

Contractor means the individual, Firm, partnership, limited liability company, or corporation, or combination thereof, private, municipal, or public, including joint ventures, duly licensed under Florida Statutes, which, as an independent Contractor, has entered into a Contract with Miami-Dade County, who is referred to throughout the Contract Documents by singular in number and masculine in gender.

County Mayor or Mayor's Designee means the chief executive officer responsible for the day-to-day operations of County government, or his/her designee.

County Regulations means a County ordinance, resolution, administrative order, implementing order, or specification.

Covered Services means professional architectural, engineering, landscape architecture, and land surveying and mapping services, including design-build, general construction services, the Equitable Distribution Program (EDP), and other forms of alternative Project delivery methods, all as defined in the CCNA.

Debar or Debarment means action taken to exclude a consultant or contractor, its individual officers, and its shareholders with significant interests, its qualifying agent and/or its affiliated businesses from County contracts, whether as a prime consultant or sub consultant as provided in Section 10.38 of the Code.

Design-Build Contract means a single contract with a design-build firm for the design and construction of a public construction project , as defined in the CCNA.

Design-Build Firm (a/k/a Design-Builder) has the meaning provided in the CCNA.

Design Criteria Package has the meaning provided in the CCNA.

Design Criteria Professional has the meaning provided in the CCNA.

Equitable Distribution Program (EDP) means a program administered by ISD, or successor department, that streamlines the solicitation process for Continuing Contracts, by distributing Professional Services to eligible firms on a defined basis. EDP Projects must have construction

costs and study activities within the thresholds established in the CCNA for Continuing Contracts.

EDP Firms represent a group of Architectural and Engineering (A&E) professional firms that hold a County Pre-Qualification Certificate and are approved by the County to participate in the Equitable Distribution Program.

Expedite Process means contracts, change orders, and amendment/modifications processed utilizing the authority stated in Sections 2.8.2.5 through 2.8.2.8 of the Code. Contract documents not eligible for processing under the expedited procedure shall be submitted through the normal process in accordance with Section 2.8.3 of the Code.

Firm has the meaning provided in the CCNA.

First-Tier/Step 1 means the evaluation of responsive Proposers pursuant to the applicable criteria as specified in the Notice to Professional Consultants (NTPC) or Request for Design-Build Services (RDBS).

Internal Services Department (ISD), or successor department, means the department of Miami-Dade County who is charged with the administration of facility management, design and construction management, fleet management, risk management, surplus property disposition services, and capital inventory management. Additionally, ISD is engaged in real estate development and management, Americans with Disabilities Act compliance, elevator regulation, and parking services.

Local Certified Veteran Business Enterprise means the program established under Section 2-8.5.1 of the Code and Section 295.187, Florida Statutes, the "Florida Veteran Business Enterprise Opportunity Act."

Locally Headquartered Business (LHB) has the meaning provided in Section 2-8.5 of the Code.

Local Preference means the preference given under Sections 2-8.5 and 2-10.4 of the Code.

Miscellaneous Construction Contract (MCC) has the meaning provided in IO 3-53.

Modification means a written amendment or supplemental agreement executed by the County, the Professional Firm and the Firm's Surety (if required by the agreement or the applicable bond), covering modifications to the agreement.

Notice to Professional Consultants (NTPC) means a document soliciting professional services under the CCNA which includes but is not limited to a description of the scope of services, Technical Certification requirements, selection criteria and methodology, Review Committee contract measures established for the subject project, data sheets or forms to be completed and submitted as part of the proposal, and submission deadline date.

Ordinal Score means the score after the individual CSC members' total Qualitative Points, for each respondent, is converted in numerical order. For each CSC member, the highest Qualitative Points shall be equivalent to the lowest ordinal score.

Past Performance Evaluation (PPE) means an evaluation prepared by project managers of the

performance of a Firm during or upon conclusion of a Project.

Pre-Qualification Certification (PQC) means the County's certification process that may include, but not be limited to, Technical Certification, affirmative action plan verification, and vendor registration.

Prime Consultant means a Firm that enters into a PSA with the County to render Professional Services under a solicitation.

Professional Services has the meaning provided in the CCNA.

Professional Services Agreement (PSA) means a Contract to provide services within the scope of the practice of architecture, engineering, landscape architecture, land surveying and mapping, as defined by the CCNA and performed by an architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

Progressive Design-Build Contract has the meaning provided in Section 337.025(2), Florida Statutes, as amended.

Project has the meaning provided in the CCNA.

Proposer means the person, Firm, entity, or organization submitting a response to a solicitation. This term is synonymous with "Respondent," "Prime Consultant," or "Design-Builder."

Qualitative Points means the point values assigned by CSC members for each selection criterion.

Request for Design-Build Services (RDBS) means a solicitation for acquisition of design-build services. The RDBS may include, but is not limited to, a description of the scope of services, Technical Certification requirements, selection criteria and methodology, Design Criteria Package, forms to be completed and submitted as part of the proposal, and submission deadline date.

Responsibility has the meaning established in IO 2-13.

Responsiveness has the meaning established in IO 2-13.

Request to Advertise (RTA) means a document prepared by a department to authorize and initiate the advertisement of a solicitation to contract for Covered Services as applicable.

Rotational Value (RV) means a Firm's position in the EDP Pool. The Firm's position in the ranking is based on their Technical Certification categories and the RV. The RV is established by a Firm's three-year award and payment history.

Second-Tier/Step 2 means the evaluation of short-listed Proposers pursuant to the applicable criteria as specified in the NTPC or RDBS.

Small Business Development, Office of (SBD), or successor department, is the department of Miami-Dade County charged with managing small business programs and services.

Small Business Enterprise Goods Program (SBE-G&S) means a small business certification designation used for the purchase of goods as defined in Section 2-8.1.1.1 .2 of the Code.

Small Business Enterprise Services Program (SBE-G&S) means a small business certification designation used for the purchase of services as defined in Section 2-8.1.1.1.1 of the Code.

Small Business Enterprise Architecture & Engineering Program (SBE-A&E) means a small business certification designation used for the purchase of certain professional architectural, landscape architectural, engineering, or survey and mapping services, as defined in Section 2-10.4.01 of the Code.

Small Business Enterprise Construction Services Program (SBE-CON) means a small business certification designation for construction related enterprise as defined in Section 10-33.02 of the Code.

Strategic Procurement Department (SPD), or successor department, means the department of Miami-Dade County charged with the administration of the processes and programs covered in this IO unless otherwise expressly specified.

Sub-Consultant means an A&E Firm, which as a Team member, has input and responsibility for certain aspects of a Project, and who provides Professional Services under the discretion of a Prime Consultant/Contractor. Term is not synonymous with Sub-contractor.

Sub-contractor means a non-A&E Firm, which provides non-A&E services under the discretion of a Prime Consultant/Contractor. Term is not synonymous with Sub-consultant.

Team means all Firms identified in the Proposer's submittal to provide services specified in the solicitation.

Technical Certification (TC) means a comprehensive review by the County Technical Certification Committee affirming a firm's eligibility to provide professional services to the County in various Technical Certification categories.

Technical Certification Committee means the committee appointed by the County Mayor or Mayor's designee, pursuant to Section 2-10.4(5) of the Code, to review the statements of qualifications submitted by Firms to ascertain whether a Firm is fully qualified to render the required Professional Services to the County.

SECTION I - CAPITAL IMPROVEMENTS PROJECT TRACKING AND REPORTING REQUIREMENTS

A. Initial Planning and Scheduling

All capital construction projects are subject to BCC prioritization and budget approval. The planning and scheduling functions are important to the success of a project and shall be an element of the initial phase of project development. Upon approval of a capital construction project by the BCC, the client department shall provide SBD with all relevant project data including, but not limited to, the following:

1. Capital Budget assigned project number

2. Departmental project tracking number(s)

3. Project description

4. Project location

5. Commission district(s)

6. Needs assessment document

7. Funding source including time and use constraints when applicable

8. Initial project schedule including, but not limited to:

    a. Planned completion of design criteria documents

    b. Planned land acquisition if applicable

    c. Planned start of the Architectural and Engineering design

    d. Planned start of construction

    e. Planned completion of project

B. Design Criteria

To the greatest extent possible, capital construction projects require that a design criteria document be prepared prior to the actual design creation. Larger or more complex projects may require a Design Criteria Professional service agreement to prepare these documents. The completion of the design criteria document is the first milestone in the capital construction process. For a miscellaneous design project, the design criteria package may be as simple as stating the applicable standards while for a building construction project it may include, but is not limited to, the following:

1. Function of the project

2. Design capacity requirements both short-term and long-term

3. Project constraints including, where applicable:

    a. Funding

    b. Time schedules

    c. Footprint or proposed site plan

    d. Land availability

e. Existing structures

f. Location of existing utilities, utility easements, or similar restrictions

g. Ongoing operations impact

h. Permitting and zoning issues

i. Traffic planning

j. Demographics

k. Architectural style

l. Landscaping

m. Interagency/intergovernmental coordination of ongoing/future/planned projects.

If a professional service agreement is used for the acquisition of architectural and engineering services, the design criteria document should be part of the solicitation package. If it is anticipated that a professional service agreement will be utilized for the design effort, then prior to the anticipated advertisement the department should have completed the scope of services and design criteria package. Exceptions to advertising without a completed design criteria package must be authorized by the Mayor or Mayor's designee prior to placement of the advertisement. The scope of services and technical classifications for the project should be submitted to SBD for the establishment of Small Business Enterprise goals.

C. Land Acquisition

The appropriate Administrative and/or Implementing Orders, the Code, and Florida Statutes shall govern land acquisition.

D. Architectural and Engineering Design

Upon completion and review of the design criteria document, the client department shall enter the design phase of the project. Project progress reporting shall include, but is not limited to:

1. Planned commencement of design effort or notice to proceed to consultant

2. Planned thirty percent (30%) completion (50% for utility design)

3. Planned dry run plans review submission or seventy percent (70%) completion

4. Planned completion of construction specification documents

5. Planned start of construction groundbreaking

6. Planned completion of project

E. Construction

Approximately thirty (30) calendar days prior to the anticipated advertisement date, the client department should have completed the construction specifications package. The client department should create and submit the project data sheet with appropriate trade recommendations to SBD to establish SBE-CON goals. Also, the client department shall initiate the Request to Advertise obtaining required signatures and budgetary approvals. Information to be included on the Request to Advertise and Award Recommendation documents is provided in Section III – Capital Construction Contracting Policy. The Request to Advertise Project Memorandum shall include, but is not limited to, the following:

1. Pre-bid Meeting Date if applicable
2. Bid opening date
3. Planned Bid Award date
4. Planned pre-construction meeting
5. Planned Notice to proceed
6. Planned groundbreaking
7. Planned completion date

All capital improvement projects are subject to BCC prioritization and budget approval. The planning and scheduling functions are key to the success of a project and shall be an element of the initial phase of project development. Upon approval of a capital project by the BCC, the client department shall enter into the County's available database all relevant project data.

SECTION II – ACQUISITION OF PROFESSIONAL SERVICES

POLICY:
It is the policy of the County to have a fair and equitable selection and distribution process for the solicitation and award of Contracts for Covered Services. The procurement process will be performed depending on the type of Covered Services as follows:

A. Request to Advertise (RTA) for Covered Services

1. Provisions

Professional Services requests that are below the threshold for Continuing Contracts as established by the CCNA shall be procured through a Continuing Contract, or through the EDP, without an RTA. SPD may identify other opportunities for Continuing Contract services to address the needs of the client department that are in the County's best interest. When Professional Services are required in excess of the CCNA thresholds for

Continuing Contracts, and for all Contracts which the County solicits outside of the EDP, the client departments shall:

a. Develop a draft RTA based on the project and associated sites, pursuant to the County's Capital Budget and Multi-Year Plan, or the funding authority and approval allocated for the project;

b. Pursuant to Section 2-10.4 of the Code, submit project's relevant data for SBD's consideration to establish project measures or set aside as deemed appropriate, and make any appropriate recommendation for the process of selection, including any for the use of a one tier method of selection, upon application of the standards set forth below;

c. Upon certification from the Office of Management and Budget (OMB) that funding is available, and establishment of project goals by SBD, the client department shall prepare a complete package, along with a detailed scope of work and design criteria document and submit to SPD for review. Scope of services and design criteria may differ significantly based on the nature and complexity of the desired professional service agreement;

d. Finalize the RTA and forward it to OMB to certify funding availability;

e. Forward it to the County Attorney's Office (CAO) to review for legal sufficiency;

f. Approval by the County Mayor or Mayor's designee shall constitute concurrent approval of the measures established by SBD. Upon receipt of approval, SPD shall forward a copy to the client department and the Architectural and Engineering (A&E) Unit may proceed with the advertisement.

2. Solicitation for Covered Services

SPD shall review and approve the RTA for the scope of work, criteria, and pertinent information to be incorporated in the solicitation document(s) for public advertisement. While SPD shall generally adhere to the criteria for selection set forth in this IO, the SPD Director or the Director's designee shall be entitled to make the final determination, in the exercise of his/her professional discretion, of what selection criteria shall be utilized in the solicitation to address the needs of the project in the best interests of the County.

The client department may recommend preferred project experience and qualifications as part of the solicitation evaluation criteria. To increase competition, any preferred criteria or pre-requisites recommended by client departments will be evaluated by SPD on a project-by-project basis. All project/staff experience pre-requisites are to be indicated as "preferred" instead of "required" in the solicitation document.

SPD shall prepare the public announcement for publication in a newspaper(s) of general circulation. The public announcement shall contain information on obtaining the solicitation document, inclusive of the scope of services for the project, and the procedures to be followed by any Firm wishing to be considered.

The Cone of Silence, as defined in Section 2-11.1 of the Code, commences after the advertisement of the solicitation document.

3. Pre-qualification Certifications (PQC)

All Firms providing Professional Services are required to be prequalified and technically certified by the County. Proposers shall have an active PQC status at the time of negotiation and at Contract award recommendation. Technical Certification is required for Firms providing Professional Services at the time of proposal submittal deadline, evaluation, negotiation, and if selected, at the time of Contract award, and throughout the effective term of the Contract. If at the commencement of these phases, a Proposer and its Sub-consultants do not have the required Technical Certification, the proposal will be deemed non-compliant with the solicitation requirements and will not advance to the next step of the process. Should there be a lapse on the Technical Certification status in between the procurement phases, SPD will make the effort to have the Proposer cure the lapse prior to the next procurement phase, if the project timeline is not impacted. Client departments are responsible for verifying PQC/TC compliance at the time of Contract award and throughout the effective term of the Contract.

A Competitive Selection Committee (CSC) shall be appointed by the County Mayor or Mayor's designee, pursuant to IO 3-34.

In a Two-Tier selection process, if a member of the CSC is no longer serving on the CSC at the time of the Second-Tier Selection, the remaining CSC members will continue with the process until the CSC concludes their deliberations and makes their recommendation.

The selection process shall adhere to the CCNA and Section 2-10.4 of the Code in accordance with the guidelines established in this IO. By application of the criteria and processes set forth in this IO, the County intends to short list and select in the order of preference, not fewer than three (3) responsive and responsible proposals. If the County receives fewer than three (3) proposals, or fewer than three (3) proposals are determined to be responsive and responsible to perform the required services, the County may conduct an analysis of market availability for the specific subject services and, in its sole discretion, may proceed with the proposal(s) received which are responsive and responsible.

Any requested changes to the proposed Team composition after the response deadline, including replacement of firm(s) or assigned personnel listed in the proposal, will only be considered (1) before the completion of Negotiations; and (2) solely in the case of unforeseen circumstances (e.g., a change in employment status outside the employer's control or a change in the organizational structure of any Team member).

Any such change to the proposed team submitted by the Proposer is subject to County approval, in its sole discretion, which may include a review by the client department and SPD as to all matters concerning the requested change, including the time elapsed between the qualifying event and the submittal of the request, comparability of experience and qualifications and possession of required technical certifications (as applicable), and consultation with the CAO.

B. Notice to Professional Consultants (NTPC) Solicitation

1. Provisions

SPD shall be responsible for the County's procurement of A&E Services with the coordination of the client departments. A&E Services solicitations shall comply with the CCNA. The following is applicable to the A&E Services process:

All Consultant selections shall proceed to Second-Tier evaluation unless the following circumstances are applicable: (1) the solicitation is for work to be assigned through individual work orders for engineering Contracts with a value of less than $5 million, or the solicitation is for work to be assigned through individual work orders for architecture Contracts with a value of less
than $2 million, as specified in the solicitation document; or (2) the CSC waives the Second-Tier by a majority vote when the solicitation allows a Two-Tier selection process. Under these two above referenced circumstances, the Consultant selection shall be based on the results of the First-Tier evaluation only.

The NTPC may include limitations as to page count, font size, spacing and other format requirements relating to the proposal. The following are some, but not all, of the provisions which may typically be included in the NTPC:

a. Except where restricted by federal, state laws, or external regulations, respondents must submit as either a Prime Consultant or Sub-consultant. Failure to comply with this provision may deem the proposers non-responsible.

b. Limit on the number of Teams that Consultants may participate in when responding to a solicitation as a Sub-consultant for the purpose of mitigating potential Organizational Conflicts of Interest. Any such limitation shall be determined by the SPD Director or the Director's designee and included in the solicitation document.

c. If at any time the County has reason to believe that any person or Firm has provided incorrect information or made false statements in a proposal, or oral presentation before a selection committee, or if the misrepresentation is confirmed following a Contract award, the County Mayor or Mayor's designee shall refer the matter to the Office of the Inspector General and/or other investigative agencies. This includes misrepresentation of information regarding dollars awarded and paid on all County Contracts. In addition to pursuing any other legal remedies, the County Mayor or Mayor's designee may, in his/her sole discretion, find the proposer non-responsible, and eliminate the Firm from consideration or if the misrepresentation is confirmed following Contract award, may terminate the Contract. Furthermore, the County Mayor or Mayor's designee may initiate Suspension and/or Debarment proceedings in accordance with the Code.

d. An accounting of all County awarded dollars allocated and paid for Professional Services, records, and performance evaluation history that will be used in the evaluation of proposals shall be maintained by the County.

2. Evaluation

The Architectural and Engineering Professional Services solicitations typically involve a Two-Tier selection process as specified in the criteria included in the solicitation document. The First-Tier is the Evaluation of Experience and Qualifications, and the Second-Tier is the Oral Presentations.

As more particularly set forth below, the evaluation in both tiers involves the CSC's evaluation and application of points based on the CSC's qualitative evaluation of the proposals, and the concurrent application by SPD staff of certain points based on eligibility and/or established formulas.

a. **First-Tier Selection: (Maximum 110 points)**

The CSC shall assign points based on the selection criteria set forth in 1A, 2A, 3A, and 4A below which totals 90 points. SPD staff shall assign an additional 20 points based on the selection criteria set forth in 5A, 6A, 7A, and 8A as applicable to the project.

Criterion 1A: QUALIFICATIONS OF THE TEAM MEMBERS ASSIGNED TO THE PROJECT (Maximum of 40 points)

Evaluation of the qualifications of the individuals and experience level of the professional and management staff to be assigned to the project, quality and availability of the project manager and staff of the Firm to be assigned, if any, including any preferred qualifications as specified in the NTPC. The qualifications shall also include, but not be limited to, familiarity with County Regulations and sustainability design principles as set forth in the solicitation documents.

Criterion 2A: PAST EXPERIENCE ON SIMILAR PROJECTS (Maximum of 30 points)

Evaluation of the Firm's past experience, professional role, and knowledge of similar projects, including any preferred experience as specified in the NTPC; and the Firm's understanding of the scope of work which may include, but not be limited to, studies performed that may affect the specific project being evaluated, key design elements, approach to the project, understanding and awareness of the regulatory, permitting, and compliance requirements involved with the project, health and safety programs, and number of LEED accredited completed projects, as applicable.

Criterion 3A: PAST PERFORMANCE OF THE FIRMS (Maximum of 15 points)

Evaluation of the Firm's past performance, overall interrelationship with proposed Team members, responsiveness, experience in scheduling projects, and timely submittal of deliverables on past projects will be considered, including performance on any non-County projects. CSC members are required to review the available Past Performance Evaluation reports in the County's database as of the submittal due date.

Criterion 4A: FIRM'S PROJECT STAFFING AVAILABILITY, AND ABILITY TO MEET TIME AND BUDGET (Maximum of 5 points)

Evaluation of the Firm's staffing levels assigned to the project, including the Firm's ability to replace key personnel if so needed, their experience in scheduling projects, systems utilized to keep track of the project schedule, cost controls, familiarity with County guidelines and regulations, as well as tools and methods employed to avoid cost overruns, change orders, and project delays.

Criterion 5A: AMOUNT OF WORK AWARDED AND PAID BY THE COUNTY (Maximum of 5 points)

SPD will use this criterion to distribute work equitably and consider amounts awarded and paid by the County for Professional Services. The formula used to determine a Team's awarded and paid amounts (Average Dollar Value or "ADV") is the sum of 50% of the dollars awarded for Professional Services to the prime Firm and all Sub-consultants by the County when they served as a Prime Consultant in previous engagements, during the three-year period immediately preceding the submittal date; plus 50% of the dollars paid for Professional Services to the prime Firm and all Sub-consultants by the County when they served as a Prime Consultant in previous engagements, during the three-year period immediately preceding the submittal date. The highest amount awarded and paid by the County to any Firm responding to the NTPC shall be the Maximum ADV. The point total awarded for Criterion 5A is determined as a percentage ratio of each Team's ADV to the Team whose ADV is the highest ("Maximum ADV").

The Team with the Maximum ADV shall receive one (1) point. The other Team shall receive points as follows:

100% to >80% of Maximum ADV	1 point
80% to >60% of Maximum ADV	2 points
60% to >40% of Maximum ADV	3 points
40% to >20% of Maximum ADV	4 points
20% to >0% of Maximum ADV	5 points

ADV calculations shall be based on the current information available within the County's database(s) and shall be performed by County staff in advance of the First-Tier meeting, but not communicated to the CSC until scoring is completed and submitted by the CSC to SPD staff for processing.

Criterion 6A: USE OF LOCALLY HEADQUARTERED BUSINESSES (Maximum of 5 points)

SPD staff shall assign points to all eligible Teams based on the percentage of Contract work assigned to Locally Headquartered Businesses (LHB) as specified in this Section in furtherance of Sections 2-8.5 and 2-10.4 of the Code. Points will only be awarded to A&E firms assigned work associated with TC category(ies) required by the NTPC.

LHB will be included, if it is an applicable criterion, in the solicitation document.

If the Prime is not an LHB, then the following points will be assigned based on the percentage of work sub-contracted to the LHB Sub-consultants as set forth below:

Percentage (%) of work assigned for LHB Sub-consultants	Points
< 5%	0

5% to < 15%	1
15% to < 25%	2
25% to < 35%	3
35% to < 45%	4
45% and over	5

In the event a Locally Headquartered Business is the Prime, and such Firm commits to perform a minimum of 50% of the value of the work of the Contract with its own forces, the Firm shall be entitled to three (3) points on account of the Firm's own status as an LHB . Such Firm shall be entitled to an additional two (2) points based on subcontracting, as provided for all firms in the schedule below:

Percentage (%) of work assigned for LHB Sub-consultants	Points
< 5%	0
5% to <15%	1
15% and over	2

The LHB preference shall be implemented and enforced in accordance with the enforcement provisions set forth in the applicable enforcement implementing order.

The funding source for the project may affect applicability of Criterion 6A. A funding source may require disregarding this Criterion.

Criterion 7A: LOCAL PREFERENCE (5 points)

SPD staff shall assign five (5) points to all Teams eligible for Local Preference, per Sections 2-8.5 and 2-10.4 of the Code. The County will assign the points upon review of the submitted qualifying information meeting this requirement as specified in the NTPC.

The funding source for the project may affect applicability of Criterion 7A. A funding source may require disregarding this Criterion.

Criterion 8A: LOCAL CERTIFIED VETERAN BUSINESS ENTERPRISE PREFERENCE (5 points)

SPD staff shall assign five (5) points to all Teams eligible for Local Certified Veteran Business Enterprise preference, per Section 2-8.5 of the Code. The County will assign the points upon review of the submitted qualifying information meeting this requirement as specified in the NTPC

The funding source for the project may affect applicability of Criterion 8A. A funding source may require disregarding this Criterion.

Points awarded for Criteria 5A through 8A will be calculated by County staff in advance of the meeting and will be shared upon completion of scoring by the CSC.

b. Second-Tier Selection (Maximum 110 points).

Note: The CSC may decide, in their sole discretion, not to hold Second-Tier Selection in which case the recommendation will be based on First-Tier Selection.

The Second-Tier meeting provides the opportunity for shortlisted firms identified at the First-Tier selection to present additional information during an oral presentation based on the criteria set forth below. A question-and-answer period may also be involved. Furthermore, the CSC may request supplemental written information prior to or in lieu of oral presentations.

The CSC shall assign points based on the selection criteria 1B, 2B, and 3B which total 95 points. SPD staff shall assign an additional 15 points based on the selection criteria 4B, 5B, and 6B as applicable to the project.

The oral presentation schedule will be based on the reverse order of the First-Tier's final ranking of the Firms.

Criterion 1B: QUALIFICATIONS OF PROFESSIONAL PERSONNEL AND TEAM MEMBERS ASSIGNED TO THE PROJECT (Maximum of 40 points)

Evaluation of the qualifications and experience level of the professional personnel and Team members assigned to the project. The qualifications may include past experience with similar type projects and familiarity with County Regulations.

Criterion 2B: KNOWLEDGE OF PROJECT SCOPE AND PROJECT APPROACH (Maximum of 40 points)

Evaluation of the respondent's understanding of the proposed scope of work, which may include, but not be limited to, studies performed that affect this project, key design elements (a design scheme may be required), effects on the community involved, and awareness of the permitting requirements including health and safety measures applicable to the project's scope. Respondents approach to the project, sustainable design principles as set forth in the solicitation document, and implementation of LEED requirements, as applicable.

Criterion 3B: PROPOSER'S PROJECT MANAGEMENT METHODOLOGY (Maximum of 15 points)

Staffing levels assigned to the project, their experience in scheduling projects, systems utilized to keep track of the project schedule, cost control, quality assurance, and quality control, as well as tools and methods employed to avoid cost overruns and project delays. Evaluation of the Firm's management approach to the proposed scope of services.

Criterion 4B: USE OF LOCALLY HEADQUARTERED BUSINESSES (LHB) (Maximum of 5 points)

SPD staff shall assign points to all eligible firms based on the percentage of Contract work assigned to LHB as specified herein. Points will only be assigned to A&E firms assigned work associated with TC category(ies) required by the NTPC.

If the Prime is not an LHB, then the following points will be assigned based on the percentage of work sub-contracted to the LHB Sub-consultants as set forth below:

< 5% LHB	0 points
5% to <15% LHB	1 point
15% to <25% LHB	2 points
25% to <35% LHB	3 points
35% to <45% LHB	4 points
45% and over LHB	5 points

If an LHB is the Prime, and such Firm commits to perform a minimum of 50% of the value of the work of the Contract with its own forces, the Firm shall be entitled to three (3) points on account of the Firm's own status as an LHB. Such Firm shall be entitled to an additional two (2) points based on subcontracting, as provided for all firms in the schedule below:

Percentage (%) of work assigned for LHB Sub-consultants	Points
< 5%	0
5% to <15%	1
15% and over	2

The LHB preference shall be implemented and enforced in accordance with the enforcement provisions set forth in this IO and in Implementing Order 3-68. The County will provide the points upon review of the submitted qualifying information meeting the above criteria as specified in the NTPC.

The funding source for the project may affect applicability of Criterion 4B. A funding source may require disregarding this Criterion.

Criterion 5B: LOCAL PREFERENCE (5 points)

SPD staff shall assign five (5) points to all Teams eligible for Local Preference, per Sections 2-8.5 and 2-10.4 of the Code. The County shall assign the points upon review of the submitted qualifying information meeting this requirement as specified in the NTPC.

The funding source for the project may affect applicability of Criterion 5B. A funding source may require disregarding this Criterion.

Criterion 6B: LOCAL CERTIFIED VETERAN BUSINESS ENTERPRISE PREFERENCE (5 points)

SPD staff shall assign five (5) points to all Teams eligible for Local Certified Veteran Business Enterprise preference, per Section 2-8.5 of the Code. The County shall assign the points upon review of the submitted qualifying information meeting this requirement as specified in the NTPC.

The funding source for the project may affect applicability of Criterion 6B. A funding source may require disregarding this Criterion.

Points assigned for Criteria 4B through 6B shall be calculated by SPD staff in advance of the meeting and will be shared upon completion of scoring by the CSC.

c. Tabulation of Scores (First-Tier and Second-Tier)

Each CSC member shall assign Qualitative Points on each respondent's evaluation report in accordance with the established evaluation criteria.

SPD shall record the Qualitative Points assigned to each Team by individual CSC members for each respondent and read the information into the record. SPD shall monitor the Qualitative Points assigned to each Team by individual CSC members. [[~~Any disparities for variation more than thirty-three percent (33%) of the average score awarded by all CSC members by criteria will be brought to the individual CSC member's attention during the meeting. The committee member will be afforded an opportunity to review/modify his/her disparate score(s).~~]]

SPD staff shall convert the qualitative scores for all criteria for each CSC into Ordinal Scores. If a tie exists in the Ordinal Scores of a CSC member, all tied Proposers shall retain the lowest Ordinal Score (i.e., highest ranking). The ordinal ranking sequence will then skip the number of tied rankings (i.e., if three firms are tied for 1st, all three will retain an ordinal score of 1 and the next highest ranked firm shall receive an ordinal score of 4), to the next highest ranked Proposer.

If the lowest total qualitative score of a CSC member deviates by 25% or more from the average score, the lowest qualitative score for each Proposer will be discarded. The qualitative scores will be totaled to yield the Adjusted Qualitative Points for each respondent. The highest Ordinal Score for each Proposer will be discarded. The remaining Ordinal Scores of each CSC member for each Proposer shall then be totaled to yield the Adjusted Ordinal Score. The Proposers shall be ranked numerically starting with the lowest total Adjusted Ordinal Score.

Tiebreakers in the total Adjusted Ordinal Scores for the Final ranking shall be applied as follows:

First tiebreaker during First-Tier and Second-Tier will be the highest total Adjusted Qualitative Score. During a First-Tier meeting, if the tie remains, it will be the highest total Qualitative Points for criterion 1A, followed by 2A, 3A, and 4A. During a Second-Tier meeting, if the tie remains, it will be the highest total Qualitative Points for criterion 1B, followed by 2B, and 3B, in that order, until the tie is broken.

The final ordinal ranking is then determined as the next order of business.

3. PSA Negotiations

After evaluations are completed, the CSC shall recommend to the County Mayor or Mayor's designee, in order of preference, no fewer than the three (3) highest ranked firms deemed to be the most qualified, provided no fewer than three (3) firms have responded to the solicitation, and/or have been deemed responsive, pursuant to the CCNA, or however many fewer number of firms remain eligible for negotiations. The CSC's recommendation, in final ranking order, shall be forwarded to the County Mayor or Mayor's designee for approval to negotiate a Contract for the solicited services. Upon the County Mayor or Mayor's designee's approval, the County shall negotiate with the recommended Firm(s).

Negotiations shall be conducted as follows:

a. SPD is to schedule, coordinate, and lead negotiations with support from the client department.

b. The County Mayor or Mayor's designee will select a team of personnel, which may be referred to as the negotiation team, that he/she deems advisable to negotiate a Contract with the recommended firm(s). The client department and/or the SPD Director may recommend specific individual(s) who are experienced and knowledgeable with the subject matter to be part of the negotiations.

c. Should negotiations fail to achieve a mutually satisfactory PSA, negotiations with that Firm may be formally terminated by SPD. The negotiation team will proceed to negotiations with the next highest ranked Firm until a satisfactory agreement is achieved.

d. Upon failure to negotiate an agreement with any of the recommended firm(s), the County Mayor or Mayor's designee may recommend to reject all proposals and re-advertise the project. Rejection of proposals for projects exceeding the threshold in Section 2-8.1(b)(1) are subject to approval by the BCC.

4. PSA Award

Upon successful negotiation of a PSA, SPD will prepare for and on behalf of the client department who will present the Contract Award Recommendation (CAR) memorandum.

Upon execution of the CAR by the County Mayor or Mayor's designee, as applicable, the CAR shall be filed with the Clerk of the Board, and the client department shall notify SBD to remove the project from the Cone of Silence Report.

5. Rejection of All Respondents

If either the selection or negotiations process fail to result in a Contract award, SPD shall prepare a memorandum for and on behalf of the client department addressed to the BCC, the County Mayor, or Mayor's Designee, as applicable,

for the client department to request rejection of all proposals. The recommendation for rejection shall be filed with the Clerk of the Board and the client department shall notify SBD to remove the project from the Cone of Silence Report.

6. Professional Services Agreement (PSA)

SPD will maintain a draft form PSA for each client department. The PSA should:

a. Require Professional Services firms to register with the County and maintain an active registration throughout the term of the Contract;

b. Require Professional Services firms to provide all documents required by applicable County Regulations, including, without limitation: certificates of good standing, and insurance certificates;

c. Require Professional Services firms, and all members of Contracting Teams, to maintain active Technical Certifications in the required categories for the project throughout the term of the Contract, and submit current paid and award records for all County Contracts; and

d. Provide a reasonable cure period for any curable violations of County requirements.

7. Managing the Professional Service Agreement

The client department shall manage the Consultant's performance in accordance with the PSA.

Client departments shall complete periodic performance evaluation reports for each PSA. At a minimum, one (1) evaluation shall be completed per year, or on a more frequent basis, if Consultant performance warrants it. The client department shall prepare a final performance evaluation report within thirty (30) calendar days of issuing the Certificate of Completion. PSAs shall include language advising the Firm(s) that performance evaluations of the services rendered shall be prepared by the client department and may be utilized by the County as an evaluation criterion for future solicitations and consideration.

Firms shall have the right to review their performance evaluations report and submit a notice of appeal letter, and a detailed rebuttal of the ratings contained therein, within thirty (30) days of the issuance date of the evaluation to SBD. If any performance evaluation is appealed by the applicable Firm, then the County shall not utilize that evaluation when selecting a Consultant until the appeal process has been resolved.

Amendments to the PSA shall be prepared by the client department and presented to the BCC for approval.

B. Request for Design-Build Services Solicitation

1. Provisions

SPD shall be responsible for the County's procurement of design-build services with the coordination of the client departments. Design-build solicitations shall comply with the CCNA. The following is applicable to the design-build process:

a. The Design Criteria Package shall be prepared by a Design Criteria Professional meeting the requirements as defined by the CCNA prior to advertisement. The County may procure the Design Criteria Professional through an NTPC or EDP as required by the project. The County Mayor or designee may grant exceptions to advertising without a completed Design Criteria Package.

b. The Design Criteria Professional shall be responsible for the following including, but not limited to:

    i. Preparing the Design Criteria Package for the design and construction of the public construction project.

    ii. Reviewing responses submitted by the Design-Build Firms for compliance with the design criteria.

    iii. Assuring compliance of project construction and Design Criteria Package, by supervising and approving the detailed construction documents of the project.

    iv. Evaluating the construction project's compliance with the Design Criteria Package.

c. The Design Criteria Professional who has been selected to prepare the Design Criteria Package is **not** eligible to render services under a Design-Build Contract executed pursuant to the Design Criteria Package and in accordance with CCNA.

d. The Design Criteria Package shall contain any other items as required by procedures, laws, ordinances, or prevailing circumstances.

e. The RDBS may include limitations as to page count, font size, spacing and other format requirements relating to the proposal.

    i. Except where restricted by federal or state laws, or external regulations, respondents must submit as either a Design-Builder or a Sub-consultant. Failure to comply with this provision may deem the proposals non-responsive.

    ii. Limit on the number of Teams that Consultants may participate in when responding to a solicitation as a Sub-consultant. Any such limitation shall be determined by the County Mayor or Mayor's Designee and included in the solicitation document.

    iii. If at any time the County has reason to believe that any person or Design-Builder has provided incorrect information or made false statements in a proposal, or oral presentation before a selection

committee, or if the misrepresentation is confirmed following a Contract award, the County Mayor or Mayor's designee shall refer the matter to the Office of the Inspector General and/or other investigative agencies. This includes misrepresentation of information regarding dollars awarded and paid on all County Contracts. In addition to pursuing any other legal remedies, the County may, in its sole discretion, find the proposer non-responsible, and eliminate the Firm from consideration or if the misrepresentation is confirmed following Contract award, may terminate the Contract. Furthermore, the County may initiate Suspension and/or Debarment proceedings in accordance with the Code.

iv. All accounting of County awarded dollars and paid for Professional Services, records, and performance evaluation history that will be used in the evaluation of proposals shall be maintained by the County.

2. Evaluation

The selection for design-build services is based on a two-step process:

Step 1 Evaluation is the evaluation of a design-build Team's qualifications based on the Step 1 evaluation criteria. Unless otherwise specified in the RDBS, the CSC will attempt to qualify no fewer than three (3) responsive and responsible firms unless the County had already proceeded with fewer than three (3) Design-Builders to the Step 1 process, and by majority vote will determine the maximum number of responsive and responsible firms to advance to Step 2.

Only those advancing Design-Builders from the Step 1 evaluation/selection process are eligible to submit a technical and price proposal in the Step 2 evaluation process.

Only advancing Design-Builders found to be responsive and responsible who choose to offer a responsive and responsible proposal shall participate in the Step 2 evaluations, which consist of the Design-Builder Team presentation followed by a question-and-answer period.

As more particularly set forth below, the evaluation in both Steps involves the CSC's evaluation and application of points based on the CSC's qualitative evaluation of the proposals, and the parallel application by SPD staff of certain points based on eligibility and/or established formulas.

a. Step 1 Evaluation:

The Step 1 evaluation shall be based on the selection criteria listed below, or as specified in the RDBS.

Step 1 Selection: (Maximum 110 points)

The CSC shall assign points based on the selection criteria 1A, 2A, 3A, and

4A which totals 95 points. SPD staff shall assign up to an additional 15 points based on criteria 5A, 6A, and 7A, as applicable to the project.

Criterion 1A: QUALIFICATIONS OF THE TEAM MEMBERS ASSIGNED TO THE PROJECT (Maximum of 45 points)

Evaluation of the qualifications of the individuals and experience level of the professional and management staff to be assigned to the project, including the Team's ability to replace key personnel if needed, quality and availability of key personnel, including any preferred experience as specified in the RDBS, and demonstrated project experience relative to this type of project.

Criterion 2A: KNOWLEDGE AND PAST EXPERIENCE OF SIMILAR TYPE PROJECTS (Maximum of 35 points)

Evaluation of the Design-Builder's understanding of the scope of work, and experience on previous similar type projects, including any preferred experience as specified in the RDBS. Consideration may also be given to key design elements, understanding and awareness of the permitting requirements involved with the project, and health and safety programs, as applicable.

Criterion 3A: PAST PERFORMANCE OF THE TEAM (Maximum of 10 points)

Evaluation of Team's past performance, overall interrelationship with proposed Team members, responsiveness, experience in scheduling projects and timely submission of deliverables on past projects, including any non-County projects. CSC members are required to review all Consultant/Contractor Past Performance Evaluation reports available in the County's database as of submittal due date.

Criterion 4A: ABILITY OF TEAM MEMBERS TO INTERFACE WITH THE COUNTY (Maximum of 5 points)

Evaluation of Design-Build Team's communication ability, commitment to satisfy the County's requirements, familiarity with County Regulations, and sustainability design principles.

Criterion 5A: AMOUNT OF WORK AWARDED AND PAID BY THE COUNTY (Maximum of 5 points)

SPD will use this criterion to distribute work equitably and consider amounts awarded and paid by the County for Professional Services. The formula to determine a Team's awarded and paid amounts (Average Dollar Value or "ADV") is the sum of 50% of the dollars awarded for Professional Services to all Sub-consultants by the County when they served as a Prime Consultant in previous engagements, during the three-year period immediately preceding the submittal date; plus 50% of the dollars paid for Professional Services to all Sub-consultants by the County when they

served as a Prime Consultant in previous engagements, during the three-year period immediately preceding the submittal date. The highest amount awarded and paid by the County shall be the Maximum ADV. The criterion is determined as a percentage ratio of each Team's ADV to the Team whose ADV is the highest ("Maximum ADV").

The Team with the Maximum ADV shall receive one (1) point. The other Team shall receive points as follows:

100% to > 80% of Maximum ADV	1 point
80% to > 60% of Maximum ADV	2 points
60% to > 40% of Maximum ADV	3 points
40% to > 20% of Maximum ADV	4 points
20% to > 0% of Maximum ADV	5 points

ADV calculations shall be based on the current information available within the County's database(s) and shall be performed by County staff in advance of the First-Tier meeting, but not revealed to the CSC until scoring is completed and submitted by the CSC to SPD staff for processing.

Criterion 6A: LOCAL PREFERENCE (5 points)

SPD staff shall assign five (5) points; or if the Step 1 total Qualitative Points exceed 110, then this criterion shall be 5% of the Step 1 criteria maximum points excluding criteria points for Local Preference and Local Certified Veteran Business Enterprise; to all Teams eligible for Local Preference, per Sections 2-8.5 and 2-10.4 of the Code. The County shall assign the points upon review of the submitted qualifying information meeting this requirement as specified in the RDBS.

The funding source for the project may affect applicability of Criterion 6A. A funding source may require disregarding this Criterion.

Criterion 7A: LOCAL CERTIFIED VETERAN BUSINESS ENTERPRISE PREFERENCE (5 points)

SPD staff shall assign five (5) points; or if the Step 1 total Qualitative Points exceed 110, then this criterion shall be 5% of the Step 1 criteria maximum points excluding criteria points for Local Preference and Local Certified Veteran Business Enterprise; to all Teams eligible for Local Certified Veteran Business Enterprise preference, per Section 2-8.5 of the Code. The County shall assign the points upon review of the submitted qualifying

information meeting this requirement as specified in the RDBS.

The funding source for the project may affect applicability of Criterion 7A. A funding source may require disregarding this Criterion.

Points awarded for Criteria 5A through 7A shall be assigned by SPD staff in advance of the meeting and will be shared upon completion of scoring by the CSC.

b. Step 2 Evaluation:

The Step 2 evaluation shall be based on the selection criteria listed below, or as specified in the RDBS.

Step 2 Selection: (Maximum 110 points)

The CSC shall assign points based on the selection criteria 1B, 2B, and 3B which totals 80 points. Criterion 4B – Price may be evaluated by the CSC or based on a formula calculated by SPD as specified in the RDBS. SPD staff shall assign up to an additional 30 points based on the selection criteria 4B, 5B, and 6B as applicable to the project.

Criterion 1B: PROJECT DESIGN APPROACH (Minimum of 1 point - Maximum of 30 points)

Evaluation of the project concept offered in the proposal including, but not limited to, the evaluation of design including, but not limited to, aesthetics, functionality, efficiency, and overall compliance with the County's objectives and requirements defined in the Design Criteria Package.

Criterion 2B: PROJECT CONSTRUCTION APPROACH (Minimum of 1 point - Maximum of 30 points)

Evaluation of the constructability, phasing of the work, staging and sequencing, managerial approach, environmental control methods, work quality control, safety and construction schedule, overall effects on the community, understanding and awareness of permitting requirements of all authorities having jurisdiction including, without limitation, the County, and adherence to County's construction objectives and requirements as set forth in the Design Criteria Package.

Criterion 3B: ABILITY TO PROVIDE REQUIRED SERVICES WITHIN TIME AND BUDGET (Minimum of 1 point - Maximum of 20 points)

Evaluation of the Design-Builder's overall management approach, including experience in scheduling projects, systems that will be utilized to keep track of the project schedule, cost control, quality assurance, quality control, issues and methods employed to avoid cost overruns and project delays, and evaluation of Design-Builder's capability to provide the appropriate personnel, and equipment to efficiently carry out the requirements of the work. Evaluation of the Design-Builder's Team

approach to the project, including an evaluation of the expertise of the prime, Sub-consultants, and subcontractors.

Criterion 4B: PRICE (Minimum of 1 point - Maximum of 20 points)

Price evaluation will be stipulated in the RDBS.

Criterion 5B: LOCAL PREFERENCE (5 points)

SPD staff shall assign five (5) points; or if the Step 1 total Qualitative Points exceed 110, then this criterion shall be 5% of the Step 2 criteria maximum points excluding criteria points for Local Preference and Local Certified Veteran Business Enterprise; to all Teams eligible for Local Preference per Sections 2-8.5 and 2-10.4 of the Code. The County shall award the points upon review of the submitted qualifying information meeting this requirement as specified in the RDBS.

The funding source for the project may affect applicability of Criterion 5B. A funding source may require disregarding this Criterion.

Criterion 6B: LOCAL CERTIFIED VETERAN BUSINESS ENTERPRISE PREFERENCE (5 points)

SPD shall assign five (5) points; or if the Step 1 total Qualitative Points exceed 110, then this criterion shall be 5% of the Step 1 criteria maximum points excluding criteria points for Local Preference and Local Certified Veteran Business Enterprise; to all Teams eligible for Local Certified Veteran Business Enterprise preference, per Section 2-8.5 of the Code. The County shall award the points upon review of the submitted qualifying information meeting this requirement as specified in the RDBS.

The funding source for the project may affect applicability of Criterion 6B. A funding source may require disregarding this Criterion.

Points awarded for Criteria 5B through 6B will be assigned by SPD staff in advance of the meeting and will be shared upon completion of scoring by the CSC.

c. Tabulation of Scores (Step 1 and Step 2)

Step 1

Each CSC member shall assign Qualitative Points on each respondent's evaluation report in accordance with the established evaluation criteria.

SPD shall record the Qualitative Points assigned to each Team by individual CSC members for each respondent and read the information into the record. Any disparities for variation more than thirty-three percent (33%) of the average score awarded by all CSC members by criteria will be brought to the individual CSC member's attention during the meeting. The CSC member will be afforded an opportunity to review/modify his/her

disparate score(s).

At the conclusion of the evaluation, scores will be totaled to yield the total Qualitative Points for all applicable criteria. The respondents shall be ranked numerically based on the highest total qualitative score first.

Tiebreakers for the Final ranking shall be applied as follows:

> The first tiebreaker will be the highest total Qualitative Points for criterion 1A, followed by 2A, 3A, and 4A, in that order, until the tie is broken. The Step 1 final ranking is then determined.

Step 2

Each CSC member shall assign Qualitative Points on each respondent's evaluation report in accordance with the established evaluation criteria.

SPD shall record the Qualitative Points assigned to each Team by individual CSC members for each respondent and read the information into the record. Any disparities for variation in excess of thirty-three percent (33%) of the average score awarded by all CSC members by criteria will be brought to the individual CSC member's attention during the meeting. The CSC member will be afforded an opportunity to review/modify his/her disparate score(s) at the same meeting.

At the conclusion of the evaluation, scores will be totaled to yield the total Qualitative Points. The respondents shall be ranked numerically based on the highest totaled qualitative score first.

