

MEMORANDUM

Agenda Item No. 5(C)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

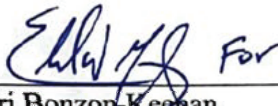
DATE: (Public Hearing: 10-18-22)
September 1, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance pertaining to Small
Business Enterprise programs;
amending sections 2-8.1.1.1.1, 2-
8.1.1.1.2, 2-10.4.01, and 10-
33.02 of the Code; creating an
additional tier to retain mid-level
firms from program graduation;
amending definitions and
program or program components
sections; deleting provisions
authorizing County Mayor to
periodically adjust firm size
limits based upon consumer price
index

Ordinance No. 22-133

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Danielle Cohen Higgins.



Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: October 18, 2022

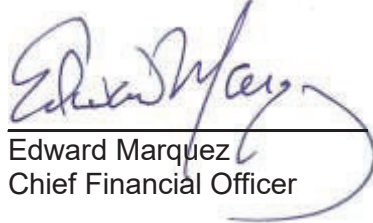
To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Fiscal Impact Statement for Ordinance Relating to Small Business Enterprise

The proposed Ordinance will create an additional tier in the Small Business Enterprise (SBE) Section of the Code that will retain mid-level firms from program graduation, amending definitions and program or program components sections. This amendment will keep mid-level firms within the SBE program, the size standards for each SIC Code will be increased to allow firms which have graduated within the last three years to re-enter the program and extend the participation of those that are scheduled to graduate.

It is not anticipated that this Ordinance will have a fiscal impact to the County, as no additional staffing or operating resources will be required.


Edward Marquez
Chief Financial Officer

Memorandum



Date: October 18, 2022

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Social Equity Statement for Ordinance Pertaining to Small Business Enterprise Programs; Amending Sections 2-8.1.1.1.1, 2-8.1.1.1.2, 2-10.4.01, and 10-33.02 of the code of Miami-Dade County, Florida; creating an additional tier to retain Mid-Level firms from program graduation

The proposed Ordinance pertains to amending sections 2-8.1.1.1.1, 2-8.1.1.1.2, 2-10.4.01, and 10-33.02 of the code of Miami-Dade County, Florida, creating an additional tier to retain Mid-Level firms from program graduation; amending definitions and program or program components sections; deleting provisions authorizing County Mayor or County Mayor's designee to periodically adjust firm size limits based upon consumer price index.

The proposed Ordinance may have a social benefit for the firms which graduated from the Small Business Enterprise (SBE) programs because they exceeded the required size standards for the SBE Programs. This Ordinance will allow firms which graduated from said SBE Programs within the last three years to re-enter the Program, and SBE firms that are set to graduate, their participation will be extended. Additionally, the County will benefit from the increase size standards and creation of additional tiers and participation levels, based on the potential increase in the number of SBE firms that could compete on County contracts.

A handwritten signature in blue ink that reads "Edward Marquez".

Edward Marquez
Chief Financial Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 18, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 5(C)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 5(C)
10-18-22

ORDINANCE NO. 22-133

ORDINANCE PERTAINING TO SMALL BUSINESS ENTERPRISE PROGRAMS; AMENDING SECTIONS 2-8.1.1.1.1, 2-8.1.1.1.2, 2-10.4.01, AND 10-33.02 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; CREATING AN ADDITIONAL TIER TO RETAIN MID-LEVEL FIRMS FROM PROGRAM GRADUATION; AMENDING DEFINITIONS AND PROGRAM OR PROGRAM COMPONENTS SECTIONS; DELETING PROVISIONS AUTHORIZING COUNTY MAYOR OR DESIGNEE TO PERIODICALLY ADJUST FIRM SIZE LIMITS BASED UPON CONSUMER PRICE INDEX; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the Miami-Dade County (“County”) Small Business Enterprise (“SBE”) programs provide business opportunities to certified small businesses, to aid in their growth, development, and contribution to the County and South Florida economies; and

WHEREAS, a construction related enterprise, including a design-build firm, and any firm providing trades and/or services for the completion of a construction project, as defined in section 10-33.02 of the Code of Miami-Dade County, Florida (the “Code”), (i) which has an actual place of business in the County, (ii) the individual net worth of any of its owners does not exceed \$1,500,000, and (iii) whose average annual gross revenues for the last three years do not exceed (a) \$10,000,000 for Standard Industry Code (“SIC”) 15 – Building Construction, General Contractors and Operative Builders, (b) \$6,000,000 for SIC 16 – Heavy Construction, other than Building Construction, or (c) \$5,000,000 for SIC 17 – Specialty Trade Contractors, may become certified in the Small Business Enterprise Construction Services Program (“SBE-Con” or “CSBE”); and