Tiebreakers for the Final ranking shall be applied as follows:

> The first tiebreaker will be the highest total Qualitative Points for criterion 1B, followed by 2B, 3B, and 4B if criterion 4B was evaluated by the CSC (if points are assigned based on a formula the tiebreaker ends with criterion 3B), in that order, until the tie is broken. The final ranking is then determined.

Price Proposal and Bid Bond

Prior to finalizing the Step 2 Final rankings, the price proposals and bid bonds shall be read into the record.

3. RDBS Negotiations

After evaluations are completed, the CSC shall recommend to the County Mayor or Mayor's designee, in order of preference, no fewer than the three (3) highest ranked Design-Builders deemed to be the most qualified, provided no fewer than three (3) shortlisted Design-Builders submitted responsive and responsible proposals, under the CCNA, or however many fewer numbers of Design-Builders remain eligible for negotiations. The CSC's recommendation, in final ranking order shall be forwarded to the County Mayor or designee, for approval to negotiate a

Contract for the solicited services. If the County, in its sole discretion, determines that highest ranked Design-Builder does not represent the Best Value to the County, the Design-Builder representing the Best Value shall be ranked higher. This re-ranking shall be reserved to instances where: a) the price is determined to be artificially low and not reflective of the true anticipated project cost; b) the Design-Builder through its submission and/or price appears to have misunderstood the scope of the project or the required services; c) there is a large price discrepancy between responsive and responsible Design-Builders, where the County determines that it may receive the necessary services at a much lower price; and d) upon application of such other factors as the CSC may promptly set forth in writing, the County effectively determines that the re-ranking is in the best interest of the County. The Firm with highest ranking, or the Firm providing the Best Value to the County, shall be recommended for negotiations. Upon the County Mayor or designee's approval, the County shall enter negotiations with the recommended Design-Builder.

Negotiations shall be conducted as follows:

a. SPD is to schedule, coordinate, and lead negotiations with support from the client department.

b. The County Mayor or designee will select a team of personnel, also referred to as the negotiation team, that he/she deems advisable to negotiate a Contract with the recommended Design-Builder. The client department and/or SPD Director may recommend specific individual(s) who are experienced and knowledgeable with the subject matter to be part of the negotiations.

c. Should negotiations fail to achieve a mutually satisfactory Design-Build Contract, negotiations with that Design-Builder may be formally terminated by SPD. The negotiation team will proceed to negotiations with the next highest ranked Design-Builder until a satisfactory agreement is achieved.

d. Upon failure to negotiate an agreement, the County Mayor or Mayor's designee may recommend to reject all proposals and re-advertise the project.

Responsibility reviews, if applicable, will be conducted following the CSC Step 2 recommendation and prior to forwarding the recommendation for award to the County Mayor or the Mayor's designee.

4. Design-Build Contract Award

Upon successful negotiation of a Design-Build Contract, SPD will assist the client department by preparing the award recommendation.

Upon execution of the CAR by the County Mayor or Mayor's designee, as applicable, the CAR shall be filed with the Clerk of the Board, and the client department shall notify SBD to remove the project from the Cone of Silence Report. SPD shall notify all Proposers of the commencement of the protest period pursuant to Implementing Order 3-21.

5. Rejection of all Respondents

If either the selection or negotiation process fail to result in a Contract award, or the County decides in its sole discretion to terminate the process, the client department shall prepare a memorandum addressed to the BCC, County Mayor, or Mayor's Designee, as applicable, to request rejection of all proposals. The recommendation for rejection shall be filed with the Clerk of the Board and the client department shall notify SBD to remove the project from the Cone of Silence Report.

6. Design-Build Contract

SPD will maintain a draft Design-Build Contract. The Design-Build Contract should:

a. Require Design-Builder to register with the County and maintain an active vendor registration throughout the term of the Contract;

b. Require Design-Builder to provide all documents required by applicable County Regulation, including, without limitation, required copies of bonds and insurance certificates;

c. Require Professional Services firms, and all members of Contracting Teams, to maintain active Technical Certifications in the required categories for the project throughout the term of the Contract;

d. Require Design-Builder to submit to the County current paid and award records for all County Contracts; and

e. Provide a reasonable cure period for any curable violations of County requirements.

7. Managing the Design-Build Contract

The client department shall manage the Design-Builder's performance in accordance with the Design-Build Contract and pursuant to Administrative Order 3-42.

Client departments shall complete periodic performance evaluation reports for each Design-Build Contract. At a minimum, one (1) evaluation shall be completed per year, or on a more frequent basis, if Design-Builder performance warrants it. A final performance evaluation report within thirty (30) calendar days of issuing the Certificate of Completion is required. Design-Build Contracts shall include language advising the Firm(s) that performance evaluations of the services rendered shall be prepared by the client department and may be utilized by the County as an evaluation criterion for future solicitations and consideration.

Design-Builders shall have the right to review their performance evaluations report and submit a notice of appeal letter, and a detailed rebuttal of the ratings contained therein, within thirty (30) days of the issuance date of the evaluation. If any performance evaluation is appealed by the applicable Design-Builder, then the

County shall not utilize that evaluation when selecting a Design-Builder until the appeal process has been resolved.

Amendments to the Design-Build Contract shall be prepared by the client department and presented to the BCC for approval.

8. Alternate Technical Concept (ATC) Process for Step 2 Evaluations

The ATC process allows innovation, flexibility, time and cost savings on the design and construction of Design-Build Projects while meeting project commitments and while providing the Best Value for the County and the public. The proposed ATC shall provide an approach that is equal to or better than the requirements of the RDBS/DCP, as determined by the County. A proposed concept does not meet the definition of an ATC if the concept is contemplated by the RDBS/DCP. ATCs which reduce scope, quality, performance, or reliability shall not be proposed.

Advancing Firms may be asked to participate in Individual Negotiation Meetings with County staff, technical advisors, and specific stakeholders as identified by the County to present and describe proposed changes/deviations from the RDBS/DCP to obtain approval from the County prior to the Technical Proposals, Price Proposals, and/or Aesthetics Proposals submissions. Where allowed, the process to govern the proposal, clarifications, negotiations and approval or rejection of ATCs shall be set forth in the RDBS. The Individual Negotiation Meetings are to be held in accordance with Section 286.0113(2)(b)(1) of the Florida Statutes. The County's audio recordings of each Individual Negotiation Meeting and the content of such recordings are to be made available in accordance with Section 119.071(1)(b)(2), (3) of the Florida Statutes.

The Step 2 evaluation criteria of the Technical and/or Aesthetic proposals may include such pertinent items as: Project Design Approach, Project Aesthetic Approach, Project Construction Approach, Innovative Concepts and Value-Added Provisions, Accelerated Schedule, Contract Time, and Price. Kick-Off, Oral Presentations, Page Turn or Matrix presentation meetings to the CSC may optionally be held depending on the project and pursuant to the RDBS.

C. OTHER PROCUREMENT METHODS

Other Design-Build methods utilized by the construction industry are available for County use depending on the nature of the project, time and budget constraints, bonding requirements, staff capabilities, etc. Only in limited situations, the County may elect a process that results in award of a Design-Build construction Contract without full price competition.

Designer-Led Design-Build is suited primarily to less prescriptive architectural projects (libraries, air/seaport terminal buildings, museums, and other specialized buildings), for the efficiencies it yields and the sophisticated design interpretation it may afford. Owner input on the design is increased. Qualifications-based selection is used with pricing developed during or after design completion by the Firm.

Progressive Design-Build enables the owner to provide substantial input on the design and buyout decisions, as it collaborates with Design-Builder during design development. Qualifications-based selection with Guaranteed Maximum Price is developed during or

after design completion by the Firm.

1. CONTINUING CONTRACTS

The Equitable Distribution Program (EDP) is a "Continuing Contract" for Professional Services entered into in accordance Florida Statutes 287.055 whereby a professional architectural, engineering, landscape architectural, or surveying and mapping Firm provides Professional Services for projects in which the estimated construction cost of each individual project under the Contract does not exceed $4 million, for study activity the fee for Professional Services for each individual study under the Contract does not exceed $500,000, or for work of a specified nature as outlined in the contract required by the agency, or such cost limits as amended in the CCNA. The Continuing Contract has a fixed term with no time limitation except that the Contract must provide a termination clause. Firms providing Professional Services under Continuing Contracts shall not be required to bid against one another. An active PQC/TC status is a requirement for work assignment under EDP. The PQC/TC status shall be active prior to the work assignment and throughout the duration of the assigned services.

a. Equitable Distribution Program (EDP)

SBD is responsible for the implementation and administration of this Program. The County Mayor or Mayor's designee is delegated the authority to award EDP Professional Service Agreements to eligible participants.

The EDP establishes a structured process to procure and distribute A&E assignments to eligible EDP participants, local, and certified SBE-A&E firms.

Registration to participate in EDP is open and may be publicly advertised when funding source requires it for open participation. A condition for a Firm receiving an assignment are the following: Firm must be prequalified, technically certified, and registered in the EDP pool.

A Firm's participation in the program does not represent a Contract between Miami-Dade County and any participant, but rather an acknowledgement that a participant satisfies the qualification criteria required for membership.

Eligible Consultants must meet the following EDP qualifications requirements:

i. Qualification Criteria:

1. EDP firms are required to be a Locally Headquartered Business, unless the funding source to be used for the EDP Professional Service Agreement prohibits the application of the foregoing Locally Headquartered Business requirement.

2. A business owner, alone or as a member of a group, shall own or control only one (1) Firm, including Affiliates.

3. An individual design professional can only qualify one (1) Firm pursuant to the respective Licensing Governing Boards of the State of Florida.

4. As part of the EDP membership application, firms are required to confirm prime and Sub-consultant awards and payments in the Business Management and Workforce System (BMWS) on all Miami Dade County Contracts.

5. Upon written notice, a Firm shall execute the EDP Professional Services Agreement (PSA) and submit the required documents and insurance certificates within ten (10) calendar days.

ii. Program Participation:

1. After gaining admission into the program, each Firm shall be ranked in accordance with the rotation ranking formula in all of the MDC technical categories the Firm holds.

2. Each Firm's position in the ranking is based on its Technical Certification categories and the Firm's Rotational Value (RV). The RV is established by a Firm's three years award and payment history ("Compensation Amount").

3. When a Firm is selected for its first EDP assignment, the Firm shall be required to execute the EDP Professional Services Agreement, submit insurance certificates and applicable affidavits within ten calendar days from receipt of notification. A Firm's evidence of insurance will be required for each service order.

4. EDP participants acting as a prime or Sub-consultant are subject to Section H -Sanctions for Contractual Violations and Section I - Administrative Penalties for failure to abide by this IO, the PSA, or established program policy and procedures.

iii. EDP Work Assignment Procedures

1. The client department shall submit the work assignment request including a detailed scope of work, applicable Technical Certification categories required, estimated fee, and estimated start and completion date to the EDP Coordinator for assignment of appropriate A&E professionals.

2. The EDP Coordinator shall review the work assignment request(s) and verify the prime Technical Certification categories required for the scope of work and any additional Technical Certification categories or specialty requirements that may be needed to complete the scope of work. The EDP Coordinator will determine the next available three (3) Primes per supporting Technical Certification category, based on their position in the EDP and provide to the client department.

3. Client departments shall contact each Firm per their position on the list as follows: first Firm listed before going to the next Firm to request their specific qualifications for review and select the most qualified Firm. The client department must document the factors utilized to determine the most qualified Firm. If a prime Firm is certified in all the required Technical Certification categories, it may perform the required services with its own work force otherwise the prime shall select EDP Sub-consultants from the list of EDP firms. Upon the Firm(s) acceptance of the offer of work assignment, the names of the Prime Firm and Sub-consultants shall be forwarded to the EDP Coordinator.

4. SBD shall conduct surveys when a client department has an assignment that requires specific funding requirements and/or a Consultant with unique expertise. In these instances, qualified respondents will be considered in the order of ranking according to the EDP RV.

5. If negotiations with the qualified respondent fail, the client department shall notify SBD and begin negotiations with the next qualified Firm provided by the EDP Coordinator. This process will continue until a successful agreement is reached.

6. If the client department determines that the next available Firm(s) is not qualified to perform the services, the client department shall provide (in writing to the EDP Coordinator) an explanation for the disqualification.

7. Upon the written request of the client department Director or Director's Designee, hire a specific Firm qualified in the required technical expertise area for a specific project, when deemed in the best interest of the County.

8. The client department's timeframe to obtain acceptance of work assignments, request additional firms and/or negotiate a service order may be limited by the EDP Coordinator.

9. Simultaneous with the completion of the service order and submittal of final payment requests, the client department shall prepare a performance evaluation in accordance with Implementing Order 3-42.

10. If any service order shall be cancelled or changed, the client department shall notify the EDP Coordinator.

b. Continuing Services Contracts

Other continuing services Contracts, as defined by the CCNA, may be utilized by departments provided that they are in the County’s best interest and shall be based upon sound business rationale in accordance with the CCNA.

E. SANCTIONS FOR CONTRACTUAL VIOLATIONS

The County may terminate or cancel a Contract, or require the termination or cancellation of the Sub-consultant Contract, if the respondent or any Sub-consultant(s) violates Article VII of Chapter 11A of the Code. A violation by a respondent or Sub-consultant, or failure to comply with this IO, may result in the imposition of one or more of the following sanctions:

1. Suspension of any payment or part thereof until such time as the issues concerning compliance are resolved.

2. Termination, suspension, or cancellation of the Contract in whole or in part, as provided for in the applicable provisions of the Contract.

3. If a Firm attempts to comply with the provisions of this Implementing Order through fraud, misrepresentation, or material misstatement or material omission, or is found to have committed such acts, the Firm and its principals may be suspended, debarred or subject to a civil action and/or criminal prosecution based on the specific circumstances. In addition, the County may utilize some or all remedies allowed by Florida law.

4. As a further sanction, the County Mayor or designee may impose any of the above stated sanctions on any other Contracts or Sub-consultant Contracts the Firm has with the County. In each instance, the Firm shall be responsible for all direct and indirect costs associated with such, cancellation, termination, suspension, or Debarment.

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

    a. Failure to comply with pre-qualification requirements, not reporting organizational and operational changes, providing materially inaccurate, materially omitted or false information, and other related violations.

    b. Deviation from any compliance agreement related to the County's small business programs or other material failure to comply with program requirements.

    c. Modifications to the scope of work, Contract terms, and/or fees of a subcontractor and/or Sub-consultant without prior approval from the County, where the same affects the County's small business programs.

    d. Subcontracting work to a non-EDP member without written authority of the County.

    e. Sub-standard quality of work as evidenced by revisions to design required due to lack of compliance with building codes required and re-submittal of plans for dry-run permitting.

    6. All firms performing work for the County are subject to evaluation as

provided for in the professional service agreement or under the rules of Administrative Order 3-42, Evaluation and Suspension of Contractors and Consultants.

F. Administrative Penalties

The County Mayor or Mayor's designee may deem a Firm ineligible to participate in County Contracts for a specified period, not to exceed five (5) years, for violation of, or non-compliance with this Implementing Order, proposal(s), and/or Consultant selection documents. Subject ineligibility is applicable to an applicant, its individual officers, its shareholders with significant interests, and its affiliated businesses.

G. PSA SUPPORT FUNCTIONS

SBD shall:

1. Maintain Consultant performance evaluation records for consideration of County departments or selection committees.

2. Conduct workshops for employees participating in the County's CSC pool to describe the role and responsibilities of members and review pertinent legislation affecting the selection process.

3. Record the client department's utilization of authorized Continuing Contracts to monitor fair and equitable utilization of participating Firms.

4. Administer the EDP including, without limitation, the review of service orders, EDP rotation, and the appropriate selection of firms.

5. Administer the pool of County employees available to serve on the CSC. Update the CSC membership roster bi-annually.

6. Review proposals for pre and post compliance with participation measures, requirements and issuance of performance memoranda.

7. Provide work history, data and reports to SPD reflecting the amount awarded and/or paid to the Prime and Sub-consultants for selection ranking.

Notwithstanding the foregoing duties of SBD, SPD will continue to administer the Pre-Qualification process for architectural, engineering, landscape architecture, land surveying and mapping firms and provide related information to SBD.

SECTION III - CAPITAL CONSTRUCTION CONTRACTING POLICY:

This section governs capital contracts and the expedite process authorizing the County Mayor or Mayor's designee to advertise, negotiate, and award uncontested contracts for funded capital improvement construction projects and certain unanticipated yet funded capital repair or rehabilitation projects, as well as qualifying Professional Service Agreements.

PURPOSE:

Section 2-8.2.7 of the Code, as amended, authorizes the County Mayor, subject to BCC ratification, to approve and expedite capital projects authorized therein. Eligible projects and contracts may include:

1. Approved funded capital construction projects where no protest is filed within the timeframe specified in Section 2-8.4 (b) of the Code, and all associated professional service agreements.

2. The negotiation and settlement of contractor claims, change orders issued for additional work and amendments/modifications to professional service agreements, if specified in the bid or other competitive specifications and the contract document. Change orders and amendments/modifications shall not exceed five hundred thousand dollars ($500,000) in cumulative dollar amount and shall not exceed fifteen percent (15%) of the contract price in the cumulative percentage amount, unless related to environmental remediation or health requirements.

The County Mayor or Mayor's designee is authorized to advertise for bid, award, and reject bids or proposals for contracts and purchases at the thresholds specified in Section 2-8.1 of the Code, without the need for further action by the BCC.

All eligible capital construction contracts shall be processed utilizing this procedure and standard forms developed by ISD. Contracts deemed controversial in nature or holding special interest to the BCC shall be processed as a BCC Agenda item.

A. Capital Construction Contracting

1. Request to Advertise

   County departments shall request general construction services under Section 255.20 of the Florida Statutes, and applicable County Regulations. General construction services, valued up to $5 million, shall be procured through the MCC, without an RTA. ISD may identify other opportunities for Continuing Contract services to address the needs of the client departments when in the County's best interest.

   Procedures: When general construction services are required in excess of the above-mentioned threshold, the client departments shall:

   i. Develop a draft RTA based on the project and associated sites, pursuant to the County's Capital Budget and Multi-Year Plan, or the funding authority and approval allocated for the project.

   ii. Pursuant to Section 2-10.4 of the Code, submit project's relevant data for SBD's consideration to establish contract measures or set aside as deemed appropriate.

   iii. Finalize the RTA and forward it to OMB to certify funding availability.

   iv. Upon certification from OMB that funding is available, and establishment of project goals by SBD, the client department shall prepare a complete package, along with a detailed scope of work and submit to the client

department's director for approval. Scope of services may differ significantly based on the nature and complexity of the desired construction contract.

v. Approval by the County Mayor or Mayor's designee shall constitute concurrent approval of the measures established by SBD. Upon receipt of approval, the client department shall file the RTA with the Clerk of the Board.

2. Client Departments Responsibilities:

i. Include a "Termination For Convenience" clause in the bid specifications and contract documents.

ii. Utilize the standard bid specifications and contract documents, which include a clause indicating the County Mayor may negotiate and settle contractor claims, issue change orders for additional work and amend/modify PSAs, which do not exceed five hundred thousand dollars ($500,000) in cumulative dollar amount and do not exceed fifteen percent (15%) of the contract price in the cumulative percentage amount or the criteria established in the Section 2-8.2.7 of the Code and Section 2-8.1 of the Code, as amended.

iii. Ensure that all contingency and allowance accounts conform to the requirements of Section 2-8.1(h) of the Code, as amended.

iv. Notify SBD and ISD of changes in scope of work after approved application of an SBE measure and prior to advertisement. SBD shall review the change and determine whether the contract requires further review to reconsider the assigned SBE measures.

v. Notify SBD and ISD of any contract advertisement dates that are in excess of one hundred and twenty (120) days of the initial review and approval of SBE measures allowing SBD to identify any changes in availability. After six (6) months, all contracts should be resubmitted to SBD to establish current availability.

B. Construction Contract Award

Upon opening of bids, the client department (or ISD if it is the Department purchasing) shall obtain verification of contractor compliance with the SBE-CON program, prepare the CAR with the selected bidder and forward it to OMB for certification of funds availability.

a. If the contract award recommendation amount differs from the client department's (or ISD if it is the Department purchasing) estimated cost provided in the RTA by more than ten (10%) percent (above or below estimate), the client department shall justify the variance in the Project Memorandum. Larger variances shall require additional written explanation and support including a statement from the design engineer or architect.

b. Once funding is approved, the client department (or ISD if it is the Department purchasing) shall prepare a package including the Award Recommendation,

the Compliance Review Report, the Bid Tabulation, the SBD Project Worksheet, the OMB approval, the Project Memorandum with the approval of the County's Attorney's Office as to legal sufficiency, and any other relevant documentation. The complete package shall be submitted to County Mayor's Office for review and further processing before scheduling the CAR for inclusion on BCC and BCC committee agendas.

c. The client department (or ISD if it is the Department purchasing) shall review the package and submit a recommendation to the County Mayor's Office for final review and approval.

d. Upon approval by the County Mayor or designee of the award recommendation, client department (or ISD if it is the Department purchasing) shall file the documents with the Clerk of the Board and forward a copy to the client department to notify all firms of the award recommendation for the project and proceed with the contract award. The award recommendation shall not constitute an executed contract until approved by the BCC or executed by the County Mayor or Mayor's designee under the authority granted by the BCC.

e. If a protest is filed with the Clerk of the Board within three (3) calendar days of filing the documents approved by the County Mayor or Mayor's designee, existing procedures for processing bid protests shall govern. The filing of a protest nullifies the County Mayor's or Mayor's designee's approval and requires the client department to prepare and submit a formal BCC Agenda item unless the Hearing Examiner concurs with the County Mayor's recommendation.

f. Upon expiration of the bid protest period without a bid protest being filed, the client department (or ISD if it is the Department purchasing) shall proceed with the execution of the contract. The client department shall forward a copy of the executed contract package to ISD for the County Mayor's or Mayor's designee's execution.

g. If the project is listed on the Economic Stimulus Program list of approved projects, or was advertised pursuant to Section 2-8.2.7 of the Code or any other expedite or economic stimulus or similar ordinance, ISD shall prepare a Project Ratification List on a quarterly basis and present it to the appropriate committee for approval and subsequent submission to the BCC for ratification.

h. If all bids are rejected, the client department (or ISD if it is the Department purchasing) shall prepare a Request to Reject all Bids and Authorization to Re-Advertise for Bids, including detailed justification for rejection of all bids and the rationale to re-advertise without modifying original specifications. If the reason for rejection is related to the allotted budget for the particular project, the client department should demonstrate changes that would affect pricing.

i. The client department (or ISD if it is the Department purchasing) shall forward the Request to Reject to OMB for approval and once approved, shall submit

documentation to SBD to initiate the re-advertising process following the procedures outlined in this Implementing Order.

C. Execution of Contract Options

If options to extend or increase funding are provided for in the contract, the client department (or ISD if it is the Department purchasing) may recommend exercising the contract option as follows:

a. The client department (or ISD if it is the Department purchasing) shall prepare the amendment identifying the specific contract and options being executed. The amendment must be signed by the contractor, reviewed, and approved by the CAO as to legal sufficiency, then submitted to ISD for further processing. If the contract option being executed involves an increase of the contract amount, the client department shall obtain an Increase Rider and an Executed Payment and Performance Bond and submit these forms to ISD or client department's unit overseeing insurance requirements along with the amendment.

   The client department (or ISD if it is the Department purchasing) shall review the documentation and submit a recommendation to the County Mayor's Office for final review and approval.

b. Upon approval by the County Mayor or designee, the client department (or ISD if it is the Department purchasing) shall file the documents with the Clerk of the Board and forward a copy to the client department, as applicable.

D. Unanticipated Funded Capital Repair and Rehabilitation Projects

Unanticipated funded capital projects not specified in the Annual Proposed Capital Budget and Multi-Year Capital Plan for fiscal year 1999-2000, or subsequent fiscal years, may be included in the expedite process by approval of a resolution by the BCC. Upon BCC approval, the process shall be as follows:

1. The client department(or ISD if it is the Department purchasing) shall submit the project to OMB for approval of funding source and level of funding intended for use on the project.

2. The client department (or ISD if it is the Department purchasing) shall prepare the resolution and accompanying documentation for BCC approval to process the project(s) under the ESP or any other current expedite ordinance(s), as applicable.

3. Upon BCC approval of the resolution, the project may proceed in accordance with the procedures outlined in this IO.

E. Alternative Methods of Acquiring Construction Contracts

Miscellaneous Construction Contracts (MCC) are addressed in Implementing Order 3-53.

SECTION IV – CHANGE ORDERS AND PSA AMENDMENTS/MODIFICATIONS

SCOPE:

This section establishes the procedures for client departments (or ISD if it is the Department purchasing) to implement and maintain on a timely basis an internal formalized classifying, tracking, monitoring and reporting system for all change orders or amendments to design and construction projects. Specific construction change order information shall be supplied to SBD and ISD, who shall be responsible for maintaining and integrating this information into a countywide construction award and change order database for quarterly reporting to the County Mayor.

PROCEDURE:

The client department (or ISD if it is the Department purchasing) shall prepare a change order for additional work or time extension or an amendment/modification to a PSA, if such authority is specified in the bid specifications or contract, for approval by the County Mayor, subject to BCC ratification under a current applicable expedite ordinance, for:

1. Compensation for time extensions and contractor claims which shall not exceed five hundred thousand dollars ($500,000) in cumulative dollar amount and shall not exceed fifteen percent (15%) of the contract price in cumulative percentage amount, or the current thresholds in the Code.

2. Environmental remediation or health requirements in any amounts.

3. Reduction of contract scope and contractor compensation.

4. Granting time extensions without compensation or waiver of liquidated damages.

A. Change Orders and Amendments/Modifications

1. The client department (or ISD if it is the Department purchasing) shall prepare a package including the change order, amendment or modification form or electronic facsimile with the appropriate approvals from SBD, OMB, and the CAO, the change order or amendment/modification memorandum, and the following exhibits: Exhibit “A” SBD Firm History Report, Exhibit “B” Summary of Bids and Exhibit “C” Detail of Contingency and Contract Usage.

2. Time-only change orders and amendments that do not include a request for increase of the original contract amount, for projects awarded under a current applicable expedite ordinance(s), will be processed for approval by the County Mayor or Mayor’s designee.

3. The client department (or ISD if it is the Department purchasing) shall review the package and submit a recommendation to the County Mayor’s Office for final review and approval. If the County Mayor or designee determines that, based on ISD’s recommendation, the change order, amendment or modification is not eligible to be processed under a current applicable expedite ordinance, or deems it controversial or holding a special interest to the BCC, the documents shall be returned to the user

department for processing as a regular BCC agenda item.

4. Upon approval by the County Mayor, the client department (or ISD if it is the Department purchasing) shall file the documents with the Clerk of the Board and forward a copy to the client department.

5. Client department (or ISD if it is the Department purchasing) shall prepare a Project Ratification List under a current applicable expedite ordinance, and present it on a quarterly basis to the appropriate committee for approval and subsequent submission to the BCC for ratification.

B. Change Order Memorandum Requirements

Change Order Memorandum requirements shall include, but not be limited to, the following:

1. The original cost estimate for the construction of the project.

2. A copy of the original Bid Tabulation for all bids received for the contract.

3. The time impact to the contract period (in days).

4. The cost impact to the contract value.

5. The classification of the type of change order in at least one of the following categories (multiple classifications are allowed):

    a. **Regulatory Change:** change caused by revisions in federal, state or local regulations after contract award.

    b. **Other Agency Requested Change:** change requested by other county, state or federal agency.

    c. **Design Errors Change:** change caused by design errors on the part of the architect or engineer. The identity of the party believed to be responsible for the design error shall be stated.

    d. **Design Omission Change:** change to include items necessary for the project that were inadvertently not included in the contract. This type of change differs from Design Errors Change, in that the County would have paid for such items if included in the original bid. The identity of the party believed to be responsible for the design omission shall be stated.

    e. **County Requested Change:** change caused by revision in the County's programmatic requirements, operational requirements, or occupancy schedule after contract award.

    f. **Unforeseen or Unforeseeable Change:** change such as differing sub-soil conditions, variation in location of hidden or underground utilities, unforeseeable environmental requirements, or unavailability of specified

product(s) due to manufacturer's discontinuance.

g. **Force Majeure:** an unexpected or uncontrollable event including, without limitation, storms, fires, floods, strikes, lockouts, and similar events.

h. **Escalation Change:** change caused by material price fluctuations triggering cost adjustments pursuant to contract provisions.

i. **Cost Overruns or Underruns:** a final balancing change order of those costs, which exceed or fall below the estimated contract amount.

j. The change order number (i.e., Change Order No. 1).

k. The word 'Final' when applicable (i.e., Change Order No. 2 and Final).

l. The history of previous change order requests to the contract.

m. Indication of the timely submittal by the contractor. If the change order was not timely submitted, the following statement must be included in the County Mayor's memorandum: "The contractor did not submit this claim during the time provided in the contract for making claims. The Board of County Commissioners has no legal obligation to consider this claim."

n. The status of the allowance account including the original amount, any increases or decreases and the current balance.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Implementing Order

Implementing Order No.: 03-41

Title: SMALL BUSINESS ENTERPRISE (SBE) PROGRAM FOR THE PURCHASE OF GOODS AND SERVICES

Ordered: 10/20/2020 **Effective:** 10/30/2020

AUTHORITY:
Sections 1.01, 2.02 and 5.02 of the Miami-Dade County Home Rule Amendment and Charter and Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade County.

SUPERSEDES:
This Implementing Order supersedes previous Implementing Order 3-41, ordered May 1, 2018 and effective May 11, 2018.

POLICY:

A. This Small Business Enterprise ("SBE") Program shall apply to all County and Public Health Trust contracts for the purchase of goods ("SBE- Goods") or services ("SBE-Services"), respectively, including professional services other than architectural, engineering, architectural landscape and land surveying and mapping professional services of seven hundred thousand dollars ($700,000.00) or less, governed by Florida Statutes Section 287.055. The SBE Program shall not apply to construction or construction management services of seven hundred thousand dollars ($700,000.00) or less; purchase, leases or rental of real property; licenses and permits; concessions; franchise agreements; or contracts for investment banking services.

B. It is the policy of Miami-Dade County that County departments expend with SBEs one hundred (100) percent of the total value of contracts one hundred thousand dollars ($100,000.00) or less for goods or services.

C. Small Business Enterprise Measures may be applied to contracts greater than $100,000.

D. The application of contract measures to contracts for goods or services purchased by the Public Health Trust shall be governed by this Implementing Order, except that the Public Health Trust shall establish its own administrative procedures consistent with this Implementing Order to govern the application of contract measures to its purchases of goods or services except for construction and/or architectural and engineering services. The Public Health Trust shall provide data on a quarterly basis of all contracts awarded to SBEs.

I. DEFINITIONS:

This Implementing Order incorporates completely, definitions listed in the SBE Goods Program ordinance and SBE Services Program ordinance. Additional terms necessary for the

understanding of this Implementing Order, are listed below:

A. Anniversary Date means twelve (12) months from the date of which a firm received approval for its SBE certification, recertification or continuing eligibility.

B. Billing means any request for payment by a SBE, whether through a regular invoice, change order, claim, etc.

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

D. Business Tax Receipt means a document verifying that a firm is registered by Miami-Dade County to do business in Miami-Dade County.

E. 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.

F. Compliance Audit is generated the month after payment is made from the County to the successful bidder/proposer ("Successful Bidder" or "Successful Proposer" or "Successful Bidder/Proposer") and requires the Successful Bidder/Proposer to report payments made to subcontractors, and for the subcontractors to confirm receipt of these payments, via the County's web-based system within the timeframe specified by SBD.

G. Compliance Monitor means the Director of Small Business Development or designee from the Minority Affairs Division of the Miami-Dade Aviation Department or designee assigned to review compliance with Sections 2-
8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade County, as amended, and this Implementing Order.

H. Continuing Eligibility means authorization following an annual review of a Miami-Dade County certified SBE firm to verify that program eligibility requirements are maintained.

I. Contract means an agreement for the purchase of goods or services, including professional services. Professional services includes, but is not limited to accounting, legal, health care, consulting and management services. For SBE-Goods, Contract does not mean: (i) an agreement to purchase, lease or rent real property; or (ii) a grant, license, permit, franchise or a concession. For SBE-Services, Contract does not mean:
(i) an agreement to purchase, lease, or rent real property; (ii) a grant,

license, permit, franchise or a concession; (iii) 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 (iv) a contract for construction or construction management services of seven hundred thousand dollars $700,000.00) or less.

J. Contract Measure means a contract set-aside, a subcontract goal, a bid preference, or a selection factor, singly or in any combination.

K. Contracting Officer means a department director or his/her designee, who prior to award manages the bid process or post award and has primary responsibility to manage the contract and enforce contract requirements.

L. County means Miami-Dade County, Florida, a political subdivision of the State of Florida.

M. Debar means to exclude a contractor, its individual officers, its shareholders with significant interests, its qualifying agent, or its affiliated businesses from county contracting and subcontracting for a specified period.

N. 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.

O. Joint Venture means a business arrangement of two or more parties, in which at least one is a SBE that agrees to pool its resources for the purpose of accomplishing a specific task, and is registered with SBD.

P. Make-up Plan means a plan whereby a bidder submits via the County's web-based system its commitment that if awarded the contract, it will fulfill all or a portion of any pending SBE-Goods or SBE-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.

Q. Mentor means a firm with an established business which has applied for and been approved by SBD, in accordance with applicable procedures, for participation as a mentor in the Mentor-Protégé Program. A Mentor may not provide mentoring services to more than one (1) Protégé firm at any one time, but is allowed to serve as a Mentor for an unlimited number of times (pursuant to SBD approval).

R. 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. Specific details of this program are provided in this Implementing Order.

S. Mentor-Protégé Program Coordinator means the Small Business Development staff designated as the individual(s) responsible for coordinating and administering the various activities of the Mentor- Protégé Program.

T. Mentor-Protégé Project Plan is a description of the type of training the Mentor will provide to the Protégé during the identified project. This document will be developed by the Mentor with the Protégé's input and submitted along with a signed Mentor-Protégé Development Agreement; all to be reviewed and approved by Small Business Development.

U. Mentor-Protégé Development Agreement a signed agreement between a Mentor (prime) and a certified CSBE firm (subcontractor/sub-consultants) Protégé.

V. NAICS means North American Industry Classification System.

W. NIGP means National Institute of Governmental Purchasing.

X. Protégé means a firm: (i) certified as a SBE with SBD; (ii) actively conducting business for a minimum of two (2) years; (c) maintaining an actual place of business where it provides its products and services, in Miami-Dade County; (d) in good legal standing with the State of Florida, Miami-Dade County, and all other local jurisdictions; and (e) without any SBE violations within the preceding two (2) year period from its application to the MPP. Such participation cannot exceed two (2) years, and a firm may only be a Protégé one time. A Protégé agrees to follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD.

Y. 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 the public input requires deliberation regarding the measures/goals recommendation. The RC will make recommendations to the Mayor or designee as needed.

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

AA. Small Business Enterprise (SBE) means a business entity certified by SBD, providing goods or services, 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 year average gross revenues does not exceed the following contracting participation levels:

i. Micro Tier 1 — $0 to $750,000;

ii. Micro Tier 2 — $750,000.01 to $2,000,000; or

iii. Tier 3 — $2,000,000.01 to $5,000,000.

The term Small Business Enterprise shall also include a (x) manufacturer with one hundred (100) employees or less or (y) wholesaler with fifty (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 ($1,500,000), 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.

The County Mayor or designee shall be authorized to adjust the SBE size limits every

five (5) years at his/her discretion based on the Consumer Price Index for All Urban Consumers (CPI-U) calculated by the U.S. Department of Commerce or other appropriate tool of inflation measures as applied to Miami-Dade County for the preceding five (5) years. The first indexing adjustment shall occur for the 2013-2014 calendar year using the figures provided for the calendar year ended December 31, 2012, and every five (5) years thereafter. The County Mayor or designee shall advise the Board of any such adjustment.

BB. 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 and identify certified firms to fulfill goal(s) and percentages, dollar value, and description of the work to fulfill the SBE goal 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 within the specified time frame. Bidders must enter into written subcontracts with the listed SBE(s).

CC. Vendor means one who sells goods or services.

DD. 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.

II. MANAGEMENT & TECHNICAL ASSISTANCE (MTA) PROGRAM

A. Description
SBD will provide management and technical assistance and community outreach to certified SBEs performing as vendors and providing goods and/or

services in Miami-Dade County. These services will be referred to as the "MTA Program."

B. Program Requirements
For SBE firms to participate in the MTA Program they must meet certain program requirements, which includes regular meetings with SBD and participation in community outreach events.

C. Management and Technical Assistance Services
Small Business Development will be responsible for providing services to small businesses that should include, but should not be limited to pre and post-award services and access to business management services. Each firm will be assigned an SBD staff person (the "Technical Assistance Coordinator") in order to assess and address their particular needs.

1. After being certified* by SBD in the SBE Program, the SBE will meet with the Technical Assistance Coordinator ("TAC"). The TAC will:

   a. Provide an overview of SBD functions;

   b. provide an overview of the SBE Program;

   c. provide the SBE with a packet containing forms for the MTA, Bonding and Financial Assistance Program, and Mentor-Protégé Program, as well as a Needs

Assessment Form; and

d. assist the SBE in filling out the Needs Assessment Form.

**Note* - in some instances, firms applying for SBE certification will be referred to the MTA Program for assistance before being certified.

2. The SBD TAC will review the SBE Needs Assessment Form to determine what needs the SBE has, and will make sure that the SBE meets all eligibility requirements for the various programs.

3. If participation in the Mentor-Protégé Program is recommended, the Bonding and Loan Coordinator ("BLC") will assist the SBE in filling out the forms to register for that program.

4. If participation in the Bonding and Financial Assistance Program (the "BFA Program") is recommended, the BLC will assist the SBE in filling out the necessary forms. If bonding assistance is identified as a need, the applicant shall fill out a bonding assistance questionnaire.

D. Community Outreach

Small Business Development shall provide community outreach to stimulate the interest of the small business community in the program. The department shall design and implement an outreach program that will communicate the advantages of the program as well as convincing potential participants that

contracting opportunities exist. The program shall provide on-going recruitment and assistance to small businesses.

E. Program Restrictions

The following restrictions shall apply to the program applicant:

1. An applicant who exceeds the SBE Program size standards after one year of being formally notified is prohibited from continued participation.

2. Firm must have an actual place of business in Miami-Dade County.

3. Loss of certification shall result in prohibition from the program.

III. BONDING AND FINANCIAL ASSISTANCE PROGRAM

A. Program Description

Upon the Board's approval of a Bonding and Financial Assistance Program and award of the contracts necessary to implement same, SBEs that are certified and in good standing with Miami-Dade County may be eligible to receive bonding and financial assistance. The County shall establish guidelines and procedures for the implementation of the Financial Assistance program to include eligibility requirements for application.

The BFA Program will provide SBEs with assistance in obtaining bonding and/or financial assistance for goods and services 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.

B. Program Requirements

1. Bond Application Assistance Process

   Upon completion of the bond application package, the same shall be reviewed for completeness and thereafter shall be submitted to the entities with whom the County contracts for the Program. Any additional information required by such entities shall be requested directly from the SBE with a copy of such request to SBD staff.

2. Bonding and Financial Application Process

   a. The BFA Program participant will provide all the necessary documentation to complete a Bonding and/or Financial Assistance application. SBD, through partnering relationships with bonding agencies and lending institutions, shall assist SBEs in obtaining bonding and financial assistance.

   b. SBD shall assist the BFA Program participant in preparing and completing the Bonding and/or Financial Assistance application package.

   c. Upon completion of the Bonding and/or Financial Assistance application package, SBD staff will perform a review of the BFA Program participant's application for completeness and thereafter submit same to the entities with whom SBD has partnered for the BFA Program. SBD staff shall be notified of the approval status of the bonding or loan application.

   d. Any additional information required by bonding entities shall be requested directly from the SBE with a copy of such request to SBD staff.

C. Bonding and Loan Coordinator Responsibilities:

1. The BLC shall maintain a listing of surety bonding companies, which will be utilized in the BFA Program. This listing shall include treasury listed and state listed companies only.

2. The BLC shall coordinate between the County, eligible SBEs, and surety bonding companies.

3. The BLC shall solicit eligible lending institutions to participate in the BFA Program, and refer eligible SBEs to them as needed.

4. The BLC will keep records and files on all SBE firms that have applied to participate in any of the SBD training or assistance programs. The BLC will also set up appointments for SBE firms with the appropriate entities as applicable.

5. The BLC will coordinate regular workshops for SBE firms on how to do business with the County, to discuss County procurement processes and to develop specialized business related educational opportunities.

6. The BLC is responsible for marketing of the BFA Program.

7. The BLC is responsible for providing various reports to the Small Business Advisory Board. Such reports will include the: (a) number of clients that applied to the BFA Program; (b) number of clients that received bonding and/or loans; and (c) bonding or loan amount(s).

D. BFA Program Process and Segments

Firms wishing to be part of these programs will follow the steps below:

1. Certified SBE expresses need for financial assistance, through internal referral or outreach activities.
2. Referral is made to the BLC and financial needs assessment meeting appointment is made.
3. Financial needs assessment meeting is conducted and SBE's financial needs are addressed. BLC will assess the SBE's financial condition and present it with attainable options.
4. If a bonding need is identified, then BLC will refer SBE to a surety agent, and provide additional assistance as needed. BLC will follow up with surety agent and report outcome of bonding assistance request.
5. If loan assistance is needed, then BLC will refer the SBE to the most suitable lending partner, including commercial banks, alternative lenders, and microlenders. BLC will follow up with SBE and lending partner, provide additional assistance where needed in the process, and report outcome of lending assistance referrals.

IV. CERTIFICATION

A. Eligibility Requirements

1. No firm shall be certified as a SBE where the individual net worth of any of its owners is more than on one million five hundred thousand dollars ($1,500,000). Representations as to gross revenues and net worth of owners shall be subject to audit.

2. SBE applicants must be profit-motivated businesses. Not-for-profit or non- profit corporations are not eligible for certification.

3. Only firms that meet personal net worth and size limits of SBEs as to average annual gross revenues for the last three (3) years may be certified as SBEs, or in the case of manufacturers and wholesalers – the number of full-time, permanent employees of the applicant firm and all of its domestic and foreign affiliates, may be certified as SBEs.

4. Size determinations for SBEs certification eligibility shall take into account the combined

gross revenues of the applicant firm and all of its domestic and foreign affiliates, or in the case of manufacturers and wholesalers – the number of full-time, permanent employees of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included. Section E below provides additional information regarding affiliation determinations.

5. Applicants and certified SBEs must be properly licensed to conduct business in Miami-Dade County, must perform a commercially useful function with an actual place of business in Miami-Dade County, not a Virtual Office, must have a valid business tax receipt issued by Miami- Dade County at least one (1) year prior to certification, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified. In addition, a firm shall not be certified unless it contributes to the economic development and well- being of Miami-Dade County's tax base. When determining whether the applicant has an actual place of business in Miami-Dade County, SBD shall consider evidence such as, but not limited to:

   a. The existence and location of secretarial or other administrative staff.

   b. Offices, premises related to business, or other facilities within Miami- Dade County at which the goods or services to be provided are produced or performed.

   c. Local Business Tax Receipt issued by Miami-Dade County.

6. A firm shall be certified as a SBE only if a business owner, alone or as a member of a group, owns at least 10% of the firm's stock personally and possesses the licenses necessary to satisfy the qualifying requirements required in order to engage in the business of providing the type of services for which certification is sought.

7. An individual, alone or as a member of a group, shall own or control only one (1) SBE at a time.

8. When investigating the ownership and control of an applicant or a SBE, SBD shall consider factors including, but not limited to, all securities constituting ownership and/or control of a business for purposes of establishing the business as a SBE shall be held directly by the owners. No securities held in trust shall be considered.

9. Nothing shall prohibit SBEs from competing for contracts under the Federal Disadvantaged Business Enterprise (DBE) program or any other business assistance program if the SBE is also certified for the programs under this Implementing Order by SBD or certified for the programs under this Implementing Order by SBD or certified by any other agency or organization.

10. A SBE shall not be subject to any formal or informal restrictions that limit the customary discretion of the owner.

11. An applicant that has undergone a recent change in ownership, control or reported income level will be carefully scrutinize. Factors such as, but not limited to, the following shall be considered:

a. The reasons for the timing of the change in ownership of the business relative to the time that the contracts in the applicant's trade, or servicer area are advertised;
b. Whether an individual identified as an owner who had a previous or continuing employee-employer relationship with present owners has actual management responsibilities and capabilities;
c. Whether reported income levels indicate a sever decline to possibly attempt to qualify the firm for SBE certification; and
d. Whether affiliation as described herein exists or once existed between the applicant firm and a non- SBE firm.

B. Terms of Certification

1. Certification for a SBE firm is valid for a three (3) year period. To validate continuing eligibility, SBD may conduct random audit(s) within the three (3) year certification period. The re-certification application shall include, at a minimum:

   a. The prior three (3) years of federal business tax returns based upon the year that the SBE application is submitted. The tax returns must be signed, completed and submitted for the firm and all affiliates.

   b. Current business, professional licenses and certifications issued by the State of Florida and Miami-Dade County, and Local Business Tax Receipt issued by Miami-Dade County.

   c. Current lease agreement or warrantee deed for the firm's actual place of business.

   d. Notarized, sworn affiliation affidavit.

   e. Current personal financial statement for each direct or indirect owner.

2. Additional supporting documentation may be required by SBD to verify re-certification and continuing eligibility. The re-certification application shall be submitted at least one hundred and eighty (180) days prior to the end of the three (3) year certification term to ensure sufficient time for processing by SBD. If the application is not approved by the end of the three (3) year certification period, and such application was not submitted at least ninety (90) days prior to end of three (3) year certification term, the certification of the firm shall expire and not be in effect until a new application is approved by SBD. A firm whose certification expires because the re-certification application is not approved as of the last day of the three (3) year certification period pursuant to the above, shall no longer be eligible to participate in the CSBE program, however the firm may complete any existing contracts and continue counting towards meeting any measures on existing contracts.

3. SBD will take the following action if a SBE firms does not continue to meet the eligibility criteria for the CSBE program given a failure to provide either required audit or re-certification documentation:

   a. SBD shall provide written notice via the County's web-based system (the "Decertification Notice") to the SBE firm that the firm will be decertified as of the date specified in the Decertification Notice.

b. SBD shall allow the SBE firm fifteen (15) days from the date of the Decertification Notice to submit the required audit or re-certification documentation.

c. If the SBE firm does not provide the required audit or re-certification documentation within the timeframe stipulated in the Decertification Notice, the SBE shall be decertified as of the date stipulated in the Decertification Notice.

d. Effective the date specified in the Decertification Notice, the firm shall no longer be a SBE, however the firm may complete any existing contracts and continue counting towards meeting any measures on existing contracts.

4. A SBE firm, its individual officers, its shareholders, its qualifying agent or its affiliated businesses that has been denied certification is not eligible to apply for certification for twelve (12) months from the time of the denial. Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD. Graduating firms may be eligible to reapply for certification, after filing and submitting their most recent corporate tax return subsequent to graduation, if and only if, said tax return was not previously considered.

5. A SBE must be certified by the applicable type of goods or services it provides in accordance with the applicable NAICS/NIGP Commodity Code in which the SBE is licensed (if applicable). A SBE can be certified in more than one NAICS/NIGP Commodity Codes. SBD will determine the appropriate codes for certification under the program based on the licenses held by the firm and experience submitted to SBD.

6. A business owner, alone or as a member of a group, shall own or control only one SBE firm at a time and shall not own or control another separate business certified under the Small Business Enterprise Program. If a non-SBE in the same or similar line of business as a SBE has an equity ownership of such SBE that exceeds ten (10) percent, the SBE shall not be certified or recertified.

7. SBEs shall provide written notice to SBD of any changes that affect their business structure or eligibility as SBEs. SBEs shall complete an submit required and supporting documentation describing the nature of the change and the effective date of the change(s) to SBD within thirty (30) calendar days of the effective date of the change(s) via the County's web-based system. SBD shall review and determine if said change(s) effect the firm's SBE certification.

8. A SBE must have a valid certification in effect at time of bid submittal. For successful bidders, certification must be maintained from bid award throughout the duration of the agreement. With the exception of provisions described in Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami- Dade County, for graduation from the SBE Program, loss of SBE certification may lead to removal of the firm from continued participation in the SBE Program. SBEs shall allow site visits by County staff when attempting to determine continuing compliance with certification requirements. However, a graduated SBE shall be eligible to complete any existing contracts and continue counting towards meeting any measures on existing contracts, as well as be eligible to be awarded contracts as primes or subcontractors for bids/proposal submitted prior to the notice of graduation.

9. A SBE must be certified in accordance with Section IV c (2) below.

10. Applicants and SBEs must be properly licensed to conduct business in Miami-Dade County, must perform a commercially useful function with an actual place of business in Miami-Dade County, and must continue to perform a commercially useful function in Miami- Dade County to be eligible for certification or to remain certified.

11. SBD shall suspend a SBE's certification when an owner or a qualifier necessary to the firm's certification dies or is incarcerated. A firm's certification may also be suspended when there is adequate evidence that there has been a material change in circumstances that affects the SBE's eligibility, or when the SBE fails to notify SBD in writing of any material change in circumstances as required. SBD shall provide written notification of the suspension and a time frame for the CBE-A/E to demonstrate the firm's certification eligibility before SBD initiates the decertification process as provided in Section IV b (3) above. During the period of suspension, the SBE may complete any existing contracts and continue counting towards meeting any measures on existing contracts as long as all other certification requirements are met but will not be eligible for new awards under the CBE-A/E program.

C. SBD Responsibilities and Certification Process

1. SBD is the County agency responsible for certifying, decertifying and re-certifying applicants for the SBE Program. SBD shall collect, analyze and verify all information needed to establish the eligibility of an applicant and continued eligibility of SBEs. SBD shall attempt to make a certification decision within ninety (90) days of receipt of a complete application via the County's web-based system. An application is complete when it includes all required supporting documents. SBD shall make available a re-certification application via the County's web-based system.

2. SBD shall not certify an applicant, shall not recertify a SBE, and shall decertify a SBE that fails to comply with the criteria or procedures of Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade County, as amended, this Implementing Order and/or participation provisions. SBD shall have discretion to suspend the certification of a SBE during any appeal of a certification decision.

3. SBD shall certify each SBE by the type of good and/or service it performs in accordance with the applicable NAICS/NIGP code(s).

4. To decertify a SBE, SBD shall either: (a) give notice to the SBE that the decertification decision will be effective at the completion of any appeal under this Implementing Order; or (b) suspend the certification of the SBE during any appeal of the certification decision. SBD shall give written notice, including the reasons for its decision, to applicants who are denied certification and to SBEs who are decertified, or denied continuing eligibility recertification, or have graduated.

5. SBD may require applicants and SBEs to submit information regarding their business operations including, but not limited to, a breakdown of the applicant's or SBE's ownership, and/or work force as to race, national, origin, gender, and gross annual sales receipts.

6. SBD shall make available a re-certification application via the County's web-based system.

7. SBD shall maintain an updated list of SBEs, based on each NAICS/NIGP commodity code(s) by which the SBE is certified.

8. Interested parties shall complete an SBE certification application via the County's web-based system. An explanation of the certification requirements is also available on SBD's Web Page at www.miamidade.gov/smallbusiness.

9. The applicant shall complete the certification application and submit it online with all requested documentation to SBD.

10. All applicants, including SBEs seeking continuing eligibility, shall attend if requested by SBD staff, an Eligibility Review Meeting to clarify information that was submitted in the application and accompanying documents or to gain additional information regarding the applicant's eligibility for certification. SBD shall notify the applicant if an eligibility review meeting is required.

11. All applicants, including SBEs seeking continuing eligibility, shall allow site visits by SBD staff to gain additional information regarding compliance with eligibility requirements. SBD shall notify the applicant if a site visit is required and shall schedule the site visit at a mutually convenient time.

12. Applicants and SBEs shall provide SBD with all information that SBD reasonably requests to determine eligibility for certification.

13. All information submitted to SBD shall be subject to random audit. If a SBE does not submit documentation requested as part of random audit by the time frame specified by SBD, SBD shall initiate the decertification process as provided in Section IV b (3) above.

D. Decertification

1. If during the period of certification, the County receives information that a SBE received certification improperly or that the firm no longer qualifies to be certified as a SBE, then SBD shall conduct an investigation of the allegations.

2. SBD shall decertify the firm if the investigation indicates that:

a. The firm cannot be contacted at the last known address.

b. The firm is no longer in business;

c. The firm is no longer licensed to do the type of business for which it was certified;

d. The firm obtained its original certification and/or recertification through false representation or deceit; or

e. The firm has been debarred by Miami-Dade County.

3. When decertifying a SBE, SBD shall either:

   a. Give notice to the SBE that the decertification decision will be effective at the completion of any appeal under this Implementing Order; or

   b. Suspend the certification of the SBE during any appeal of the decertification decision.

E. Affiliation Determination

General: Only small firms that meet size limits of SBEs as to average annual adjusted gross revenues for the last three years or number of employees for manufacturers and/or wholesalers may be certified as SBEs. Size determinations for SBE shall take into account the combined gross revenues and/or employees of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included.

1. Affiliation: Firms are considered affiliates of each other when either directly or indirectly:

   a. One firm controls or has the power to control the other, or

   b. A third party or parties controls or has the power to control both, or

   c. An identity of interest between or among parties exists such that affiliation may be found.

2. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, related business lines or related scopes of work, common facilities, common management, and contractual relationships. Examples of affiliation include:

   a. Nature of control in determining affiliation

      1) Every firm is considered to have one or more parties who directly or indirectly control or have the power to control it.

         Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

      2) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.

   b. Identity of interest between and among persons as an affiliation determinant. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one firm. In determining who controls or has the power to control a firm, persons with an identity of interest may be treated as though they were one person.

3. Affiliation through stock ownership.

4. Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another firm.

5. Affiliation through common facilities. Affiliation generally arises where one firm shares office space and/or employees and/or other facilities with another firm, particularly where such firms are in the same or related industry or field of operations, or where such firms were formerly affiliated.

6. Affiliation with a newly organized firm. Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one firm organize a new firm in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the firm is furnishing or will furnish the other firm with sub-consulting agreements, financial or technical assistance, proposal or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.

7. Affiliation through contractual relationships. Affiliation generally arises where one firm is dependent upon another firm for consulting agreements and business to such a degree that its economic viability would be in jeopardy without such agreements/business.

8. Affiliation under joint venture arrangements

V. JOINT VENTURES BIDDING ON CONTRACTS WITH SBE MEASURES

A. Approval of Joint Ventures

Only joint ventures registered with SBD in accordance with this Implementing Order are eligible to participate as joint ventures in the SBE program. Joint ventures must be lawfully established. At least one member of the joint venture must be certified as a SBE before the joint venture can be approved. Joint ventures can participate under the SBE program on contracts with set-asides, subcontractor goals, bid preferences and selection factors.

B. Program Requirements and Incentives

Joint Ventures must submit their joint venture agreements for approval by SBD, no later than thirty (30) calendar days prior to the date set for receipt of bids on an eligible project. SBD shall review the joint venture agreements for approval by considering the following factors:

1. Allocation of profits and losses to each venture partner;
2. allocation of the management and control; and
3. capital investment from each venture partner.

As a Joint Venture under the SBE programs, a written joint venture agreement must be

completed by all parties, lawfully established with the State of Florida, and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner. The agreement must state that the Joint Venture will continue for the duration of the project, at minimum.

A proposal/bid submitted by a Joint Venture that does not include a written joint venture agreement approved by SBD in accordance with the requirements of this IO, shall be deemed a non-qualified Joint Venture, and ineligible to participate in the SBE Program. An eligible Joint Venture may bid on County projects. Upon the approval of the contracting department and SBD, all projects valued over $5,000,000 shall require each bidder to be a Joint Venture, as long as availability exists.

Joint Ventures will receive a Bid Preference or Selection Factor based on the percentage ownership of the SBE, as follows:

a. Less than ten percent (10%) SBE ownership will result in a 0% bid preference or 0% selection factor.

b. Between ten percent (10%) to twenty percent (20%) SBE ownership will result in a 3% bid preference or 3% selection factor.

c. Between twenty-one (21%) to fifty percent (50%) SBE ownership will result in a 5% bid preference or 5% selection factor.

d. Fifty-one percent (51%) and greater SBE ownership will result in a 10% bid preference or 10% selection factor.

The Joint Venture will receive credit towards any CBE-A/E measures based on the percentage ownership of the SBE that is part of the joint venture. A Joint Venture that includes fifty-one percent (51%) or above CBE-A/E ownership may also bid on set-aside contracts.

C. Joint Venture Responsibilities

Joint ventures must submit prior to bid submission a Joint Venture Agreement containing the following information:

1. A description of the financial contribution of each member;
2. a list of the personnel and equipment used by each member;
3. a detailed breakdown of the responsibility of each member and the work to be performed by each member;
4. an explanation of how the profits and/or losses will be distributed;
5. the bonding capacity of each member;
6. a description of any management or incentive fees for any of the members;
7. a statement of the percentage of the joint venture that is owned and controlled by the qualifying member(s) and the basis for claiming such percentage; and
8. a copy of any required State of Florida certificates or registrations.

D. SBD Responsibilities

SBD shall collect, assemble and verify all information needed to determine if at least one of the members of a joint venture is a SBE, and to approve the joint venture agreement and register said Joint Venture, as applicable. A Joint Venture Agreement is complete when it includes all required supporting information.

VI. PROGRAM MANAGEMENT

A. Contracts $100,000 and Under

1. County departments/agencies that issue or use contracts are required within the fiscal year to expend one hundred (100) percent of the total value of contracts one hundred thousand dollars $100,000.00 or less for goods or services on certified SBEs. 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).

2. Bids or quotes submitted by any SBE that is a Micro Tier 1 or Micro Tier 2 shall automatically receive a ten (10) percent bid preference and a Tier 3 SBE shall automatically receive a five (5) percent bid preference, when not set-aside for SBEs. When set-aside, the preference shall be: ten (10) percent for Micro Tier 1 SBEs; five (5) percent for Micro Tier 2 SBEs; and zero (0) percent for Tier 3 SBEs. County departments shall deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation, and are also required to solicit bids or quotes from at least four (4) firms where available (two available certified SBEs and two non-certified firms).
3. SBD shall review reports of the utilization of SBEs and shall inform departments failing to meet the requirements set forth herein. Additionally, SBD shall report awards to SBEs to the Board annually.

B. Contracts Greater than $100,000

1. Prior to advertisement, each contract, purchase, or blanket purchase of goods or services in excess of one hundred thousand dollars ($100,000), and each purchase order that may accumulate an aggregate amount greater than one hundred thousand dollars ($100,000) shall be reviewed for the application of contract measures.

2. Departments shall submit contracts to SBD to review for the application of measures and shall work in conjunction with SBD in making a recommendation. SBD shall seek concurrence with the issuing and user departments when making a recommendation. Departments shall advise SBD of any contract advertisement dates that are in excess of 120 days of the initial RC recommendation. Departments shall also advise SBD of any projects not advertised within 180 days of the recommendation. Those contracts not advertised within 180 days will be re-submitted to SBD for reconsideration.

3. Departments shall advise SBD of any changes in bid specifications, post award changes and all contracts with measures that are cancelled.

4. The County Mayor or designee may approve emergency purchases with measures that meet the County's definition of emergency. Such measures shall be submitted

presented to SBD for ratification.

5. Standard participation provisions shall be included in all contract documents with applied measures unless SBD approves substitute proposal documents.

VII. CONTRACT ADMINISTRATION

A. Pre-Award Compliance Review

1. Bid documents shall require bidders to submit a completed Certificate of Assurance at the time of bid submission, acknowledging the required measure and submission of a Utilization Plan via the County's web-based system. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform therefore. Failure to submit the required Certificate of Assurance and Utilization Plan shall deem the bid/proposal non-compliant.

2. The Compliance Monitor shall notify the bidder in writing stating the facts and the reasons on which the noncompliance is based. Upon notification from SBD, the bidder may request a meeting in writing within two

   business days from the date of the notification of noncompliance. The bidder shall supply further relevant information as required by the Compliance Monitor. No new altered Utilization Plan will be accepted.

3. The Compliance Monitor shall issue a written recommendation to the Contracting Officer that includes facts and reasons for the bidder's compliance or noncompliance.

VIII. APPLICATION OF CONTRACT MEASURES

A. Set-asides:

The County Commission or Public Health Trust may determine it is in its best interest to waive competitive bidding or selection requirements and set-aside a contract for SBEs where, prior to bid advertisement, there are at least three
(3) available SBEs to perform the set-aside contract.

1. Where applicable : (i) contracts from $100,000.01 to $750,000 shall be set-aside for Micro Tier 1 SBEs; (ii) contracts from $750,000.01 to
   $2,000,000 shall be set-aside for Micro Tier 2 SBEs; and (iii) contracts from $2,000,000.01 to $5,000,000 shall be set-aside for Tier 3 SBEs.

2. When set-aside, the bid preference shall be: ten (10) percent for Micro Tier 1 SBEs; five (5) percent for Micro Tier 2 SBEs; and zero (0) percent for Tier 3 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. In the event there is no availability in the designated SBE tier, SBD may assign a set-aside to the next level tier which will retain a set-aside recommendation. Lower tier SBE firms may bid on higher tier set-asides, but higher tier SBEs may not bid on a lower

tier set-asides.

B. Subcontractor Goals:

A recommendation to apply a subcontractor goal is appropriate when there are three (3) or more certified firms available to provide the portion of the contract.

1. Subcontractor goals may be applied to a contract based on estimates made prior to bid advertisement of the quality, quantity and type of subcontracting opportunities provided by the contract and the availability of SBEs to perform such work. Bid documents for contracts to which a SBE subcontract goal is applied shall provide that only SBEs certified to provide the type of goods or services for which a goal is imposed shall be counted towards meeting a goal. The bid documents shall further provide that a bidder must be found in compliance with the requirements of subsections 2 and 3 below in order to be eligible for award of the contract.

2. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that bidders must submit with its bid a completed Certificate of Assurance acknowledging the required measure and submission of a Utilization Plan via the County's web-based system. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required timeframe, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform therefore. The solicitation documents for any competitive selection involving a separate evaluation of sealed price envelopes shall require that the technical submission contain a Certificate of Assurance acknowledging the required measure and submission of a Utilization Plan via the County's web-based system listing the certified SBEs to fulfill the measure. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a SBE may itself meet the goal to the extent it is certified to provide the type of services that are the subject of the contract. Bidder must include in bid documents a Certificate of Assurance acknowledging the required measure and submission of a Utilization Plan via the County's web-based system listing itself to fulfill the measure. The Utilization Plan shall be executed by the bidder via the County's web- based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a joint venture one or more of whose venturers is an SBE must submit with its bid a copy of the joint venture agreement in order for such venturer(s)'s participation to be eligible to be counted towards meeting the goal. The joint venture agreement shall be in writing, signed by all venturers, and shall specify the ownership, control, profits and financial risk assumed by each venturer, including the SBE venturer(s). The joint venture agreement shall also specify the portion of the contract work (i.e., the services to be provided) to be performed by the SBE venturer(s) in detail separately from the work to be performed by the non-SBE member. The bidder shall receive credit towards meeting the goal to the extent that the combined dollar value of the SBE's participation as shown in the joint venture agreement submitted in conformity with and meeting the requirements of this

paragraph bears to the total contract price bid by the bidder. Bidder must include in bid documents a Certificate of Assurance acknowledging the required measure and submission of a Utilization Plan via the County's web-based system listing the certified SBEs to fulfill the measure. The Utilization Plan shall be executed by the bidder and the SBE(s) via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform. A SBE may fulfill a subcontractor goal in only one (1) goal type per contract.

3. A bidder that is a SBE may meet up to 100% of the subcontractor goal with its own forces. A bidder that is a joint venture having one or more SBEs venturers may comply with the goal based on the percentage participation of the SBE joint venturer(s) in the ownership, control and profits of the joint venture, and in the performance of the contract work.

4. Bid documents shall provide only expenditures to SBEs for performing a commercially useful function. These expenditures shall be counted toward meeting a subcontractor goal, expenditures to SBEs who subcontract work further to non-SBEs shall not be counted toward meeting a specified goal unless such subcontracting receives prior approval from SBD.

5. The Successful Bidder shall submit to the Contracting Officer, for approval, a written subcontract agreement corresponding in all respects to the Successful Bidder's Utilization Plan. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Goods Program and Services Program.

C. Bid Preference:

1. A bid preference shall apply to all contracts which are to be awarded on the basis of price (excluding RFPs, RFIs and RFQs) and are not set- aside. The preference shall be utilized for bid evaluation, and shall not affect the contract price. The preference accorded on contracts from
$100,000.01 to $1 million shall be ten percent (10%) of the price bid for all tiers. The preference accorded on contracts greater than $1 million shall be five percent (5%) of the price bid for all tiers. SBEs are not accorded a bid preference on contracts of less than or equal to $100,000. Contract documents shall include standard language indicating the application of a bid preference.

2. On contracts on which a preference is applied, SBD shall conduct a periodic review of contracts hereunder and will prepare a report to the issuing department's director.

D. SBE Selection Factor

1. Any bidder that is a SBE or a joint venture with a SBE, shall be accorded a selection factor on RFPs, RFQs, and RFIs for contracts greater than
$100,000 that are not set-aside for bidding solely by SBEs. Contract documents shall include standard language indicating the application of a selection factor.

2. RFPs, RFQs and RFIs that assign weights to evaluation or selection criteria, shall provide that a bidder entitled to a selection factor shall receive an additional ten percent (10%) of the evaluation points scored on the technical portion of such bidder's

proposal. RFPs, RFQs and RFIs that do not assign weights to evaluation or selection criteria, shall provide that whenever there are two best ranked proposals that are substantially equal and only one of the two so ranked is submitted by a bidder entitled to a selection factor, the selection factor shall be the deciding factor for award.

E. Review Process

1. SBD shall publish a list of projects under review daily on the department's webpage. SBD shall review the proposed contracts and the departmental recommendations. Should SBD and the department(s) not reach consensus, on recommended measures or goals, and when public input requires deliberation regarding the measure/goal, the contract will go through the Review Committee Process, as detailed below. Upon obtaining departmental concurrence with the recommended measure, SBD shall post projects and recommended goals daily on the SBD web page.

2. SBD shall consider public comments in writing on projects pre- and post measure or goal recommendations.

3. All projects with recommended measures shall contain language to allow for public comment to be submitted to SBD within thirty-six (36) hours of posting via a designated email address or mail.

4. All advertised projects shall contain language to allow for public comments to be submitted to SBD within thirty-six (36) hours of date of advertisement via a designated email address or mail. SBD and the contracting department shall review comments and make recommendations, as applicable, to the Mayor or designee.

5. Changes to goal recommendations, approved by the Mayor or designee, as a result of public comment shall require issuance of an addendum to the project advertisement.

F. Review Committee Process

SBD is responsible for recommending to the Mayor or designee whether to apply SBE set-asides or subcontractor goals to a contract. The Mayor or designee may accept, reject, modify or otherwise alter SBD's or Review Committee's recommendation.

1. All recommendations shall be agreed upon between SBD and the contracting department, prior to final recommendation to the Mayor or designee.

2. The Mayor or designee shall establish a standing Review Committee (RC) to meet periodically, or as often as needed, to review projects in which consensus was not established between SBD and the contracting department and when public input requires deliberation regarding the measure/goal. The RC will make recommendations to the Mayor or designee.
3. The RC shall conduct public deliberations and make recommendations whether to apply SBE set-asides or subcontractor goals to a contract. The Mayor or designee may accept, reject, modify or otherwise alter SBD's or Review Committee's recommendation.

4. The standing members of the RC shall include: Director, Transportation and Public

Works Department; Director, Internal Services Department; a rotating Director of the County's capital departments or their designees; and a County Mayor appointed Chairperson. A quorum of the RC shall be three (3) members. Staff support shall be provided to the Review Committee by SBD.

5. SBD shall staff the RC and make recommendations of measures to the RC and County Mayor or designee.

6. The RC shall meet as needed. SBD shall timely publish meetings, listing the meeting location, date, and time. All RC meetings are subject to Government-in-the-Sunshine requirements. The chair shall allow participation of the public at RC meetings consistent with accomplishing the agenda of the RC.

7. The RC shall have authority to promulgate rules of general application to carry out its responsibilities, which rules are subject to review and approval by the County Mayor or designee.

8. The RC may, after public deliberation and consideration of alternatives, accept, reject, modify or otherwise alter the staff recommendation. The County Mayor or designee may accept, reject, modify or otherwise alter SBD's recommendations. The Board of County Commissioners may accept, reject, modify or otherwise alter the County Mayor's recommendations. The Mayor may accept or veto the Board of County Commissioners' recommendations. In accordance with the policy established by the Board of County Commissioners, the Board of County Commissioners may overrule the Mayor's veto.

IX. BIDDER'S RESPONSIBILITY WHERE A SBE SUBCONTRACTOR GOAL IS APPLIED:

Bid documents to which a SBE subcontractor goal is applied shall require bidders to submit a Certificate of Assurance at the time of bid submission acknowledging the required measure and submission of a Utilization Plan via the County's web- based system. Each Utilization Plan shall be executed by the bidder and the SBE upon notification of SBD within the required timeframe, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform therefore. The Successful Bidder shall enter into a written subcontract agreement for approval, corresponding in all respects to the Successful Bidder's Utilization Plan to include the type of services the SBE is to provide and the percentage and price. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Goods Program and Services Program.

X. PROMPT PAYMENT:

It is the County's intent that all firms, including SBEs providing goods and/or services to the County, shall receive payments promptly in order to maintain sufficient cash flow. The prime vendor in direct privity with the SBE must notify the SBE, the managing agency and SBD, in writing, of those amounts billed by the SBE that are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing by the SBE. Failure of the prime vendor to comply with the applicable requirements of this Section shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE and payment shall be forthcoming.

A. The prompt payment provisions of this Section shall take precedence over Section 2-8.1.4

of the Code of Miami Dade County, Fla. ("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.

2. Billings from prime vendors under goods and/or services contracts with the County or Public Health Trust ("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 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.

B. Contracting Officer's Responsibilities

1. The Contracting Officer administering a contract with a SBE measure shall forward undisputed billings from SBE prime contractors to the Finance Department for payment within fourteen (14) calendar days of receipt of such billings.

2. The Contracting Officer must notify the SBE prime contractor and SBD, in writing, of those amounts billed by the SBE that are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing by the SBE. Failure of the Contracting Officer to comply with the applicable requirements of this Section 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 by the next billing date or fourteen (14) calendar days from receipt of billing, whichever is less.

3. A SBE prime contractor may invoice the County 1% interest per month for any

undisputed amount that is not paid promptly as provided by this Section.

4. SBD may investigate reported instances of late payment to SBEs.

5. Departments shall report disputed invoices to the Board on a quarterly basis.

XI. POST AWARD COMPLIANCE AND MONITORING

A. SBD shall monitor and enforce the compliance of the vendor with the requirements of this Implementing Order, and any related program requirements, during the duration of the contract and may monitor for up to one year after notice of completion of the work or full payment of contract obligations, whichever comes last.

B. Successful Bidders and SBE shall permit the County to have access during normal business hours to all books and records relating to the compliance with the contract measure applied to the contract or relating to compliance with certification requirements. This right of access shall be granted for one year after completion of the work or full payment of contract obligations, whichever comes last, or for one year after the expiration of SBE certification.

C. Successful Bidders and SBEs shall permit the County to have access to employees performing work during normal business hours in order to conduct visual inspections and interviews that may be conducted privately when necessitated by County staff.

D. Successful Bidders and SBEs shall comply with all reporting requirements established by SBD. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County.

E. In the event that during the performance of a contract containing a SBE subcontractor goal, a SBE is not able to provide the services specified in the Utilization Plan submitted at the time of bid, the Successful Bidder must locate a SBE to substitute. The Successful Bidder must receive approval for substitution from SBD. A Successful Bidder that cannot secure a substitute SBE must provide a written statement to the Compliance Monitor.

F. SBD shall be responsible for monitoring the performance of the Successful Bidder regarding compliance with a contract measure applied to the contract. The Compliance Monitor may, at his or her discretion, investigate deviations in the utilization of SBEs from that required by the contract and make recommendations regarding compliance to the Contracting Officer. Contracting Officer shall not make a final determination without a recommendation regarding compliance from the Compliance Monitor. Deviations from the contract measure stated in the contract that shall be monitored include, but are not limited to:

1. Termination of an SBE's subcontract agreement.

2. Reduction in the scope of work to be performed by an SBE.

3. Modifications to the terms of payment or price to be paid to an SBE.

4. Failure to enter into a contract with an SBE being utilized to meet a contract measure.

G. If, after execution of a subcontract agreement, the Successful Bidder submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not reasonably have been aware, until subsequent to the date of execution of such subcontract, a SBE, who entered into such subcontract has committed a material breach of the subcontract agreement, the Successful Bidder shall be entitled to exercise such rights as may be available to him/her to terminate the subcontract agreement. The procedures of paragraphs H and I below apply to this paragraph.

It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a performance and payment bond(s), if so requested by the prime contractor after execution of a written subcontract and prior to commencement of the subcontractor's work. In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor, furnish a performance and payment bond(s) wherein the prime contractor shall be named the obligee, guaranteeing (i) prompt performance of such subcontract and (ii) the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under such subcontract, the prime contractor may reject such bid and make a substitution of another subcontractor subject to the bid specifications. Such bond(s) may be required at the expense of the subcontractor only if the prime contractor in its written or published request for sub-bids (1) specifies that the expense for such bond(s) shall be borne by the subcontractor, and (2) clearly specifies the amount and requirements of such bond(s).

If the bond process for the subcontractor is not completed before the later of either the prime contractor's contract approval and award date, or ninety (90) days prior to the commencement of work of subcontractor, it shall be the prime contractor's sole discretion to extend time for the bond to be obtained or waive the bond requirement.

H. County's Determination of Bidder's Excusal or Termination of SBE Subcontract Agreement.

If the Successful Bidder at any time submits a written request to the Contracting Officer under the prior two paragraphs, the Contracting Officer as soon as practicable, shall determine whether the Successful Bidder has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the Successful Bidder, upon notice, an opportunity to present pertinent information and arguments. The procedures of paragraph I below apply to this paragraph.

I. Alternative Subcontracts.

If the Successful Bidder is excused from entering into a subcontract or rightfully terminates a subcontract under this Implementing Order and without such subcontract the Successful Bidder will not achieve the level of SBE participation upon which the contract was awarded, the Successful Bidder shall make every reasonable effort to propose and submit a substitute SBE via the County's web-based system and enter into an alternative subcontract or subcontract for the same work to be performed by another available SBE as appropriate, for a subcontract price or prices totaling not less than the subcontract price under the excused or terminated subcontract, less all amounts previously paid thereunder. The Successful Bidder must submit to the Compliance Officer a request for substitution

and subcontract agreement with the new SBE and provide all documentation required by the County. A Successful Bidder that cannot secure a substitute SBE must provide all supporting documentation required by the County. The procedures of paragraphs 1 and 2 below apply to this paragraph:

1. The Compliance Monitor may require the Successful Bidder to produce such information, as the Compliance Monitor deems appropriate and may obtain further information from other sources. The Compliance Monitor shall make his/her recommendation under this paragraph to the Contracting Officer and forward a copy to the bidder.

2. The Contracting Officer will consider objections to the Compliance Monitor's recommendation only if such written objections are received by the Contracting Officer within five (5) business days from the Successful Bidder's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, and as he/she in his/her discretion may determine, will reply to the Successful Bidder's written objection within ten (10) business days of receipt of these objections.

XII. CONTRACTUAL SANCTIONS

A. Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's or SBE's violation of or failure to comply with the Small Business Enterprise Program Ordinance and this Implementing Order 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; or

3. Termination, suspension, or cancellation of the contract in whole or part.

B. In the event a bidder or SBE attempts to comply with the provisions of this Implementing Order 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 and subcontracts the bidder or SBE has on other 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.

C. The foregoing notwithstanding, the Mayor or designee shall include language in all prospective projects containing a SBE goal which provides that, in addition to any other sanction for failure to fulfill the SBE 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 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 Director. A Make-up Plan must be submitted as part of any bid or proposal for future contracts as part of the Utilization Plan submitted via the County's web-based system. The Make-up Plan must identify all SBEs to meet the subcontractor goal and the work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to submit the required Make-up Plan with the Utilization Plan for any future contracts shall result in the submittal being deemed non-compliant. Any contractor subject to an approved Make-up Plan that fails to comply with any of the material terms of That Make-up Plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a six (6) month period. A contractor that fails to comply with any of the material terms of a second Make-up Plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a one (1) year period. A contractor that fails to comply with any of the material terms of a third Make-up Plan, without good cause, may be subject to debarment and shall automatically be referred to the debarment committee. After serving a debarment for failure to satisfy a make-up plan for no good cause, the subject firm shall be deemed ineligible for bidding on County contracts with measures for 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 SBE measure otherwise applicable to the future contract.

D. The foregoing obligation shall be in addition to any SBE goal otherwise applicable to the future contract. The procedures for making up the SBE deficit shall follow SBD policy.

E. Some of the contractual violations that may result in the imposition of sanctions listed in this Implementing Order 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 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 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 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 comply with the Living Wage Ordinance pursuant to Section 2-8.9 of the Code of Miami-Dade County;

12. Failure to enter into a written subcontract with a SBE after listing the firm on a Utilization Plan; and

13. Failure to pay subcontractors promptly and in accordance with this Implementing Order.

XIII. Administrative Penalties

Administrative penalties may range from de-certification to debarment. 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 Implementing Order and bid documents:

A. 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.

B. The loss of eligibility to be certified as a 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.

C. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this Implementing Order 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.

D. 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 Implementing Order 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.

E. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the 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 exceed three (3) years.

F. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to twenty percent (20%) of the amount thereof; for the second deficit, a penalty in an amount equal to forty percent (40%) thereof; for the third and successive deficits, a penalty in an amount equal to sixty percent (60%) thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade County, as amended.

G. If the required payment is not made within thirty (30) days of the 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.

XIV. Appeals Process

A. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of Sections 2-8.1.1.1.1 and 2-8.1.1.1.2, Code of Miami-Dade County, as amended, or this 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 thirty (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 and all exhibits received by him/her, to the Mayor or designee, who (i) may sustain, reverse or modify the hearing officer's recommendations and (ii) shall render a final decision, in writing. The determination of the Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

B. Decisions by the County Mayor under this Implementing Order shall be final.

C. PROCEDURES FOR ADMINISTRATIVE HEARING:

The procedure for administrative hearings shall provide that:

1. SBD will schedule a hearing date before a hearing officer, upon timely receipt of a request for an administrative hearing along with a $250 nonrefundable filing fee to appeal certification denial, decertification or a determination of noncompliance with the requirements of Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade County, or this Implementing Order.

2. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.

3. SBD shall serve upon the firm, contractor (or subcontractor) and/or lessee a notice of hearing following the Clerk of Court's designation of the administrative hearing officer. Such notice shall include:

    a. A copy of SBD's determination of noncompliance, as appropriate, outlining alleged prohibited practices upon which it is based;

    b. A description of the administrative penalties being considered; and

    c. The notice shall advise the appellant that he or she may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them.

4. SBD shall schedule a hearing before a hearing officer within 90 days from the date of the request for administrative hearing and receipt of the $250 filing fee, unless the parties rescind their request for hearing in writing.

5. Within five (5) days after completion of the administrative hearing, the administrative hearing officer shall transmit his/her findings of facts, conclusions, and recommendations together with all evidence taken before him/her, all exhibits received by him/her, to the Mayor or designee, in addition to a transcript of the hearing prepared by the County, 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 Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

D. QUALIFICATIONS OF HEARING OFFICERS:

1. Administrative hearing officers shall be residents of Miami-Dade County who possess outstanding reputations for civic price, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the County Mayor or designee pursuant to Section 8CC-2 of the Code of Miami-Dade County. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk. The Clerk shall submit an annual report to the Board on the number of women who have served as administrative hearing officers.

2. The County Mayor or designee shall appoint as many administrative hearing officers as are deemed necessary. Every effort will be made to ensure that the appointment of hearing officers reflect the diversity of the demographics of Miami-Dade County.

Appointments shall be made for a term of two (2) years. Any administrative hearing officer may be reappointed at the discretion of the County Mayor, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual administrative hearing officer; provided, however, that a determination as to reappointment must be made for each administrative hearing officer at the end of his or her one year term. The County Mayor shall have the authority to remove administrative hearing officers at any time. Appointments to fill a vacancy shall be for the remainder of the unexpired term.

3. Administrative hearing officers shall not be County employees but shall be compensated for their services.

4. The Miami-Dade County Attorney's Office shall serve as general counsel to the administrative hearing officer.

XVI. MENTOR-PROTÉGÉ PROGRAM:

A. Program Mission

Miami-Dade County seeks to build effective working relationships between leaders of mature established companies and emerging small business enterprises for the latter to benefit from the knowledge and experience of the established Mentor firms. Mentors will assist with the development of the Protégé's business plan by identifying the most critical needs to achieve the plan, and implementing the actions to obtain the desired results.

The Mentor-Protégé Program ("MPP") is a community-based effort, involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The MPP was created to assist in overcoming barriers that typically inhibit or restrict the success of small businesses. The program is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. As a result of the MPP, Protégés will experience a greater than industry average success rate and realize the growth and profitability objectives of their business plans, as well as long range stability. By implementing the MPP, Miami-Dade County will provide a community benefit by strengthening emerging businesses and providing them with the tools to benefit from opportunities in Miami-Dade County's economic development.

B. General Objectives

The primary objectives of Miami-Dade County's CBE-A/E MPP are:

1. To develop and strengthen Protégé firms through coaching and counseling from Mentors.

2. To expand business opportunities for Protégé firms.

3. To enable Protégés to become competent and viable well managed businesses subsequent to graduation.

4. To assist mentoring companies in carrying out their civic and corporate responsibilities

by furnishing opportunities to provide development assistance to other emerging Miami-Dade County firms.

5. To enhance Miami-Dade County's overall business and economic environments.

6. Incentives – In addition to the benefits provided in the Program Mission section above, Mentors can be compensated for their participation in the MPP for one year (the "Commitment Period"), and will be eligible for an incentive on bidding on Miami-Dade County contracts for one year after completion of the Commitment Period. This incentive shall consist of either a (i) two percent (2%) bid preference or (ii) ten percent (10%) selection factor, for bid/proposal evaluation purposes only. The incentive may only be used for one contract award per Commitment Period, and must be utilized within one (1) year from the end of the Commitment Period. A Mentor claiming an incentive on bidding on Miami-Dade County contracts based on the MPP must continue to meet the eligibility requirements in this Implementing Order.

C. Measurable Objectives

1. To create an environment that promotes a firm's ability to increase its capital, net earnings and profit margins; therefore, increasing its bonding capacity and credit rating.

2. Increase in Protégé firm's capacity to perform as depicted in equipment owned or leased, size of payroll, materials purchased, and overhead costs.

3. Identify tools to increase the volume and value of Protégé's current and future work.

4. Increase in Protégé's longevity and viability during and after concluding MPP participation.
5. Achievement of goals outlined in the Protégé's business plan.

D. MPP Eligibility Requirements

1. Mentor Eligibility Requirements

a. The Mentor shall be a company which is successful and productive in its area of work or services with a minimum of five (5) years of experience in its principal industry and which agrees to provide development assistance through the MPP.

b. The Mentor must be and remain in good legal business standing with the State of Florida, Miami-Dade County and all other local jurisdictions. Mentors must be solvent and licensed to do business in Miami-Dade County.

c. The Mentor shall follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibilities as a Mentor, including attending all meetings scheduled with Protégé and/or SBD. Additionally, Mentors shall not have any SBE violations within the preceding two (2) years from its application to the MPP.

2. Protégé Eligibility Requirements

a. The Protégé shall: (a) be a company certified as a CBE-A/E with SBD;

(b) have been actively conducting business for a minimum of two (2) years; (c) be ready for expansion; and (d) agree to participate fully in the MPP.

b. The Protégé must maintain an actual place of business where it provides its products and services, in Miami-Dade County throughout the duration of its MPP participation.

c. The Protégé firm must be and remain in good legal standing with the State of Florida, Miami-Dade County, and all other local jurisdictions. Protégés must be solvent and licensed businesses when applicable.

d. The Protégé agrees to follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD. Additionally, Protégés shall not have any SBE violations within the preceding two (2) years from its application to the MPP.

3. Mentor Application Process

a. The Mentor shall complete the application process to participate in the MPP. SBD may request additional documentation to ensure that eligibility requirements are met.

b. All documentation and information provided by the Mentor throughout the application process is subject to verification by SBD.

c. SBD will assign one Protégé to one Mentor. Both parties must sign a Mentor-Protégé Development Agreement to formalize their commitment to the MPP. Pairing Mentors with Protégés with a current or previous working relationship with each other, will be strongly discouraged since an objective of the MPP is to establish new productive relationships in the architecture and engineering industry.

4. Protégé Application Process

a. The Protégé shall apply with SBD on the appropriate application form to be considered for program participation as a Protégé. Accompanying the application should be a completed business plan and all required documentation, which may be pertinent to the Protégé's current financial standing, bonding level, capacity, staffing, workload, and other key business indicators. SBD may request additional documentation to determine MPP eligibility requirements are met.

b. All documentation and information provided by the Protégé throughout the application process is subject to verification by SBD.

c. SBD will assign one Protégé to one Mentor and both parties must sign a Mentor-Protégé Development Agreement to formalize their commitment to the MPP.

5. Mentor Responsibilities

a. Meetings - The Mentor shall conduct monthly face-to-face coaching and counseling

meetings with the Protégé and assigned SBD staff, to review the Protégé's strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings shall be conducted in Miami-Dade County. The Protégé will also be expected to provide reports using SBD's approved format on its efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s). Both parties should establish target dates for any further improvements or enhancements.

b. Informal Contacts - The Mentor is encouraged to routinely communicate with the Protégé to discuss daily problems and situations encountered by the Protégé and to provide periodic review.

c. Introduction to Resources - The Mentor shall facilitate networking opportunities in the banking, bonding, management, and business industries.

d. Independence - The Mentor must not assume managerial or administrative control of the Protégé during or following the mentorship period.

e. Working Relationships - Nothing in Mentor-Protégé Program regulations shall prohibit Mentors and Protégés from working together on joint ventures or in contractor-subcontractor arrangements on architecture, landscape architecture, engineering, surveying and mapping, or other projects provided that control of the Protégé firm remains with the Protégé itself. Protégés may be used to meet subcontractor goals on which the Mentor bids.

6. Protégé Responsibilities

a. Goals and Objectives - The Protégé shall prepare and strive to achieve targeted goals and objectives, which shall serve as a guideline and benchmark for evaluating the Protégé's progress in the MPP.

b. Meetings - The Protégé shall take part in monthly face to face coaching and counseling meetings with the Mentor and assigned SBD staff to review its strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings shall be conducted in Miami-Dade County. The Protégé will also be expected to provide reports using SBD's approved format on its efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s). Both parties should establish target dates for any further improvements or enhancements.

c. Informal Contacts - The Protégé is encouraged to routinely communicate with the Mentor to discuss daily problems and situations encountered by the Protégé and to obtain periodic counseling and guidance as needed.

d. Use of Training Resources - In an effort to enhance its business and industry knowledge and effectiveness, the Protégé is encouraged to attend training conferences, coursework, or workshops that will assist them in reaching targeted goals and objectives.

e. Independence - The Protégé is not permitted to relinquish managerial or administrative control to the Mentor.

7. Program Coordination

SBD is responsible for the overall coordination and administration of the CBE-A/E MPP. SBD's duties will include:

a. Advertising and promoting the MPP.
b. Organizing related business events.
c. Identifying and approving Mentors.
d. Identifying and certifying Protégés.
e. Assigning Mentors to Protégés as available.
f. Informing and reminding Mentors and Protégés of their roles and responsibilities.
g. Attending Mentor-Protégé meetings to promote effective cooperation and participation.
h. Reviewing meeting and progress status reports.
i. Maintaining program records.
j. Attracting the support of larger corporate sponsors.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Approved by the County Attorney as to form and legal sufficiency .

Implementing Order

Implementing Order No.: 3-48

Title: Miami International Airport North Terminal Development Procurement

Ordered: 07/17/2008 **Effective:** 07/27/2008

AUTHORITY:
Sections 2-8.1, 2-8.2, 2-285.1, and 2-10.4 of the Code of Miami-Dade County, and Sections 5.02 and 5.03 of the Miami-Dade County Home Rule Amendment & Charter.

SUPERSEDES:
Not Applicable

SCOPE:
This Implementing Order institutes procedures to expedite administration of contracts for the design, construction, and installation of goods and materials related to the North Terminal Development Program. It also governs the expedited process for the modification of North Terminal Development ("NTD") contracts. Policies and procedures relating to the County's procurement processes not specifically addressed by this Implementing Order shall remain applicable and are detailed in Administrative Orders or other Implementing Orders and the County Code. The powers delegated under this Implementing Order shall only apply to those contracts assumed by the County pursuant to the Fourth Amendment to the Lease, Construction and Financing Agreement between Miami-Dade County and American Airlines, as adopted by the Board of County Commissioners pursuant to Resolution R-735-05, and/or other contracts previously procured by American Airlines and previously assumed by Miami-Dade County via action of the Board of County Commissioners, and/or contracts to finish work begun but left incomplete as of August 1, 2005, and/or contracts related to the construction, design, or construction management of the North Terminal Development which were awarded by the Board of County Commissioners ("BCC") prior to May 1, 2008.

POLICY:
For the North Terminal Development Program ("NTD Program") to function efficiently and responsibly, an expedited process to address unforeseen site conditions, owner directed changes, and changes required by authorities having jurisdiction is needed to minimize delays and cost increases in the NTD Program.

The Mayor and the Airport Director ("Director") of the Miami-Dade Aviation Department ("MDAD") shall have the authority to amend any contract for services to be performed, facilities to be constructed, or goods and materials to be incorporated in connection with the NTD Program at Miami International Airport.

The Mayor and the Airport Director shall administer the ratification/expedite process for contracts, change orders, amendments, modifications, and settlement agreements and shall prepare a ratification list and submit it to the BCC on a quarterly basis in January, April, July and October of each year.

The authority delegated in this section is intended to be supplemental to, and shall not limit authority otherwise granted to the Mayor, Manager, or Airport Director by ordinance or by administrative or implementing order.

EXCEPTION:
Nothing in this Implementing Order shall affect the requirements of Chapter 2 of the Code of Miami-Dade County or State law for the competitive purchase of goods and services, including those related to public construction work and those contained in the Consultants Competitive Negotiation Act.

A. CHANGE ORDERS AND AMENDMENTS/MODIFICATIONS

The Mayor and the Airport Director may extend the contract time and waive liquidated damages for failure to comply therewith before the specified date for completion of the contract provided good cause exists and the contract provides that after the expiration of the contract time the County may extend the contract time or waive liquidated damages; and may otherwise modify the contract terms, may increase or reduce in any amount the scope and compensation payable under any contract, and may grant compensable and non-compensable time extensions. However, the authority granted under this section shall not allow the Mayor or the Airport Director to amend any contract if the value of that amendment is in excess of ten million dollars, without the prior consent of the BCC.

1. MDAD staff shall prepare a draft agenda item including the change order or amendment, staff's recommendation memorandum, and the necessary exhibits. The package shall be submitted to the Airport Director or his designee for review and further processing.

2. The Airport Director or his designee shall review the package and, if acceptable, MDAD staff shall proceed to obtain the remaining required reviews including appropriate approvals from THE Department of Small Business Development ("SBD"), MDAD Finance, Office of Strategic Business Management ("OSBM"), HNTB, and the County Attorney's Office. MDAD staff shall then submit to the Mayor for final review and approval. If the Mayor concurs with the recommendation, he or she will sign the change order, amendment, or modification.

3. Upon approval by the Mayor, MDAD shall file the documents with the Clerk of the Board and distribute the item to the Consultant/Contractor and other parties consistent with MDAD contract administration guidelines.

4. When a change order or amendment which contemplates increased or changed work is processed under this Implementing Order, such work must be considered essential for the base contract project scope to function as intended or the Owners need to address unforeseen site conditions and/or changes required by authorities having jurisdiction over the project.

B. SETTLEMENT AGREEMENTS

The Mayor and the Airport Director are delegated authority to negotiate and settle contractor claims for the NTD Project without prior approval by this Board, unless such settlements will result in payment to the contractor of more than ten million dollars.

1. Claims settled pursuant to this authorization shall be in accordance with MDAD's established claims resolution process and procedures, as the same may be reviewed and amended by the County Attorney's office as to form and legal sufficiency.

2. The settlement shall be in full compliance with Resolution R-119-06 (the "CSBE Resolution") which provides for the review, resolution and payment of claims of Community Small Business Enterprise ("CSBE") Subcontractors for work performed on the NTD project and R-397-06 ("the Amended Claims Process") which requires that payment of any settlement amount be conditional upon the claimant paying such portion of the pass through of claims of CSBE subcontractors to such subcontractors. These settlements shall be in compliance with the resolutions and shall include, at a minimum, the following provisions to protect payment to CSBE subcontractors: a) a release executed by each CSBE subcontractor whose work is involved in the claim, regardless of tier, specifically identifying the amount payable to such CSBE subcontractor from the settlement proceeds, and b) the express contractual commitment of the prime to the County and to such CSBE subcontractor to pay the amount owed to the CSBE subcontractor. This commitment shall be enforceable by the CSBE subcontractor and/or the County on its behalf.

3. MDAD staff shall prepare a draft agenda item including the settlement agreement documents, staff's recommendation memorandum, and the necessary exhibits. The package shall be submitted to the Airport Director for review and further processing.