WHEREAS, a SBE shall graduate and is no longer eligible for program participation when it exceeds either (i) the personal net worth limit of any of its owners, or (ii) the specific size limits stated for the small business program based on the firm's three year average gross revenues; and

WHEREAS, a SBE that graduates continues to submit financial information as to cumulative gross revenue and bonding capacity to SBD annually for three years thereafter in order to further the County's ability to assess the effectiveness of the program; and

WHEREAS, from 2019 to 2021 a total of 16 firms graduated from the SBE-Con program, because the three year average gross revenues exceeded the size standard for the SIC Code in which they were certified; and

WHEREAS, to keep mid-level firms within the SBE-Con program, the size standards for each SIC Code should be increased to allow firms that have graduated within the last three years to re-enter the program and extend the participation of those that are scheduled to graduate; and

WHEREAS, new participation levels should be created to extend the participation of the mid-level firms in the SBE-Con program; and

WHEREAS, an increase to the size standard and additional participation levels should also be applied to the (i) SBE-Architectural & Engineering, (ii) SBE-Services, and (iii) SBE-Goods programs in a similar manner; and

WHEREAS, the County will benefit from an increase to the size standards and creation of additional tiers and participation levels, to extend the ability of mid-level firms to participate in all SBE programs,

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

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

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

* * *

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

* * *

21. *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 (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) Tier 1 — \$0 to \$750,000;
- (ii) Tier 2 — \$750,000.01 to \$2,000,000; ~~[[€]]~~
- (iii) Tier 3 — \$2,000,000.01 to \$5,000,000~~[[€]]~~>>;
or
- (iv) Tier 4 -- \$5,000,000.01 to \$8,000,000.<<

No firm shall be certified as a SBE where the personal net worth of any of its owners is more than one million five hundred thousand dollars (\$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

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.

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.]]~~

* * *

(3) *Program.*

* * *

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

1. Within the fiscal year, it is required that County departments expend with SBEs 100 percent of the total value of contracts two hundred-fifty thousand dollars (\$250,000.00) or less for services. The departmental requirement shall be complied with unless SBD determines that there is either not enough capacity, or the contract(s) can only be handled by a non-SBE firm(s). The total value of Public Health Trust contracts applicable under this section shall remain at one hundred thousand dollars (\$100,000.00).
2. 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.

* * *

(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; ~~[[and]]~~ (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<<.

* * *

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.

* * *

3. *Bid Preference:*

* * *

- 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.

* * *

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

Sec. 2-8.1.1.1.2. Small Business Enterprise Goods Program.

* * *

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

* * *

22. *Small Business Enterprise ("SBE" or "SBE-Goods")* means a business entity certified by SBD, providing services, which has a valid business tax receipt issued by Miami-Dade County at least one (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) Tier 1 — \$0 to \$750,000;
- (ii) Tier 2 — \$750,000.01 to \$2,000,000; ~~[[e]]~~
- (iii) Tier 3 — \$2,000,000.01 to \$5,000,000~~[[f]]~~>>;
or
- (iv) Tier 4 -- \$5,000,000.01 to \$8,000,000.<<

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 one million five hundred thousand dollars (\$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.]]~~

* * *

(3) *Program.*

* * *

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

1. Within the fiscal year, it is required that County departments expend with SBEs 100 percent of the total value of contracts two hundred-fifty thousand dollars (\$250,000.00) or less for goods. The departmental requirement shall be complied with unless SBD determines that there is either not enough capacity, or the contract(s) can only be handled by a non-SBE firm(s). The total value of Public Health Trust contracts applicable under this section shall remain at one hundred thousand dollars (\$100,000.00).
2. 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.

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(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; ~~[[and]]~~ (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<<.

* * *

- 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.

* * *

3. *Bid Preference:*

* * *

- 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.

* * *

Section 3. Section 2-10.4.01 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

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

* * *

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

* * *

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:

- i. Tier 1 CBE-A/Es in the case of architectural, landscape architectural, engineering, or surveying and mapping services - 3-year average annual gross revenues of \$0 to \$500,000.00.
- ii. Tier 2 CBE-A/Es in the case of architectural, landscape architectural, engineering, or surveying and mapping services - 3-year average annual gross revenues of \$500,000.01 to \$2,000,000.00.
- iii. Tier 3 CBE-A/Es in the case of architectural services - 3-year average annual gross revenues of \$2,000,000.01 to \$4,500,000.00.
- iv. Tier 3 CBE-A/Es in the case of landscape architectural services, engineering, or surveying and mapping services - 3-year average annual gross revenues of \$2,000,000.01 to \$6,000,000.00.
- >>v. Tier 4 CBE-A/Es in the case of architectural services - 3-year average annual gross revenues

of \$4,500,000.01 to \$6,500,000.00.