4. The Airport Director shall review the package and, if acceptable, MDAD staff shall proceed to obtain the remaining required reviews including appropriate approvals from SBD, MDAD Finance, OMB, HNTB, and the County Attorney's Office. MDAD staff shall then submit the item to the Mayor for final review and approval. If the Mayor concurs with the recommendation, he or she will sign the settlement agreement.

5. Upon approval by the Mayor, MDAD shall file the documents with the Clerk of the Board and distribute the item to the Consultant/Contractor and other parties consistent with MDAD contract administration guidelines.

C. NORTH TERMINAL DEVELOPMENT BUDGET

1. Any exercise of authority to this section shall be subject to the limits of the overall budget approved by the BCC for the NTD Program. Allocation of monies pursuant to this Ordinance may not result in an overall increase in the NTD Program budget.

2. The Mayor and the Airport Director are authorized to shift dollar allocations among different projects that are within the overall North Terminal Development budget, provided however, that such reallocations do not cumulatively exceed the Board approved NTD Program budget.

3. The Mayor or the Airport Director shall report such reallocations among different projects to the BCC at their last meeting in July (of each year).

D. RATIFICATION

1. MDAD shall administer the ratification process for items processed under this Implementing Order including, change orders and amendments or modifications, as well as settlement agreements and shall prepare a ratification list and submit it to the BCC on a quarterly basis in January, April, July and October of each year.
2. MDAD shall include the following provision in each of the amendments, change orders or other modifications to address the event that the Board of County Commissioners may not ratify the Mayor's actions under this Implementing Order: In the event the BCC does not ratify the approval of the Mayor of this change order, amendment, or modification, the County shall terminate the change order, amendment, or modification by sending written notice to the Contractor, Consultant, or Supplier. The termination date shall be effective the date the notice is received. Such notice may be by electronic means (e.g., email). If electronic means are used, the electronic notice shall be followed by hardcopy. The County shall pay for all services or work completed and approved prior to receipt by the Contractor, Consultant, or Supplier of the notice of termination. Payment for completed work shall be in accordance with its contract/agreement with the County.

E. ASSISTANCE TO SMALL BUSINESSES

It is the policy of Miami-Dade County to follow sound and prudent business practices, and to promote full and equitable participation of all segments of the community. With this goal in mind, a concerted effort is made to obtain services in accordance with the requirements of A.O. No. 3-22, the Community Small Business Enterprise (CSBE) Program for the Purchase of Construction Services; A.O. Order No. 3-32 the Community Business Enterprise (CBE-A/E) Program for the Purchase of Professional Architectural, Landscape Architectural, Engineering, or Surveying and Mapping Services; A.O. No. 3-41, the ł implementation of the Small Business Enterprise (SBE) Program for Goods and Services; the Disadvantaged Business Enterprise programs; A.O. No. 3-37, the Community Workforce Program; and, A.O. 3-23 Anti-discrimination in Contracting, Procurement, Bonding and Financial Services Activities. All items processed under the authority of this Implementing Order shall be reviewed by SBD prior to the Mayor's approval of the item.

F. PROCESS REVIEW

MDAD's Standards and Compliance Division will conduct administrative reviews of internal practices and operations to ensure that the legislative intent of this Implementing Order is achieved. In addition, the County's Audit and Management Services Department, Office of the Commission Auditor, and the Office of the Inspector General may perform random audits of the relevant County Departments to ensure departmental compliance with legislative and contract requirements in the processing of the provisions of this Implementing Order.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

County Manager

Implementing Order No.: IO 3-53

Title: Miscellaneous Construction Contracts Program

Ordered: 12/05/2017 **Effective:** 12/15/2017

AUTHORITY:
Sections 2-8.1 and 2-8.2.7.01 of the Code of Miami-Dade County, Resolutions R-1139-07, Resolution R-597-08, and Sections 1.01, 2.02 and 5.03(D) of the Miami-Dade County Home Rule Amendment & Charter.

SUPERSEDES:
This Implementing Order (IO) replaces the prior IO 3-53 and supersedes Section III.C.1 of Implementing Order 3-39, which became effective on April 16, 2010.

SCOPE:
This IO establishes the policy for administration of the Miscellaneous Construction Contracts (MCC) Program. This IO is applicable to the pre-qualification, registration, award and administration of miscellaneous construction contracts with a maximum value as specified in Section 2-8.1(b) of the Code of Miami-Dade County (Code). The MCC Program has two (2) plans. The 7040 Plan is 100% set-aside for certified Small Business Enterprise-Construction (SBE-CON) contractors. The 7360 Plan is open to all contractors and only used if either federal funding is involved or an SBE-CON set-aside cannot be established.

The County Mayor or County Mayor's designee shall ensure that the MCC program is utilized as approved by the Board of County Commissioners and that the work is awarded in a fair and equitable manner. The Internal Services Department (ISD) Small Business Development (SBD) Division shall administer the MCC Program. The use of the MCC program shall be in strict adherence with all applicable local, state, and federal regulations.

POLICY:
This IO is intended to enhance contracting opportunities for SBE-CON contractors and to expedite the award of construction contracts.

PROCEDURES:

I. DEPARTMENT ELIGIBILITY AND INCLUSION OF CONTRACTS

All County departments are eligible to access the MCC Program. To participate, the department must adhere to the procedures described herein and maintain well-trained, knowledgeable staff to manage the construction activities. Inclusion of contracts in the MCC Program shall be as established by Section 2-8.2.7.01 of the Code.

II. CONTRACTOR REGISTRATION PROCESS

A. MCC Program Participation Requirements

To enroll in the MCC Program, contractors should submit an MCC Program Registration Form to SBD. Contractors must be in good standing with the County by not having any outstanding debts and demonstrating acceptable past performance.

B. 7040 Plan Registration Requirements

Contractors wishing to participate in the 7040 Plan must comply with the following two (2) requirements:

1. Register as a vendor with ISD Procurement Management Services Division; and
2. Be certified as a Miami Dade County Small Business Enterprise - Construction (SBE-CON) contractor and maintain certification at all times as a SSE-CON contractor with SBD.

Note: SBE-CON certification requires that the contractor hold valid Miami-Dade County Certificates of Competency and/or State of Florida contractor's licenses.

Contractors will be automatically enrolled in the 7040 Plan by checking the appropriate box on the Small Business Enterprise Program certification application and effective the date of the SSE-CON certification approval. If the contractor opts out of the 7040 Plan by checking the appropriate box on their SSE Certification Application the firm will not be added to the pool. Contractors may be enrolled in the 7040 Plan at any time after the submittal of a SBE certification application by completing and submitting the MCC Program Registration Form.

C. 7360 Plan Registration Requirements

Contractors wishing to participate in the 7360 Plan must comply with the following three (3) requirements:

1. Register as a vendor with ISD Procurement Management Services Division;
2. Submit a completed MCC Program Registration Form to SBD; and
3. Hold at all times valid Miami-Dade County Certificates of Competency and/or State of Florida licenses.

D. Emergency Response Team Pool Registration Requirements

An emergency is an unforeseen or unanticipated, urgent and immediate need for construction services where the protection of life, health, safety, welfare of the community or the preservation of public property would not be possible using any of the County's standard contracting methods. The Emergency Response Team (ERT) Pool under the MCC Program may be used for such construction contract awards.

Contractors wishing to be a part of the ERT Pool must comply with the following:

1. Meet the requirements of either the 7040 or 7360 Plan;
2. Complete the MCC Program Registration Form and indicate their intent to be part of the ERT Pool;
3. Submit proof of insurance for Worker's Compensation, General Liability and Automobile Liability (Owned, Non-Owned and Hired Vehicles) Insurance in an amount not less than $300,000 combined single limit for bodily injury and property damage; and
4. Be available 24 hours per day/ 7 days per week and respond to the user department's emergency call, within two (2) hours of the call, by communicating with a live person from said user department.

Note: In the event a contractor fails to respond two (2) consecutive times within two (2) hours of being contacted for an emergency, the user department shall notify SBD of the contractor's lack of compliance. SBD will then determine if the contractor will be suspended from the ERT Pool. SBD will allow a suspended contractor to reregister for the ERT Pool following the expiration of a six-month suspension period.

III. REQUEST FOR PRICE QUOTATION IN THE CAPITAL IMPROVEMENTS INFORMATION SYSTEM

A. Request for Price Quotation Creation

A Request for Price Quotation (RPQ) refers to the solicitation document issued by the County containing the project scope of work to be performed and requesting submittal of prices and other necessary information. The solicitation process begins when a user department creates and submits a complete RPQ in the Capital Improvements Information System (CIIS).

An RPQ from a user department shall:

1. Contain an estimated project value based on recent prices (no more than six months old);
2. Have a well-defined scope of services;
3. Identify special requirements, when applicable;
4. Clearly state in CIIS the plans and/or specifications, if any; and
5. Contain the Office of Management and Budget (OMB) approved capital budget project number, site number and its specific funding source with the index code (if applicable), as all RPQs are subject to funding approval by OMB.

The user department shall include the "RPQ Bid Form" with the bid package they provide to bidders.

B. Bonds

It is the policy of the County to foster opportunities for small businesses and the requirement for a Bid Bond or Payment and Performance Bond may serve as a barrier for an opportunity. Accordingly, SBD will review RPQs requiring a Bid Bond or Payment and Performance Bond with an estimated contract value less than $200,000 to determine whether such requirement is appropriate under the circumstances before it provides the user department with a bidders list.

C. Liquidated Damages

User departments are encouraged to include liquidated damages provisions in RPQs, when applicable.

D. Single Trade Contract

A Single Trade Contract is created when 100% of the scope of the work can be performed by a Specialty Building Contractor as defined under Chapter 10 of the Code or when the scope of work is primarily a single trade but ancillary trade work is required to complete 100% of the work. Under the 7040 Plan, only Specialty Building Contractors can bid as the prime contractor on a Single Trade Contract RPQ.

E. Multiple Trade Contract

A Multiple Trade Contract is created when the scope of work to be performed requires a licensed General Contractor (ex., Building, Engineering or Mechanical) as prime

contractor and specialty subcontracting trades. Under the 7040 Plan, subcontractors must be certified SBE-CON contractors unless none is available, in which case the user department must request an exemption from SBD prior to issuing the solicitation.

IV. MCC PROGRAM SOLICITATION PROCESS

A. 7040 Plan Solicitations

RPQs issued for the 7040 Plan are not publicly advertised and only contractors registered in the 7040 Plan are eligible to bid by invitation only. Once the user department submits a complete RPQ through CIIS, SBD will review the RPQ for compliance with this 10 and create a bidders list as stated below. To process the RPQ, three (3) or more licensed prime contractors in the 7040 Plan must be licensed in the categories required for the work.

A contractor's certification level established pursuant to Section 10-33.02 of the Code determines that contractor's participation level in the 7040 Plan. The Mayor or Mayor's designee shall be authorized to issue, and regularly update, the Contractor's Rotation Policy. The Contractor's Rotation Policy shall be intended to distribute contracts equitably among contractors registered in the 7040 Plan based on number of prior contracting opportunities within the plan and contract awards. The Contractor Rotation Process establishes the placement of each 7040 Plan contractor for RPQs. Once SBD approves a contractor to participate in the 7040 Plan and its profile is complete in the CIIS, the system will allocate the placement of that contractor based on a rotation factor. The rotation factor is further explained in SBD's Contractor's Rotation Policy.

1. RPQs valued up to $10,000
   SBD will provide the user department a bidders list with a minimum of (4) contractors in numerical order based on each contractor's placement on the rotation. The user department shall invite Bidder Number 1 to provide a quote and award the contract to it, if the quote is responsive and the bidder is responsible. If Bidder Number 1 either (1) fails to respond, (2) is unavailable to perform the work, (3) provides a quote that is not responsive, or (4) is not responsible, the user department shall give Bidder Number 2 the same opportunity to provide a quote. This process shall continue until the user department awards the contract to a contractor on the list or the project is canceled. In the event that the user department determines that none of the contractors from the bidders list can be awarded or none responded to the RPQ, the user department shall request from SBD an additional bidders list.

2. RPQs valued from $10.001 to $200,000
   SBD shall provide the user department with a minimum of ten (1 0) contractors that will bid competitively. However, user departments may request that SBD provide it with all contractors registered in the primary license trade.

3. RPQs valued from $200,001 to $5,000,000
   The user department shall invite all contractors registered in the primary license trade to bid competitively. RPQs in the 7040 Plan valued at $250,000 and over may be subject to Community Workforce Program (CWP) requirements. SBD will provide the CWP goal, if applicable.

B. 7360 Plan Solicitations

RPQs processed through the 7360 Plan are those that are either federally funded or approved by SBD as there is insufficient availability for a 100% SBE-CON set-aside. However, projects to be processed through the 7360 Plan must first be submitted to SBD for review and application of SBE subcontractor and/or CWP measures, if applicable.

RPQs for the 7360 Plan are advertised publicly and are open for bidding by all contractors that comply with the requirements of this 10. SBD will advertise 7360 Plan RPQs and post on the ISD Procurement Management Services website.

V. 7040 AND 7360 PLANS RPQ AWARD PROCESS

A. Sealed Bids

All sealed bids must be opened publicly and read aloud.

B. Recommendation for Award

For the 7040 Plan, the Recommendation for Award letter will be issued to the responsive and responsible bidder. For the 7360 Plan, the Recommendation for Award letter will be issued to the lowest priced, responsive and responsible bidder. SBD shall review the Recommendation for Award (via CIIS), confirm that the contractor's insurance is current and approve the Purchase Order (via ADPICS/ERP) to ensure compliance with this 10.

Note: Contractor's insurance must be approved by the ISD Risk Management Division.

Award amounts more than 20% below or above the original estimated contract value shall include written justification in CIIS from the user departments. A user department shall also provide a written justification for any decision to not use a contractor that proffered a bid to the County in the rotation process.

C. Posting and Filing of Awards

Awards from $25,000 to $250,000 shall be posted by the user department on ISD's website and notification shall be sent to all bidders. Awards greater than $250,000 shall be filed by the user department with the Clerk of the Board.

D. Notice to Proceed

The user department shall only approve, execute and release the Notice to Proceed (NTP) after SBD approves the purchase order. The executed NTP constitutes a contract with Miami-Dade County for the MCC Program and shall incorporate by reference the latest version of the contract documents available at the time of execution of the NTP. No work shall begin prior to the approval of the purchase order and issuance of the NTP.

VI. ERT POOL AWARD PROCESS

An Emergency RPQ may be awarded without utilizing the competitive bid procedures if the user department determines that the work to be performed is an emergency and cannot be performed within the required time using competitive purchasing procedures. The user department's Project Manager shall process a request for the emergency work by contacting, and awarding the project to, a contractor from the ERT Pool in CIIS.

Contractors may submit their emergency quotes by telephone, facsimile or e-mail, followed by written confirmation.

Within five (5) working days after the contractor is contacted to perform the work described in the Emergency RPQ, the user department's director or authorized designee shall submit to SBD a written explanation of the circumstances mandating the emergency procedures.

VII. CHANGE ORDERS OR REVISIONS TO THE RPQ

The County may process change orders, which result in additions to, or reductions from, the amount, type or value of the work described in the RPQ, including the contract timeline. User departments shall follow the same approval process for MCC Program awards outlined above when submitting a change order. Change Orders must have all required authorizations prior to submittal to SBD.

Any County contract with small business measures is required to meet at least eighty-five percent (85%) of the small business goals applicable to the tasks and value of the portion of the contract work performed to date before a change order or contract amendment may be considered for approval, unless the following explanatory information has been provided. Items with small business measures which fail to meet this minimum threshold or equivalent percentage must clearly explain (i) the circumstances as to why the goal(s) was not achieved, (ii) steps taken by the prime contractor(s) and the user department to meet the goal(s), and (iii) how the small business goal(s) will be achieved in the change order or contract amendment.

A. Contracts Valued up to $1.000,000

Change orders for contracts with a current value up to $1,000,000 require authorization by the user department's Project Manager and Assistant Director.

B. Contracts Valued $1.000.001 or over

Change orders for contracts with a current value of $1,000,001 or over require authorization as shown in the table below.

% Contract Value of Cumulative Change Order Amount*	% Time Extension*	Authorization by (or designee)
< 15%	< 15%	User Department Project Manager and Assistant Director
15 – 25%	15 – 25%	User Department Project Manager and Director
> 25%	> 25%	User Department Project Manager and Deputy Mayor

***Not to exceed the maximum value specified in Section 2-8.1(b) of the Code.**

User departments shall submit to SBD copies of all executed change orders regardless of the dollar amount or time change requested. A change order is executed when all applicable signatures are received, which may include contractor, user department Project Manager, user department Assistant Director, user department Director, Deputy Mayor and surety.

Any change order that will increase the contract value in excess of the maximum value specified in Section 2-8.1 (b) of the Code shall be subject to approval by the Board of County Commissioners.

VIII. PERFORMANCE EVALUATIONS

In accordance with Administrative Order No. 3-42, *Evaluation and Suspension of Contractors and Consultants,* all contractors shall be evaluated for their performance at least once on each capital improvement contract. The performance evaluation shall be completed in the CIIS by the user department's Project Manager no later than 90 days after contract completion or final acceptance, whichever comes first. Performance evaluations may be used as a basis for determining future awards.

IX. CONSTRUCTION MANAGEMENT AND CIIS

User departments shall identify a "Project Qualifier" for each RPQ submitted to SBD. The Project Qualifier and the personnel assigned to manage a capital improvement project must have working knowledge of the type of work to be accomplished and possess general project/construction management skills. All personnel assigned to manage an MCC Program RPQ shall become familiar with the policies and Procedures involving the use of CIIS. SBD staff shall provide overall CIIS training to all users.

Maintaining data in the CIIS

User departments shall provide, on a monthly basis, a current status for each RPQ by entering the appropriate information in that RPQ's unique "home page" in the CIIS.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Approved by the County Attorney
as to form and legal sufficiency.

Implementing Order

Implementing Order No.: 3-54

Title: Wage Theft Program

Ordered: 09/10/2010 **Effective:** 09/20/2010

AUTHORITY:
The Miami-Dade County Home Rule Amendment and Charter, including among others, Sections 1.01 and 2.02 A and Chapter 22 of the Code of Miami-Dade County.

POLICY:
It is hereby declared to be the policy of Miami-Dade County in the exercise of its police power for the public safety, health and general welfare, to eliminate and prevent wage theft. This Implementing Order (IO) eliminates the underpayment or nonpayment of wages earned by persons working in Miami-County and serves the public purpose by promoting their economic security and dignity; by promoting business and economic development through the elimination of unfair economic competition by unscrupulous businesses that do not pay or that underpay their Employees; and by relieving the burden on the public that unfairly subsidizes unscrupulous Employers whose Employees are forced to rely on public assistance because of unpaid or underpaid wages.

SCOPE:
Any Employer who fails to pay any portion of wages due to an Employee, according to that Employee's wage rate, within a reasonable time from the date on which that Employee performed the work for which those wages were compensation, shall be considered wage theft; and such a violation shall entitle an Employee, upon a finding by a Hearing Examiner appointed by Miami-Dade County or by a court of competent jurisdiction that an Employer is found to have unlawfully failed to pay wages, to receive back wages in addition to liquidated damages from that Employer.

DEFINITIONS:

1. *Employee* - shall mean a natural person who performs work within the geographic boundaries of Miami-Dade County while being employed by an employer, but shall not include any bona fide independent contractor.

2. *Employer* - shall include any person who, acting either individually or as an officer, agent, or employee of another person, acts directly or indirectly in the interest of a person or entity employing an employee; but such term does not include:

   (a) The United States or a corporation wholly owned by the government of the United States;
   (b) The State of Florida;
   (c) Miami-Dade County;
   (d) The Public Health Trust of Miami-Dade County, or
   (e) An Indian Tribe.

3. *Hearing Examiner* – shall mean a person appointed by the County that it deems qualified to hear wage theft matters.

4. *Wage rate* - shall mean any form of monetary compensation which the Employee agreed to accept in exchange for performing work for the Employer, whether daily, hourly, or by piece; but in all cases shall be equal to no less than the highest applicable rate established by operation of any federal, state or local law.

PROCEDURE:

A. Criteria to File Wage Theft Complaint

1. The Employee's work must have been performed within the geographic boundaries of Miami-Dade County;

2. The Employee's claim must be at least sixty-dollars ($60);

3. The Employee's complaint must be filed within one year of the date the work was performed.

Notwithstanding the above, in the event that either of the following conditions are present, the Employee may not file a wage theft complaint with the County:

1. The Employee has brought private legal action against the Employer, or is aware of either private action brought on their behalf, or any enforcement action brought by the State of Florida based upon the same facts and allegations against the Employer regarding this wage claim;

2. The Employee already has a judgment involving the same wage claim.

B. Filing Wage Theft Complaint

A standard wage theft complaint form (Form) shall be made available to aggrieved Employees by the County's Department of Small Business Development (SBD) during normal business hours. The Form may be amended by SBD as needed to best comply with Chapter 22 of the Code of Miami-Dade County. The Form must be filled out completely and legibly, and signed and dated prior to its acceptance by SBD. Below are filing guidelines for Employees to follow:

1. Employees must provide their name, address, and telephone number. If the Employee does not have a telephone, an alternate contact number should be provided (e.g. friend or relative). If the Employee's address or telephone number changes after filing the Form, the Employee must notify the County of the change. The complaint may be closed if the County is unable to contact the Employee.

2. Employees must provide the Employer's name, name of the business, business address and telephone number. If filing a complaint against more than one Employer,

a separate Form must be completed for each Employer. Each Employee filing against an Employer must complete a separate Form.

3. Employees must provide an explanation of the circumstances of the violation, including the following:

    - The date or dates (month/day/year format) the violation occurred; and
    - The dollar amount of unpaid wages, including how the Employee calculated this amount. For example:
        - Hours worked each day (or part of day) multiplied by the Employee's hourly or daily Wage Rate; or
        - For piece work, the number of pieces completed multiplied by the Wage Rate per piece.

4. Employees are encouraged to provide any supporting documentation that may assist the Hearing Examiner in evaluating their complaint. Examples of useful supporting documentation include:

    - A copy of any demand letter the Employee may have sent to the Employer for payment of unpaid wages;
    - A copy of Employee's paycheck(s) (front and back), and check stubs or payroll vouchers;
    - A copy of any agreements that were entered into and signed by the Employee and the Employer;
    - A written, notarized statement, with name and address, from fellow employee(s) who could substantiate the complaint;
    - A copy of Employee's work schedules, time sheets, or any other documentation verifying the number of hours/days worked or pieces completed;
    - If the claim involves a verbal agreement, the Employee should provide a thorough written statement detailing the terms of the agreement;
    - A copy of the Employee's W-2 form from the Employer;
    - Any records maintained by the Employee of hours/days worked or pieces completed and wages paid.

C. Criteria Determination

Once a complaint form has been accepted as complete, SBD will promptly determine whether the Employee's wage theft complaint meets the filing criteria in Section B above. This determination is a ministerial act and is not based on further investigation or the exercise of independent judgment. Once it is determined that the complaint meets the criteria, SBD will serve the complaint and provide written notice to the identified employer by certified mail within fifteen (15) days.

D. Employer Response

The Employer must respond to the Employee's complaint within twenty (20) days of its receipt.

E. Conciliation

SBD will encourage the Employee and Employer to reach a conciliatory agreement resolving the complaint prior to referring the matter to a Hearing Examiner.

F. Hearing Examiner

In the event that conciliation efforts are unsuccessful, the County will appoint a Hearing Examiner to determine whether a wage theft violation has occurred. Either the Employee or Employer may request that the Hearing Examiner issue subpoenas to summon witnesses to testify on their behalf. The party requesting a summons be issued is responsible for paying witnesses and their mileage fees. The Hearing Examiner's final determination may be appealed to the appropriate court of law.

If the Hearing Examiner determines that a wage theft violation has occurred, the Hearing Examiner will order the Employer to pay wage restitution to the affected Employee in an amount equal to three (3) times back wages. The Employer must also pay the Board of County Commissioners for the actual administrative and processing costs of the hearing.

G. Representation

Employees and Employers may be represented by legal counsel or non-lawyer advocates before the Hearing Examiner or during any other proceedings related to this Implementing Order (IO).

H. Enforcement

If the Employer fails to comply with the Hearing Examiner's order within forty-five (45) days after written notice from the County, the County will offer the Employer a one-time forty-five (45) days extension upon request and the Employer will be liable for payment of interest on the outstanding amounts owed to the Employee and the Board of County Commissioners.

I. Reporting

A fiscal report regarding the administrative cost associated with the implementation of the Wage Theft Program must be submitted to the Board of County Commissioners within six (6) months of the effective date of the ordinance creating Chapter 22 of the Code and annually thereafter.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

County Manager

Approved by the County Attorney as
to form and legal sufficiency

Implementing Order No.: IO 3-57

Title: ADOPTION OF STANDARD CONSTRUCTION CONTRACT

Ordered: 11/08/2012 **Effective:** 11/18/2012

AUTHORITY:
The Miami-Dade County Code Section 2-8.1 (c), Miami-Dade County Charter Section 5.03(d), and Resolution No. R-1203-10.

SCOPE:
This Implementing Order (IO) establishes a policy for the use of standard construction general conditions to be used by all County departments. A Standard Construction Contract has inherent benefits to the County, addresses Resolution No. R-1203-10 relating to standardization of County construction documents, and the construction industry's long-standing request for standardized construction contract language. This Implementing Order is applicable to all County capital departments as the standard construction contract language for capital construction projects.

POLICY:
It is County policy to develop standardized contract language and related documents to be used by all County departments. This standardization ensures ease of use both internally and by the construction industry when performing capital construction projects and increases the efficiency of contract review times, promotes fairness, transparency, and uniformity in contract compliance.

Special Provisions
Unique contractual requirements for individual departments (such as security and Federal requirements at Miami International Airport, and, Federal and State requirements for Transit and Housing) will be addressed in Special Provisions to the contract that are specific to the respective department. These Special Provisions will be prepared by the department and shall be complementary to the Standard Construction Contract. Prior to including such complementary Special Provisions in a bid solicitation, the user department shall provide these provisions to the Internal Services Department (ISD) for review and approval.

Standard Forms and Practices
In accordance with Resolution No. R-1203-10, ISD, as part of the second phase of this standardization initiative, will develop standard forms and practices, including but not limited to standard instructions to bidders, invitations to bid, bid forms, change order forms, invoice forms, record keeping practices, scheduling practices and invoicing practices. The standard forms and practices shall be developed by ISD, working collaboratively with user departments, the CAO and the construction industry.

PROCEDURES:
Adoption
Sixty (60) days after the effective date of this IO, the Standard Construction Contract shall be adopted by all County departments with capital projects as their standard

construction contract language for all of their capital construction projects. Upon approval by the ISD Director, the standard forms and practices shall also be adopted by all County departments with capital projects.

Updates

Updates to the Standard Construction Contract, forms and practices adopted pursuant to this IO shall be incorporated on an annual update cycle. Annual updates to the contract shall be prepared and issued by ISD, working in conjunction with the CAO, user departments and the construction industry. Adopted updates, forms and practices shall bear the signature of the ISD Director and the date of issue of such document(s). By exception, the ISD Director may adopt an update at any time to address a change in the law or upon his or her determination that protecting the interests of the County requires adoption of the update on an expedited basis.

The following documents have been approved for use by all County departments under this IO:

1. The standard conditions of contract which bear the signature of the Mayor or the Mayor's designee and are attached to the resolution adopting this IO (the "Standard Construction Contract"), are hereby adopted, to be used and updated as provided in this IO. Upon approval of this IO, all County departments with capital projects shall be required to adopt the latest version of the Standard Construction Contract for use on their capital construction projects within 60 days of the IO's effective date, or as updated by the ISD Director or designee in accordance with this IO. The latest version of the Standard Construction Contract will be available on-line on the ISD website.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Approved by the County Attorney as
to form and legal sufficiency ____

STANDARD CONSTRUCTION
GENERAL CONTRACT CONDITIONS
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1. DEFINITIONS

(June 12, 2012)

Addendum/Addenda: A modification or clarification of the Contract Documents distributed to prospective Bidders prior to the opening of Bids.

Advertisement for Bids: The public notice inviting the submission of Bids for the Work.

Allowance Account (General): Account in which a stated maximum dollar amount is included in the Contract for the purpose of funding, at the sole discretion of the Owner, unforeseen and/or changed conditions or extra work arising during the prosecution of the Work or any other changes issued by the Owner. The scope and limitations regarding use of the Allowance Account are contained in the Contract Documents. Performance of work, if any, under this Allowance Account shall be authorized by written Work Order issued by the Owner.

Allowance Account(s) (Dedicated): Account(s) in which stated maximum dollar amount(s) are included in the Contract for the purpose of funding specific items of work at the sole discretion of the Owner. The scope and limitations regarding use of the Dedicated Allowance Account(s) are contained in the Contract Documents.

Architect/Engineer: Owner or its authorized representatives identified in the Notice-to-Proceed letter, including but not limited to the Resident Architect/Engineer, the Construction Manager, the Owner's representatives and the Architect/Engineer of Record. In the event an Architect/Engineer is not employed on the project, the term "Owner" may be substituted for Architect/Engineer.

Art in Public Places: Miami-Dade County program established through Ordinance #94-12 and codified in Miami-Dade County Code Section 2-11.15 providing 1.5% of each County project's capital cost to fund a public art component within the Project. Coordination and installation of the Artist's work is included as part of the scope of the Contractor's services to the extent that it is defined in the Bid Documents.

Artist: Person(s) chosen through the Art in Public Places program to design and fabricate or specify an integrated work of art for the Project. The term Artist as may be referred to in the Contract Documents means the Artist and/or their authorized representative.

As-Built Documents: Documents signed and sealed by an appropriately licensed professional and submitted by the Contractor during and/or upon completion of the Contract reflecting actual installed/built conditions and all changes made in the Contract Documents during the construction process and showing the exact dimensions, geometry, location, identification and such other information as required by the Contract Documents and/or Architect/Engineer for all elements of the work completed under the contract. (Also referred to as As-Built Drawings or As-Builts). Final payment is conditional upon the receipt of As-Built Documents.

BCC: Board of County Commissioners, the governing board of Miami-Dade County.

Beneficial Occupancy: The point at which the Owner or Architect/Engineer determines that the Work or any portion thereof can be occupied from a regulatory and work function standpoint prior to Substantial Completion of the Work. Beneficial Occupancy will not relieve the Contractor of any of its obligations relative to Substantial Completion or of its responsibility to fully complete the Work in accordance with the Contract Documents.

Bid: The written offer of a Bidder to perform the Work.

Bid Documents: The Advertisement for Bids, Instructions to Bidders, Bid Form, Bid Security, Construction Contract, all contractual forms, General Conditions, Special Provisions, Technical Specifications and Contract Drawings, together with all Addenda and any other applicable standards, regulations, laws and permits as described within these other documents which may be incorporated by reference.

Bid Item: A specific item of work represented by a line item in the Bid Form.

Bid Form: The form on which Bids are submitted.

Bid Security: The cashier's check, certified check or bid bond, accompanying the Bid and submitted by the prospective bidder, as a guarantee that the prospective bidder will enter into a contract with the Owner for the performance of the Work and furnish acceptable bonds and insurance if the Contract is awarded to him.

Bidder: An individual, firm, partnership, corporation or combination thereof, submitting a Bid for the Work.

Certificate of Substantial Completion: Certificate issued to the Contractor by the Owner certifying that Substantial Completion has been achieved.

Certificate of Completion: Certificate issued by the local building official providing proof that a structure or system is complete and, for certain types of permits, is released for use and may be connected to a utility system. This certificate does not grant authority to occupy a building, such as a shell building, prior to the issuance of a Certificate of Occupancy by the local building official.

Certificate of Final Acceptance: Certificate issued to the Contractor by the Owner certifying that Final Acceptance has been achieved in accordance with the definition reflected herein (see Final Acceptance definition).

Certificate of Occupancy: Certificate issued by the local building official after the building official inspects the building or structure and finds no violations of the provisions of applicable codes or other laws that are enforced by the local building department.

Change Notice: A document issued by the Architect/Engineer or Owner to the Contractor specifying a proposed change to the Contract Documents and requesting a price proposal from the Contractor, if applicable, within a specified time period.

Change Order: A written agreement executed by the Owner, the Contractor and the Contractor's Surety, covering modifications to the Contract Documents.

Construction Staging Area: Property which may be available for use by the Contractor during the construction period for the purpose of storing products and construction equipment and for the purpose of staging the Work. The construction staging area(s), if applicable, are defined in the Contract Documents.

Construction Contract: The agreement executed by the Contractor and the Owner covering the performance of the Work including the furnishing of labor, superintendence, materials, tools and equipment as indicated in the Contract Documents. The term "Contract" shall have the same meaning.

Consultant: See Architect/Engineer.

Contract Documents: Bid Documents, Change Orders, Payment and Performance Bonds, Work Orders, Approved Schedules, all Contractual Forms, Approved Shop Drawings and Approved Working Drawings.

Contract Drawings: The plans, profiles, cross-sections, elevations, schedules, and details which show locations, character, dimensions and details of the Work. Contract Drawings are confidential under the Florida Public Records Act and the Contractor is responsible for maintaining confidentiality during and after the progress of the Work.

Contractor: The individual, firm, partnership, or corporation, or combination thereof, private, municipal, or public, including joint ventures, duly licensed under Florida Statutes, which, as an independent Contractor, has entered into a Contract with Miami-Dade County, who is referred to throughout the Contract Documents by singular in number and masculine in gender.

Contract Time: The number of days allowed for completion of the Work commencing with the effective date of Notice to Proceed. The Contract Time will be stipulated in the Contract Documents unless extended by a Change Order or by a Work Order.

County: See Owner.

County Manager: The County Manager of Miami-Dade County, Florida.

County Mayor: The Mayor of Miami-Dade County, Florida.

Critical Path: Longest sequence of activities in a project's schedule which defines the project completion date and which must be completed on time in order for the project to be completed on schedule.

Days: Unless otherwise designated, days mean calendar days.

Department Director: The Director of the Miami-Dade County Department implementing the work.

Department Director's Representative: The person or persons designated by the Department Director to act on his behalf in the administration of the contract within the limits of their respective authorization.

Direct Costs: Direct Costs recoverable by the Contractor as a result of changes in the Work shall be limited to the actual additional costs of labor and materials installed as part of the Work and for the reasonable additional cost of rental of any Special Equipment or Machinery. Labor shall be limited to site labor costs, including Employer's Payroll Burden. Specifically excluded from

labor are the costs of general foremen and site office personnel. Materials are limited to permanent materials required by the Contract Documents and materials approved by the Architect/Engineer as necessary to install the permanent materials in an efficient and workmanlike manner. For special equipment or machinery not listed in said document, the Contractor shall be paid a rental rate corresponding to the average prevailing rental rate for such equipment or machinery in Miami-Dade County, Florida, subject to approval by the Architect/Engineer. No additional payment shall be made to the Contractor for fuel, lubricants, fair wear and tear, transportation, insurance or depreciation. Any equipment or machinery not designated by the Architect/Engineer as special equipment and machinery shall be considered Overhead.

Extra Work: Work not provided for in the Contract Documents as awarded or as previously modified by Change Order or Work Order but found to be essential to the satisfactory completion of the Contract within its intended scope.

Field Representative/Construction Manager: An authorized representative of the Owner that may provide administrative and construction inspection services during the pre-construction, construction, and closeout phases of the Contract and through which the orders of the Owner shall be given. The Field Representative has no authority to modify or waive any provision of the Contract Documents.

Final Acceptance: The formal written acceptance by the Owner of the completed work.

Final Completion: Point in time when the Owner determines that all Work has been completed in accordance with the Contract Documents and all deficiencies listed within the Certificate of Substantial Completion and Punch List have been corrected to the satisfaction of the Owner or Architect/Engineer including but not limited to all required final inspections, close-out documents, delivery of all spares and extra materials and activation of warranties as required. A Certificate of Final Acceptance shall be issued to the Contractor by the Owner upon Final Completion.

Force Account: A method of payment measured by actual cost of the labor, materials and equipment plus a mark-up for Indirect Costs, as distinct from other payment methods such as lump sum or unit price, for Extra Work ordered by Change Order and/or Work Order.

Fragment: A fragment or selected portion of the Schedule network and/or network of proposed changed work activities.

Furnishing: Manufacturing, fabricating and delivering to the site of the Work materials, plant, power, tools, patterns, supplies, appliances, vehicles and conveyances necessary or required for the completion of Work.

General Conditions: This section of the Contract Documents which specifies, in general, the contractual conditions.

Green Building Practices: Environmentally- and socially-conscious practices that emphasize processes and methods of design and construction that reduce exposure to noxious materials, conserve non-renewable energy and scarce materials, minimize life-cycle ecological impact of energy and materials, employ renewable energy or materials that are sustainably harvested, protect

and restore local air, water, soils, flora and fauna, and support pedestrians, bicycles, mass transit and other alternatives to fossil-fueled vehicles.

Indirect Costs: Overhead.

Installation, Install or Installing: Completely assembling, erecting and connecting material, parts, components, supplies and related equipment specified or required for the completion of the Work including the successful passing of all tests so that they are fully functional.

LEED (Leadership in Energy and Environmental Design): An ecology-oriented building certification program run under the auspices of the U.S. Green Building Council (USGBC) which concentrates its efforts on improving performance across five key areas of environmental and human health: energy efficiency, indoor environmental quality, materials selection, sustainable site development, and water savings.

Limit of Work: Boundary within which the Work is to be performed.

Liquidated Damages: The amount that the Contractor accepts, as stipulated in the Contract Documents, that will be deducted from the Contract Sum for each Day of delay due to a Non-excusable Delay.

Liquidated Indirect Costs Rate: The amount, stipulated in the Contract Documents, that will be added to the Contract Sum for each Day of delay due to a Compensable Delay. The Contractor accepts this sum as full compensation for the Contractor's and all its Subcontractors' Indirect Costs, for each Day of Compensable Delays. This amount is agreed to include any costs other than Direct Costs incurred by the Contractor and all its Subcontractors of any tier in the performance of this Contract.

Lump Sum Bid Item: A bid item in which quantity is not separately measured for payment in units but rather is based on the amount bid by the Contractor as indicated in the Bid Form and made a part of the Contract. Partial payments of Lump Sum Bid Items will be conditionally made, based upon an approved schedule of values, and will be subject to reconciliation in the event that the work of a Lump Sum Bid Item is not fully completed in accordance with the requirements of the Contract Documents.

Miami-Dade County (MDC): A political subdivision of the State of Florida, the Owner.

Milestone: A completion date as defined in the Contract Documents.

Notice to Proceed: Written notice from the Owner to the Contractor specifying the date on which the Contractor is to proceed with the Work and on which the Contract Time commences to run.

Notice of Termination: Written notice from the Architect/Engineer or the Owner to the Contractor to permanently stop work under the Contract on the date and to the extent specified in the notice. The Notice of Termination includes Notices of Termination for Convenience, Default and National Emergencies as set forth in the Contract Documents. Upon receipt of such notice, the Contractor shall comply with the termination provisions of this Contract.

Overhead (Indirect Costs): Overhead, also defined as “Indirect Costs”, includes any and all costs other than Direct Costs. The term “Overhead” as indicated in this definition shall apply to both Contractors and Subcontractors of any tier. Overhead includes, but is not limited to, all profit and costs associated with: Project bond premiums, Project insurance premiums, costs of supervision, coordination, superintendents, general foremen, consultants, schedulers, cost controllers, accountants, office administrative personnel, time keepers, clerks, secretaries, watch persons, small tools, equipment or machinery, utilities, rent, telephones, facsimile machines, computers, word processors, printers, plotters, computer software, all expendable items, job site and general office expenses, extended jobsite general conditions, interest on monies retained by the Owner, escalated costs of materials and labor, impact cost on unchanged work, inefficiency, decreased productivity, home office expenses or any cost incurred that may be allocated from the headquarters of the Contractor or any of its Subcontractors, loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other Project, loss of interest income on funds not paid, costs to prepare a bid, cost to prepare a quote for a Change in the Work, costs to prepare, negotiate or prosecute claims, costs of legal and accounting work, costs spent to achieve compliance with applicable laws and ordinances, loss of Projects not bid upon, loss of productivity or inefficiencies in the Work from any cause.

Owner: Miami-Dade County, whose governing body is the BCC acting in its proprietary capacity. Where applicable, the Owner acts through its Architect/Engineer or Field Representative. When these Contract Documents require the action of individual persons, the documents contain specific references to these persons. In particular, the documents shall refer to the BCC when approval of the BCC is specifically required and to the Architect/Engineer when the Architect/Engineer’s approval is specifically required.

Payment and Performance Bond: Bond executed by the Contractor and its Surety assuring that the Contractor will, in good faith, perform and guarantee the work in full conformity with the terms of the Contract Documents and will promptly pay all persons supplying the Contractor with labor, materials, or supplies, used directly or indirectly by the Contractor in the prosecution of the Work. This bond shall be a single instrument bond for twice the penal sum (to cover 100% of the total maximum contract amount for payment-related issues and 100% of the total maximum contract amount for performance-related issues).

Project: See definition for Work.

Punch List: A list issued by the Owner to the Contractor of work elements requiring remedial action or completion by the Contractor before Final Completion is issued to the Contractor.

Right-of-Way: A term denoting land and property, and interests therein, owned or acquired by the Owner.

Schedules: All schedules delivered under the Contract including time schedules and schedule of values.

Schedule of Values: A detailed cost breakdown of each lump sum bid item in the bid form, submitted by the Contractor at the beginning of the Work and to be used as a basis to determine monthly progress payments and quantity adjustments within the constraints specified in the Contract Documents.

Shop Drawings: Documents furnished by the Contractor for approval by the Architect/Engineer to illustrate specific portions of the Work. Shop Drawings include drawings, diagrams, illustrations, calculations, schedules, tables, charts, brochures and other data describing design, fabrication and installation of specific portions of the Work.

Site, Project Site, Work Site, Construction Site, Job Site: The location(s) at which the work under this Contract is to be accomplished, as shown in the Contract Documents.

Special Provisions: Section of the Contract which includes specific contractual requirements not covered in the General Conditions that are specific to the Project.

Subcontractor: Any person or entity, other than the employees of the Contractor, supplying the Contractor with labor, materials, supplies and/or equipment used directly or indirectly by the Contractor in the prosecution of the Work.

Substantial Completion: Substantial Completion of a Project is the date on which the Owner certifies that the construction is sufficiently completed, in accordance with the Contract Documents, as modified by any Change Orders, so that the Owner can occupy the Project for the use for which it was intended. A certificate shall be issued to the Contractor by the Owner upon achievement of Substantial Completion.

Surety: The bonding company or companies furnishing the bonds required of a Bidder and of the Contractor.

Technical Specifications: The general term comprising all the written directions, provisions and requirements contained herein, entitled "Technical Specifications," those portions of standard specifications to which reference is specifically made in the Technical Specifications, and any Addenda, Work Orders and Change Orders that may be issued for the Contract, all describing the work required to be performed, including detailed technical requirements as to labor, materials, supplies and equipment and standards to which such work is to be performed as well as any reports specifically issued with the Bid Documents and specifically identified in the Instructions to Bidders which may include geotechnical or other technical reports.

Temporary Construction Easement Line: A boundary which describes additional areas which may be made temporarily available for construction operations.

Time Contingency: The maximum time specifically identified in the Contract Documents by which the Owner may extend the contract time to accomplish the work without a change order. Limitations on the use of the time contingency are set forth in the Contract Documents.

Unit Prices: Unit prices shall include all labor, materials, tools, and equipment; all other direct and indirect costs necessary to complete the item of Work and to coordinate the unit price Work with adjacent work; and shall include all

overhead and profit. Contractor shall accept compensation computed in accordance with the unit prices as full compensation for furnishing such Work.

Work: The construction and services required by the Contract Documents, which includes all labor, materials, equipment, and services to be provided by the Contractor to fulfill the Contractor's duties and obligations imposed by the Contract Documents or, if not specifically imposed by the Contract Documents, which can be reasonably assumed as necessary to fulfill the intent of the Contract Documents to provide a complete, fully functional and satisfactory project.

Work Order: A written order, authorized by the Architect/Engineer or Owner, directing the Contractor to perform work under a specific Allowance Account or directing the Contractor to perform a change in the Work that does not have a monetary impact, including but not limited to, extending the Contract Time or subject to the to payment of Liquidated Indirect Costs if entitlement is established as required by these Contract Documents. No Work Order may increase the Contract Sum.

END OF ARTICLE

2. INTERPRETATION

(June 12, 2012)

A. The intent of the Contract is to include all necessary items for the proper completion of the Work by the Contractor so the Owner may have a fully functioning facility and fully receive the benefits intended under the Contract. The Contractor shall perform, without additional compensation, such incidental work as necessary to complete the Work and fulfill the design intent, in accordance with the requirements set forth in the Contract Documents, so that it will meet the requirements for which the Project was intended, in a satisfactory and workmanlike manner.

B. The Contract Documents and all referenced standards cited are essential parts of the Contract requirements. A requirement occurring in one is as binding as though occurring in all. The documents comprising the Contract Documents are complementary and indicate the construction and completion of the Work. Anything mentioned in the Contract Documents and not shown on the Contract Drawings, or shown on the Contract Drawings and not mentioned in the Contract Documents, shall be of like effect as if shown or mentioned in both. The more stringent shall apply in the case of a conflict.

C. Site Inspections and Verification of Governing Dimensions: In executing the contract, the Contractor represents that he has, prior to bid, visited the site, become familiar with the conditions under which the work is to be performed and correlated his personal observations with the requirements of the Contract Documents or that he has chosen not to do so, in the event that a mandatory site visit is not specified in the Contract Documents. The Contractor accepts the responsibility for all errors in construction which could have been avoided by such examination and the opportunity to seek timely clarifications during the bidding process. The Contractor, before commencing work, shall verify all governing dimensions at the site, and shall examine all adjoining work on which his work is in any way dependent for its conformance with the intent of the Contract Documents and no disclaimer of responsibility for defective or non-conforming adjoining work will be considered unless notice of same has been filed by the Contractor, and agreed to in writing by the Owner through the Architect/Engineer before the Contractor begins any part of the Work. No disclaimer for defective or non-conforming adjoining work that was clearly foreseeable to the Contractor during a site visit (mandatory or non-mandatory) will be considered by the Owner.

D. Errors, Inconsistencies and Omissions: The Contractor shall carefully study and compare all drawings, Contract Documents and other instructions; shall verify all figures on the Contract Drawings before laying out the Work; shall notify the Owner or Architect/Engineer of all errors, inconsistencies, or omissions which he may discover; and obtain specific instructions in writing during the bidding process and prior to submitting his Bid. The Contractor shall not take advantage of any

apparent error or omission which may be found in the Contract Drawings or Contract Documents, and the Architect/Engineer shall be entitled to make such corrections therein and interpretations thereof as he may deem necessary for the fulfillment of their intent. The Contractor shall be responsible for all errors in construction which could have been avoided by such examination and notification, and shall correct, at his own expense, all work improperly priced, scheduled or constructed through failure to notify the Owner or Architect/Engineer and to request specific instructions.