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

~~[[The County Mayor or designee shall be authorized to adjust the CBE A/E size limits every five (5) years at his/her discretion based on the local Consumer Price Index for All Urban Consumers (CPI-U) calculated by the U.S. Department of Commerce or other appropriate tool of inflation measures as applied to Miami-Dade County for the preceding five (5) years. 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.]]~~

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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 ~~[[or—greater]]>>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.<<

~~[[LL.]]>>~~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.

~~[[MM.]]>>~~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:*

* * *

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, ~~[[and/or]]~~ 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, ~~[[and/or]]~~ 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, ~~[[and/or]]~~ 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.

* * *

Section 4. Section 10-33.02 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

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

* * *

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

* * *

Contracting participation level refers to the level in which a CSBE firm is classified based on the average gross revenues of the firm over a three-year period. The >>four (4)<< [[three (3)]] contracting participation levels are:

1. Level I—Three-year average gross revenues of \$0—\$2,000,000.00.
2. Level II—Three-year average gross revenues from \$2,000,000.01 but not exceeding \$5,000,000.00.
3. Level III—Three-year average gross revenues from \$5,000,000.01 but not exceeding \$10,000,000.00.
- >>4. Level IV—Three-year average gross revenues from \$10,000,000.01 but not exceeding \$15,000,000.00.<<

Prime contracts with estimated project construction cost in excess of ~~[[ten]]~~>>fifteen<< million dollars (~~[[\\$10,000,000.00]]~~>>\$15,000,000.00<<) shall be "open market" contracts which all firms can bid on.

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Set-aside means reservation for competition solely among CSBEs of a given prime County contract whose estimated cost is ten million dollars (\$10,000,000.00) or less, and such construction contracts will be classified into one (1) of the >>four (4)<< ~~[[three (3)]]~~ contracting participation levels based on estimated project cost:

1. Level I Set-aside—For competition solely among Level I prime contractors of a given County contract for construction project valued from \$0 to \$2,000,000.00.
2. Level II Set-aside—For competition solely among Level I and II prime contractors of a given County contract for construction project valued from \$2,000,000.01 to \$5,000,000.00. Level III prime contractors may not compete for Level II set-asides contract as prime contractors, unless Level I and Level II prime contractor unavailability exists.
3. Level III Set-aside—For competition solely among Level I, Level II, and Level III prime contractors of a given County contract for construction project valued from \$5,000,000.01 to \$10,000,000.00.

>>4. Level IV Set-aside—For competition solely among Level I, Level II, Level III, and Level IV prime contractors of a given County contract for construction project valued from \$10,000,000.01 to \$15,000,000.00.<<

SIC (Standard Industrial Classification) or the equivalent North American Industry Classification System (NAICS) code is a code that was developed by the Federal Office of Management and Budget for use in the classification of establishments by type of activity in which they are engaged.

Small Business Enterprise for Construction Services (CSBE) means a construction related enterprise, including a design-build firm, and any firm providing trades and/or services for the completion of a construction project, as defined in Chapter 10 of the Code of Miami-Dade County, which has an actual place of business in Miami-Dade County and

whose average annual gross revenues for the last three (3) years do not exceed: ~~[[ten]]>>fifteen<<~~ million dollars ~~([[\$10,000,000.00]]>>\$15,000,000.00<<)~~ for SIC 15 - Building Construction, General Contractors and Operative Builders; ~~[[six]]>>twelve<<~~ million dollars ~~([[\$6,000,000.00]]>>\$12,000,000.00<<)~~ for SIC 16 - Heavy Construction, other than Building Construction; or ~~[[five]]>>eight<<~~ million dollars ~~([[\$5,000,000.00]]>>\$8,000,000.00<<)~~ for SIC 17 - Specialty Trade Contractors. CSBEs shall be categorized by the type of construction they perform in accordance with the two-digit Standard Industrial Classification (SIC) code, or the six-digit North American Industry Classification System (NAICS), of the Census applicable to such type of construction. A CSBE will graduate out of the program upon notification by SBD that it has exceeded these size limits based on its three-year average annual gross revenues. A certified CSBE that graduates out of the program shall continue to submit financial information as to cumulative gross revenue and bonding capacity to SBD annually for 3 years thereafter in order to further the County's ability to assess the effectiveness of the program.