E. Where "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the Contract Documents unless stated otherwise.

F. References to Articles or Sections include sub-articles or subsections under the Article referenced.

G. Referenced Standards: Material and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the date of the Invitation to Bid except where otherwise expressly indicated. In case of a conflict between the Contract Documents and the referenced standard, the Contract Documents shall govern.

H. Order of Precedence of Contract Documents: Unless otherwise provided for in the Special Provisions or required by law, the order of precedence of the Contract Documents will be as follows:

1) Change Orders to the Contract
2) Notice to Proceed
3) Construction Contract
4) Addenda
5) Special Provisions
6) General Conditions
7) Technical Specifications
8) Contract Drawings
9) Referenced Codes and Standards
10) Guarantees
11) Instructions to Bidders
12) Invitation to Bid
13) Other documents

I. In case of differences between small and large scale drawings, the drawings showing greater detail shall govern. Schedules on drawings shall take precedence over conflicting notations on drawings. In the event of discrepancy between any scaled dimensions on drawings and the figures written thereon, the figures shall govern over the scaled dimensions unless otherwise indicated.

J. Explanations: Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the

Contract Documents, the Contractor shall apply to the Owner or Architect/Engineer in a timely manner to allow sufficient time for such further written explanations as may be necessary and shall conform to the explanation provided as part of the Contract. The Owner or Architect/Engineer's decision shall be final.

K. Effect of Headings: The headings and titles to provisions in the Contract Documents are descriptive only, and shall be deemed not to modify or affect the rights and duties of parties to this Contract.

L. No acceptance, order, measurement, payment, or certificate of or by the Architect/Engineer and/or the Owner or its employees or agents shall either estop the Owner from asserting any rights or operate as a waiver of any provision hereof or of any power or right herein reserved to the Owner or of any rights to damages herein provided.

M. Wherever the terms, "as directed", "ordered", "permitted", "designated", "as approved", "approved equal", "or equal", "acceptable" and other words of similar meaning which authorize an exercise of judgment are used in the Contract Documents, such judgment shall be vested only in the Architect/Engineer and/or the Owner and shall be final.

N. The Contractor shall make available at the job site one copy of each referenced standard and/or Contract Documents for the Contractor's and the Field Representative's use during the time that work covered by the standards and/or Contract Documents is underway.

O. The Contract Documents provide for a complete work and may have been prepared in divisions of various crafts, trades and other categories of work. The Contractor is responsible for the performance of all work under the Contract regardless of any such divisions and shall ensure that all of the work is performed and completed. The organization of the Contract Documents into divisions, sections and articles and the arrangement of the drawings do not restrict or limit the Contractor into dividing the Work among subcontractors or in establishing the extent of the Work to be performed by any trade.

P. No deviation from the approved Contract Documents shall be permitted without the prior written approval of the Owner, which approved deviation shall be documented either by Change order or Work Order.

Q. All Requests for Information by the Contractor per this section shall be in accordance with the Contract Documents.

END OF ARTICLE

3. ARCHITECT/ENGINEER/FIELD REPRESENTATIVE

(June 12, 2012)

A. The Architect/Engineer shall respond to questions which may arise as to the quality and acceptability of materials furnished, work performed, and as to the manner of performance and rate of progress of the work in accordance with the time frames prescribed in the Contract Documents. The Architect/Engineer shall decide all questions which may arise as to the interpretation of the Contract Documents relating to the Work, and the fulfillment of the Contract on the part of the Contractor, and those decisions shall be binding on the Contractor

B. The Architect/Engineer is not authorized to revoke, alter, or waive any requirement of the Contract.

C. The Architect/Engineer, Owner or Field Representative shall have free access to the Work and materials at all times to facilitate the performance of his duties.

D. Subject to concurrence by the Owner, the Architect/Engineer shall have the right to observe and reject any material or work performed which does not meet the requirements of the Contract Documents. When the Architect/Engineer discovers any work in progress or completed that does not meet the requirements of the Contract Documents, the Architect/Engineer shall reject that portion of the Work affected and shall confirm such rejection in writing, as soon as practical, detailing the reasons for the rejection. Work rejected by the Architect/Engineer will not be paid for. Any such observation and/or rejection shall not be construed as undertaking supervisory control of the Work or of means and methods employed by the Contractor or his Subcontractors and shall not relieve the Contractor of any of his responsibilities or obligations under the Contract. The Contractor shall not request or attempt to require the Architect/Engineer to undertake such supervisory control or to administer, supervise, inspect, assist, or act in any manner so as to relieve the Contractor from such responsibilities or obligations.

E. The fact that the Architect/Engineer has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract Documents, shall not bar the Architect/Engineer from subsequently rejecting said materials or work.

F. If either the Architect/Engineer or the Field Representative requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract Documents. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work. Should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at no additional cost to the Owner.

G. Any work done or materials used which are not in compliance with the Contract Documents may be ordered removed and replaced at the Contractor's expense.

H. The Owner and other agencies having jurisdiction over the work hereunder shall be afforded free access to the site to perform such inspections and tests as may be required to determine conformance of the Work with the Contract Documents.

I. Neither the Architect/Engineer nor the Field Representative shall be responsible for any safety obligations imposed on the Contractor by applicable industry standards, licensing requirements, laws or regulatory requirements.

END OF ARTICLE

4. OWNER

(June 12, 2012)

A. Unless otherwise specified or excluded elsewhere in the Contract Documents, the records of borings, test excavations and other subsurface investigations, if any, are offered as information only and solely for the convenience of the Contractor. The Owner does not warrant or guarantee either that said records are complete or that the said records will disclose the actual subsurface conditions. The interpretation of the records and the conclusions drawn therefrom as to the actual existing subsurface conditions are the sole responsibility of the Contractor.

B. Any estimates of quantities of work or materials, based on said borings, test excavations and other subsurface investigations are not warranted by the Owner to indicate the true quantities or distribution of quantities unless the Contractor is expressly directed to rely on such information to prepare and submit his Bid.

C. If the Contractor is notified by the Owner to correct defective or nonconforming work, and the Contractor fails to promptly proceed with corrective action in a reasonable time, the Owner may, upon written notice, accomplish the redesign, repair, rework or replacement of nonconforming work by the most expeditious means available and backcharge the Contractor for the cost incurred. The cost of backcharge work shall include all reasonable costs associated with the corrective action.

D. The Owner shall separately invoice or deduct from payments, otherwise due to the Contractor, the costs as provided herein. The Owner's right to backcharge is in addition to any or all other rights and remedies provided in this Contract, or by law. The performance of backcharge work, on behalf of the Owner, shall not relieve the Contractor of any of its responsibilities under this Contract including but not limited to express or implied warranties, specified standards for quality, contractual liabilities and indemnifications, and the Contract Time.

E. The Field Representative and/or Architect/Engineer will administer the Contract and the orders of the Owner are to be given through the Field Representative and/or Architect/Engineer. The Field Representative and/or Architect/Engineer shall determine the amount and quality of the several kinds of work performed and materials furnished which are to be paid for under the Contract.

F. The Field Representative will observe the Contractor's work for compliance with the Contract Documents. Such observation shall extend to all or any part of the work done and to the preparation, fabrication, or manufacture of the material to be used.

G. Upon discovery, the Field Representative shall call the Contractor's attention to faulty workmanship or defective materials and shall reject work and materials not conforming to the requirements of the Contract Documents.

H. When any work in progress or completed does not meet the requirements of the Contract Documents, the Field Representative shall have the authority to order the Contractor to shut down that portion of the work affected until the affected work is corrected to the satisfaction of the Field Representative. The Field Representative shall confirm this order in writing as soon as practicable, detailing the reasons for the shutdown. Work performed in violation of the Field Representative's order to shutdown will not be accepted or paid for.

I. The Field Representative is not authorized to revoke, alter, or waive any requirements of the Contract. The Field Representative will negotiate and act on behalf of the Owner to the authorized limits of his authority as specified in the Contract Documents.

J. Whenever the Contractor intends to build, assemble or perform any portions of the Work away from the site, the Contractor shall promptly notify the Field Representative of such intentions, including where and when such work is to be performed, before such work starts. The Contractor shall also make arrangements for access thereto by the Field Representative and/or the Architect/Engineer so that the aforementioned portions of the Work may be inspected as needed.

K. The fact that the Field Representative has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract Documents, shall not bar the Field Representative from subsequently rejecting said materials or work and does not relieve the Contractor of his responsibility to meet the requirements of the Contract Documents.

L. The Field Representative shall not act as a foreman or perform other duties for the Contractor, nor interfere with the management of the work by the Contractor.

M. The administration, observation of the work, and actions by the Field Representative, as herein provided, shall not be construed as undertaking supervisory control of the construction work or of means and methods employed by the Contractor or his Subcontractors and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract; the Contractor shall not request or attempt to require the Field Representative to undertake such supervisory control or to administer, to supervise, to inspect, to assist, or to act in any manner so as to relieve the Contractor from such responsibilities or obligations.

N. The Field Representative shall decide all questions relating to the rights of different prime Contractors on the Project or site.

O. All materials and each part or detail of the work shall be subject to observation by the Field Representative and/or the Architect/Engineer. The Architect/Engineer and the Field Representative shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required.

P. Miami-Dade County enters into this Contract solely in its proprietary capacity. Nothing in this Contract is intended to bind or otherwise restrict the discretion of Miami-Dade County acting in its regulatory

capacity, including but not limited to the regulatory acts of the Departments of Regulatory and Economic Resources (RER), Public Works and Waste Management (PWWM), Fire-Rescue (MDFRD) and Water & Sewer (WASD) or their successors.

END OF ARTICLE

5. CONTRACTOR
(June 12, 2012)

A. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

B. The Contractor shall hold valid current certificate(s) of competency for the type of work to be performed, in accordance with the qualifications requirements as set forth in Chapter 489 of the Florida Statutes and Chapter 10 of the Code of Miami- Dade County.

C. The Contractor shall maintain within Miami-Dade County, Florida, a duly authorized agent to accept service of legal process on its behalf, and shall keep the Owner advised of such agent's name and address, during the duration of the Contract, and for three years after final payment or as long as Contractor has warranty obligations under these Contract Documents, whichever period terminates later. The Contractor shall complete the form titled "Contractor Agent to Accept Service" included in the Contract Documents and submit it to the Architect/Engineer prior to NTP.

D. The Contractor shall be responsible for the complete performance for all of the work under the Contract, and for the methods, means, and equipment used in performing the Contract and for all materials, tools, apparatus and property of every description used in connection therewith.

E. Upon approval of the Contractor's schedule by the Owner, the Contractor will submit written confirmation from all his Subcontractors agreeing to work within the timeframes specified in the Contractor's approved schedule.

F. Contractor's Superintendent: The Contractor shall provide a superintendent at the site at all times who is competent in the type of work being performed to act as the Contractor's agent, and shall give that superintendent the full authority to receive instruction from the Field Representative or Architect/Engineer and to execute the order or directions of the Field Representative or Architect/Engineer, including the prompt supply of all materials, tools, equipment, labor, and incidentals that may be required. The Contractor shall furnish such superintendence regardless of the amount of work that is subcontracted, and the superintendent shall read, speak, write and understand English. The Contractor shall also maintain at least one other employee on the work site during Project working hours who speaks and understands English. This superintendent shall be responsible for keeping written daily logs of the work on the project.

G. The competency of the superintendent shall be demonstrated through licensure or certification in contracting, engineering, trade or experience as applicable to the work being performed. Proof of licensure, certification or qualification of the superintendent must be provided to the Owner at the pre-construction conference and is subject to the

approval of the Architect/Engineer or Field Representative after Contractor receipt of said requirements.

H. In the event that the Field Representative or Architect/Engineer determines, through the course of the actual work progress, that the superintendent lacks the knowledge or expertise necessary to execute the work in an efficient and competent manner, in keeping with all current codes and best practices, the Field Representative or Architect/Engineer shall notify the Contractor in writing and the superintendent shall be replaced by the Contractor with a person acceptable to the Field Representative or Architect/Engineer within five (5) working days.

I. The Contractor's failure to replace the superintendent in the time allotted shall be cause for the Owner to suspend work with such delays chargeable to the Contractor as Liquidated Damages as specified elsewhere in this contract.

J. The Contractor shall maintain a daily accounting of his daily manpower, by trade and position, and provide this information to the Field Representative on a weekly basis.

END OF ARTICLE

6. SUBCONTRACTORS

(June 12, 2012)

A. The Contractor will be permitted to subcontract portions of the Work to competent Subcontractors. Such Subcontractors shall hold valid current certificate(s) of competency for the type of work to be performed, in accordance with the qualifications requirements as set forth in the Florida Statutes and the Code of Miami- Dade County.

B. Nothing contained herein shall create any contractual relationship between the Owner and any level of Subcontractor, materialman or supplier.

C. All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor which shall contain provisions that:

1) Preserve and protect the rights of the Owner and any of its authorized representatives under the Contract, including but not limited to, the Architect/Engineer and Field Representative, with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
2) Require that such Work be performed in accordance with the requirements of the Contract Documents including the Contractor's approved schedule;
3) Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a part, in reasonable time to enable the Contractor to apply for payment in accordance with any and all payment provisions of the Contract Documents;
4) Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor or Supplier where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;
5) Require specific consent to all relevant provisions of the Contract Documents; and
6) Incorporate all flow-down clauses specifically called for in the Contract, as directed.

D. Contractor Participation: The Contractor shall perform not less than 25 percent of the Work, not inclusive of materials purchased, with his own organization. If the Contractor is a joint venture, the requirement shall be satisfied by any one, or a combination of any of the joint venture partners. Where a percentage of a Bid Item is subcontracted, the dollar value of that percentage subcontracted will be based on the estimated cost of such Bid Item, determined from information submitted by the Contractor, subject to approval by the Owner. The materials produced by other than the Contractor's forces shall be considered as being

subcontracted. If, during the progress of the Work, the Contractor requests a reduction in such participation percentage, and the Owner determines that, due to the special nature of the conditions of the Work at the time, it would be to the Owner's advantage, the percentage of the Work required to be performed by the Contractor may be reduced, provided written approval of such reduction is obtained by the Contractor from the Owner. The Contractor shall not proceed with any such reductions until his request is approved in writing by the Owner or his authorized designee. Under no circumstances shall less than ten percent (10%) of the Work be performed with the Contractor's own forces.

E. Work Performed by Equipment-Rental Agreement:

1) The amount of work performed under equipment rental agreements shall not be considered Subcontractor work. However, for work to be performed by equipment-rental agreement, the Contractor shall notify the Architect/Engineer in writing of such intention before using the rented equipment, and shall indicate whether the equipment is being rented on an operated or non-operated basis. The Contractor's written notice shall contain a listing and description of the equipment and a description of the particular work to be performed with such equipment. As an exception to the above requirements for a written notice to the Architect/Engineer, such notice will not be required for equipment to be rented (without operators) from an equipment dealer or from a firm whose principal business is the renting or leasing of equipment.

2) The operators of rented equipment, whether rented on an operated or a non-operated basis, will be subject to wage rate requirements applicable to the Project. If equipment is being rented without operators, the Contractor shall be required to carry the operators on his own payroll. When equipment is rented on an operated basis, the Contractor, when required by the Contract or requested by the Architect/Engineer, shall submit payrolls from the lessor with the names of the operators shown thereon.

F. No work is to be performed at the Work site until the Contractor is in compliance with the Insurance Specifications, has furnished satisfactory evidence of required insurance to the Owner and obtained all required permits.

G. Approval of Subcontractor:

1) Prior to entering into any subcontract for Work to be performed on the Project, the Contractor shall secure the approval of the Owner regarding the prospective subcontractor’s qualifications, employment data and compliance with CSBE program requirements. The forms used to provide the required information shall be the same as those included in the Forms for Bidding. The Owner will review the submittal from each Subcontractor, and will furnish written notification to the Contractor concerning approval of the award of the subcontract. If the Owner objects to the proposed award or fails to respond to the Contractor within five (5) business days of the

complete submittal of the required information, the Contractor may furnish written notice of another subcontractor for consideration. The Owner may, at its discretion, waive or reduce subcontractor information submittal requirements as it deems appropriate.

2) In accordance with Ordinance 97-104, codified in Miami-Dade County Code Sections 2-8.1 and 10-33.01, the Contractor shall not, without written consent of the Owner, either replace any subcontractor or permit any such subcontract to be assigned or transferred, or allow that portion of the Work to be performed by anyone other than the approved subcontractor, except he may perform the work himself with qualified personnel upon written notice to the Owner in accordance with applicable law.

END OF ARTICLE

7. PROSECUTION OF THE WORK

(June 12, 2012)

A. Workmanship and Unauthorized Work

1) Work under this Contract shall be performed in a skillful and workmanlike manner. Unless otherwise indicated in the Contract Documents, the Contractor shall be solely responsible for means and methods and for the coordination of all trades through completion of the Work and without damage to the existing or newly installed components and surfaces. The Architect/Engineer or Field Representative may, in writing, require the Contractor to remove from the work any employee the Architect/Engineer or Field Representative determines incompetent, careless or otherwise objectionable. Such request shall be at no cost to the Owner.

2) Unauthorized Work: Work performed beyond the lines and grades shown on the Contract Drawings and approved Shop Drawings or established by the Owner, and Extra Work done without a Work Order or Change Order, will be unauthorized work and the Contractor will receive no compensation therefor. If required by the Owner, unauthorized work shall be remedied, removed or replaced by the Contractor at the Contractor's expense. Upon failure of the Contractor to remedy, remove or replace unauthorized work, the Owner may at its discretion, remedy, remove or replace the unauthorized work and the Contractor shall bear the responsibility for any and all costs and for delays resulting from such work.

3) The entire work and each part thereof, unless otherwise specified in the Contract Documents, shall be placed at the location, elevation, grade and gradient specified, and in proper alignment and adjustment. The Contractor shall provide all frames, forms, falsework, shoring, guides, anchors and temporary structures required to ensure these results.

4) No deviation from the approved Contract Documents shall be permitted without the prior written approval of the Architect/Engineer and/or Owner, by Work Order or Change Order, which approved deviation(s) shall be documented to the extent required by the Contract Documents.

5) The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the Contract Documents. All workers shall have sufficient skill and experience to properly perform the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

6) All proposed equipment shall be of sufficient size and in such mechanical condition as to meet requirements of the work, producing a satisfactory quality of work. Equipment used on any portion of the work shall be such that no damage to previously completed work, adjacent property, or existing facilities will result from its use.

7) When the Contract Documents specify the use of certain methods and equipment, such methods and equipment shall be used unless others are

authorized in writing by the Architect/Engineer by Work Order or Change Order. If the Contractor desires to use a method or type of equipment other than specified in the Contract, he may request permission from the Architect/Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with Contract requirements. If, after trial use of the substituted methods or equipment, the Architect/Engineer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the Architect/Engineer may direct, at no additional cost to the Owner. No change will be made to the Contract price or the Contract Time as a result of authorizing a change in methods or equipment under this article.

8) The Contractor shall give constant attention to the work to facilitate the progress thereof, and he shall cooperate with the Architect/Engineer and its Field Representatives and with other Contractors in every way possible.

9) The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that the work will be of good quality, free from faults and defects in materials and workmanship for a period of one year from the date of Substantial Completion, unless otherwise required under this Contract. Work not conforming to these standards may be considered defective. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

B. Material

1) Unless otherwise indicated in the Contract Documents, equipment, material and products incorporated in the Work covered by this Contract shall be new and of the grade specified for the purpose intended. Unless otherwise specifically indicated, reference to equipment, material, product, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at his option and, subject to the approval of the Architect/Engineer, use any equipment, material, article, or process which is equivalent to that named, subject to the requirements of these Contract Documents or propose a substitute equipment, material, article or process as indicated below. The Contractor shall at all times comply with established Green Building or LEED standards, if applicable, and as established in the Contract Documents. Proposed alternative equipment, material, products, or patented processes shall be considered equivalent if the Architect/Engineer determines that the proposed alternative is functionally equal to and/or sufficiently similar to that specified in the Contract Documents.

2) The Architect/Engineer shall be the sole judge of the quality, suitability and cost of the proposed alternative equipment, material, article or process. A proposed alternative shall be considered equivalent and/or functionally equal to that specified in the Contract Documents if, in the exercise of reasonable judgment, the Architect/Engineer determines that the proposed alternative is at least equal in materials of construction, quality, durability, appearance, strength and design characteristics, will reliably perform at least equally well the function and achieve the results imposed by the design concept and has a proven record of performance and availability.

3) If the Architect/Engineer determines that a proposed alternative does not qualify as equivalent or functionally equal, the alternative may be proposed for consideration as a substitute subject to the Contractor submitting sufficient information as provided below to allow the Architect/Engineer to determine that the proposed alternative is essentially equivalent to or better than the specified item and is an acceptable substitute for that said specified item.

4) The burden of proving the quality, suitability and cost of an alternative shall be borne by the Contractor. All information required by the Architect/Engineer in judging an alternative shall be supplied by the Contractor at the Contractor's expense. The Architect/Engineer's costs in evaluating a proposed alternative, irrespective of its acceptance, will be reimbursed by the Contractor to the Owner. In the case of approved alternatives, the Contractor shall also reimburse the Owner for the Architect/Engineer's costs to revise the Contract Documents.

5) The Contractor certifies that, if approved and incorporated into the Work, there will be no increase in cost to the Owner or in Contract Time and the proposed alternative shall conform substantially to the detailed requirements of the item specified in the Contract Documents.

   a. Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to affect such redesign or change will be considered in evaluating the suitability of the alternative material. All costs pertaining to redesign and changes in other parts of the Work, including remedial work to completed work, shall be at the Contractor's expense.

   b. No action relating to the approval of alternative materials will be taken until the request for approval of the alternative materials is made in writing by the Contractor accompanied by complete data as to the quality, suitability and cost of the materials proposed. Such request shall be made at least 60 days before the early start date of the activity. Any delays in receiving approval shall be the responsibility of the Contractor.

   c. The Architect/Engineer will examine and review the proposed alternative with the Owner and return it, within twenty-one (21) calendar days from the date of its receipt at the Architect/Engineer's office, to the Contractor noted with the final decision. If the final decision approves either an equal or a substitution, the approval must also contain the Owner's written approval. When requested by the

Architect/Engineer, the Contractor shall resubmit such Shop Drawings, descriptive data and samples as may be required.

d. Where classification, rating, or other certification by a body such as, but not limited to, Underwriters' Laboratories Inc. (UL), National Electrical Manufacturer's Association (NEMA), or American Railway Engineering Association (AREA) is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed body, or equivalent independent testing laboratory, indicating compliance with Contract Documents requirements. Testing required proving equality of the material proposed shall be at the Contractors expense.

e. Approval of an alternative material will be only for the characteristics and use named in such approval, and shall not change or modify any Contract requirement, or establish approval for the material to be used on any other Project for the Owner.

6) Source of Supply and Quality of Materials: The Contractor shall furnish all materials and products required to complete the Work except those designated to be furnished by the Owner.

   a. Notwithstanding prior inspection and approval by the Architect/Engineer, only materials conforming to the requirements of the Contract Documents shall be incorporated in the Work.

   b. The materials shall be manufactured, handled and incorporated so as to ensure completed work in accordance with the Contract Documents.

7) Defective Materials: Contractor-furnished materials not conforming to the requirements of the Contract Documents will be rejected, whether in place or not. Rejected material shall be removed immediately from the Work site. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work. The Owner may cause the removal and replacement of rejected material and the cost thereof will be deducted from any monies due or to become due to the Contractor.

8) Handling of Materials: Materials shall be transported, handled and stored by the Contractor in a manner which will ensure the preservation of their quality, appearance and fitness for the Work. Materials shall be stored in a manner to facilitate inspection.

9) The Owner will have no responsibility to the Contractor concerning local material sources.

   a. The Contractor shall make all necessary arrangements with the owners of material sources. The Contractor shall pay all costs in connection with making such arrangements, exploring, developing and using material sources, whether or not indicated, except such costs as the Owner expressly agrees in writing to assume.

10) Disposal of Material Outside the Work Site: Unless otherwise specified in the Contract Documents, the Contractor shall make his own arrangements for properly disposing of waste and excess materials outside the Work Site and he shall pay all costs therefore. Contractor

shall comply with all local, state and federal requirements when disposing of waste and excess materials.

a. Prior to disposing of material outside the Work Site, the Contractor shall obtain written permission from the owner on whose property the disposal is to be made. The Contractor shall file with the Architect/Engineer said permit, or a certified copy thereof, together with a written release from the property owner absolving the Owner from any and all responsibility in connection with the disposal of material on said property.

11) Property Rights in Materials: The Contractor shall have no property right in materials after they have been attached or affixed to the Work or the soil, or after payment has been made by the Owner to the Contractor for materials delivered to the site of the Work, or stored subject to or under the control of the Owner, as provided in these Contract Documents. However, the Contractor shall be responsible for the security of the material on-site until Final Acceptance by the Owner.

C. Methods of Sampling and Testing

1) Sampling and testing of all materials shall be as set forth in the Contract Documents. Except for quality control testing and any other testing that may be the direct responsibility of the Contractor as set forth in the Contract Documents, the testing of samples and materials will be made at the expense of the Owner by the project testing laboratory. The Contractor shall furnish the required samples without charge. Any and all fees for non-conforming materials or work shall be solely borne by the Contractor. The Contractor shall give sufficient notification to the Field Representative of the placing of orders for or receipt of materials to permit testing.

2) The Field Representative may inspect, at its source, any specified material or assembly to be used in the Work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the Work and to obtain samples required for its acceptance of the material or assembly

Should the Field Representative conduct plant inspections, the following shall exist:

a. The Field Representative shall have the cooperation and assistance of the Contractor and the producer with whom he has contracted for materials.

b. The Field Representative shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of materials being furnished.

c. If required by the Field Representative, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Office or working space should be conveniently located with respect to the plant.

3) It is understood and agreed that the Owner shall have the right to retest any material which has been tested and approved at the source of supply after it has been delivered to the site. The Field Representative shall have the right to reject only material which, when retested, does not meet the requirements of the Contract Documents. In such an event, the cost of re-testing shall be borne by the Contractor if it results in a rejected material.

4) All inspections and testing of materials, assemblies and equipment will be performed in Miami-Dade County. If the Contractor's material or manufacturing sources are such that inspections or tests cannot be made in Miami-Dade County, all traveling and lodging expenses in connections with such inspections and testing shall be borne by the Contractor.

D. Meetings

1) A pre-construction conference will be held prior to the issuance of the Notice to Proceed to discuss the work to be performed under this contract. The Contractor and its major Subcontractors shall be required to attend this meeting. The Contractor will be advised of the time, date and location of the meeting.

2) The Contractor shall attend weekly construction coordination meetings at a time and place to be designated by the Architect/Engineer. These meetings are intended to determine job progress, identify job problems, assist in solving and preventing job problems, and promote coordination with all entities involved in the Contract and with other Owner Contractors. The Contractor shall cause Subcontractors and suppliers to attend as he deems advisable, or as requested by the Architect/Engineer. Unless otherwise provided for in these Contract Documents, the Contractor shall be responsible for generating and distributing meeting minutes for all such meetings.

E. Permits and Compliance with Laws

1) Unless otherwise provided for in these Contract Documents, the Contractor shall be responsible for obtaining necessary licenses and permits and for complying with applicable Federal, State, County and Municipal laws and latest codes and regulations in connection with the prosecution of the Work. (For payment of permit(s), see Special Provisions). No time extensions will be allowed for delays in obtaining the required permits unless revisions directly caused by the Owner or its agents are required to the Contract Drawings due to changes in codes, regulations and applicable contract standards during the contract term. See Special Provisions for additional permit requirements.

2) The Owner will not pay or reimburse the Contractor for any penalties relating to his permits or fees as a result of the Contractor's failure to timely obtain all his permits, inspections, approvals, etc.

3) The Contractor shall observe and comply with all applicable Federal, State, County and other laws, codes, ordinances, rules and regulations of the Federal, State and County governments, all authorities having jurisdiction, and any and all programs developed in compliance therewith, in any manner affecting the conduct of the Work.

4) Dewatering of excavations shall be performed in accordance with the applicable provisions of the Department of Environmental Resources Management (DERM), Florida Department of Environmental Protection (DEP), U.S. Environmental Protection Agency (USEPA) and the South Florida Water Management District (SFWMD) Dewatering Permits and/or any and all authorities having jurisdiction and any other requirements specified in the Contract Documents. The means and methods of dewatering shall be determined by the Contractor who shall bear the full cost of same as part of the contract price.

5) All construction activities shall be subject to the pollution prevention requirements established under the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act regulating storm water discharge from construction sites.

6) Upon completion of all of the work contemplated under the Contract Documents, the Contractor shall obtain and deliver to the Field Representative such Certificate(s) of Occupancy or Certificate(s) of Completion as required by the Florida Building Code and/or authority having jurisdiction.

7) The Contractor shall be subject to and comply with all the provisions of Miami-Dade County Code Section 2-8.4.1, which provides that, whenever any individual or corporation or other entity attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement, the County shall, whenever practicable, terminate the Contract. The Contractor is further directed to Section 10-38 of the Miami-Dade County Code which provides for the debarment of County contractors.

F. Coordination and Access

1) Other Contracts: The Owner may undertake or award other contracts for additional work, and the Contractor shall fully cooperate and coordinate with other Contractors and the Owner and carefully fit his own work to such additional work. The Contractor shall not perform any act which will interfere with the performance of work by any other contractor or by the Owner. The Contractor shall be responsible for obtaining all necessary scheduling details from other Contractors and these requests must be provided, in writing, to the Owner. The Architect/Engineer shall have the authority to resolve conflicts related to coordination between Contractors.

2) In the event of interference between the work of the Contractor and other contractors working concurrently at the Site, the Field Representative will instruct the Contractor as to which work has priority in performance and such instructions shall be binding upon the Contractor.

3) Utility companies, railroads, and municipal agencies having facilities within the limits of the Work shall have access to their facilities at all times for inspection and repair.

G. Rights in Land and Improvements

The Contractor shall make no arrangements with any person to permit occupancy or use of any land, structure or building within the Work Site for any purpose whatsoever, either with or without compensation, in

conflict with any agreement between the Owner and any property owner, former property owner or tenant of such land, structure or building. The Contractor shall not occupy Owner-owned property outside the Work Site without obtaining prior written approval from the Owner.

H. Interference With Existing Utilities

1) Attention of the Contractor is specifically directed to the need for careful control of all aspects of his work to prevent damage to cables, ducts, water mains, sewers, fire mains, telephone cables, fuel lines, radar cables, and any other existing overhead or underground utilities and structures.

2) Before commencing work in any given area, the Contractor shall contact utility companies to identify any potential conflicts. Further, the Contractor shall also carefully review the Plans, survey and search the site for utility locations, and determine possible utility conflicts. All known above and underground utilities, including, but not limited to, electrical, telephone, communications, lighting cables, fuel lines, sewer, drainage and water pipes, and other existing structures are shown on the Plans for reference purposes only, but no guarantee is expressed or implied that the information is accurate. It shall be the sole responsibility of the Contractor to ascertain and/or verify the location of any and all such utilities or structures using magnetic and electronic detectors and by hand excavation or other appropriate measures before performing any work that could result in damage to such existing utilities or structures. The Contractor shall make a thorough search of the particular location for underground utilities or structures whether or not shown on the drawings, before excavation work is commenced in any particular location. To this end the Contractor shall provide and maintain throughout the term of the Contract, electronic and magnetic detecting devices capable of locating underground utilities or structures. The Contractor shall, after locating primary and critical existing utilities, mark their location with indelible material or other means satisfactory to the Field Representative and maintain above ground physical identification during the work.

3) In the event of damage to, or accidental disruption of utilities or other facilities as a result of the Contractor's operations, the Contractor shall take immediate steps to repair or replace all damage and to restore all services. Further, the Contractor shall engage any additional outside services which may be necessary to prosecute repairs on a continuous "around the clock" basis until services are restored. The Contractor shall also provide and operate any supplemental temporary services to maintain uninterrupted use of the facilities. All costs involved in making repairs and restoring disrupted service resulting from the Contractor's work shall be borne by the Contractor and the Contractor shall be fully responsible for any and all claims resulting from the damage.

I. Protection of Existing Facilities, Vegetation, Structures, Utilities and Improvements

1) The Contractor shall preserve and protect existing vegetation such as trees, shrubs, and grass on or adjacent to the work site which are not indicated to be removed and which do not unreasonably interfere with the construction Work and he shall replace in kind the vegetation, shrubs and grass damaged by him at his own expense.
2) The Contractor shall protect from damage all utilities, foundations, walls or other parts of adjacent, abutting or overhead buildings, railroads, bridges, structures, surface and subsurface structures at or near the site of the Work and shall repair or restore any damage to such facilities, except utilities, resulting from failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the Work. If, after receipt of notification from the Architect/Engineer, the Contractor fails to or refuses to repair any such damage promptly, the Owner may have the necessary Work performed and charge the cost thereof to the Contractor.
3) At points where the Contractor's operations are adjacent to utility facilities, damage to which might result in expense, loss, disruption of service or other undue inconvenience to the public or to the owners, Work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor. The Contractor shall be solely and directly responsible to the owners and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay, caused by the Contractor's operations.
    a. Where public utilities or their appurtenances interfere with permanent construction, unless otherwise specified, work involved in permanently relocating or otherwise altering such public utilities and their appurtenances will not be a part of this Contract but will be done by utility owners at no cost to the Contractor. If the Contractor wishes to have utilities temporarily relocated, he shall make necessary arrangements with utility owners and reimburse them at his own expense for cost of the Work. The Contractor shall keep the Architect/Engineer advised of temporary relocation arrangements.
    b. The Contractor shall not repair or attempt to repair utility damage but shall immediately contact the utility owner. The Contractor shall obtain the name, address and telephone number of each utility company that the work will affect and the person in such utility company to contact. He shall submit to the Architect/Engineer said names, addresses and telephone numbers.
4) The Contractor shall comply with the latest version of the Florida Building Code or the Code under which the Contract Documents were approved, whichever is applicable at the time the Work is performed.
5) In order to safeguard the owners and tenants of abutting property and at the same time prevent unjust or fraudulent claims against the Contractor the Government, State, the Owner and the Architect/Engineer in respect thereto, the Contractor shall cause a detailed examination of abutting property to be made before construction is begun. The owner or tenant of each parcel or structure

or his or their duly authorized representative will be invited to be present during the examination by a notice in writing delivered by the Contractor to a person in charge of the premises or structure, or by the mailing of the notice to the owner at the premises. The Architect/Engineer will attend while the Contractor makes the detailed examination. A complete record including photographs of the existing conditions of each parcel or structure shall be made in triplicate, signed by the Contractor, Owner and the Architect/Engineer and one copy will be delivered to the Owner, one to the Architect/Engineer and one will be retained by the Contractor. At such time as the Architect/Engineer may direct, or upon the filling of the verified statement by the owner, tenant, lessee, operator or occupant of the building structure, and in any event, upon the completion of any work that in the opinion on the Architect/Engineer might affect the abutting property, the Contractor will make another detailed examination of such abutting property. A complete record of the then existing conditions of said property will be made in triplicate, signed by the Contractor and one copy will be delivered to the Owner, one to the Architect/Engineer and one will be retained by the Contractor. In any action, which may be brought by any owner, tenant, lessee, operator or occupant of abutting property to recover under the provisions of this article or any paragraph hereof, the record of the existing conditions of each parcel will be prima facie evidence of the conditions thereof at the time of the making of the examination.

6) The Contractor shall maintain access to fire hydrants and fire alarm boxes throughout the prosecution of the Work. Hydrants, alarm boxes and standpipe connections shall be kept clear and visible at all times unless approved otherwise. If visibility cannot be maintained, the Contractor shall provide clearly visible signs showing the location of the fire hydrant, fire alarm box or standpipe connection. The Contractor shall promptly notify the authority having jurisdiction of any impairment to any fire systems.

J. Damage to the Work and Responsibility for Materials

1) The Contractor shall be responsible for materials delivered and work performed until completion and Final Acceptance of the entire construction thereof, except those materials and work which may have been accepted under the applicable sections of this article and shall take all necessary steps to protect the Work, from all causes, at his expense.

2) The Contractor shall bear the risk of injury, loss or damage to any and all parts of the Work for whatever cause, whether arising from the execution or from the non-execution of the Work, except as provided for in this article. The Contractor shall rebuild, repair or restore work and materials which have been damaged or destroyed from any cause before Completion and Acceptance of the Work and shall bear the expense thereof. The Contractor shall provide security including, but not limited to, security guards, temporary drainage systems and erection of temporary structures and temporary fencing as necessary to protect the Work and materials from damage.

3) The Contractor shall be responsible for materials not delivered to the site for which any progress payment has been made to the same extent as if the materials were so delivered.

4) The Contractor's responsibility for material shall be the same for Owner-furnished material, upon receipt of said material from the Owner, under this Contract as for Contractor-furnished material.

5) Relief from Maintenance and Responsibility: The Contractor may request, in writing, from the Owner, that the Owner relieve the Contractor of the duty of maintaining and protecting certain portions of the Work, as described in this paragraph, which have been completed in all respects in accordance with the requirements of the Contract. Such action by the Owner will relieve the Contractor of responsibility for injury or damage to said completed portions of the Work resulting from use by the Owner or the public for any cause, but not from injury or damage resulting from the Contractor's own operations or negligence. Portions of the Work for which the Contractor may be relieved of the duty of maintenance and protection, as provided in this paragraph, include the following:

   a. Early possession by the Owner of any portion of the Work, in accordance with the Contract Documents.

   b. This Paragraph 5 does not relieve the Contractor of responsibility for repairing or replacing defective work or materials in accordance with the Contract requirements.

K. Emergencies

1) In an emergency affecting the safety of life, the Work, or adjacent property, the Contractor shall notify the Field Representative and the Architect/Engineer as early as possible that an emergency exists. In the meantime, without special instruction from the Architect/Engineer as to the manner of dealing with the emergency, the Contractor shall act at his own discretion to prevent such threatened loss or injury. As emergency work proceeds, the Field Representative and the Architect/Engineer may issue instructions, which the Contractor shall follow. The compensation to which the Contractor is entitled on account of emergency work, if any, shall be limited to emergencies not caused by actions or inactions of the Contractor determined in accordance with the Contract Documents, where applicable.

2) For purposes of this article, an emergency is defined as an act or event that has already occurred, not caused by actions or inactions of the Contractor, which, if no immediate action is taken may affect the safety of life, the work, or adjacent property. This article does not apply to steps taken by the Contractor to protect the Work, adjacent structures, utilities, existing vegetation, etc. under other sections of the Contract Documents. Furthermore, this article does not apply to preparations the Contractor may make prior to storms or hurricanes or other acts of God.

L. Accident Prevention

1) Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
   a. All persons on the Site or who may be affected by the Work;
   b. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and other property at the Site or adjacent thereto, including trees, shrubs lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
2) Contractor shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection.
3) Upon notification from the Owner or its representative(s), the Contractor shall promptly correct any deficiencies affecting the safety and well being of the construction workers and the public that have been identified by the notice.
4) Should a situation of imminent danger be identified, work in the affected area must be suspended immediately until the condition has been corrected. Imminent danger is defined as the exposure or vulnerability to harm or risk that is impending or about to occur as defined by the Field Representative or the Architect/Engineer. The Contractor will not be entitled to future claims alleging impacts caused by the Owner stoppage of the Work due to safety reasons.

M. Warranty of Work

1) Except where longer periods of warranty are indicated for certain items, the Contractor warrants the Work under the Contract to be free from faulty materials and workmanship for a period of not less than one (1) year from the date of Substantial Completion. This one-year period shall be covered by the Surety Performance Bond as specified in this Contract, except that in the case of defects or failure in a part of the work which the Owner takes possession of prior to Substantial Completion, such a period shall commence on the date the Owner takes possession. Upon receiving notification from the Owner or any public body, to whom the ownership of the Work has been transferred or who has agreed to maintain the Work, the Contractor shall immediately remedy, repair, or replace, without cost to the Owner or other notifying party and to the entire satisfaction of the notifying party, defects, damages, or imperfections due to faulty materials or workmanship appearing in said Work within said period of not less than one year. Remedial work shall carry the same warranty as the original work starting with the date of acceptance of the replacement or repair. Payment to the Contractor will not relieve him of any obligation under the Contract.

2) The Contractor, at no additional expense to the Owner, shall also remedy damage to equipment, the site, or the buildings or the contents thereof, which is the result of any failure or defect in the Work, and restore any Work damaged in fulfilling the requirements of the Contract. Should the Contractor fail to remedy any such failure or defect within ten (10) days after receipt of notice thereof, the Owner will have the right to replace, repair, or otherwise remedy such failure or defect and deduct all costs from the Contractor's pay request or Payment and Performance Bond if final payment has been made.

3) The Contractor will correct all latent defects discovered within ten (10) years after Substantial Completion provided that the Owner shall notify the Contractor of each latent defect within the time specified by law. The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for all damages sustained by the Owner resulting from latent defects, fraud, or such gross mistakes as may amount to fraud, discovered after the stated guarantee and warranty periods have expired. If the Contractor fails to act within ten (10) days, the Owner reserves the right to have the work performed by others at the expense of the Contractor, and the Contractor agrees to pay the Owner the reasonable cost associated with procurement, implementation and management thereof upon demand. The Owner shall also be entitled to reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.

4) Subcontractors', manufacturers' and suppliers' warranties and guaranties, expressed or implied, with respect to any part of the Work and any material used therein shall be deemed obtained and shall be enforced by the Contractor for the benefit of the Owner provided that, if directed by the Owner, the Contractor requires such subcontractors, manufacturers and suppliers to execute such warranties and guaranties, in writing, directly to the Owner.

5) The rights and remedies of the Owner provided in this article are in addition to and do not limit any rights and remedies afforded by the Contract or by law.

6) Nothing in the above intends or implies that this warranty shall apply to work that has been abused or neglected by the Owner, its agents or other public body, utility or railroad to which ownership has been transferred.

END OF ARTICLE

8. CONTRACT TIME

(June 12, 2012)

A. Notice to Proceed

1) The Owner may issue authorization to obtain permits to the Contractor after the Contractor has executed the Contract and has delivered the specified bonds and certificates of insurance in forms acceptable to the Owner, for the limited purpose of obtaining all necessary permits to complete the work. If the Contractor is unable to obtain all necessary permits within 30 days, through no fault of the Contractor, the Owner has the option, but not the obligation, to terminate the Contract, without fault to the Contractor or the Owner, effective immediately upon written notice by the Owner or give the Contractor additional time to obtain the permits. Upon the Contractor providing satisfactory evidence of obtaining the permits, the Owner will issue Notice to Proceed. Except as specifically authorized in writing by the Owner, the Contractor is not authorized to perform work (other than obtaining permits) under the Contract until the effective date of the Notice to Proceed, upon which the Contractor shall commence work and shall diligently prosecute the Work to completion within the time limits specified. The Contract time commences on the date shown on the Notice to Proceed.

2) Any Work Performed by the Contractor (other than obtaining permits) prior to Notice-To-Proceed shall be at the Contractor's own risk and shall not be considered as the basis for any claim.

B. Schedules

1) The Contractor shall provide, maintain, and periodically update schedules in strict accordance with the Contract Documents. The Special Provisions shall contain specific requirements for the form, content and date of submission of the baseline schedule and all schedule updates.

2) The Contractor shall prosecute the Work in accordance with the approved baseline Schedule or most recently approved revision to the baseline schedule. In the event that progress along the critical path is delayed, the Contractor shall revise his planning to include additional forces, equipment, shifts or hours as necessary to meet the time or times of completion specified in this Contract at no additional cost to the Owner. In addition, the Contractor shall revise his schedule to reflect these recovery actions and submit it to the Owner for review and approval it being understood that such approval will be as to the format and composition of the schedule and not the Contractor's means and methods. Additional costs resulting therefrom will be borne by the Contractor. Delayed progress is defined as:

   a. A delay in the start or finish of any activity on the critical path (critical path is defined as the path with the least amount of float) of the approved baseline schedule or most recently approved revision to the baseline; or

   b. A delay in the start or finish of any non-critical activity which consumes more than the available float shown on the approved

baseline schedule or most recently approved revision to the baseline, thereby making the activity critical and late; or

c. A projected completion date shown on a schedule update which is later than the contractual completion date; or

d. Any combination of the above.

3) Failure of the Contractor to comply with the requirements under this provision will be grounds for determination that the Contractor is not prosecuting the Work with such diligence as will ensure completion within the Contract Time. Upon such determination, the Owner may terminate the Contractor's right to proceed with the Work, or any separate part thereof, in accordance with the Contract Documents. If in the Contractor's estimation, the cause(s) of delay are beyond the Contractor's control, the Contractor shall adhere to the sections of the Contract Documents related to extensions of time, claims and others as appropriate.

4) The Contractor shall be responsible for scheduling and coordinating the work of all crafts and trades, subcontractors and suppliers, required to perform the Work and to complete the Work within the prescribed time. Any inefficiency or loss of productivity in the labor, materials, or special equipment of the Contractor or its subcontractors of any tier, from any cause, shall be the responsibility of the Contractor. No reimbursement of these or any other costs can be requested by or granted to the Contractor or any of its subcontractors of any tier for inefficiency or loss of productivity in labor, materials, or special equipment, except as specified in the paragraph in this article dealing with Liquidated Indirect Costs, for delays in the performance and completion of the Work directly caused by the Owner or its authorized representatives. Other than the exception described above, additional costs may only be paid to the Contractor as a result of additional Work added to the Contract scope of work.

C. Extensions of Time and Classification of Types of Delays

1) Once a delay has been identified and it has been established through a scheduling analysis that a delay affects the Project's end date or contractually mandated milestone date, the delay must be classified to determine responsibility and to compute damages, if any. Before the Contractor can submit a request for time extension, claim or any request for additional compensation involving or related to time, the Contractor must classify the delay(s) in accordance with the following classifications. These delay classifications shall be used by the Owner and the Contractor in resolving any time-related disputes. Delays fall into three basic categories: non-excusable, excusable, and compensable.

a. Non-excusable delays are those delays to the critical path which were foreseeable at the time of contract award or delays caused by the Contractor due to the Contractor's fault or negligence or his/her own inefficiencies or problems, due to his/her inability to coordinate subcontractors and/or other flaws in his/her planning. In these types of delays the Contractor is not entitled to extra time

or compensation and the Owner may be allowed to assess Liquidated Damages or actual damages, depending on the contract provisions.

b. Excusable delays are those delays to the critical path beyond the Contractor's control and without the active interference of the Owner, such as extreme weather (force majeure), strikes and delays caused by third parties (i.e. not the Contractor or the Owner). Contractors are granted a time extension but no additional compensation for the extended time of performance for excusable delays.

c. Compensable delays are delays to the critical path caused by active interference or participation of the Owner or Owner's consultant. Examples of compensable delays are failure of the Owner to provide right-of-way, introducing late design changes, late review of shop drawings by the Owner or his Architect/Engineer and failure of the Owner to coordinate the work of various prime Contractors. In the case of a compensable delay, the compensation for the extended period of performance may cover, in addition to the direct cost due as a result of the changes, Liquidated Indirect Costs as specified in the Contract Documents.

d. Concurrent delays involve two or more delays to the critical path occurring at the same time, either of which, had it occurred alone, would have affected the end date of the Project. In that event, the Contractor's sole remedy is a time extension and relief of Liquidated Damages with no compensation for extended cost for the concurrency delay period.

e. The compensability of concurrent delays depends on the types of delays involved. The following shall determine the effects of concurrent delays on time extensions and compensable costs:

   i. EXCUSABLE DELAY CONCURRENT WITH A NON-EXCUSABLE DELAY. For excusable delays concurrent with non-excusable delays, the Contractor is entitled to a time extension only. For example, it rains the day footings are to be excavated (excusable delay) but the excavation equipment was down for repairs (non-excusable delays).

   ii. NON-EXCUSABLE DELAY CONCURRENT WITH A COMPENSABLE DELAY. For non-excusable delays concurrent with compensable delays, the Contractor is entitled to a time extension only. For example, if the Owner introduces a design change for a beam but the Contractor has failed to submit the shop drawings for said beam in a timely manner. This would be an example of a non-excusable delay (late shop drawings) concurrent with a compensable delay (Owner introducing design change).

   iii. EXCUSABLE DELAY CONCURRENT WITH A COMPENSABLE DELAY. For excusable delays concurrent with compensable delays, the Contractor is entitled to a time extension only. For example, the Owner does not provide the

necessary right-of-way to begin construction (compensable delay) but the Contractor's forces are on strike (excusable delay).

2) Time Extensions: The Contractor may be granted an extension of time and will not be assessed Liquidated Damages for any portion of the delay in completion of the Work, arising from acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, strikes, labor disputes, or weather more severe than the norm, provided that the aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes, and has given to the Architect/Engineer immediate verbal notification, with written confirmation within 48 hours, of the cause or causes of delay. Within thirty (30) days after the end of the delay, the Contractor shall furnish the Architect/Engineer with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract Document references, and the measures taken to prevent or minimize the delay. All requests for extension of time shall be submitted in accordance with the Contract Documents. Failure to submit such information will be sufficient cause for denying the delay claims. The Owner will ascertain the facts and the extent of the delay and its findings thereon will be final and conclusive subject to the dispute provisions in the Contract Documents. The extensions of time granted for these reasons shall be considered excusable and shall not be the basis for any additional compensation.

   a. Weather more severe than the norm shall apply only as it affects particular portions of the Work and operations of the Contractor, as determined by the Architect/Engineer. Weather more severe than the norm is defined as any situation exceeding the mean data as recorded by The National Climatic Data Center, Asheville, North Carolina and published by the National Oceanic and Atmospheric Administration (This data is taken from the table of normals, means, and extremes in the latest version of the "Local Climatological Data, Annual Summary with Comparative Data, Miami, Florida"). For the calculation of delays due to rain, precipitation of 0.01 inches or more a day shall be considered to be a rain day if the rain actually prevented the Contractor from performing work. The effects of weather less severe than the norm may be taken into account in granting time extensions at the Owner's sole discretion.

   b. An extension of time will not be granted for a delay to the critical path caused by a shortage of materials, except Owner-furnished materials, unless the Contractor furnishes to the Architect/Engineer documentary proof that he has diligently made every effort to obtain such materials from every known source within reasonable reach of the Work. The Contractor shall also submit proof, in the form of a CPM network analysis data, that the inability to obtain such materials when originally planned, did in

fact cause a delay in final completion of the Work which could not be compensated for by revising the sequence of his operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of the Architect/Engineer that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities.

3) Delays Caused by Consultant and/or the Owner: If the Contractor's performance of the Work along the critical path is delayed by any condition or action directly caused by the Owner, and which was not foreseeable by the Contractor at the time the Contract was entered into, the Contractor shall, provide notification in accordance with the Contract Documents, of any such delay and of the anticipated results thereof. The Contractor shall cooperate with the Owner and use its best efforts to minimize the impact on the schedule of any such delay. In instances where a Contract change extends the Contract beyond the completion date, the Contractor may claim Liquidated Indirect Costs as specified in the paragraph in this article dealing with Liquidated Indirect Costs. These delays shall be considered compensable, except for the period in which these delays may be concurrent with Contractor-caused delays. If a delay on the part of the Owner is concurrent, that is, if it occurs at the same time as a Contractor-caused delay, the Owner-caused delay shall be considered an excusable delay for the portion of the Owner-caused delay which is concurrent with the Contractor-caused delay.

4) Delays Beyond Contractor's Control Not Caused by Consultant and/or the Owner: If Contractor's performance of the Work along the critical path is delayed by any conditions beyond the control and without the fault or negligence of Contractor and not caused by the Owner, and which was not foreseeable by Contractor at the time this Contract was entered into, Contractor shall, provide immediate verbal notification with written notification in accordance with the Contract Documents, of any such delay and of the anticipated results thereof. Within two (2) calendars days of the termination of any such delay, Contractor shall file a written notice with the Architect/Engineer specifying the actual duration of the delay. If the Owner determines that the delay was beyond the control and without the fault or negligence of the Contractor and not foreseeable by the Contractor at the time this Contract was entered into, the Owner will determine the duration of the delay and may extend the time of performance of this Contract provided, however, that Contractor shall cooperate with the Owner and use its best efforts to minimize the impact on the schedule of any such delay. These delays shall be considered excusable and the Contractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of the delays

contemplated by this paragraph and extension of time shall constitute Contractor's sole remedy for such delays.

5) In addition to the delays in the Work specified in this section, delays in the Work directly caused by an act or omission by an owner of an adjoining property will not be considered an Owner-controlled delay. An owner of an adjoining property is a person, firm, corporation, partnership, or other organization who either owns or occupies, or both, structures or parcels or both, immediately adjacent to the Work Site. Extension of time for those delays will be considered excusable and shall be treated as specified in this article, provided that:

   a. The Contractor has, in accordance with this article, given to the Architect/Engineer immediate verbal justification, with written confirmation within forty-eight (48) hours of the delay; and

   b. The Contractor establishes, to the satisfaction of the Architect/Engineer, that:

      i. The delay was caused directly by an act or omission by the owner of the adjoining property; and

      ii. The Contractor has taken reasonable precautions and has made substantial effort to minimize the delay.

6) A Change Order will be furnished to the Contractor within a reasonable period of time, after approval by the BCC, of a request for extension of time, specifying the number of days allowed, if any, and the new dates for completion of the Work or specified portions of the Work. All requests for time extension shall be in accordance with the Contract Documents. With the exception of time extensions covered under the time contingency allowance in the contract, only the BCC shall grant final written approval of all Change Orders, including additional money or extensions of time. All change orders shall be in full accord with the Contract Documents.

7) For the proper format to be used in submitting requests or claims for time extensions, refer to applicable sections of the Contract Documents.

8) Extensions of time shall be in accordance with Section 9-3 of the Code of Miami-Dade County, as applicable.

D. Substantial Completion and Final Acceptance

1) The following items must be satisfied before Substantial Completion, as defined in the Contract Documents, will be approved:

   a. All Work must be completed to the satisfaction of the appropriate permitting agencies having jurisdiction over the Work. The Contractor must furnish the Owner with a “Certificate of Occupancy” or a “Certificate of Completion”, as applicable, from the permitting agency unless circumstances arise outside the contract scope that prohibits such certificates from being issued (i.e. utility connections).

   b. All operational systems which may include but not be limited to: electrical systems, security systems, irrigation systems and fire

systems, must be completed in accordance with the Contract Documents, tested and approved.

c. All plumbing, heating, ventilation, and air conditioning systems must be completed, tested and approved. Whenever the scope of work includes a facility or building, an HVAC test and balance report must be submitted and approved as a condition precedent to Substantial Completion.

d. The punch list may not be so extensive or of a nature that the Contractor's completion will significantly interfere with the Owner's beneficial use of the facility.

2) When the Contractor believes that all the Work or designated portion thereof required by the contract is substantially completed, the Contractor shall submit to the Field Representative and the Architect/Engineer a request for Substantial Completion inspection. The Contractor, the Field Representative, the Architect/Engineer, sub-consultants, and the Owner shall meet at the Project site for the purpose of making a combined inspection of the Work. During this inspection, any item of work remaining to be done or Work to be corrected shall be noted on a Punch List. If the Field Representative and/or the Architect/Engineer and the Owner indicate on this inspection report that the Work is substantially complete, a Certificate of Substantial Completion will be issued to the Contractor. The Certificate of Substantial Completion shall establish the date of Substantial Completion and shall have attached the Punch List reflecting any items to be completed or corrected, but which do not prevent beneficial use and occupancy, and shall state the date by which the Punch List is to be completed. The completion time for the Punch List shall not be greater than sixty (60) days from the date of issuance of the Certificate of Substantial Completion.

3) If any of the conditions listed in this article are not met and the Work has not been completed, or the Contractor determines that the final Punch List cannot be completed within sixty (60) days, a Certificate of Substantial Completion shall not be issued. The Contractor shall continue work, reducing the number of items on the Punch List that were not met. Additional inspections shall be scheduled as necessary until Substantial Completion is declared. However, costs incurred by the Owner for any inspections beyond a second inspection will be charged back to the Contractor.

4) In the event the Contractor fails to achieve Substantial Completion within the period specified in the Contract for completion, the Contractor shall be liable for Liquidated Damages and the Owner has, as its option, the right to, after ten (10) calendar days notice to the Contractor, have the work performed by others and backcharge the Contractor for all Direct and Indirect Costs related to performing this work. In the event that the Owner chooses to have the work completed by others, there shall not be any further non-excusable delays charged to the Contractor beyond the ten (10) days following notice to the Contractor. However, the Contractor shall not be relieved of any non-excusable delays incurred through the date of termination. The Punch List and the Contract shall remain open until

all the Work is complete and accepted. The current retainage will be used to offset any Liquidated Damages and any backcharges, after which, any surplus retainage will be released to the Contractor. If the retainage is insufficient to cover the Liquidated Damages and any backcharge, the Owner will bill the Contractor for the balance and the Contractor shall promptly remit to the Owner an amount equal to the billing.

5) Final Completion: When the Owner or Architect/Engineer considers all Work indicated on the Punch List to be complete, the Contractor shall submit written certification that:
   a. Work has been inspected for the compliance with the Contract Documents.
   b. Work has been completed in accordance with the Contract Documents, and that deficiencies listed within the Certificate of Substantial Completion and its attachments have been corrected.
   c. Work is completed and ready for final inspection.
6) Should the Owner and/or Architect/Engineer inspection find that Work is incomplete, he will promptly notify the Contractor in writing listing all observed deficiencies. The Contractor shall be responsible for all Direct and Indirect Costs to the County resulting from the Contractor's failure to complete the Punch List items within the time allowed for completion.
7) The Contractor shall remedy deficiencies and send a second certification. Another inspection will be made that shall constitute the final inspection. Provided that work has been satisfactorily completed, the Architect/Engineer will notify the Contractor in writing of Final Acceptance as of the date of this final inspection.
8) Prior to Final Acceptance, the Contractor shall deliver to the Field Representative complete As- Builts, all approved Shop Drawings, maintenance manuals, pamphlets, charts, parts lists and specified spare parts, operating instructions and other necessary documents required for all installed materials, equipment, or machinery, all applicable warranties and guarantees, and the appropriate Certificate of Occupancy.
9) Upon notification of Final Acceptance to the Contractor, the Architect/Engineer will request and consider closeout submittals from the Contractor including but not limited to the final Contractor's Affidavit and Release of All Claims.
10) The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.
11) Re-Inspection Fees: Should the status of completion of the Work require re-inspection of the Work by the Owner and the Architect/Engineer due to failure of the Work to comply with the Contractor's representations regarding the completion of the Work, the Owner will deduct from the final payment to the Contractor, fees

and costs associated with re-inspection services in addition to scheduled Liquidated Damages.

E. Use and Possession

The Owner shall have the right to beneficially occupy, take possession of or use any completed or partially completed portions of the Work. Such possession or use will not be deemed an acceptance of work not completed in accordance with the Contract. While the Owner is in such possession, the Contractor, notwithstanding the provisions of the Contract Documents, will be relieved of the responsibility for loss or damage to the Work other than that resulting from the Contractor's fault or negligence or breach of warranty. If such prior possession or use by the Owner delays the progress of the Work or causes additional expense to the Contractor, a Contract change in the Contract price or the time of completion will be made and the Contract will be modified in writing accordingly.

F. Liquidated Damages and Liquidated Indirect Costs

1) The parties to the Contract agree that time, in the completion of the Work, is of the essence. The Owner and the Contractor recognize and agree that the precise amount of actual damages for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract and that proof of the precise amount will be difficult. Therefore, the Contractor shall be assessed Liquidated Damages on a daily basis for each Day that individual milestones, both interim and cumulative as specified in the Contract Documents, are not timely achieved or that Contract Time is exceeded due to a non-excusable delay. These Liquidated Damages shall be assessed, not as a penalty, but as compensation to the Owner for expenses which are difficult to quantify with any certainty and which were incurred by the Owner due to the delay. The amount of Liquidated Damages assessed shall be an amount, as stipulated in the Contract Documents, per day for each calendar day that individual milestones as specified in the Contract are not timely achieved or that the Project is delayed due to a non-excusable delay.

2) The Owner and the Contractor recognize and agree that the precise amount of the Contractor's Indirect Costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract, and that proof of the precise amount will be difficult. Therefore, Liquidated Indirect Costs recoverable by the Contractor shall be assessed on a daily basis for each Day the Contract Time is delayed due to compensable delay. These Liquidated Indirect Costs shall be paid to the Contractor in full satisfaction of all costs and damages caused by compensable excusable delays, except for Direct Costs. There shall be no Liquidated Indirect Costs payable for time directly related to Extra Work for which a Change Order has been issued.

3) The amount of Liquidated Indirect Costs recoverable shall be an amount, as stipulated in the Contract Documents per day for each day the Contract is delayed due to compensable excusable delay. For lump sum contracts, the daily amount of Liquidated Indirect Costs

will be calculated by dividing the total amount in the Contractor's approved Schedule of Values for General Requirements by the Contract duration (in days) after deducting any general conditions costs directly paid by the Owner during the execution of the Project. The amount of the Liquidated Indirect Costs calculated in accordance with this formula shall be stated in the Notice-to-Proceed. For unit price contracts, the daily amount of Liquidated Indirect Costs will be calculated as defined in the formula below:

$$\frac{\text{(Amount of Bid x 8\%) less any General Requirements items paid independently/individually}}{\text{Original Contract Duration (In Days)}}$$

4) In the event the Contractor fails to perform any other covenant or condition (other than time-related) of this Contract relating to the Work, the Contractor shall become liable to the Owner for any actual damages which the Owner may sustain as a result of such failure on the part of the Contractor. The Owner reserves the right to retain these amounts from monies due the Contractor.
5) Nothing in this article shall be construed as limiting the right of the Owner to terminate the Contract and/or to require the Surety to complete said Project and/or to claim damages for the failure of the Contractor to abide by each and every one of the terms of this Contract as set forth and provided for in the Contract Documents.

END OF ARTICLE

9. PROGRESS PAYMENTS
(June 12, 2012)

A. Payments

1) The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials, for performing all work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof.

2) The Owner will make progress payments monthly as the work proceeds. Unless the Special Provisions provide for the payment to be determined by using a cost-loaded CPM, the Contractor shall, within 15 days after Notice-to-Proceed, furnish a Schedule of Values for review and approval by the Owner consisting of a detailed cost breakdown of each lump sum bid item in the bid form in such detail as the Architect/Engineer shall request, showing the amount included therein for each principal category of the work, to provide the basis for determining the amount of progress payments. Unit price bid items shall be paid for in accordance with the Bid Form. The Schedule of Values shall clearly indicate the amount to be paid by the Contractor to each individual Subcontractor.

   a. The unit prices shall be in proper balance and shall be subject to approval by the Owner. In the preparation of estimates, the Owner, at its sole discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the Work Site may also be taken into consideration under this article when the Contractor furnishes satisfactory evidence that it will be utilized on the work covered by this Contract.

3) In making such progress payments, a maximum of ten-percent (10%) or a minimum of five-percent (5%), as may be amended in the Contract Documents, of the estimated amount shall be retained from each progress payment made to the Contractor until Fifty-Percent (50%) Completion of the work has been established. Fifty-Percent (50%) completion is defined as the point in time when at least 50% of the Work under contract has been physically and satisfactorily completed in accordance with the intent of the Contract Documents as determined by the Architect/Engineer. At this point, the retainage amount withheld from each subsequent progress payment shall be reduced by 50% or not to exceed five-percent (5%) and the accumulated excess amount of retainage will be released to the Contractor, unless such amount is the subject of a good faith dispute, the subject of a claim brought pursuant to Florida Statute 255.05, or otherwise the subject of a claim or demand by the Owner or Contractor. If, at the discretion of the Owner, any time after Fifty-Percent (50%) Completion of the work has been established, the Owner finds that satisfactory progress is being made, it may

authorize any of the remaining progress payments to be made in full. Also, whenever the Work is Substantially Complete, the Owner, if it considers the amount retained to be in excess of the amount adequate for its protection, may release to the Contractor all or a portion of such excess amount.

4) Material and work covered by progress payments shall become the sole property of the Owner. This provision shall not be construed as relieving the Contractor from the sole responsibility for material and work upon which payments have been made, the restoration of damaged work or as waiving the right of the Owner to require the fulfillment of the terms of the Contract.

5) Progress payments will be made in accordance with the Miami-Dade County Code, Florida Statute, s. 218.70 Florida Prompt Payment Act, and Florida Statute, s. 218.735.

   a. The Contractor's attention is directed to Florida Statute, s. 218.735, revising provisions regarding timely payment, revising deadlines for the payment of contractors, subcontractors, sub-subcontractors, material-men and suppliers. The contractor shall remit payment due to subcontractors within ten (10) days after the contractors' receipt of payment. The subcontractor shall remit payment due to sub-subcontractors and suppliers within seven (7) days after the subcontractors' receipt of payment. Dispute resolution is provided within the Statute.

6) No progress payments will knowingly be made for work not in accordance with this Contract.

7) Applications for progress payments shall be in the format as prescribed by the Owner. These applications shall be supported by evidence, which is required by this article. Each application for payment shall clearly indicate the amount to be paid to the Contractor as well as the amount to be paid to each of the Contractor's Subcontractors and suppliers. The Contractor shall certify that the work for which payment is requested has been done and that the materials listed are stored where indicated. Those items on the progress payment application that, in accordance with the applicable sections of the Contract Documents, compensate for Force Account Work, for materials not yet incorporated in the work, or for work under change orders negotiated on a cost-reimbursable basis will, under procedures of the Owner, be subject to the Owner's audit review of the Contractor's records supporting the payment application. Audits will be performed so as not to interfere with timely processing of applications for payment. If audit indicates the Contractor has been overpaid under a previous payment application, that overpayment will be credited against current progress payment applications. For a period of five years from Final Acceptance of the Contract, the Contractor shall maintain and make available for audit inspection and copying by the Owner, State and the Government and their authorized representatives, all records subject to audit review.

8) The Owner, at its discretion, may authorize payment for materials not yet incorporated into the Work, whether or not delivered to the Work Site. The value of materials on hand but not incorporated into

the Work will be determined by the Field Representative, based on actual invoice costs to the Contractor, and such value will be included in a monthly application for payment only if the materials have been properly stored on the Site, provided that such materials meet the requirements of the Contract Documents, and are delivered to acceptable locations on Site or in bonded warehouses that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next application for payment after the following conditions are met:

a. The material has been stored and stockpiled in a manner acceptable to the Field Representative at or on the Work site or in a secure storage facility within Miami-Dade County or other location as approved by the Architect/Engineer. If such materials are stored outside Miami-Dade County, the Contractor shall accept responsibility for and pay all personal and property taxes that may be levied against the Owner by any state or subdivision thereof on account of such storage of such material. The Owner will permit the Contractor, at his own expense, to contest the validity of any such tax levied against the Owner and in the event of any judgment or decree of a court against the Owner, the Contractor agrees to pay same.

b. The Contractor has furnished the Field Representative with acceptable evidence of the quantity and quality of such stored or stockpiled materials.

c. The Contractor has furnished the Field Representative with satisfactory evidence that the materials and transportation costs have been paid including but not limited to certified bills of sale for such materials and insurance certificates or other instruments, in writing, and in a form as required by the Owner. The Architect/Engineer may allow only such portion of the amount represented by these bills as, in his opinion, is consistent with the reasonable cost of such materials.

d. The Contractor has furnished the Owner legal title (free of debts, claims, liens, mortgages, taxes or encumbrances of any kind) to the material so stored and stockpiled and subject only to the Owner's payment for the materials as reflected in the application for payment. All such materials so accepted shall become the property of the Owner. The Contractor at his own expense shall mark such material as the property of the Owner and shall take such other steps, if any, the Owner may require or regard as necessary to vest title in the Owner to such material.

e. The Contractor has furnished the Owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work. The cost of the material included in an application for payment which may subsequently become lost, damaged or unsatisfactory shall be deducted from succeeding applications for payment irrespective of the cause and whether or not due to the negligence, carelessness or fault of the Owner.

f. It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of its responsibility for furnishing and placing such materials in accordance with the requirements of the Contract Documents and does not waive Owner's right to reject defective material when it is delivered to the Site until such material is delivered to the Site and satisfactorily incorporated into the work.

g. In no case will the amount in an application for payment for material on hand exceed the Contract price for such material, the Contract price for the Contract item in which the material is intended to be used or the value for such material established in the approved Schedule of Values. Payment for material furnished and delivered as indicated above will be based on 100 percent of the cost to the Contractor and retention will be withheld as specified in the Contract Documents. In any event, partial payments for materials on hand will not exceed seventy percent (70%) of the item's Bid Price, including taxes and shipping, or the agreed amount within the Schedule of Values.

h. No partial payment will be made for stored or stockpiled living or perishable plant materials.

i. The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this Article.

j. Materials may be subject to being purchased by the Owner directly under the County's "Direct Material Purchase Program" and installed by the Contractor, as applicable, in accordance with the Special Provisions.

9) Payment of the Contract lump sum price for General Requirements, if applicable, will be made in the following manner:

a. The General Requirements Lump Sum amount, including cost for bonds and insurance, shall be paid in proportion to the total percent of completion. The Owner will consider requests for payment for bonds and insurance under the General Requirements after receipt of certified invoices from the Contractor showing that the Contractor has paid them.

b. The Owner reserves its right to withhold payment for General Requirements, in whole or in part, at the Owner's sole discretion, in accordance with Paragraph 11 below.

10) If any claim is filed against the project for labor, materials, supplies or equipment which the Owner has determined to have been incorporated on the site and the Contractor has not paid for, the Owner will have the right to retain from payments otherwise due the Contractor, in addition to other amounts properly withheld under this article or under other provisions of the Contract, an amount equal to such amounts claimed.

11) In addition to the provisions of this article and other relevant sections of the Contract Documents, payment may also be withheld proportionately for the following reasons:

a. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum,

b. Reasonable indication that the Work will not be completed within the Contract Time,

c. Damage to another Contractor,

d. Unsatisfactory prosecution of the Work by the Contractor,

e. Failure of the Contractor, or his Subcontractors, to pay wage rates, when applicable as required by the Contract.

f. In the event the Surety on the Performance and Payment Bond provided by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the State of Florida suspended or revoked as provided by law. In this case, payment will continue when the Contractor provides a good and sufficient Bond(s) as required by the Contract Documents, in lieu of the Bond(s) so executed by such Surety.

g. If any work or material is discovered which, in the opinion of either the Architect/Engineer or the Field Representative, is defective, or should a reasonable doubt arise on the part of the either the Architect/Engineer or the Field Representative as to the integrity of any part of the work completed previous to the final acceptance and payment. In this case, there will be deducted from the first application for payment subsequent to the discovery of such work, an amount equal in value to the defective or questioned work, and this work will not be included in any subsequent applications for payment until the defects have been remedied or the causes for doubt removed.

12) The Contractor shall submit with each monthly invoice the certified payroll forms for all employees on the job in accordance with applicable Responsible Wages and Benefits (Ordinance No. 90-143 and codified in Miami-Dade County Code Section 2-11.16). Failure to provide this information will cause the Field Representative and/or Architect/Engineer to return the invoice to the Contractor until such time as the Contractor properly submits the information.

13) Failure to comply with the insurance requirements listed in the Contract Documents may result in the Owner's withholding or delaying payment to the Contractor.

B. Taxes

1) Except as may be otherwise provided for in the Contract Documents, the price or prices bid for the Work shall include full compensation for all federal, state, local and foreign taxes, fees and duties that the Contractor is or may be required to pay and the Contractor shall be responsible for the payment thereof during the prosecution of the work.

2) The Contractor's attention is directed to the fact that materials and supplies necessary for the completion of this Contract are subject to the Florida Sales and Use Tax, in accordance with Section 212.08, Florida Statutes, as amended. The Contractor shall not collect taxes upon making delivery to the Owner.

3) The Owner, at its sole discretion, upon request of the Contractor and where appropriate, may furnish to the Contractor appropriate evidence to establish exemption from any taxes, fees or duties which may be applicable to the agreement and from which the Owner is exempt.

C. Payments to Subcontractors and Suppliers

1) The Contractor shall pay all Subcontractors for and on account of work performed by such Subcontractors in accordance with the terms of their respective subcontracts and in accordance with Ordinance Nos. 94-40, and 02-29, Miami-Dade County Code Section 10-33.02 and Florida Statute s. 218.735.

2) Before the Contractor can receive any payment, except the first payment, for monies due him as a result of a percentage of the work completed, he must provide the Architect/Engineer with duly executed release of claim from all subcontractors and suppliers who have performed any work or supplied any material on the project as of the date, stating that said subcontractors or suppliers have been paid their proportionate share of all previous payments. In the event such affidavits cannot be furnished, the Contractor may, at the Owner's sole discretion after the Contractor demonstrates justifiable reasons, submit an executed Consent of Surety to Requisition using the form provided in the Contract Documents identifying the subcontractors and the amounts for which the Statement of Satisfaction cannot be furnished.

3) The Contractor's failure to provide a Consent of Surety to Requisition Payment will result in the amount in dispute being withheld until (1) the Statement of Satisfaction is furnished, or (2) Consent of Surety to Requisition Payment is furnished. The Subcontractor(s) shall submit with each monthly invoice the Certified Payroll forms for all employees on the job in accordance with applicable Provisions. Failure to provide this information will cause the Architect/Engineer to return the invoice to the Contractor until such time as the Contractor properly submits the information.

D. Contract Prices – Bid Form

1) Payment for the various Bid Items listed in the Bid Form shall constitute full compensation for furnishing plant, labor, equipment, appliances and materials and for performing operations required to complete the Work in conformity with the Contract Documents. All costs for work shown or indicated by the Contract Documents, although not specifically provided for by a Bid Item in the Bid Form, shall be included in the most appropriate Bid Item price for the items listed. Except for the relief provided by the applicable section of the Contract Documents governing Differing Site Conditions, the Contractor will not be entitled to additional compensation for

providing an activity or material necessary for the completion of the Work in accordance with the Contract even though the activity or material is not included in a specific Bid Item or indicated in the Contract Documents.

E. Final Payment

1) After the Work has been accepted by the Owner, subject to the provisions of the Contract Documents, a final payment will be made as follows:

a. Prior to Final Acceptance of the Work, the Contractor shall prepare and submit a proposed final application for payment to the Architect/Engineer showing the proposed total amount due the Contractor, segregated as to Bid Item quantities, force account work, and other bases for payments; deductions made or to be made for prior payment; amounts to be retained; any claims the Contractor intends to file at that time or a statement that no claims will be filed; and any unsettled claims, stating amounts. Prior applications and payments shall be subject to correction in the proposed final application for payment. Claims filed with the final application for payment must be otherwise timely under these General Conditions.

b. The Owner will review the Contractor's proposed final application for payment and necessary changes or corrections will be forwarded to the Contractor. Within 10 days thereafter, the Contractor shall submit a final application for payment incorporating changes or corrections made by the Architect/Engineer together with additional claims resulting therefrom. Upon approval by the Owner, the corrected proposed final application for payment will become the approved final application for payment.

c. If the Contractor files no claims with the final application for payment and no claims remain unsettled within 30 days after final inspection of the Work by the Architect/Engineer and the Owner, and agreements are reached on all questions regarding the final application for payment, the Owner, in exchange for an executed release of all claims and properly executed close-out documents specified in Paragraph 3 below, will pay the entire sum found due on the approved final application for payment.

d. Upon final determination of any and all claims, the Owner, in exchange for properly executed close-out documents specified in Paragraph 3 below, will pay the entire sum found due on the approved final application for payment, including the amount, if any, allowed on claims.

e. The release from the Contractor will be from any claims arising from the Work under the Contract. If the Contractor's claim to amounts payable under the Contract has been authorized by the Owner for assignment pursuant to the relevant sections of the Contract Documents, a release may be required from the assignee.

f. Final payment will be made within 30 days after approval of the final notice and resolution of Contractor's claims, or 30 days after Final Acceptance of the Work by the Owner, whichever is later. If a final application for payment has not been approved within 30 days after final inspection of the Work, the Owner shall make payment of sums not in dispute without prejudice to the rights of either the Owner or the Contractor in connection with any disputed items.

g. Prior to payment of a claim settlement, the claim may be audited by the Owner and may be subject to approval by the funding agencies.

h. Final payment made in accordance with this article will be conclusive and binding against both parties to the Contract on all questions relating to the amount of work done and the compensation paid therefore.

2) With the final application for payment, the Contractor shall return and submit final releases of claim from himself, from each Subcontractor of record and from other Subcontractors or material suppliers who may have notified the Owner that they were furnishing labor or materials for this project. These releases from Subcontractors and suppliers shall be final, originals, notarized and executed on the form provided by the Owner and included in the Contract Documents, all in accordance with all applicable Florida Statutes. In addition, the Contractor shall execute and return to the Owner all the enclosed close-out documents. In the event that all of the above releases cannot be furnished, the Contractor may, at the Owner's sole discretion after the Contractor demonstrates justifiable reasons, submit a Consent of Surety to Final Payment in a form acceptable to the Owner, recognizing lack of such releases of claim. Furthermore, the Contractor and the Surety shall agree in writing, in a form acceptable to the Owner, to indemnify, defend and hold harmless the Owner from any claims of Subcontractors and suppliers who refuse to execute final releases.

3) The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

a. Faulty or defective Work appearing after Final Completion;

b. Failure of the Work to comply with the requirements of the Contract Documents, discovered after Final Completion;

c. The performance of audits to seek reimbursement of any overpayments discovered as a result of an audit as provided in the Contract Documents;

d. The enforcement of those provisions of the Contract Documents which specifically provide that they survive the completion of the Work;

e. The enforcement of the terms of the Payment and Performance Bonds against the Surety;

f. Terms of all warrantees/guarantees required by the Contract Documents.

4) The acceptance of final payment shall constitute a waiver of all claims by the Contractor.

END OF ARTICLE

10. CHANGES
(June 12, 2012)

A. Changes

1) The Owner reserves the right to, at any time, without notice to the sureties and without invalidating the Contract, by written notice or order designated as a Change Notice or Change Order, make any change in the Work within the general scope of the Contract including but not limited to changes:
    a. In the Contract Documents;
    b. In the method or manner of performance of the Work;
    c. In Owner-furnished facilities, equipment, materials, services, or site or;
    d. Directing acceleration in performance of the Work.
2) In the event the Owner exercises its right to change, delete or add work under the Contract, such work will be ordered and paid for as provided for in the Contract Documents.
3) Changes in the work may be initiated by the issuance of a Change Notice by the Architect/Engineer. The Contractor shall submit a proposal to the Architect/Engineer and the Owner for their review, in accordance with the Contract Documents, within a reasonable time after receipt of a Change Notice. The Contractor shall maintain this proposal, for acceptance by the Owner, for a minimum of 90 calendar days after submittal. The cost or credit to the Owner for any change in the work shall be determined in accordance with the provisions of the Contract Documents. The Contractor shall not be compensated for effort expended in preparing and submitting price quotes.
4) In the event the Contractor fails to provide the full cost and time estimate for the change work or refuses to execute a full accord Change Order, the Owner will, at its sole discretion, (1) determine the total cost and time impacts of the change and compensate the Contractor and/or extend the Contract Time, if applicable, through a unilateral Change Order signed only by the Owner; or (2) direct the Contractor to proceed with the Work under the Force Account provisions of this article. Failure of the Contractor to submit his total and final estimated cost and time impact within the time period specified on the Change Notice form shall constitute a waiver by the Contractor to claim additional costs or time beyond that which has been determined by the Owner. Any disputes arising out of an Owner determination shall be resolved in accordance with the disputes provisions in the Contract Documents. Pending the Owner's final decision, the Contractor shall proceed diligently with the performance of the Work under the Contract.
5) Changes in the work covered by Unit Prices, as stated in the Contract Documents shall be all inclusive. These prices will include all Direct and Indirect Costs and means and methods of execution. To be compensable, units must be measured daily by the Contractor and approved in writing by the Owner or his authorized representative.

6) The following mark-ups on Extra Work shall apply to all changes in the Work performed under this article:

   a. For Extra Work performed by the Contractor's own forces, the Contractor agrees that his proposed cost to perform said Extra Work will in no event include a rate for overhead in excess of fifteen percent (15%).

   b. For Extra Work performed by a Subcontractor's forces, the Contractor agrees that his proposed cost to perform said Extra Work will in no event include Overhead in excess of fifteen percent (15%). The Contractor may then add five percent (5%) times the Subcontractor's or sub-tier Subcontractor's actual Direct Cost as direct compensation for the Contractor's Overhead and all other costs associated with the Subcontractors Work at all tiers.

7) Increases to the Contract Amount shall be authorized by a Change Order executed by the Contractor, the Contractor's Surety and the Owner and approved by the BCC. Decreases to the Contract amount shall be by Change Order or Work Order as determined by the Owner and shall also be subject to BCC approval when the decrease results from a reduction in the scope of the work.

8) A cost of bonds for Change Orders that impact the Contract price shall be established by the Contractor's actual reimbursement costs, as approved by the Owner, based on the original Contract Amount and the original amount reimbursed to the Contractor for bonds at the commencement of the Work. This cost of bonds shall be added to all credit amounts allowed by the Owner. For Change Orders paid under the Allowance Account, no additional bond cost will be allowed unless the Allowance Account is not included in the original Contract Amount. In this case, additional bond costs for these Change Orders will be considered.

9) Any claim for payment of Extra Work that is not covered by a Change Order or Work Order will be rejected by the Owner.

B. Allowance Accounts

1) Certain portions of work which may be required to be performed by the Contractor under this Contract are either unforeseeable or have not yet been designed, and the value of such work, if any, is included in the Contract as a specific line item(s) entitled "Allowance Account(s)".

   a. The Allowance Account (General) can be used to reimburse the Contractor for (1) furnishing all labor, materials, equipment and services necessary for modifications or Extra Work required to complete the Project because of unforeseeable conditions and; (2) for performing construction changes required to resolve: oversight in design, Owner oversight, unforeseen conditions, revised regulations, technological and product development, operational changes, schedule requirements, program interface, emergencies and delays; and for making final adjustment to estimated quantities shown on the Schedule of Values or amounts bid in the Bid Form to conform to actual quantities installed.

b. Other Allowance Account(s) (Dedicated) may be used as specified in the Contract Documents to fund specific items of work at the sole discretion of the Owner. These dedicated allowance accounts shall be used only for the purposes approved pursuant to a written Work Order issued by the Owner or his authorized representative.

2) At such time as work is to be performed under the Allowance Account(s), if any, the work shall be incorporated into the Schedule and the Schedule of Values, and shall in all respects be integrated into the construction as a part of the Contract as awarded.

3) The Work Order for the required work will be issued by the Owner or Architect/Engineer upon receipt from the Contractor of a satisfactory proposal for performance of the work, and the acceptance thereof by the Architect/Engineer and the Owner. If the Contractor and the Owner are unable to agree upon an amount of compensation or; if the nature of the work is such that a Unit Price or Lump Sum price is not economically practical or if the change work is deemed essential to the Project and actual conditions require work to be swiftly conducted to avoid or minimize delays, the Work Order may be issued to perform the work on a Force Account basis. In the event that an equitable adjustment for the said change work cannot be arrived at, either by mutual agreement or under the dispute provisions of the Contract Documents, the compensation hereunder will be the total compensation for this work.

4) No Work Orders shall be issued against an Allowance Account if such Work Orders in the aggregate exceed the authorized amount of that Allowance Account, provided however that such excess may be authorized by appropriate Change Order.

5) The unexpended amounts under the allowance accounts shall remain with the Owner and the Contractor shall have no claim to the same.

C. Deletion or Addition of Work

1) In the event the Owner exercises its right to delete any portion(s) of the work contemplated herein, such deletion will be ordered and the Contract Total Amount and Time may be adjusted as provided for in these Contract Documents by Change Order or by Work Order, as appropriate. The Contractor shall be reimbursed for any actual reasonable expenses incurred prior to the notice of deletion of work as a result of preparing to perform the work deleted. In the event of a dispute between Owner and Contractor as to the adjustment to the amount of time, the dispute shall be handled in accordance with these General Conditions.

2) Deleted Work - Lump Sum Bid Item(s): The Contractor shall credit the Owner for the reasonable value of the deleted work determined from the approved Schedule of Values, subject to approval by the Architect/Engineer. If the reasonable value of the deleted work cannot be readily ascertained from the Schedule of Values submitted in accordance with these General Conditions, or if requested by the Architect/Engineer, the Contractor shall supply all data required by the Architect/Engineer, including the actual agreements executed by the Contractor with the Subcontractors and suppliers affected by the

deleted work, to substantiate the amount of the credit to be given the Owner. The Contractor shall also submit for the Owner's approval a revised schedule of values reflecting the work remaining under the Contract following the deletion.

3) No payment(s) shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work.

4) In the event the Owner exercises its right to add to any portion of the work contemplated herein, such addition will be ordered and the Contract Total Amount and Contract Time will be adjusted as provided for in these Contract Documents, by Change Order or by Work Order as appropriate. In the event of a dispute between Owner and Contractor as to the adjustment to the Amount or the Time, the dispute shall be handled in accordance with the Contract Documents.

D. Increased or Decreased Quantities (Unit Prices)

1) This section applies to Owner-initiated additions or deletions from the Work and to the unit prices contained within this contract and controls payments or credits for variations between estimated and actual quantities required to complete the Work, even though the additions or deletions may be distinct or separate structures or activities and regardless of the fact that the addition or deletion is a result of field adjustments, site conditions, a design change or any other cause. Increases or decreases will be determined by comparing the actual quantity required to the Architect/Engineer's estimated quantity in the Bid Form.

2) If the actual quantity of Bid Item varies from the Architect/Engineer's quantity estimate by 25% or less, payment for the Bid Item will be made at the Contract unit price. If the actual quantity varies from the Bid quantity by more than 25%, the compensation payable to the Contractor will be the subject of review by the Contractor and the Architect/Engineer and a Contract adjustment will be made by means of a Change Order in accordance with the Contract Documents to credit the Owner with any reduction in unit prices or to compensate the Contractor for any increase in unit price resulting from variations between estimated and actual quantities. The unit price to be re-negotiated shall be only for that quantity above 125% or below 75% of the original bid quantities.

3) The Contractor shall submit to the Architect/Engineer all data required to substantiate the amount of compensation requested therefore. In no event shall the Contractor be entitled to compensation greater than the aggregate amount of all the Unit Prices times the original bid quantities of Work reflected in the Bid Form.

4) No compensation will be made in any case for loss of anticipatory profits, loss of bonding capacity or consequential damages.

E. Extra Work

1) Except as otherwise expressly provided above, all additional work ordered, work changed or work deleted shall be authorized by Work Order(s) or Change Order(s). All changed or added work so

authorized shall be performed by the Contractor at the time and in the manner specified.

The Change Order shall include, as a minimum:

a. Scope of work to be added, deleted or modified;

b. Cost of work to be added, deleted or modified;

c. The Contract time extension or reduction in contract time in the case of deleted work required to perform the work to be added, deleted or modified;

d. Full release of claims associated with the Contract through the date of the change order, or a reservation of claims identified as to each claim reserved, the scope of the work, the maximum cost of the work, and the maximum number of days of Contract time requested, shall be specified.

The Work Order shall include, at a minimum:

a. Scope of work to be added, deleted or modified;

b. Cost of work to be added, deleted or modified;

c. The Contract time extension required to perform the work to be added, deleted or modified;

d. Full release of claims associated with the work order work, or a reservation of claims identified as to each claim reserved, the scope of the work, the maximum cost of the work, and the maximum number of days of Contract time requested, shall be specified.

2) If Work is ordered, changed, or deleted which is not covered by Unit Prices, then, the Owner and the Contractor shall negotiate an equitable adjustment to the Contract Price for the Direct Costs for the performance of such work in accordance with this article. Indirect Costs for Work ordered, changed or deleted may be reimbursed for Excusable and Compensable Delay as defined in these Contract Documents.

   a. In order to reimburse the Contractor for additional Direct Costs, either by Work Order, Change Order or any other means, the Contractor must have additional work added to the Contract Scope of Work. The additional cost of idle or inefficient labor, from any cause, or the additional cost of labor made idle or inefficient from any cause will not be considered a reimbursable additional Direct Cost. Special equipment or machinery, which is made idle or inefficient by the Work ordered, changed or deleted, may be reimbursable if approved by the Architect/Engineer as an unavoidable cost to the Contractor, caused by the Owner.

   b. Costs of special equipment or machinery, not already mobilized on the site, approved by the Architect/Engineer, shall be calculated using the current issue of the Associated Equipment Distributors (AED) Manual plus any required mobilization. The

selection of which of the AED rates (daily, weekly, monthly) to be used to calculate these costs shall be as follows:

i. Between one (1) day and seven (7) days, use the daily rate.

ii. Between seven (7) days and thirty (30) days, use the weekly rate.

iii. Greater than thirty (30) days, use the monthly rate.

c. For less than one (1) day hourly rates, use the daily rate divided by eight (8).

d. For overtime hourly rates use the daily rate divided by eight (8), the weekly rate divided by forty (40), or the monthly rate divided by one hundred and seventy-six (176) as appropriate.

e. Costs for Special Equipment and Machinery already mobilized on the site, shall not exceed the monthly rate stated in the AED Manual, divided by one hundred and seventy-six (176), per hour that the Special Equipment and Machinery is in use on the work plus any required re-mobilization.

f. The cost calculation shall not combine rates within the range of a time extension. It shall use decimals of the time extension rate that the extension falls under. For example, the cost calculation for a piece of Special Equipment with an approved delay of forty five (45) days shall be one and one-half (1.5) months times the monthly rate, not one (1) month at the monthly rate, plus two (2) weeks at the weekly rate, plus one (1) day at the daily rate.

g. Rental for special equipment and machinery, not already mobilized to the site, shall be an amount equal to the appropriate daily, weekly, or monthly rental rate for such equipment, in accordance with the current issue of Associated Equipment Distributors' (AED) "Compilation of Nationally Averaged Rental Rates and Model Specifications for Construction Equipment" (notwithstanding the caveats contained therein that such rental rates are not for use by government agencies) for each and every rental period (in weeks, days, or months as applicable) that the special equipment or machinery is in use on the work plus any required mobilization. Payment for special equipment and machinery already mobilized to the site shall not exceed the monthly rate stated in the AED standards divided by one hundred and seventy six (176) to establish a per hour rate that the special equipment and machinery is in use on the Work, plus any required re-mobilization.

h. For indirect costs, the Contractor shall be allowed a percentage mark-up as set forth in Paragraph G. 2 below.

F. Differing Site Conditions

1) The Contractor shall immediately, and before such conditions are disturbed, notify the Architect/Engineer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents, or (2) unknown physical

conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

2) The Architect/Engineer will promptly investigate the conditions, and if such conditions materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under the Contract, a Contract change may be made and the Contract modified in writing in accordance with the Contract Documents.

3) No claim of the Contractor under this article will be allowed unless the Contractor has given the notice required in the Contract Documents.

4) No claim by the Contractor for a Contract change hereunder will be allowed if asserted after final payment under this Contract.

5) If the Owner is not given written notice prior to the conditions being disturbed, the Contractor will be deemed to have waived his right to assert a claim for additional time and compensation arising out of such changed conditions.

G. Force Account

1) If the Owner and the Contractor cannot reach agreement on an equitable adjustment to the Contract Price for any work as prescribed above, then the Extra Work will be performed on a Force Account basis as directed by the Architect/Engineer and paid for as specified below.

2) The following percentages will be allowed as mark-ups over Direct Costs for all negotiated adjustments to the Contract Amount or for work performed on either a negotiated lump sum basis or a Force Account basis:

   a. Extra Work Performed directly by Contractor's Own Forces: The Contractor may add up to a maximum fifteen percent (15%) mark-up on the actual Direct Cost of the Extra Work, subject to review and approval by the Architect/Engineer, as direct compensation for Overhead. A 10% mark-up will be added to all negotiated credit amounts for deleted work not performed to cover Overhead.

   b. Extra Work Performed by a Subcontractor or any Sub-tier Subcontractor: The Subcontractor may add up to a maximum fifteen percent (15%) mark-up on the actual Direct Cost of the Extra Work as direct compensation for Overhead. The Contractor may add a five percent (5%) mark-up on the Subcontractor's actual Direct Cost as Contractor’s Overhead. A 10% additional credit will be added to all Subcontractor negotiated credit amounts for deleted work not performed to cover quality control, supervision, coordination, overhead, small tools and incidentals.

3) In the event Extra Work is performed on a Force Account basis, then the Contractor and the Subcontractor(s), as appropriate, shall maintain itemized daily records of costs, quantities, labor and the use of authorized Special Equipment or Machinery. Copies of such

records, maintained as follows, shall be furnished to the Architect/Engineer daily for approval, subject to audit.

a. Comparison of Record: The Contractor, including its Subcontractor(s) of any tier performing the work, and the Architect/Engineer shall compare records of the cost of force account work at the end of each day. Agreement shall be indicated by signature of the Contractor, the Subcontractor performing the work, and the Architect/Engineer or their duly authorized representatives.

b. Statement: No payment will be made for work performed on a force account basis until the Contractor has furnished the Architect/Engineer with duplicate itemized statements of the cost of such force account work detailed as follows:

   i. Name, classification, date, daily hours, total hours, rate and extension for each laborer, tradesman, and foreman.

   ii. Designation, dates, daily hours, total hours, rental rate, and extension of each unit of special machinery and equipment.

   iii. Quantities of materials, prices, and extensions.

   iv. Transportation of materials.

   The statements shall be accompanied and supported by a receipted invoice of all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from its stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

c. Authorization of Special Equipment and Machinery: No compensation for special equipment or machinery shall be made without written authorization from the Architect/Engineer. The Architect/Engineer shall review and evaluate any special equipment or machinery proposed by the Contractor for use on a force account basis. As part of its evaluation, the Architect/Engineer shall determine whether any of the special equipment or machinery being proposed by the Contractor will be concurrently used on the Project, including approved changes, or on other force account work on the Project. If the Architect/Engineer determines that such a concurrent use of special equipment or machinery is being proposed by the Contractor, prior to the authorization of such special equipment or machinery, the Architect/Engineer and thereto Contractor shall establish a straight-line prorated billing mechanism based on the actual percentage of time that the equipment or machinery is required to be used on the force account work(s).