~~[[The County Mayor or designee shall be authorized to adjust the CSBE size limits every five (5) years at his/her discretion based on the local Consumer Price Index for All Urban Consumers (CPI-U) calculated by the U.S. Department of Commerce or other appropriate tool of inflation measures as applied to Miami-Dade County for the preceding five (5) years. 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.]]~~

CSBEs must be certified by SIC or NAICS code, and classified into one (1) of the >>four (4)<<~~[[three (3)]]~~ contracting participation levels. The lack of bonding capacity shall not preclude an applicant from being certified as a CSBE. As part of the certification process, CSBEs must go through a prequalification process which will be used to determine which of the >>four (4)<<~~[[three (3)]]~~ contracting participation levels the CSBE will be placed in based on the firm's >>four (4)<<~~[[three (3)]]~~ year average gross revenues. The contracting participation levels are as follows:

1. Level I—Three-year average gross revenues of \$0.00—\$2,000,000.00;
2. Level II—Three-year average gross revenues above \$2,000,000.00 but not exceeding \$5,000,000.00; ~~[[or]]~~
3. Level III—Three-year average gross revenues above

\$5,000,000.00 but not exceeding \$10,000,000.00[[-]]>>, or

4. Level IV—Three-year average gross revenues above \$10,000,000.00 but not exceeding \$15,000,000.00.<<

A firm's eligibility to participate in the CSBE program and the contracting participation level at which it will participate shall be determined based on the three-year average gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A [which can be found in the County Clerk's office attached to Ordinance Number 97-52]. No firm shall be certified as a CSBE where the individual net worth of any of its owners is more than one million five hundred thousand dollars (\$1,500,000.00). Representations as to average gross revenues, personal net worth of owners and payroll shall be subject to audit.

Notwithstanding any other provision of this Section 10-33.02, Level II and Level III CSBEs certified in SIC Code 17 - Specialty Trade Contractors, may bid on a specialty trade contract set aside for CSBEs whose estimated cost is above \$50,000.00 and may participate in any specialty trade portion of the work of a contract subject to a CSBE subcontractor goal where the cost of the specialty trade portion of the contract work is above \$50,000.00.

* * *

(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:

* * *

8. *Contract measures:*

- a. *Contract set-asides:* The County Commission or Public Health Trust may determine it is in its best interest to waive

any competitive bidding or selection requirement and set-aside a prime County construction contract for CSBEs when determined, prior to bid advertisement, that there are at least three (3) CSBEs available in the Standard Industrial Classification (SIC) category, as well as in the contracting participation level that the contract is classified in (based on the estimated project construction cost). Contracts with estimated project construction cost less than or equal to ~~[[ten]]~~>>fifteen<< million dollars (~~[[\$10,000,000.00]]~~>>\$15,000,000.00<<) may be set-aside for competition by CSBEs. Such contracts will be placed into one (1) of >>four (4)<<~~[[three—(3)]]~~ contracting participation levels based on the estimated project construction cost, and will be classified by Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) code. The >>four (4)<<~~[[three—(3)]]~~ contracting participation levels, based on average gross revenues for the past three (3) years are:

1. Level I—Three-year average gross revenues of \$0—\$2,000,000.00
2. Level II—Three-year average gross revenues above \$2,000,000.01 but not exceeding \$5,000,000.00
3. Level III—Three-year average gross revenues above \$5,000,000.01 but not exceeding \$10,000,000.00
- >>4. Level IV—Three-year average gross revenues above \$10,000,000.01 but not exceeding \$15,000,000.00<<

CSBEs will also be categorized by contracting participation level, which will be determined by the Department of Small Business Development (based, in part, on the CSBE's prequalification package).

CSBEs prequalified in one (1) Contracting Participation Level (e.g.>>1<< those in

Contracting Participation Level III) may not bid on a lower level prime County contract set-aside for CSBEs (e.g., a three hundred thousand dollar (\$300,000.00) project which falls into Level I). However, a CSBE prequalified in a lower level may bid on contracts whose estimated cost falls within a higher level (e.g., a Level I CSBE may bid on a Level II or III, or IV contract).

* * *

Section 5. 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 6. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word “ordinance” may be changed to “section,” “article,” or other appropriate word.

Section 7. 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:

October 18, 2022

Approved by County Attorney as to form and legal sufficiency:

EWJ for
dsh

Prepared by:

David Stephen Hope

Prime Sponsor: Commissioner Danielle Cohen Higgins