Special equipment or machinery which is approved for use by the Architect/Engineer shall be reviewed and accounted for on a daily basis as provided in the Comparison of Record and Statement paragraphs of this section of the Contract.

d. Inefficiency in the Prosecution of the Work: If in the Owner's or Architect/Engineer's opinion, the Contractor or any of its Subcontractors, in performing Force Account Work, is not making efficient use of labor, materials or equipment or is proceeding in a manner which makes Force Account Work unnecessarily more expensive to the Owner, the Owner or Architect/Engineer may, in whole or part, direct the Contractor in the deployment of labor, material and equipment. By way of illustration, inefficiency may arise in the following ways, including but not limited to: (1) the timing of the Work, (2) the use of unnecessary labor or equipment, (3) the use of a higher percentage of journeymen than in non-force account Work, (4) the failure to procure materials at lowest price, or (5) using materials of quality higher than necessary.

H. Contractor Proposals - General

1) The Contractor may at any time submit to the Architect/Engineer for his review proposed modifications to the Contract Documents, including but not limited to, changes in the Contract Time and/or Contract Amount, supported by a cost/price proposal. Upon acceptance of the proposed modifications by the Owner, a Work Order or Change Order will be issued. Denial of a proposed modification will neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities. A Contract change in the form of a Contract price reduction will be made if the change results in a reduction of the cost of performance and the Contractor will not be entitled to share in said savings unless the proposal is made in accordance with Paragraph I of this article. Except as provided in Paragraph I below, the Contractor will not be compensated for any direct, incidental or collateral benefits or savings the Owner receives as a result of the proposal.

I. Value Engineering Change Proposals: The Contractor may submit to the Architect/Engineer one or more cost reduction proposals for changing the Contract requirements. The proposals shall be based upon a sound study made by the Contractor indicating that the proposal:

a. Will result in a net reduction in the total Contract amount;

b. Will not impair any essential function or characteristic of the Work such as safety, service life, reliability, economy of operation, ease of maintenance and necessary standardized features;

c. Will not require an unacceptable extension of the Contract completion time; and

d. Will require a change in the Contract Documents and such change is not already under consideration by the Owner.

i. The Owner may accept in whole or in part any proposal submitted pursuant to the previous paragraph on Value Engineering Change Proposals by issuing a Change Order which will identify the proposal on which it is based. The Change Order will provide for a Contract change in the Contract price and will revise any other affected provisions of the Contract Documents. The equitable adjustment in the Contract price will be established by determining the net savings resulting from the accepted change. The net savings resulting from the change will be shared between the Contractor and the Owner on the basis of 50 percent for the Contractor and 50 percent for the Owner and will be limited to one Value Engineering Change Proposal per Change Order. Net savings will be determined by deducting from the proposal's estimated gross savings (1) the Contractor's costs of developing and implementing the proposal (including any amount attributable to a subcontractor) and (2) the estimated amount of increased costs to the Owner resulting from the change, such as evaluation, implementation, inspection, related items, and Owner -furnished material. Estimated gross savings will include Contractor's labor, material, equipment, overhead, profit and bond. The Contract price will be reduced by the sum of the Owner's costs and share of the net savings. For the purposes of this article, the applicable provisions of the Contract Documents shall be used to determine the equitable adjustment to the Contract price.

ii. The Owner will not be liable for delay in acting upon, or for failure to act upon, any proposal submitted pursuant to of this article. The decision of the Owner as to the acceptance or rejection of any such proposal under the Contract will be final. The submission of a proposal by the Contractor will not in itself affect the rights or obligations of either party under the Contract.

iii. The Contractor shall have the right to withdraw part or all of any proposal he may make under Paragraph 2 of this article at any time prior to acceptance by the Owner. Such withdrawal shall be made in writing to the Architect/Engineer. Each such proposal shall remain valid for a period of 60 days from the date submitted. If the Contractor wishes to withdraw the proposal prior to the expiration of the 60 day period he will be liable for the cost incurred by the Owner in reviewing the proposal.

iv. The Contractor shall specifically identify any proposals under Paragraph 2 of this article with the heading "Value Engineering Change Proposal", or the proposal will be considered as made under Paragraph 1 of this article.

2) The Contractor, in connection with each proposal for a Contract Change Notice under this article, shall furnish the following information:

a. A description of the difference between the existing Contract requirement and the proposed change, and the comparative advantages and disadvantages of each, justification when a

function or characteristic of an item is being altered, and the effect of the change on the performance of the end item;

b. An analysis and itemization of the requirements of the Contract which must be changed if the Value Engineering Change Proposal is accepted and a recommendation as to how to make each such change (e.g., a suggested specification revision);

c. A separate detailed cost estimate for both the existing Contract requirement and the proposed change to provide an estimate of the reduction in costs, if any, that will result from acceptance of the Value Engineering Change Proposal taking into account the costs of development and implementation by the Contractor;

d. A prediction of any effects the proposed change would have on collateral costs to the Owner such as government-furnished property costs, costs of related items, and costs of maintenance and operation;

e. A statement of the time by which a Contract modification accepting the Value Engineering Change Proposal must be issued so as to obtain the maximum cost reduction, noting any effect on the Contract completion time or delivery schedule; and

f. Identification of any previous submission of the Value Engineering Change Proposal to the Owner, including the dates submitted, the numbers of the contracts involved, and the previous actions by the Owner.

3) The Contractor waives any and all claims relating to any delay that may arise out of a Value Engineering Change Proposal.

END OF ARTICLE

11. CLAIMS AND DISPUTES

(June 12, 2012)

A. Notice of Claims

1) The Contractor will not be entitled to additional time or compensation otherwise payable for any act or failure to act by the Owner, the happening of any event or occurrence, or any other cause, unless he shall have given the Architect/Engineer a written notice of claim therefore as specified in this article.

2) The Contractor shall provide immediate verbal notification with written confirmation within forty-eight (48) hours of any potential claims and of the anticipated time and/or cost impacts resulting thereof. The written notice of claim shall set forth the reasons for which the Contractor believes additional compensation and/or time will or may be due, the nature of the costs involved and the approximate amount of the potential claim.

3) It is the intention of this article, that differences between the parties arising under and by virtue of the Contract shall be brought to the attention of the Architect/Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken.

4) The notice requirements of this article are in addition to those required in other articles of these Contract Documents.

5) The Contractor shall segregate all costs associated with each individual claim including but not limited to labor, equipment, material, subcontractor and supplier costs, and all other costs related to the claim. In the event that the Contractor has multiple claims, the Contractor will segregate each claim individually including the respective costs associated with each claim. Failure to segregate claims and their respective costs will be grounds for the Owner's rejection of the claim. No “total cost claims” shall be allowed under this Contract.

6) The Contractor must maintain a cost accounting system as a condition for making a claim against the Owner. The cost accounting system must segregate the costs of the work under the Contract (non-claims-related) from claims-related and other Contractor costs through the use of a job cost ledger and be otherwise in compliance with general accounting principles.

7) If the Owner decides to pay all or part of a claim for which notice was not timely made, the Owner does not waive the right to enforce the notice requirements in connection with any other claim.

8) Inasmuch as the notice of claim requirements of this article are intended to enable the Architect/Engineer to investigate while facts are fresh and to take action to minimize or avoid a claim which might be filed thereafter, the Contractor's failure to make the required notice on time is likely to disadvantage the Owner. Therefore, a claim that does not comply with the notice requirements above shall not be considered unless the Contractor submits with his claim proof

showing that the Owner has not been prejudiced by the Contractor's failure to so comply and, in the event the Owner has been prejudiced by the Contractor's failure to submit a timely notice of claim, the Owner will reduce any equitable adjustment claimed by the Contractor to reflect the damage.

B. Claim Submittals

1) Claims or requests for equitable adjustments filed by the Contractor shall be filed in full accordance with this article no later than 30 calendar days after the act giving rise to the claim and in sufficient detail to enable the Owner to ascertain the basis and amount of said claims. In the case of continuing or on-going claim events, the Contractor shall be allowed to periodically amend his claim to more accurately reflect the impact of said claim, until the end of the claim event. No claims for additional compensation, time extension or for any other relief under the Contract shall be recognized, processed, or treated in any manner unless the same is presented in accordance with this Article. Failure to present and process any claim in accordance with this Article shall be conclusively deemed a waiver, abandonment or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Contract.

2) The Owner will review and evaluate the Contractor's claims. It will be the responsibility of the Contractor to furnish, when requested by the Architect/Engineer, such further information and details as may be required to determine the facts or contentions involved in his claims. The cost of claims preparation or Change Order negotiations shall not be reimbursable under this Contract.

3) Any work performed by the Contractor prior to Notice-to-Proceed (NTP) shall not be the basis for a claim from the Contractor of any kind.

4) Each claim must be certified by the Contractor as required by the Miami-Dade Code, False Claims Act (see Code Section 21-255, et seq.), and accompanied by all materials required by Miami-Dade County Code Section 21-257. A "certified claim" shall be made under oath by a person duly authorized by the claimant, and shall contain a statement that:

   a. The claim is made in good faith;

   b. The claim's supporting data is accurate and complete to the best of the person's knowledge and belief;

   c. The amount of the claim accurately reflects the amount that the claimant believes is due from the Owner; and

   d. The certifying person is duly authorized by the claimant to certify the claim.

5) In order to substantiate time-related claims (delays, disruptions, impacts, etc.), the Contractor shall, if applicable and as determined by the Owner, submit, in triplicate, the following information:

   a. Copy of Contractor's notice of claim in accordance with this article. Failure to submit the notice is sufficient grounds to deny the claim.

   b. The approved, as-planned Schedule in accordance with the applicable section of the Contract Documents and computer storage media, if applicable.

   c. The as-built Schedule reflecting changes to the approved schedule up to the time of the impact in question and computer storage media if applicable.

   d. The basis for the duration of the start and finish dates of each impact activity and the reason for choosing the successor and predecessor events affected in the schedule shall be explained. Also, the basis for the duration of any lead/lags inserted into the schedule and the duration in related activity duration shall be explained.

   e. A marked-up as-built Schedule indicating the causes responsible for changes between the as-planned and as-built schedule and establishing the required cause and effect relationships.

   f. After indicating specific time related changes on the as-built schedule, the documentation must be segregated into separate packages with each package documenting a specific duration change identified previously. This documentation package shall include Change Orders, Change Notices, Work Orders, written directions, meeting minutes, etc., related to the change in duration.

   g. Any loss of efficiency, acceleration, disruption and loss of productivity claims shall be compensated as part of the Liquidated Indirect Costs paid for compensable, excusable delays and mark-up on Direct Cost of changes as allowed by the Contract. Total cost and modified total cost claims will not be accepted and the Contractor agrees to waive the right to seek recovery by these methods. The claimed delay shall not result from a cause specified in the Contract Documents as a non-excusable delay.

   h. The Contractor assumes all risk for the following items, none of which shall be the subject of any claim and none of which shall be compensated for except as they may have been included in the compensation described under Liquidated Indirect Costs: (1)home office expenses or any Direct Costs incurred allocated from the headquarters of the Contractor; (2)loss of anticipated profits on this or any other project, (3)loss of bonding capacity or capability; (4) losses due to other projects not bid upon; (5)loss of business opportunities; (6)loss of productivity on this or any other project; (7)loss of interest income on funds not paid;

(8)costs to prepare, negotiate or prosecute claims and (9)costs spent to achieve compliance with applicable laws and ordinances (excepting only sales taxes paid shall be reimbursable expense subject to the provisions of the Contract Documents).

i. All non-time-related claim items for additional compensation for Direct Costs shall be properly documented and supported with copies of invoices, time sheets, rental agreements, crew sheets and the like.

j. Cost information shall be submitted in sufficient detail to allow for review. The basis for the budgeted or actual costs shall include man-hours by trade, labor rates, material and equipment costs etc. These costs shall be broken down by pay item and Construction Specification Institute (CSI) Division.

k. The documentation for budgeted cost shall, as a minimum, include:

   i. Copies of all the Contractor's bid documents, bid quotes, faxed quotes, etc.

   ii. Copies of all executed subcontracts.

   iii. Other related budget documents as requested by the Architect/Engineer.

l. The documentation for actual cost shall, as a minimum, include:

   i. Time Sheets.

   ii. Materials invoices

   iii. Equipment invoices

   iv. Subcontractors' payments

   v. Other related documents as required by the Architect/Engineer.

m. The Contractor shall make all his books, employees, work sites and records available to the Owner or its representatives for inspection and audit.

n. No payment shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work.

6) As indicated above, the Architect/Engineer and the Field Representative shall be allowed full and complete access to all personnel, documents, work sites or other information reasonably necessary to investigate any claim. Within sixty (60) days after a claim has been received, the claim shall either be rejected with an explanation as to why it was rejected or acknowledged. Once the claim is acknowledged, the parties shall attempt to negotiate a satisfactory settlement of the claim, which settlement shall be included in a subsequent Work Order or Change Order. If the parties fail to reach an agreement on a recognized claim, the Owner shall pay to the Contractor the amount of money it deems reasonable, less any appropriate retention, to compensate the Contractor for the recognized claim.

7) Failure of the Contractor to make a specific reservation of rights regarding any such disputed amounts in the body of the Change Order which contains the payment shall be construed as a waiver, abandonment, or relinquishment of all claims for additional monies resulting from the claims embodied in said Change Order. However, once the Contractor has properly reserved rights to any claim, no further reservations of rights shall be required and the Contractor shall not be required to repeat the reservation in any subsequent change order. Prior reservation of rights may however be modified, by express reference, in subsequent change orders. Notwithstanding the aforementioned, at the time of final payment under the Contract, the Contractor shall specify all claims which have been denied and all claims for which rights have been reserved in accordance with this section. Failure to so specify any particular claim shall be constructed as a waiver, abandonment, or relinquishment of such claim.

C. Disputes

1) The following provisions shall govern disputes under this Contract unless the Special Provisions to this Contract contain the requirement for the use of an alternate dispute resolution method. For example, for large projects of great complexity, a Dispute Review Board (DRB) may be employed by the Owner to settle disputes in lieu of the Department Director or OOM designee as specified below. In this case, the DRB alternative shall be specified by the individual department in the Special Provisions and, if utilized, shall supersede this dispute provision.

   a. In the event the Contractor and Owner are unable to resolve their differences concerning any determination made by the Architect/Engineer or Owner on any dispute or claim arising under or relating to the Contract (referred to in this Section as a "Dispute"), either the Contractor or Owner may initiate a dispute in accordance with the procedure set forth in this article. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.

   b. For contracts with a value of $5 million or less, all Disputes under this Contract shall be decided by the Department Director or his designee. For contracts valued at more than $5 million, Disputes shall be decided by a designee appointed by the Office of the Mayor (OOM). Decisions rendered by the Department Director or OOM designee shall not be binding but shall be admissible in a court of competent jurisdiction.

   c. As soon as practicable, the Department Director or OOM designee shall adopt a schedule for the Contractor and Owner to file written submissions stating their respective positions and the bases therefore. The written submissions shall include copies of all documents and sworn statements in affidavit form from all witnesses relied on by each party in support of its position. Within 20 working days of the date on which such written submissions are filed, the Department Director or OOM designee

shall afford each party an opportunity to present a maximum of one hour of argument. The Department Director or OOM designee may decide the Dispute on the basis of the affidavits and other written submissions if, in his opinion, there is no issue of material fact and the party is entitled to a favorable resolution pursuant to the terms of this Contract. As part of such decision, the Department Director or OOM designee shall determine the timeliness and sufficiency of each notice of claim and claim at issue as provided in this article. The Department Director or OOM designee shall have the authority to rule on questions of law, including disputes over contract interpretation, and to resolve claims, or portions of claims, via summary judgment where there are no disputed issues of material fact. Furthermore, the Department Director or OOM designee is authorized by both parties to strike elements of claims seeking relief or damages not available under the contract (such as, but not limited to, claims for lost profits, off-site overhead, loss of efficiency or productivity claims or claim's preparation costs) by summary disposition.

d. In the event that the Department Director or OOM designee determines that the affidavits or other written submissions present issues of material fact, he shall allow the presentation of evidence in the form of lay or expert testimony directed solely to the issues which he may specifically identify to require factual resolution. The testimonial portion of the process shall not exceed one day in duration per side, including opening statements and closing arguments, if allowed by the Department Director or OOM designee at his reasonable discretion.

e. No formal discovery shall be allowed in connection with any proceeding under this article. Notwithstanding the foregoing, both parties agree that all of the audit, document inspection, information and documentation requirements set forth elsewhere in this contract shall remain in force and effect throughout the proceeding. The Department Director or OOM designee shall not schedule the hearing until both parties have made all their respective records available for inspection and reproduction and the parties have been afforded reasonable time to analyze the records. The continued failure of a party to comply with the document inspection, examination, or submission requirements set forth in this contract shall constitute a waiver of that party's claims and/or defenses, as applicable. Hearsay evidence shall be admissible but shall not form the sole basis for any finding of fact. Failure of any party to participate on a timely basis, to cooperate in the proceedings, or to furnish evidence in support or defense of a claim shall be a criteria in determining the sufficiency and validity of a claim.

f. The Department Director or OOM designee shall issue a written decision within 15 working days after conclusion of any testimonial proceeding and, if no testimonial proceeding is

conducted, within 45 days of the filing of the last written submission. This written decision shall set forth the reasons for the disposition of the claim and a breakdown of any specific issues or subcontractor claims. As indicated previously, the decision of the Department Director or OOM designee is not binding on the parties, but will be admissible in a court of competent jurisdiction.

g. If either party wishes to protest the decision of the Department Director or OOM designee, such party may commence an action in a court of competent jurisdiction, within the periods prescribed by law, it being understood that the review of the court shall be limited to the question of whether or not the Department Director or OOM designee's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

h. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Architect/Engineer's interpretation. Any presentation or request by the Contractor under this article will be subject to the same requirements for Submittal of Claims in this article.

D. Terminations

1) Termination for Convenience

a. The Owner may at its option and discretion terminate the Contract, in whole or, from time to time in part, at any time without any default on the part of the Contractor by issuing a written Notice of Termination to the Contractor and its Surety, specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective, at least ten (10) days prior to the effective date of such termination.

b. In the event of Termination for Convenience, the Owner shall pay the Contractor for all labor performed, all materials and equipment furnished by the Contractor and its Subcontractors, materialmen and suppliers and manufacturers of equipment less all partial payments made on account prior to the date of cancellation as determined by the Field Representative and approved by the Architect/Engineer. The Contractor will be paid for:

i. The value of all work completed under the Contract, based upon the approved Schedule of Values and/or Unit Prices,

ii. The value of all materials and equipment delivered to but not incorporated into the work and properly stored on the site,

iii. The value of all bonafide irrevocable orders for materials and equipment not delivered to the construction site as of the date of cancellation. Such materials and equipment must be delivered to the Owner to a site or location designated by the

Department prior to release of payment for such materials and equipment.

iv. The values calculated under i., ii. and iii. above shall be as determined by the Field Representative and approved by the Architect/Engineer.

c. In the event of termination under this article, the Contractor shall not be entitled to any anticipated profits for any work not performed due to such termination.

d. In the event of termination under this article, the Owner does not waive or void any credits otherwise due the Owner at the time of termination, including Liquidated Damages, and back charges for defective or deficient work.

e. Upon termination as indicated above, the Field Representative shall prepare a certificate for Final Payment to the Contractor.

2) Termination for Default of Contractor

a. The Contract may be terminated in whole or, from time to time in part, by the Owner for failure of the Contractor to comply with any requirements of the Contract Documents including but not limited to:

i. Failure to perform the work or failure to provide sufficient workers, equipment or materials to assure completion of work in accordance with the terms of the Contract, and the approved Schedule, or

ii. Failure to provide the Schedule for the Project by the date due, or

iii. Failure to provide adequate shop drawings by the dates indicated in the approved Schedule for the Project, or

iv. Failure to replace the superintendent in the time allotted, if required, or

v. Performing the work unsuitably or neglecting or refusing to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, after written directions from the Field Representative, or

vi. Violating the terms of the Contract or performing work in bad faith, or

vii. Discontinuing the prosecution of the work, or

viii. Failure to resume work which has been discontinued within a reasonable time after notice to do so, or

ix. Abandonment of the Contract, or

x. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or failure to maintain a qualifier, or

xi. Allowing any final judgment to stand against him unsatisfied for a period of 10 days, or

xii. Making an assignment for the benefit of creditors, or

xiii. For any other cause whatsoever, fails to carry out the work in an acceptable manner or to comply with any other Contract requirement.

b. Before the Contract is terminated, the Contractor and its Surety will be notified in writing by the Architect/Engineer or the Field Representative of the conditions which make termination of the Contract imminent. The Contract will be terminated by the Owner ten (10) days after said notice has been given to the Contractor and its Surety unless a satisfactory effort acceptable to the Owner has been made by the Contractor or its Surety to correct the conditions. If the Contractor fails to satisfactorily correct the conditions giving rise to the termination, the Owner may declare the Contract breached and send a written Notice of Termination to the Contractor and its Surety.

c. The Owner reserves the right, in lieu of termination as set forth in this article, to withhold any payments of money which may be due or become due to the Contractor until the said default(s) have been remedied. In the event of Termination for Default, the Owner also reserves the right, in cases where the damages calculated by the Owner are expected to exceed the amount the Owner anticipated recovering from the Surety, to withhold amounts for work already performed.

d. In the event the Owner exercises its right to terminate the Contract for default of the Contractor as set forth herein, the Owner shall have the option of finishing the work, through any means available to the Owner, or having the Surety complete the Contract in accordance with its terms and conditions. In case that the Owner decides to have the Surety take over the remaining performance of the Work, the time or delay between Notice of Default and start of work by the Surety is a non-excusable delay. If the Surety fails to act promptly, but no longer than thirty (30) calendar days after the Owner notifies the Surety of the Owner's decision to have the Surety complete the work, or after such takeover fails to prosecute the Work in an expeditious manner, the Owner may exercise any of its other options including completing the Work by whatever means and method it deems advisable. No claims for loss of anticipated profits or for any other reason in connection with the termination of the Contract shall be considered.

e. Payments for the various Bid Items listed in the Bid Form will constitute full compensation for all expenses incurred in consequence of discontinuance of all or any portion of the Work except as provided in this section of the Contract Documents. In no event will compensation be made for anticipatory profits or

consequential damages as a result of a discontinuance of all or any portion of the Work.

f. The Contractor shall immediately upon receipt communicate any Notice of Termination for Default issued by the Owner to the affected Subcontractors and suppliers at any tier.

g. If, after Notice of Termination of the Contractor's right to proceed under the provisions of this article, it is determined for any reason that the Contractor was not in default under the provisions of this article, or that the Contractor was entitled to an extension of time under the Contract Documents, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the section of this article dealing with Termination for Convenience.

3) Termination for National Emergencies

a. The Owner shall terminate the Contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction Contract as a direct result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense.

b. When the Contract, or any portion thereof, is terminated before completion of all items of work in the Contract, payment will be made for the actual number of units or items of work completed at the Contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits or for any other reason in connection with the termination of the Contract shall be considered.

4) Implementation of Termination

a. If the Owner cancels or terminates the Contract or any portion thereof, the Contractor shall stop all work on the date and to the extent specified in the Notice of Termination and shall:

i. Cancel all orders and Subcontracts, to the extent that they relate to the performance of the work terminated and which may be terminated without costs;

ii. Cancel and settle other orders and Subcontracts, except as may be necessary for completion of such portion of the Work not terminated, where the cost of settlement will be less than costs which would be incurred were such orders and subcontracts to be completed, subject to prior approval of the Field Representative;

iii. Settle outstanding liabilities and claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner, to the extent it may require, which approval or ratification shall be final for the purposes of this Article;

iv. Transfer title and deliver to the Owner, in the manner, at the time, and to the extent, if any, directed by it, in

accordance with directions of the Field Representative, all fabricated or un-fabricated parts, all materials, supplies, work in progress, completed work, facilities, equipment, machinery or tools acquired by the Contractor in connection with the performance of the work and for which the Contractor has been or is to be paid;

v. Assign to the Owner in the manner, at the times and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner will have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

vi. Deliver to the Field Representative As-Built Documents, complete as of the date of cancellation or termination, plans, Shop Drawings, sketches, permits, certificates, warranties, guarantees, specifications, three (3) complete sets of maintenance manuals, pamphlets, charts, parts lists, spare parts (if any), operating instructions required for all installed or finished equipment or machinery, and all other data accumulated by the Contractor for use in the performance of the work.

vii. Perform all work as may be necessary to preserve the work then in progress and to protect materials, plant and equipment on the site or in transit thereto. The Contractor shall also take such action as may be necessary, or as the Architect/Engineer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

viii. Complete performance of each part of the work not terminated by the Notice of Termination;

ix. Use his best efforts to sell, in the manner, at the time, to the extent, and at the price or prices directed or authorized by the Owner, property of the types referred to above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; provided, further, that the proceeds of any such transfer or disposition will be applied in reduction of any payments to be made by the Owner to the Contractor under this Contract or will otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Owner may direct;

x. Termination of the Contract or a portion thereof shall neither relieve the Contractor of its responsibilities for the completed work nor shall it relieve its Surety of its

obligation for and concerning any just claim arising out of the work performed.

xi. In arriving at the amount due the Contractor under this article, there will be deducted, (1) any claim which the Owner may have against the Contractor in connection with this Contract and (2) the agreed price for, or the proceeds of sale of materials, supplies or other items acquired by the Contractor or sold, pursuant to the provisions of this article, and not otherwise recovered by or credited to the Owner.

5) Suspension of Work

a. The Owner reserves the right to temporarily suspend execution of the whole or any part of the Work without compensation to the Contractor.

b. In case the Contractor is actually and necessarily delayed by any act or omission on the part of the Owner, as determined by the Owner in writing, the time for completion of the Work shall be extended by the amount of the time of such delay as determined by the Owner, and an allowance may be made for actual direct costs, if any, which may have been borne by the Contractor. Such requests for additional time and/or compensation must be made in accordance with the applicable sections of the Contract Documents.

c. Only the actual delay necessarily resulting from the causes specified in this Article, shall be grounds for extension of time. In case the Contractor is delayed at any time or for any period by two or more of the causes specified in this Article, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension will be granted for the delay.

d. In case the Contractor is actually and necessarily delayed in the performance of the Work from one or more of the causes specified in this Article, the extension of time to be granted to the Contractor shall be only for such portion of the Work so delayed. The Contractor shall not be entitled by reason of such delay to an extension of time for the completion of the remainder of the Work. If the Contractor shall be so delayed as to a portion of the Work he shall nevertheless proceed continuously and diligently with the prosecution of the remainder of the Work. No demand by the Contractor that the Owner determine and certify any matter of extension of time for the completion of the Work or any part thereof will be of any effect whatsoever unless the demand be made in writing at least 30 days before the completion date of the Work or any part thereof for which Liquidated Damages are established when meeting those dates is claimed to have been delayed by a suspension under this Article. Owner's determination as to any matter of extension of time for completion of the Work

or any part thereof shall be binding and conclusive upon the Contractor.

e. Permitting the Contractor to finish the Work or any part thereof after the time fixed for completion or after the date to which the time for completion may have been extended or the making of payments to the Contractor after any such periods shall not operate as a waiver on the part of the Owner of any rights under this contract.

f. The Contractor shall insert in each subcontract a provision that the Subcontractor shall comply immediately with a written order of the Owner to the Contractor to suspend the Work, and that they shall further insert the same provision in each subcontract of any tier.

END OF ARTICLE

12. MISCELLANEOUS PROVISIONS

(June 12, 2012)

A. Third Party Beneficiary

No contractual relationship will be recognized under the Contract other than the contractual relationship between the Owner and the Contractor. There shall be no third party beneficiary to this Contract.

B. Venue

Any litigation which may arise out of this Contract shall be commenced either in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, or in the United States District Court, Southern District of Florida.

C. Governing Laws

1) The Contractor shall, during the term of this Contract and in the prosecution of the work, be governed by the statutes, regulatory orders, ordinances and procedures of the United States of America, the State of Florida and Miami- Dade County including but not limited to the Florida Building Code and the provisions of the Code of Miami-Dade County governing Community Small Business Enterprises (CSBEs) as applicable.
2) Specifically, the Contractor and his Subcontractors shall comply with Miami-Dade County Resolution Nos. R-1386-09 and R-138-10 governing the treatment of CSBE firms.
3) In addition the Contractor agrees to abide by all federal, state, and County procedures, as may be amended from time to time, regarding how documents to which the Contractor has access are handled, copied, and distributed, particularly documents that contain sensitive security information.

D. Successors and Assigns

The Owner and the Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due the Contractor hereunder, without the previous written notice to the Owner. Consent will not be given to any proposed assignment which would relieve the Contractor or his Surety of their responsibilities under the Contract.

E. Written Notice

1) Written notice to the Contractor shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to any officer of the corporation for whom it was intended or if delivered at or sent by registered or certified mail to the last business address known to those who give the notice.

2) Written notice to the Owner shall be deemed to have been duly served if delivered in person, delivered at or sent by registered or certified mail to the individual identified in the Special Provisions.

F. Indemnification

1) In consideration of this Agreement, and to the maximum extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor agrees to indemnify, protect, defend, and hold harmless the Government, State, County, their elected officials, officers, employees, consultants, and agents from claims, liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Work.

2) The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor and/or any Subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.

3) In the event that any claims are brought or actions are filed against the Owner with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Contractor agrees that the Owner may select the attorneys to appear and defend such claims or actions on behalf of the Owner. The Contractor further agrees to pay at the Contractor 's expense the attorneys' fees and costs incurred by those attorneys selected by the Owner to appear and defend such claims or actions on behalf of the Owner. The Owner, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the Owner.

4) To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted as the parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes, as may be amended.

5) This Section shall survive expiration or termination of this Agreement.

G. Audit Rights

1) Access to Records

a. The Contractor shall, during the term of this Contract and for a period of five years thereafter, allow the Owner and its duly authorized representatives to inspect all payroll records, invoices for materials, books of account, job cost ledgers, Project correspondence and Project-related files and all relevant records pertinent to the Contract.

b. The Owner retains the right to audit accounts and access all files, correspondence and documents in reference to all work performed under this Contract. The Owner shall be provided full access upon request to all documents, including those in possession of

Subcontractors or suppliers during the work and for a period of five years after the completion of the Work. In case of any litigation regarding this Project, such rights shall extend until final settlement of such litigation. Failure to allow the Owner access shall be deemed a waiver of Contractor's claims.

c. The Contractor shall maintain a banking account within Miami-Dade County for all payments to laborers, Subcontractors and vendors furnishing labor and materials under this Contract. All records shall be maintained in Miami-Dade County for the term of this Contract.

2) Inspector General

a. According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits, inspections, and reviews of all, on any County/Trust contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit by the County. To pay for the functions of the Office of the Inspector General, any and all payments to be made to the Contractor under this contract will be assessed one quarter (1/4) of one (1) percent of the total amount of the payment, to be deducted from each progress payment as the same becomes due unless this Contract is federally or state funded where federal or state law or regulations preclude such a charge or where such a charge is otherwise precluded by Special Condition. The Contractor shall, in stating its agreed prices, be mindful of this assessment which will not be separately identified, calculated or adjusted in the proposal or Bid Form.

b. The Miami-Dade Office of the Inspector General is authorized to investigate County affairs and empowered to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor existing Projects and programs. Monitoring of an existing Project or program may include a report concerning whether the Project is on time, within budget and in conformance with the Contract Documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to Project design, bid specifications, (bid/proposal) submittals, activities of the (Contractor/ Vendor/ Consultant), its officers, agents and employees, lobbyists, County and Public Health Trust staff and elected officials to ensure compliance with the Contract Documents and to detect fraud and corruption.

c. Upon ten (10) days written notice to the Contractor, the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector inspectors general to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to Project design, bid specifications,

(bid/proposal) submittals, activities of the (Contractor/ Vendor/ Consultant), its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with the Contract Documents and to detect fraud and corruption.

d. The Inspector General shall have the right to inspect and copy all documents and records in the (Contractor/Vendor/Consultant's) possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all Project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

e. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

   i. If this contract is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

   ii. The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

f. The provisions in this section shall apply to the (Contractor/Vendor/Consultant), its officers, agents, employees, subcontractors and suppliers. The (Contractor/Vendor/Consultant) shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the (Contractor/Vendor/Consultant) in connection with the performance of this contract.

g. Nothing in this section shall impair any independent right to the Owner to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the Owner by the (Contractor/Vendor/Consultant) or third parties.

H. Severability

1) In the event any article, section, sub-article, paragraph, sentence, clause or phrase contained in the Contract Documents shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other articles, sections, sub-articles, paragraphs,

sentences, clauses or phrases of the Contract Documents, which shall remain in full force and effect as if the article, section, sub-article, paragraph, sentence, clause or phrase declared, determined or adjudged invalid, illegal, unconstitutional or otherwise unenforceable was not originally contained in the Contract Documents.

I. Payment and Performance Bond

1) A single instrument Payment and Performance Bond, satisfactory to the Owner, for twice the penal sum (no less than 100% of the total maximum contract amount for payment-related issues and 100% of the total maximum contract amount for performance-related issues), shall be required of the Contractor.

   a. The bond shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond (Total Contract) Amount	Best's Rating
$500,001 to $1,500,000	B V
$1,500,001 to $2,500,000	A VI
$2,500,001 to $5,000,000	A VII
$5,000,000 to $10,000,000	A VIII
Over $10,000,000	A IX

2) On Contract amounts of $500,000 or less, the Bond provisions of Section 287.0935, Florida Statutes shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

   a. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Invitation to Bid is issued.

   b. Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

   c. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. 9304-9308.

   Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The Bond amount shall not exceed the underwriting limitations as shown in this circular.

3) For Contracts in excess of $500,000 the provisions of the Contract Documents will be adhered to, plus the surety insurer must have been listed on the U.S. Treasury list for at least three consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

4) Payment and Performance Bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

5) The attorney-in-fact or other officer who signs a Payment and Performance Bond for a surety company must file with such Bond a certified copy of his/her power of attorney authorizing him/her to do so.

6) The cost of the Bonds shall be included in the Bid.

7) The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

8) The Bond shall be delivered to the Contracting Officer in accordance with the instructions within the Notice of Award.

9) In the event the Surety on the Payment and Performance Bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in its State of domicile or the State of Florida suspended or revoked as provided by law, the Owner shall withhold all payments under the provisions of these Contract Documents until the Contractor has given a good and sufficient Bond in lieu of Bond executed by such Surety.

10) Cancellation of any bond, or non-payment by the Contractor of any premium for any Bond required by this Contract shall constitute a breach of this Contract. In addition to any other legal remedies, the Owner at its sole option may terminate this Contract or pay such premiums, and deduct the costs thereof from any amounts that are or may be due to the Contractor.

J. Insurance

The Contractor shall maintain the insurance set forth in the Special Provisions throughout the performance of this Contract until the Work has been completed by the Contractor and accepted by the Owner.

K. Conflict of Interest

1) The Contractor or his employees shall not enter into any Contract involving services or property with a person or business prohibited from transacting such business with Miami-Dade County pursuant to Section 2-11.1 of the Code of Miami-Dade County, Florida, known as the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance.

2) In the event the Contractor, or any of its officers, partners, principals or employees are convicted of a crime arising out of, or in connection with, the work to be done or payment to be made under this Contract, this Contract, in whole or any part thereof may, at the discretion of the Owner, be terminated without prejudice to any other rights and remedies of the Owner under the law.

3) In accordance with the Code of Miami-Dade County, no officer or employee of Miami-Dade County during his tenure or for two years

thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

L. Rights in Shop Drawings

1) Shop Drawings submitted to the Architect/Engineer by the Contractor, pursuant to the Work, may be duplicated by the Owner and the Owner may use and disclose, in any manner and for any purpose Shop Drawings delivered under this Contract.

2) This paragraph shall be included in all subcontracts hereunder at all tiers.

M. Patent and Copyright

1) If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Owner, the Field Representative, and the Architect/Engineer from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the prosecution or after the completion of the work.

2) The Contractor shall warrant that the materials, equipment or devices used on or incorporated in the Work shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. The Contractor shall defend, or may settle, at his expense, any suit or proceeding against the Owner or the Architect/Engineer so far as based on a claimed patent or copyright infringement which would result in a breach of this warranty, and the Contractor shall pay all damages and costs awarded therein against the Owner or the Architect/Engineer due to such breach. The Contractor shall report to the Architect/Engineer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Owner when requested, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Contractor.

3) The Contractor shall bear all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the Work. In such case materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor, at his expense shall:

a. Secure for the Owner the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license or licenses; or

b. Replace such materials, equipment, devices or processes with non-infringing materials, equipment, devices or processes; or

c. Modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sum paid therefore without prejudice to any other rights of the Owner.

4) The preceding paragraph shall not apply to any materials, equipment or devices, specified by the Owner or the Architect/Engineer or manufactured to the design of the Owner or the Architect/Engineer or in accordance with the details contained in the Contract Documents; and as to any such materials, equipment or devices the Contractor assumes no liability whatsoever for patent or copyright infringement and the Owner will hold the Contractor harmless against any infringement claims arising therefrom.

5) Patent rights to patentable invention, item or ideas of every kind or nature arising out of the Work, as well as information, designs, specifications, know-how, data and findings shall be made available to the Government for public use, unless the Owner shall, in specific cases where it is legally permissible, determine that it is in the public interest that it not be so made available.

6) The sense of this article shall be included in all subcontracts. The foregoing states the entire liability of the Contractor for patent or copy infringement by use of said materials, equipment or devices.

N. Historical, Scientific and Archaeological Discoveries

All articles of historical, scientific or archaeological interest uncovered by the Contractor during progress of the Work shall be preserved and reported immediately to the Architect/Engineer. Further operations of the Contractor with respect to the find, including disposition of the articles, will be decided by the Owner.

O. Use of Owner’s Name in Contractor Advertising or Public Relations

The Owner reserves the right to review and approve Owner-related copy prior to publication. The Contractor shall not allow Owner-related copy to be published in Contractor's advertisement or public relations programs until submitting the Owner-related copy and receiving prior approval from the Owner. The Contractor shall agree that published information on the Owner or the Owner’s program shall be factual and in no way imply that the Owner endorses the Contractor's firm, service or product. The Contractor shall insert the substance of this provision, including this sentence, in each subcontract and supply Contract or purchase order.

END OF ARTICLE

13. ATTACHMENTS
(June 12, 2012)

END OF ARTICLE

Implementing Order No.: IO 3-58

Title: FIRST SOURCE HIRING REFERRAL PROGRAM

Ordered: 12/4/2012 **Effective:** 12/14/2012

AUTHORITY:
Sections 1.01, 2.02 and 5.02 of the Miami-Dade County Home Rule Amendment and Charter; and Section 2-2113 of the Code of Miami-Dade County

POLICY:
Except where federal or state laws or regulations mandate to the contrary, this Implementing Order shall require successful bidders of goods and services contracts prior to filling each vacancy arising under said County Contract, to first notify South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy so the contractors may post the vacancy with SFWIB. The contractor shall a) review the resumes and qualifications of the candidates, and b) make a good faith effort as determined by the County, to fill a minimum of fifty percent (50%) of its employment needs under the County Contract from the First Source Register.

The provisions of this Implementing Order shall apply to all such goods and services contracts including concessions and professional services entered into and issued by the County, its departments and agencies, except for: (i) construction, construction management, architectural, engineering, landscape architectural, and land surveying and mapping services; (ii) those covered under the Community Workforce Program ("CWP"); (iii) Section 3 Housing contracts; (iv) those covered under programs intended to encourage and assist in the employment of the blind and other severely handicapped persons such as described in Sections 413.032 - 413.037, Florida Statutes (2011); and (v) contracts where the funding source precludes inclusion of this requirement.

I. DEFINITIONS

A. "Contractor" means any person or entity which enters into a County Contract, as defined below.
B. "County" or "MDC" refers to Miami-Dade County.
C. "County Contract" means an agreement for the purchase of goods and/or services, except as specified above.
D. "First Source Register" means the register of unemployed persons maintained by the Referral Agency in accordance with the provisions of this Implementing Order.
E. "Implementing Order" or "IO" means the implementing order developed by the Mayor or Mayor's designee and approved by the Board of County Commissioners (the "Board") to give effect to the provisions of this Section.
F. "Issuing Department" means the County department issuing a solicitation for the purchase of goods and/or services.

G. "Referral Agency" means the South Florida Workforce Investment Board, through its career centers, or community-based partners and faith-based organizations.
H. "Referral Period" means the three (3) to five (5) day period following notification to the Referral Agency of employment availability.
I. "SBD" refers to the Small Business Development under the Business Affairs Division of the Department of Regulatory and Economic Resources.

II. PROGRAM COMPONENTS

A. FIRST SOURCE REGISTER

The SFWIB shall compile and maintain a First Source Register, which shall be a listing of unemployed persons, including graduates of programs funded by the Workforce Investment Act, to be made available to Contractors as a first source for their employment needs. SFWIB does not discriminate on the basis of race, ethnicity, sex, residence, or other protected category or class, in the compilation or maintenance of the First Source Register, or in its referral activities provided for in this Section. SFWIB shall, to the extent allowed by law, maintain a database which identifies the race, ethnicity, sex, and residence of the persons within the First Source Register sufficient to permit adequate analysis of the available work force.

B. IMPLEMENTATION

The roll-out of the First Source Hiring Referral Program ("FSHRP") will be as follows:

1. Miami-Dade Aviation Department (August 2012)
2. Water and Sewer Department, Fire-Rescue, Public Works and Waste Management, Community Action and Human Services Department, Office of Management and Budget, Vizcaya (October 2012 beginning)
3. Internal Services Department, Information Technology Department, Transit, Miami-Dade Police Department, Public Housing and Community Development, Port of Miami, Library, Elections (October 2012 end)
4. Parks, Recreation and Open Spaces, Miami-Dade Corrections and Rehabilitation, Regulatory and Economic Resources, Community Information and Outreach, Cultural Affairs, Juvenile Services, Medical Examiner, Animal Services, Finance, Property Appraiser (November 2012)

C. REFERRAL PROCEDURE

The SFWIB shall be the first source for Contractors to fill jobs created to satisfy the requirements of County Contracts. The following requirements shall be included in all County Contracts, except those covered under the CWP, and except those covered under programs intended to encourage and assist in the employment of the blind and other severely handicapped persons such as described in Sections 413.032 - 413.037, Florida Statutes (2011):

1. The Contractor, prior to hiring to fill each vacancy arising under a County Contract, shall first notify the SFWIB of the vacancy by completing a Job Opening Form on the SFWIB First Source Hiring website (https://iapps.southfloridaworkforce.com/firstsource/). The job order shall

contain a detailed description of the job responsibilities and qualifications, and be posted during the Referral Period of three (3) to five (5) days.

2. The SFWIB shall provide a list of qualified candidates, if such candidates are available, to the Contractor within twenty-four (24) hours of receiving a notice of vacancy. Thereafter, the Contractor shall (a) review the resumes and qualifications of the candidates, and (b) make a good faith effort, as determined by the County, to fill a minimum of fifty percent (50%) of its employment needs under the County Contract from the First Source Register. If no suitable candidate is identified from the list, the Contractor shall provide an explanation to SFWIB via the FSHRP web portal (https://iapps.southfloridaworkforce.com/firstsource/). Notwithstanding the foregoing, if after the Referral Period a suitable employee is not found through the SFWIB, the Contractor is free to fill its vacancies from other sources.
3. A good faith effort to employ candidates from the SFWIB shall constitute, at a minimum, evaluating the qualification of such candidates, and conducting interviews with those candidates who satisfy the minimum competency requirements. The Contractor is not required to hire any individual candidate referred. However, Contractors shall not commit to fill vacancies in any other manner until after the end of the Referral Period, unless SFWIB notifies the Contractor in writing prior to the end of the Referral Period that qualified candidates are not available in sufficient numbers to fill the vacancies. Upon such notification, the Contractor may immediately fill vacancies using other sources.
4. In determining whether a Contractor has made good faith efforts, the County may consider, among other criteria: a) the number, skills and composition of the Contractor's labor force ultimately hired; b) whether minimum requirements were established for available positions beyond reasonable requirements to complete the job; c) the number of referred candidates interviewed for the position; and d) the Contractor's use of the First Source Register to satisfy its labor needs in contracts other than County Contracts. The County's determination as to whether a Contractor has made such good faith efforts is final and binding.
5. All competitive solicitations for County Contracts, except those covered under CWP, shall set forth the requirements of this Section. A link to the FSHRP web portal shall be on the Internal Services Department – Procurement Management Services Division's website.

D. ISSUING DEPARTMENT RESPONSIBILITIES

1. Notify SFWIB of County Contract awards, at both the award recommendation stage, and when the Contractor is notified by the County of the award in writing. Notification should include at a minimum:
   a. Company Name.
   b. Company Contact.
   c. Contract Information.
   d. Award Amount.
2. Include First Source requirement in applicable bid and contract documents.

E. SFWIB RESPONSIBILITIES

1. Notify prospective and awarded Contractors of the FSHRP.
2. Recruit qualified MDC residents:
   a. Utilize existing database of job seekers.
   b. Market new job opportunities to MDC residents.
   c. Utilize Career Centers closest to the job seekers to recruit qualified residents interested in jobs to create a pool of candidates for FSHRP projects.
3. Create First Source Register:
   a. Determine and complete candidate eligibility.
   b. Assess job seekers to determine level of skills and training. Residents must meet all requirements of the Contractor prior to referral.
4. Refer qualified candidates that have requisite skills required by the Contractor.
5. Provide online web portal that allows Contractors the ability to submit required quarterly reports as described below under Section F (c) and (d).
6. Send system generated automated email "report due date" reminders to Contractors.
7. Provide MDC with real-time online access to Contractor quarterly status reports confirming whether the goals have been met and any non-compliance with the requirements of the ordinances and/or first source agreement.
8. Prepare quarterly reports for the Board which shall include: a) dollar amount of each contract; and b) an analysis of the effectiveness of the program during each quarterly reporting period.

F. CONTRACTOR RESPONSIBILITIES

a. Prior to filling each vacancy under a County Contract, the Contractor shall notify SFWIB of all job openings and list the vacancy via the SFWIB web portal (www.southfloridaworkforce.com). The listing shall contain, at a minimum, a detailed description of the job responsibilities, qualifications, and wage rate. The listing must be posted during the Referral Period. As required, the Contractor shall work with the SFWIB to develop a workforce plan that details such information as (a) the number of individuals to be hired, (b) positions needed, (c) job description(s), and (d) skills needed for the job.
b. Upon receipt of the list of qualified candidates from the SFWIB, the Contractor shall review resumes and qualifications of the candidates, and make good faith efforts as determined by MDC to fill a minimum of fifty percent (50%) of its employment needs under the County contract from the First Source Register. If none of the candidates are hired, the Contractor shall provide an explanation to SFWIB as to why not via the FSHRP web portal (https://iapps.southfloridaworkforce.com/firstsource/).
c. Contractors shall provide quarterly reports to the SFWIB on-line through the FSHRP web portal (https://iapps.southfloridaworkforce.com/firstsource/) indicating: (a) the name and number of employees hired in the previous quarter; (b) the source from which such employees were found; (c) wages paid; and (d)

total number of employee work hours. If none of the candidates referred are hired, an explanation as to why those referred were rejected must be included in the on-line report. Each quarterly report shall be submitted to SFWIB within two (2) weeks of the end of the quarter. Quarterly reports to the SFWIB are required from the Contractors, even if no vacancies are created or filled, for the duration of the contract or as determined by the SFWIB.

d. Contractors shall retain sufficient records to assist in determining compliance. Records shall include, but are not limited to:
   a. Notifications to SFWIB;
   b. referrals from SFWIB;
   c. job applications received from sources other than SFWIB; and
   d. the number of candidates hired based on referrals from SFWIB.

   Said records shall be made available to SFWIB upon request, to the extent allowed by law.

G. MONITORING AND COMPLIANCE
   1. SFWIB shall monitor quarterly reports submitted by Contractors and review Contractor records, to the extent allowed by law, to ensure compliance with the FSHRP. Referral Agency shall follow up with Contractors to ensure reporting requirements are met.
   2. SFWIB shall be entitled to perform random, unannounced site visits to applicable project sites to determine whether or not Contractor has filled its vacancies.
   3. SFWIB shall report to the County any non-compliance with the requirements of this ordinance, any related Implementing Order, or first source agreement between Referral Agency and Contractor.

III. SANCTIONS FOR VIOLATIONS

A. Each County Contract shall include provisions stating the nature of the sanctions to be imposed on a Contractor that is not in compliance with this Section. Such sanctions shall include, but not be limited to the following:
   1. Suspension of contract until Contractor performs obligations, if appropriate.
   2. Default and/or termination.
   3. Payment of $1,500 per employee, or the value of wages that would have been earned by employees injured by Contractor's non-compliance, whichever is less.

B. If any Contractor attempts to comply with the provisions of FSHRP through fraud, misrepresentation or material misstatement, the County, in its sole discretion, may immediately terminate the subject County Contract.

IV. APPEALS PROCESS

A. Any firm that is issued a determination of non-compliance with the requirements of this IO, its ordinance, or implementing bid documents may be appealed. SBD shall notify the affected party, in writing, setting forth the reasons for the determination and advising of the appeals process.

B. The affected party may appeal the determination by filing a written appeal with SBD within fifteen (15) business days of receipt of the notice. SBD shall forward the appeal to the SFWIB Director upon receipt.

C. PROCEDURES FOR ADMINISTRATIVE HEARING:

1. SBD will schedule a hearing date before a hearing officer, upon timely receipt of a request for an administrative hearing along with a $250 nonrefundable filing fee to appeal a determination of non-compliance with the requirements of this Implementing Order, Section 2-2113 of the Code of Miami-Dade County, or implementing bid documents.
2. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.
3. MDC shall serve upon the firm, Contractor (or subcontractor) a notice of hearing within five (5) working days of the appointment of the administrative hearing officer. Such notice shall include:
    a. A copy of SBD's determination of non-compliance, as appropriate, outlining alleged prohibited practices upon which it is based; and
    b. A description of the administrative penalties being considered.
4. An administrative hearing shall be scheduled to be heard before an administrative hearing officer within twenty (20) days after service of the notice. The notice shall also advise the appellant that he or she may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them.
5. Within five (5) days after completion of the administrative hearing, the administrative hearing officer shall transmit his/her findings of fact, conclusions, and recommendations together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the Mayor or designee, who (i) may sustain, reverse or modify the hearing officer's recommendations and (ii) shall render a final decision, in writing. The determination of the Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Approved by the County Attorney as
to form and legal sufficiency ____

Implementing Order

Implementing Order No.: 3-68

Title: Use of locally headquartered businesses for the performance of professional architectural, landscape architectural, engineering, or surveying and mapping services

Ordered: 5/7/2024 **Effective:** 5/17/2024

AUTHORITY:

The Miami-Dade County Home Rule Amendment and Charter including, among others, Sections 1.01 and 2.02(A) and Section 2-10.4 of the Code of Miami-Dade County, Florida (the "Code").

POLICY:

It is the policy of Miami-Dade County to promote the use of locally headquartered businesses in the purchase of services within the scope of this Implementing Order, consistent with a fair and transparent procurement process, all in accordance with the requirements of law.

SCOPE:

This Implementing Order establishes the process for the use of locally headquartered businesses in the County's purchases of services covered by the Consultants' Competitive Negotiation Act, Section 287.055 of the Florida Statutes (the "CCNA") and Section 2-10.4 of the Code, as the same may be amended. This Implementing Order applies to all project specific, miscellaneous, and other awards of contracts. The Public Health Trust (PHT) shall be governed by this Implementing Order. The Strategic Procurement Department (SPD) and PHT are responsible for ensuring that the requirements are included in all applicable contracts, not including those issued through the Equitable Distribution Program (EDP). The Office of Small Business Development (SBD), or successor department, is responsible for including requirements in EDP contracts and for compliance and enforcement of such requirements on covered contracts.

ELIGIBILITY REQUIREMENTS

In addition to meeting the requirements set forth in Section 2-8.5 of the Code, defining the term "Locally Headquartered Business," the following shall constitute eligibility requirements for a Locally Headquartered Business:

1. A Locally Headquartered Business must possess the necessary occupational license needed to conduct business in the State of Florida and in Miami-Dade County, must perform a commercially useful function (as such term is defined in Section 2-10.4.01 of the Code), must be prequalified pursuant to Section 2-10.4 of the Code and I.O. 3-39 and with an actual place of business in Miami-Dade County.
2. The County will review firms undergoing recent changes in ownership, control, or location to ensure that the changes are the result of ordinary market considerations and that the firms perform commercially useful functions (as such term is defined in Section 2-10.4.01 of the Code).

3. Eligibility as a Locally Headquartered Business shall be determined at the time of proposal submittal except for qualifying under the EDP as outlined herein. While a change in status as a Locally Headquartered Business will affect the firm's future ability to participate as a Locally Headquartered Business, the change of status shall not affect the award of the professional services agreement.

PROJECT REQUIREMENTS:

SPD shall develop, and SPD and PHT shall include within each Notice to Professional Consultants, a Letter of Qualifications (LOQ). The LOQ shall disclose the prime consultant and sub-consultants utilized for the locally headquartered business preference, and the prime's commitment as to the percentage of work to be performed (which will eventually equate to the percentage of dollars paid to sub-consultants) by the sub-consultants. The sub-consultants identified, and the subcontract amounts to be used, shall bear a reasonable resemblance to the County's planned project, as set forth in the applicable County planning document, including the use of the same Technical Certification categories.

SPD shall develop, and SPD and PHT shall include within each Notice to Professional Consultants, an affidavit (Eligibility Affidavit or "Locally Headquartered Business Affidavit") to be provided for each prime and sub-consultant to be used for the locally headquartered business preference attesting to such firm's status as a current Locally Headquartered Business.

SPD shall develop, and SPD and PHT shall include within each Notice to Professional Consultants, a Letter of Commitment (LOC) for each of the sub-consultants to be used for the locally headquartered business preference. The LOC shall be executed by duly authorized representatives of the prime and sub-consultants and shall state the clear and irrevocable commitment of the prime to subcontract with the subcontractor the value of work indicated in the LOC. Failure to submit a properly completed LOQ, Eligibility Affidavit, or LOC in the manner required in the Notice to Professional Consultants may result in the firm not receiving locally headquartered business points.

For reference only, the LOQ, Eligibility Affidavit, and LOC forms can be found online at: https://www.miamidade.gov/global/strategic-procurement/architectural-engineering-legislation.page. Proposers shall only use and submit the forms that are included as part of the Notice to Professional Consultants.

Proposers may cure immaterial irregularities in the required documents, or equivalent, provided they are submitted not later than forty-eight (48) hours following written notification by SPD. Immaterial irregularities shall be those which, in the sole discretion of SPD, do not affect the assurances of agreements between the prime and sub-consultant or the proposer's assurances to the County that the locally headquartered business measures will be met.

SPD and PHT shall review the documents submitted for compliance with applicable requirements. In the event of an irregularity, SPD may, but shall not be required to, afford the proposer an opportunity to cure. SPD and PHT shall be entitled to reject any LOQ that contains a substantial deviation from the County's planned project as evident from the County's planning document. In such event, the proposer shall not be entitled to the points relevant to such identified irregularity.

SPD may, from time to time, modify any forms as part of the proposal submission to elicit such additional information as SPD determines is necessary to accomplish the Board's objectives in

granting a preference to locally headquartered businesses. To the extent such forms are updated, SPD and PHT shall ensure that the latest versions of such forms are included in the solicitation.

RESPONSIBILITY OF THE OFFICE OF SMALL BUSINESS DEVELOPMENT (SBD):

SBD shall be responsible for overseeing compliance with this Implementing Order. In addition to other duties set forth specifically in this Implementing Order, SBD shall:

1. Maintain any and all records relating to the use of locally headquartered businesses in contracts, including information relevant to such firm's compliance with the requirements of this Implementing Order.

2. Provide all administrative processes, written notices, dispute resolution and notices of decisions relating to this Implementing Order.

3. Commence all suspension proceedings for non-compliance with the locally headquartered business commitments under this Implementing Order.

4. SBD shall develop and maintain all EDP Registration with applicable affidavits (the "EDP Eligibility Affidavit"). Consultants registering as prime and sub-consultant to participate in the EDP program as locally headquartered businesses must execute an EDP Eligibility Affidavit attesting to the firm's status as a locally headquartered business.

5. SBD shall require all EDP Registered Members to submit an updated affidavit annually to affirm their firm's continuing eligibility status as a locally headquartered business. The EDP Eligibility Affidavit should be submitted on the anniversary date of their EDP Registration Approval.

COMPLIANCE AND MONITORING:

1. Subconsultant Agreements

The prime consultant shall enter a written subconsultant agreement with each Locally Headquartered Business corresponding in all respects to the completed LOQ and LOC and shall thereafter neither terminate any such subconsultant agreement, nor reduce the scope of work to be performed by or decrease the price to be paid to the Locally Headquartered Business, without in each instance obtaining prior written approval from the SBD Director. The prime consultant receiving a contract award from the County shall submit to SBD copies of the agreements with the Locally Headquartered Business.

2. Access to Records

In addition, the prime consultant shall permit the County to have access during normal business hours to books and records relating to the prime contractor's use of locally headquartered business subconsultants. This right of access shall be granted for one year after completion of the work for which the prime consultant received locally headquartered business preference or, if greater, for the period specified in the audit rights provision set forth in the applicable contract.

3. Access to Job Site

The prime consultant and Locally Headquartered Business shall permit the County to have access to project locations during normal business hours in order to conduct visual inspections and employee interviews.

4. Locally Headquartered Business Utilization Reporting

The prime consultant on a project with a locally headquartered business preference shall report payments to subconsultants via the County's web-based system by completing all required Compliance Audits generated by the County's web-based system. All subconsultants must confirm the payments reported by the prime consultant via the web- based system.

5. Deviations from the Letter of Qualifications and/or Letter of Commitment

In the event that, during the performance of an agreement, the Locally Headquartered Business is not able to provide the services specified on the LOQ/LOC, the prime consultant must utilize a Locally Headquartered Business to substitute for the unavailable Locally Headquartered Business, unless the respondent can prove to the satisfaction of the County the lack of an available Locally Headquartered Business to provide the services to be provided by the prior Locally Headquartered Business. The prime consultant must receive approval for substitution from SBD. The request must be submitted via the County's web-based system to include the substitute Locally Headquartered Business.

SANCTIONS FOR VIOLATIONS:

The County may suspend a consultant from receiving any benefit as a Locally Headquartered Business under the program, including its ability to receive points as a prime, or as a sub-consultant, to afford points to a prime, for a period of one year following a material violation of law or this implementing order. The SBD Director shall provide written notice of non-compliance with this Implementing Order to include associated sanctions.

In addition, the County may debar a consultant or sub-consultant for violation or non-compliance with the provisions of the County Code governing the program or this Implementing Order. Causes for debarment and the procedures set forth for debarment are set forth in Section 10-38 of the Code.

APPEALS PROCESS:

Any firm issued a determination of noncompliance with the requirements of this implementing order may appeal such action by submitting a written request to the SBD Director along with a $250.00 nonrefundable filing fee within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the SBD Director shall appoint a hearing officer pursuant to Section 8CC-2 of the Code, 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 of the Code, 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.

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.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Implementing Order No.: 8-4

Title: GUIDELINES AND PROCEDURES FOR THE SALE, LEASE, AND CONVEYANCE OF COUNTY REAL PROPERTY

Ordered: 2/1/2022 **Effective:** 2/11/2022

AUTHORITY:

Sections 125.35, 125.37, 125.379, 125.045 and 125.38, Florida Statutes, Sections 2-8.6.5 and 2-10.4.2 of the Code of Miami-Dade County, Florida, Resolution Nos. R-377-09, R-974-09, R-256-13, R-461-13, R-761-13, R-791-14, R-1000-14, R-333-15, R-64-16, R-380-17, R-407-19, R-365-21 and R-1121-21.

SUPERSEDES:

This Implementing Order supersedes and replaces Implementing Order No. 8-4 dated May 5, 2020 and effective May 15, 2020.

POLICY:

The authority to sell, lease or otherwise dispose of County-owned real property lies solely with the Board of County Commissioners ("Board"). Such sale, lease, or disposition shall be accomplished in a transparent manner, with adequate protections in place to ensure that the intended purpose of the sale, lease, or disposition, as approved by the Board, is met. Dispositions include the granting of easements.

It is further the policy of this County that it desires to contract to sell, lease or dispose of County-owned real property to responsible entities, and to know the ownership composition of all entities to whom it contracts to sell, lease or dispose of County-owned real property. The term "responsible entity" relates to the entity's financial condition, capability, experience, and past performance, and includes honesty and integrity, skill and business judgment, experience and capacity for performing under the contract, and previous conduct, including but not limited to, meeting its financial obligations. Analysis of previous conduct shall include but not be limited to consideration as to whether the requestor, or other entity in which the requestor has a controlling financial interest, was previously conveyed or leased County-owned property which was later the subject of an involuntary reverter or lease termination by the County. Determinations on responsibility are ultimately made by the Board of County Commissioners and, where the delegated authority exists to contract, by the County Mayor, and are fundamentally issues of business judgment and policy. The term "ownership composition" as used in this Implementing Order means the identification of all persons with an ownership interest in such entity in excess of five percent; provided, however, that the ownership composition of governmental entities or publicly traded companies does not need to be identified or determined. The County Mayor or the County Mayor's designee shall include this policy in any notice or solicitation issued for the sale or lease of County-owned real property.

Nothing in this Implementing Order shall be construed as limiting the authority of County Commissioners from sponsoring items for consideration by the Board of County Commissioners for the sale or lease of County-owned property.

This Implementing Order shall be applied in a manner that is consistent with applicable federal and state laws and regulations, including, but not limited to those laws, regulations and directives related to the United States Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration program and HUD's requirements for the demolition and disposition of public housing developments as set forth in Section 18 of the United States Housing Act of 1937, as amended, and applicable regulations promulgated by HUD.

This Implementing Order shall supplement and also apply to conveyances or leases pursuant to the Miami-Dade County Infill Housing Initiative Program, as codified in section 17-171 et seq. of the Miami-Dade County Code and Implementing Order 3-44, which set forth procedures and guidelines for property disposition. To the extent that there is a conflict between the provisions set forth in this Implementing Order and Implementing Order 3-44, the provisions of this Implementing Order shall govern unless otherwise prescribed by Code or Statute.

PROCEDURE INITIATING ACTION; APPLICATION, PROPERTY CIRCULATION, AND REVIEW OF RESTRICTIONS:

Any government official, Department Director, or any private party, governmental entity, or corporation proposing the sale, lease or other disposition of County-owned real property shall abide by the procedures as set forth herein

The Department Director, other official, private party, governmental entity, or corporation is required to submit a memorandum or letter application to the County Mayor or to the County Commissioner of the district in which the property lies detailing all pertinent information regarding the proposal or request. The pertinent information for non-competitive conveyances shall include, but not be limited to, a disclosure under oath of the ownership composition of the requesting entity, and information sufficient to support a finding that the requestor is a responsible entity.

In the case of (1) any not-for-profit entity seeking the sale or lease of County-owned real property for community interest and welfare purposes pursuant to section 125.38, Florida Statutes, or (2) any entity requesting the sale or lease of County-owned real property for the construction of affordable housing pursuant to section 125.379, Florida Statutes, or (3) any entity requesting the sale or lease of County-owned real property for economic development under section 125.045, Florida Statutes, the requesting entity shall include in its letter application to the County, to the extent applicable: (i) an identification of the property requested by address and/or folio number; (ii) a detailed description of the proposed use of the County-owned real property and any development thereon, including how it meets the requirements of community interest and welfare or affordable housing purposes; (iii) an identification and a summary of the past experience of the requestor, the requester's key personnel, developer, and first-tier consultants and contractors; (iv) an estimate of the costs of construction and operation and the manner in which the requester intends to finance the development, operations and maintenance of the requested property, including proposed sources of funds and revenues; (v) the length of time the entity has been active and the number of employees; (vi) a proposed

schedule for the commencement and completion of any construction or renovation of the requested property, including development milestones, which may be used as a basis for lease termination or reverter provisions; and (vii) the proposed rental rate or purchase price, which, if nominal, shall include the asserted basis for the reduced payment rather than the payment of market value, market rent, or rent in lieu of taxes. In the event that the not-for-profit entity is requesting a conveyance, rather than a lease, it shall include in its application the specific basis for any compelling circumstances justifying a conveyance rather than a lease.

If the request and application is submitted to a County Commissioner, the Commissioner, after reviewing same, may determine whether they wish to move forward with the processing of the request. If the Commissioner seeks to proceed, the Commissioner shall forward, or cause to be forwarded, the request and application to the County Mayor who shall proceed with the process for disposition of County-owned real property as set forth in this Implementing Order.

If the request and application is not Commissioner-generated, the County Mayor, or the County Mayor's designee will review the request to determine if there is a need to refer the request to the Internal Services Department for further processing. If it is determined that there is such a need, the County Mayor or the County Mayor's designee will refer the request to the Internal Services Department or other successor department with the responsibility over property conveyances within ten days of receipt, and shall forward a copy of the request and application to the Commissioner of the district in which the property lies prior to forwarding the item to the Internal Services Department. The Internal Services Department, within five days of the referral of the request, will forward to appropriate departments and public agencies a questionnaire, with a response time of no more than ten days, to determine if there is planned use or anticipated need for the subject property, or if it could be declared surplus, and within 30 days of the referral of the request, will determine whether there are any restrictions or limitations contained in the deed, restrictive covenants, or other contracts that would preclude the conveyance of the County-owned real property or that would result in a significant financial impact to the County as the result of such conveyance (e.g. result in the repayment of grant funds) and, if so, whether the requesting entity can be made responsible for said financial impact to the County. The County Mayor or the County Mayor's designee shall prioritize any request made by the Miami-Dade Water and Sewer Department (WASD) or its successor department, for use or anticipated future use as WASD infrastructure (Resolution No. R-1121-21). The Internal Services Department will also determine whether the subject property is connected to or has access to a sanitary sewer system.

INTERNAL SERVICES DEPARTMENT AND REGULATORY AND ECONOMIC RESOURCES DEPARTMENT:

Based on the findings of the questionnaire concerning possible use of the property and its review of the contracts and restrictions pertaining to the property, the Internal Services Department will submit its findings and recommendations to the County Mayor or the County Mayor's designee within 15 days of the completion of the circulation and review of restrictions. Where there is no proposed use by a commenting County agency or department, the Internal Services Department shall immediately upon its receipt of the results of the questionnaire, forward the request or proposal to the Regulatory and Economic Resources Department ("RER"), or any successor department that oversees the County's planning functions, for its review and determination as to whether the

property is zoned consistent with the proper land use planning for the area or whether there should be a change in zoning on the subject property. The recommendation of RER shall be sent to the Internal Services Department within fifteen days of RER's receipt of the request or proposal to be sent to the Mayor's Office to be considered as part of the recommendation of the Internal Services Department. Nothing herein shall require a questionnaire or circulation for property that is to be leased pursuant to the authority set forth in section 125.35(b)(1) and (2), Florida Statutes.

COUNTY MAYOR'S OFFICE AND REQUIREMENTS FOR MAYOR'S MEMORANDUM, NOTIFICATIONS, AND PROVISIONS IN LEASES AND CONVEYANCE DOCUMENTS:

Whenever there is a valid proposed use by the commenting County agencies, the County Mayor or the County Mayor's designee will inform, in writing, the requesting party that the proposal has been reviewed and that the County Mayor has determined that the property cannot be declared surplus and conveyed or leased. In the case of a request or application that was referred to the County Mayor by a County Commissioner, a copy of such written notice to the requesting party shall be provided to the referring County Commissioner, along with a memorandum including the specific basis for the County Mayor's determination, along with written documentation from the requesting department setting forth its request for the property and specifying the intended need and proposed use of the requesting department. If a determination is made that the property can be declared surplus, and that there are no restrictions precluding the proposed lease or conveyance, then following the receipt of bids or proposals under a solicitation, or within 30 days of such determination for non-competitive conveyances and before the Board's consideration of a proposed sale or lease of County-owned real property, the County Mayor or the County Mayor's designee (i) shall perform due diligence necessary to determine whether or not the contracting entity is a responsible entity, and (ii) shall confirm the ownership composition provided by the requestor. Whenever there is a request or application that was referred to the County Mayor by a County Commissioner, the County Mayor shall, if the property can be declared surplus, prepare a memorandum within five days of such determination, addressed to the referring County Commissioner, attaching the request and application by the requesting entity, and setting forth: (i) whether the terms and conditions set forth in the application for sale or lease of County-owned property meet the requirements of community interest and welfare or affordable housing purposes; (ii) whether there are obstacles to the proposed conveyance or lease, or adverse findings discovered during the responsibility review of the proposed purchaser or tenant; (iii) the ownership composition of the proposed purchaser or tenant; (iv) the market value or market rental of the real property, including the appraised value or, if no appraisal has been conducted for land estimated to have a fair market value less than $5,000,000.00, the value set forth in the property appraiser's website (Resolution No. R-333-15); (v) with respect to not-for-profit entities seeking to lease County-owned real property, the estimated rent that would be payable in lieu of paying ad valorem taxes on the real property sought to be leased; and (vi) the identification of the department and the person who will be monitoring compliance with the terms of the lease or deed.

The Commission Auditor shall independently and simultaneously review and comment on the proposed leasing and conveyance of County property prior to the submission of an agenda item or agenda items to the Board. No agenda item shall be placed on an

agenda of the Board without the foregoing reviews by the County Mayor or Mayor's designee, subject to the exception set forth herein, and the Commission Auditor.

If a County Commissioner requests to sponsor an item for sale or lease of County-owned real property as a Commissioner-sponsored item rather than a Mayoral-sponsored item, the County Mayor or the County Mayor's designee shall nevertheless be responsible for negotiating the final proposed contract on behalf of the County and the aforementioned memorandum to the referring County Commissioner shall be attached to any Commissioner-sponsored resolution presented to the Board for consideration and approval. In all other instances which do not involve Commissioner requests, upon receipt by the County Mayor of the recommendations from the Internal Services Department, the County Mayor shall determine whether to forward a recommendation to the Board for its approval of said conveyance without competitive process where otherwise legally allowed or, following a competitive process for the sale or lease of the property in question, a recommendation for its approval of said conveyance, or take any other action or make any other recommendation. If the agenda item for said conveyance is not sponsored by the district commissioner of the district in which the real property proposed to be sold or leased is located or, in the case of multiple properties across multiple districts, when the item is not sponsored by a commissioner of any of the districts in which the properties are located, then a two-thirds vote of Board members present shall be required to approve said item for the sale or lease of County-owned real property or properties. The two-thirds vote requirement shall not apply to property located at Miami International Airport, PortMiami, and to property designated as a terminal or facility of countywide significance, nor shall it apply in the event that there is a recusal of such district commissioner from participating prior to or at the Board meeting when the item is considered.

If at the conclusion of the verification period set forth herein, the aforementioned timelines have not been met, a commissioner can thereafter bring an item forward for consideration by the Board to approve the conveyance or lease of real property as a Commissioner sponsored item without the necessity of seeking a waiver of this Implementing Order.

When applicable, the County Mayor or the County Mayor's designee shall comply with the following procedures:

(i) Prior to placing any item on an agenda of this Board or any committee of this Board for the sale, lease or surplus of County-owned property, or the issuance of any request for proposal or expression of interest regarding same, the County Mayor or the County Mayor's designee shall provide no less than four weeks' written notification to the District Commissioner in which such property lies (Resolution No. R-380-17);

(ii) Prior to placing any item on a Board agenda for a lease with a proposed tenant that provides programs or services to children and/or developmentally disabled individuals, the County Mayor or the County Mayor's designee shall perform a national criminal background check of the tenant, its principals, and their spouses, parents and children that will be working at the property, and report any adverse findings to the Board along with any recommendation to approve the lease (Section 2-8.6.5 of the Miami-Dade County Code);

(iii) In the event that the value of the property being sold is reasonably estimated to exceed $5,000,000.00, the County shall have the property appraised by two real estate appraisers holding an M.A.I designation prior to placing an item on an agenda, unless waived upon written recommendation of the County Mayor upon a finding that it is in the best interest of the County to do so. (Section 2-10.4.2 of the Miami-Dade County Code);

(iv) Prior to consideration by the Board or any committee of the Board of any proposed conveyance or lease without competitive bidding, pursuant to sections 125.045, 125.379 or 125.38, Florida Statutes, written notification shall be provided to the public by either (i) publication in a newspaper of general circulation or in a newspaper distributed in the locality where the subject property lies; (ii) mailed written notice to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll as updated, within a one-half mile radius of the subject property; or (iii) posting such notice on the subject property in a manner conspicuous to the public, by a sign or signs containing the required written notice information. The required written notice to the public required herein shall, at a minimum, contain the following information: (i) an identification of the subject property by address, folio number, and size; (ii) the date, time and location of any scheduled meeting of the Board or any committee of the Board regarding the sale or lease of the subject property; and (iii) a description of the proposed sale or lease including the recipient, intended use, and nature of the project or proposed construction. The cost of such notice shall be borne by the entity requesting the sale or lease, of County-owned real property, except in the case of substantial hardship which shall be determined in the discretion of the County Mayor or the County Mayor's designee (Resolution No. R-407-19); and

(v) All contracts, leases, and agreements, except those with other governmental entities, must be executed by the other party before submission to the Board.

LEASE AND DEED REQUIREMENTS AND RESTRICTIONS, REVERTER AND TERMINATION:

All leases, deeds and other disposition documents of County-owned real property, as applicable, shall:

(i) Include deadlines, milestones or other firm time periods by which the purpose of the sale, lease or disposition must be effectuated;

(ii) In the event that property is conveyed or leased for less than appraised value or fair market rental, include an automatic reverter clause or an automatic lease termination clause if the purpose of the sale or lease is not effectuated within the period specified in the lease or deed (Section 2-8.6.5 of the Miami-Dade County Code), relevant milestones are not met, which may include but not be limited to obtaining permits, commencement of construction and completion of construction, public use is not maintained, or a payment and performance bond or alternative security, as required by the lease or deed, are not provided prior to commencing construction (Resolution No. R-461-13). The lease or deed shall further provide that such automatic reverter or termination shall be at no additional cost to the County, and the County shall not be required to pay any

compensation to the entity in connection with the reverter or lease termination (Resolution No. R-1000-14). In the event that an automatic reverter or automatic lease termination is not included, a specific basis for not including same shall be set forth in the item presented to the Board, and at a minimum, language in generally the following form shall be included in the deed restrictions (as modified for lease termination):

> If in the sole discretion of the County, any term of this Deed is not complied with, ENTITY shall correct or cure the default/violation within thirty (30) days of notification of the default by the County as determined in the sole discretion of the County. If ENTITY fails to remedy such default within thirty (30) days, title to the subject property shall revert to the County, at the option of the County, upon written notice of such failure to remedy the default. In the event of such reverter, ENTITY shall immediately deed such property back to the County, and the County shall have the right to immediate possession of the property, with any and all improvements thereon, at no cost to the County. The effectiveness of such reverter shall take place immediately upon notice being provided by the County, regardless of the deed back to the County by ENTITY. The County retains such reversionary interest in the property, which right may be exercised by the County, at the option of the County, in accordance with this Deed. Upon such reversion, the County may file a Notice of Reversion evidencing same in the public records of Miami-Dade County. Failure to exercise such right of reverter shall not be deemed to be a waiver of such right, and by accepting the conveyance of the property, ENTITY agrees that any defenses based upon the County's delay or failure to exercise the right of reverter are hereby waived.

Nothing in this section shall prohibit the County Mayor or the County Mayor's designee from including reverter language in leases or deeds for market rent or market value, provided, however, that it is not mandatory to do so;

(iii) Include a provision requiring Board approval of any transfer or assignment of the property to an unaffiliated entity in any deed or lease for less than fair market value or rental to a not-for-profit entity pursuant to section 125.38, Florida Statutes (Resolution No. R-1000-14);

(iv) Include a minimum rental payment in lieu of taxes in the event that tax exempt status is achieved by a not-for-profit entity, unless a hardship or other substantial reason exists for foregoing such payment (Resolution No. R-256-13);

(v) Include a termination or suspension provision in the event that an emergency situation arises wherein the property is needed by the County for an emergency public purpose (Resolution No. R-64-16);

(vi) With respect to all leases or deeds which require development of the property, include deadlines, timeframes and milestones, including, at a minimum, a date upon which permits must be obtained, a date upon which construction must commence, and a date upon which construction must be completed. Further, such leases and deeds shall include appropriate protection for County-owned property, or property in which the County retains a reversionary interest, including but not limited to a payment and performance bond or other form of alternative security, adequate insurance as determined by the Risk Management Division, and a letter of credit or other adequate security to ensure completion of the development, and if necessary, to clear any liens improperly placed upon the property, to pay delinquent taxes, or to address any costs or expenses in the event of reversion or lease termination, and including a provision that all liens shall remain the responsibility of the entity from whom the property was reverted;

(vii) Include appropriate insurance requirements after providing relevant provisions of the proposed lease or deed to the Risk Management Division for review of form and content to provide recommended insurance protection;

(viii) Include a provision requiring the entity to provide proof to the County on an annual basis that the property taxes have been satisfied;

(ix) Include a provision requiring the entity to provide quarterly notarized status reports to the County Mayor or the County Mayor's designee with a copy to the District Commissioner in which the property lies at appropriate intervals regarding compliance with each milestone in the lease or deed;

(x) Include a provision that any third-party mortgages allowed under the terms of the lease or the deed shall be subordinate to the interest of the County, and that all proceeds received from the mortgage loan shall be reinvested into the property; and

(xi) If the subject property is within the Urban Development Boundary, include a provision requiring that the property owner must connect to the sanitary sewer system by a certain deadline if the property is not currently connected unless the property is non-buildable, or the conveyance is to a governmental or not-for-profit entity for public uses that do not require sanitary sewer system, and including a provision prohibiting development without providing such access (Resolution No. R-365-21).

MONITORING:

All items for the sale or lease of County property submitted to this Board shall include the appointment of a department monitor and shall include the name of the individual appointed to monitor compliance with the provisions of the deed or lease. The County Mayor or the County Mayor's designee shall monitor the payment of real estate taxes on all properties conveyed by deed or lease and shall request the Miami-Dade County Tax Collector to provide them with duplicate annual tax notices (Resolution No. R-377-09). In the event of a tenant's noncompliance with the lease the County Mayor or the County Mayor's designee shall send a written notice of termination of the lease no later than five days after the event giving rise to such termination. In the event of grantee's

noncompliance with the deed restrictions, the County Mayor or the County Mayor's designee shall record a notice of reverter or similar instrument in the public record within five days of the event giving rise to the exercise of the County's reversionary interest. The failure of the County Mayor or the County Mayor's designee to send such notice of termination or record such notice of reverter will not be construed as a waiver of the County's rights under the lease or deed to avail itself of its remedies against the tenant or grantee, unless otherwise set forth in the lease or deed.

The County Mayor or the County Mayor's designee shall, on a quarterly basis, provide a report to this Board identifying any properties which are in non-compliance or default status, the nature of the non-compliance and the amount of time such property has been in non-compliance, any steps which have been taken to enforce compliance, available remedies, and recommendations. Such report shall also identify any properties which are 30 days away from approaching a milestone or potential event of default, and any properties that have reverted, or that the lease has been terminated, due to non-compliance. The County Mayor or the County Mayor's designee shall place the completed report on an agenda of the Board or a committee of the Board in accordance with Ordinance No. 14-65, and shall attach any recorded notice of termination, or notice of lease termination.

FINAL ACTION:

If the lease or conveyance of County-owned real property is approved by the Board, the Internal Services Department or successor department will take the necessary steps to conclude the transaction and to undertake any necessary responsibility review for subsequently identified purchasers or tenants.

Thereafter the fully executed documents will be returned to the Clerk of the Board for custody. The County Mayor or County Mayor's designee will notify the Risk Management Division of all contracts accepting liability on behalf of the County or requiring either the County or the other party to provide insurance coverage. The County Mayor or the County Mayor's designee shall record all instruments of conveyance in which the County retains an interest in the Public Records of Miami-Dade County and provide a copy of the instrument to the Clerk of the Board within 30 days of execution so that the Clerk may attach and permanently store a recorded copy of the instrument together with the authorizing resolution (Resolution No. R-974-09). All leases and operating agreements shall be provided by the County Mayor or the County Mayor's designee to the Property Appraiser's office within 30 days of execution of same (Resolution No. R-791-14).

OTHER PUBLIC AGENCIES:

If property owned by the County is desired by another governmental agency for a governmental public purpose, and it is determined by the Board that the property is not needed by the County for such use, it may be conveyed at a nominal cost. It is not required for such governmental agency to execute the lease, contract, or other agreement prior to placing an item on a Board agenda. Any conveyance of a road or portions thereof to a governmental entity shall include a specific provision that such road cannot be closed without approval by the Board (Resolution No. R-461-13).

COMPETITIVE SOLICITATIONS:

To insure the County against unnecessary processing expense, an earnest money deposit is to be deposited the Internal Service Department or successor department, in each case only as and if required by the applicable solicitation documents, by all private parties or corporations submitting a bid or proposal in response to a solicitation for the sale or lease of County property.

Implementing Order

Implementing Order No.: 10-13

Title: Public Involvement Plan

Ordered: 02/02/2010 **Effective:** 02/12/2010

AUTHORITY:
Section 5.02 of the Miami-Dade County Home Rule Amendment and Charter, Section 2-8.1 of the Code of Miami-Dade County and Resolution R-273-05 of Miami-Dade County.

POLICY:
It is the policy of Miami-Dade County to implement Public Involvement Plans (PIPs) as part of major capital improvement projects that may adversely impact neighboring businesses, schools and/or residents.

Unless otherwise precluded by state or federal law, all County departments or recipients of County capital improvement funding are required to incorporate a PIP as a component of capital improvement infrastructure projects exceeding $1 million in construction cost.

The PIP may include, but is not limited to, public meetings, field assessments, innovative design, contracting construction management and evaluation techniques to minimize the disrupting effects of forthcoming infrastructure improvement projects. In the event of an emergency, the County Mayor or the County Mayor's designee may waive PIP requirements.

Additionally, department directors are encouraged to develop PIPs for other projects as appropriate, in accordance with the guidelines outlined below.

EXEMPTIONS:
Exemptions from the requirements of this Implementing Order include, but are not limited to:

- Internal renovations of existing County structures with no adverse impact on the surrounding area,
- Water and Sewer projects located within the property boundaries of their treatment plants,
- Solid Waste projects located within their facility boundaries,
- Seaport projects located within their property boundaries,
- Aviation projects located within their property boundaries and
- Transit projects located within stations or Transit facilities.

County Departments may request an exemption from the requirements of this Implementing Order for other situations not listed herein by submitting an exemption request to their respective Assistant County Manager for review and approval.

OBJECTIVE:
The objective of the PIP is to notify local governments, affected property owners, tenants, business owners, schools and the public at large of the proposed design, construction and anticipated impact of that construction. The process should allow for the resolution of controversial issues during early planning and design and as they come up later during construction. The areas of specific concerns are:

1. Access to property owners, business owners, and merchants
2. Drainage
3. Maintenance of Traffic (MOT)
4. Construction Schedule with respect to restricting working hours during peak hours, longer workdays, night work, weekend work, holiday restrictions and incentive/disincentive clauses
5. Contract time with emphasis on minimizing duration and consequent impact to the public

PUBLIC INVOLVEMENT PLAN (PIP) LEVELS

The Public Involvement Level categories identified below are intended to assist departments in determining the appropriate level of public involvement for their respective projects. Each specific plan shall be prepared taking into consideration unique project circumstances. Levels listed below are to be used as a guide only. Designation of level does not in any way restrict or designate required actions. The level designation may be used as a rule of thumb in considering the use of each option but does not replace good judgment. The project manager shall designate the project according to the Public Involvement Level as listed below:

1. **Level 1** - Project is non-controversial, causes negligible accessibility and minimal traffic disruption. Examples are:

    a. Buildings outside roadway right-of-way
    b. Small buildings or facilities with minimal impact to the public right-of-way
    c. Work outside roadway
    d. Simple rural resurfacing
    e. Minor signal work
    f. Pavement markings
    g. Bridge painting and repair outside of traffic area

2. **Level 2** - Project has general public acceptance, little or no impact on access and moderate degree of traffic disruption. Examples are:

    a. Moderate-size buildings or facilities with minimal impact to public right-of-way
    b. Urban resurfacing
    c. All work requiring traffic lane closure

3. **Level 3** - Project may be controversial, will significantly impact traffic flow or will significantly affect accessibility to properties (temporarily or permanently). Examples are:

    a. Major building, facility or roadway reconstruction outside the public right-of-way which results in impacts to public access or to the public in general
    b. Parking removal
    c. Median opening/closure
    d. Traffic signal removal

e. Major water/sewer main extension
f. Roadway widening
g. Transit/People Mover construction
h. Projects with detours

4. **Level 4-** Projects that require total closure, either permanent or temporary, for the duration of the construction or maintenance work. Examples are:

    a. Major building or facility directly impacting the public right-of-way or the public in general (solid waste facility, water & sewer treatment plants, pump stations etc.)
    b. Bridge replacement/rehabilitation
    c. Railroad crossings
    d. Subaqueous canal crossings for utilities
    e. Projects involving major environmental remediation
    f. Projects involving environmentally sensitive areas

APPLICATION OF PIP ACTIVITIES

The following table reflects PIP activities, respective impact levels and the project phases where they shall be applied:

Time of occurrence	Activity	Impact Level
Phase I (30% Design Completion)	Notice of access impact to affected property owners	1,2,3,4
Phase II (60% Design Completion)	Letter to neighbors with flyer/brochure, invitations (mass mailing) to project information workshop with property and business owners and interested public to solicit comments. Meeting with municipalities, County agencies and elected officials	2,3,4
Phase II and III (90% Design Completion)	Notice to municipalities and County agencies to solicit comments	2,3,4
All phase reviews	Phase reviews to municipalities and County officials and staff to solicit comments and concurrence	1,2,3,4
As required	Presentation(s) to municipalities, MPO, County Commission, legislators, civic and community groups and other interested public regarding design, impacts and construction status	3,4
One month prior to start of construction	Pre-construction meeting with contractor, appropriate sub-contractors, County staff, City staff and utility companies. Mass mailing of letter to neighbors including flyer/brochure with construction dates and specific project impact to traffic**(*)**. Notify District County Commissioner.	1,2,3,4
Two to four weeks prior to start of construction	Pre-construction public information meeting/open house for all interested persons to review plans, construction schedule and traffic impacts, particularly dates of total closure	2,3,4
One week prior to start of construction	News release of project start date, pertinent project information and specific traffic impact information	1,2,3,4
Throughout construction	Weekly news releases with specific traffic impact information, as warranted and as information changes	1,2,3,4
At start of construction and throughout as needed	Mass mailing of project impact, information flyers, mainly with total closures	4

(*) Notification shall contain but not be limited to the anticipated date of commencement of the project, the expected duration and, in the event that the project involves the temporary closing of a road or sidewalk or a portion of road or sidewalk, the anticipated period of such closure.

COMPONENTS OF PIP PLAN

All County departments or recipients of County capital improvement funding through Joint Participation Agreement for projects exceeding $1 million in construction cost, and that may adversely impact neighboring businesses, schools and residents, shall at a minimum, develop and implement a proposed PIP plan prior to achieving **fifty-percen**t **(50%)** design completion and a final PIP plan prior to seeking a0uthorization to advertise for construction. The final PIP plan shall incorporate the following as appropriate for the project:

- Identify each business or school within the project limits and, if the project is a major roadway, building or facility (such as those listed under Level 3 and 4), the extended project limits (¼ mile outside project limits), days and hours of construction operations and peak traffic periods, square footage, number of dedicated parking places, number of customers or students, deliveries (if scheduled) and contact person information.

- Identify specific strategies to maintain ingress and egress to businesses and schools within the extended project limits.

- Identify the number of days the project will directly and indirectly disrupt the businesses' or schools' access or parking within the extended project limits.

- Include a Maintenance-of-Traffic plan to maximize access to businesses and schools during peak traffic periods (customer or student and vehicular), scheduled deliveries and considering all hours of operation.

- Include a parking plan to maximize access to businesses and schools during peak traffic periods (customer or student and vehicular) and scheduled deliveries, and all hours of operations.

- Include a parking plan to minimize construction project and subsequent operational noise or odor in consideration of all in the vicinity of the improvement.

- Identify construction implementation methodologies that will be utilized to mitigate disruption to businesses and schools within the extended project limits. Each department or funding recipient will be responsible for minimizing the impact of its projects through close adherence to project construction schedules, breaking the project into segments, enforcing work performance in accordance with applicable specifications, working nights and weekends, and/or offering bonus incentives for early completion in addition to strictly enforcing the assessment of liquidated damages related to contractor delays.

- Identify promotional techniques (in addition to supplemental signage) to inform the community on how to access the affected businesses and schools during the construction period. Prepare and distribute promotional materials or advertisements to inform the immediate community no less than once per month that the business or school is impacted by the project. It is at the department's discretion to consider including a communications plan that provides access to project information and ensures timely notice of potential impacts via dedicated

phone lines, project websites and/or dissemination of information by local media and mailings.

- It is at the department director's discretion to assign a full time Public Involvement Officer (PIO) to help with the development and implementation of the PIP. The PIO shall inform the community that the project manager shall conduct a test of their maintenance of traffic and parking plan (for a period of not less than 2 days) and then conduct a public meeting to discuss the results and effectiveness of the test prior to start of construction. The PIO shall be available to the public to address any relevant or controversial issues for the duration of the construction period.

- Conduct no less than two public meetings during design to obtain community input to the proposed and final PIP plans. Items to be discussed include project schedule, planned dates, days and hours of construction, phasing or staging, maintenance of traffic, access mitigation, promotional activities and other relevant public involvement concerns.

- Conduct a community survey no less than sixty (60) days after completion of the project to obtain feedback on the public involvement plan and on the project's implementation. The public shall provide their survey comments directly to the affected department director. The department director shall report the survey results to the County Manager.

The respective department director and its designated project manager assigned to implement and supervise the project are responsible for preparation and implementation of the PIP. The associated records shall be retained by the implementing department in writing or audio recording. The PIP records include the proposed PIP plan and initial public meeting minutes, final PIP plan and final meeting minutes, all notices and reports associated with the implementation of each project's PIP, and any reports of stagnant work, potential disruptions and the contractor's progress. County departments shall utilize the Capital Improvements Information System (CIIS) to report on project progress or any foreseen delays.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County.

County Manager

Approved by the County Attorney as
to form and legal sufficiency

Implementing Order

Implementing Order No.: 10-16

Title: Use of the Countywide Approaching Construction Together (ACT) Viewer as a Unified Approach to Construction Work within Miami-Dade County

Ordered: 12/12/2023 **Effective:** 12/22/2023

AUTHORITY:
Section 5.02 of the Miami-Dade County Home Rule Amendment and Charter.

PURPOSE:
This Implementing Order establishes procedures requiring that departments review the Countywide ACT Viewer at various stages throughout construction project lifecycles in order to identify and respond to any potential construction conflicts. The implementation of this Implementing Order will set forth a unified approach to construction work between County departments and other governmental entities, facilitating intergovernmental collaboration, bettering the use of County resources, and minimizing construction related disturbance to residents.

APPLICABILITY:
This Implementing Order is applicable to all construction contracting departments including, but not limited to, Aviation, Community Action and Human Services, Corrections and Rehabilitation, Cultural Affairs, Fire Rescue, Internal Services, Library, Medical Examiner, Solid Waste, Parks, Recreation and Open Spaces, Police, Regulatory and Economic Resources, Seaport, Water and Sewer, Public Housing and Community Development, Homeless Trust, and Transportation and Public Works.

PROCEDURES:
For construction projects with the potential to cause conflicts with other projects, such as those that impact streets, sidewalks and public utilities, departments shall submit accurate project information to the Information Technology Department Geospatial Data Management Unit, to include boundary of scope of work, time period in which project will take place, and updated project manager contact information. Departments should ensure that this information is kept up to date throughout the project.

Additionally, departments are to review the publicly accessible ACT Viewer at several milestones throughout each project lifecycle, including the following:

(1) At the initial stages of infrastructure and facilities planning when the department identifies the broad design/development scope, schedule, goals, objectives and statutory requirements;
(2) During the design phase of each project upon review of 75% design and construction drawings;
(3) Upon submission of dry-run permit applications; and
(4) Prior to the execution of a Notice to Proceed (NTP).

The ACT Viewer will highlight projects that share common timelines and boundaries. For each highlighted project, emails will be automatically generated alerting project managers of potential collaboration opportunities. The project manager shall address any unanticipated construction conflicts that may be revealed by the ACT Viewer through interdepartmental engagement and collaboration. Where applicable, departments shall coordinate projects to minimize disturbances and more efficiently utilize County resources.

Departments are also expected to complete outreach efforts to notify the surrounding community of potential construction impacts in accordance with IO 10-13.

As enhancements continue to be made to the ACT Viewer, this Implementing Order will be reviewed on an annual basis and revised as necessary through a working group comprised of representatives from County departments including Water and Sewer, Transportation and Public Works, Aviation, Seaport, Solid Waste, Internal Services, and Parks Recreation and Open Spaces.

In order to expand and maximize use of the ACT Viewer, or any equivalent software/coordination program, and to better coordinate construction projects with non-County entities, such as municipalities, other governmental agencies and utility providers, the County will create and enter into a standard Joint Participation Agreement with any such entity that wishes to partner with the County for use of the ACT Viewer, or any equivalent software/coordination program, and to coordinate construction projects in order to minimize disruption to the County residents caused by such projects.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Approved by the County Attorney as
to form and legal sufficiency ____