

# MEMORANDUM

Agenda Item No. 7(B)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

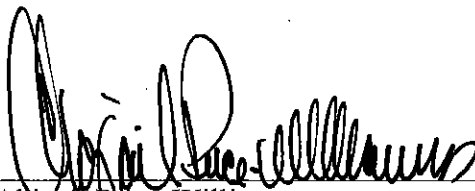
**DATE:** (Second Reading 4-10-18)  
February 21, 2018

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Ordinance pertaining to Small Business Enterprise Programs; amending sections 10-33.02, 2-10.4.01, 2-8.1.1.1.1, 2-8.1.1.1.2, 2-11.16, 2-8.1, 2-8.8, and 2-8.9, and 10-34 of the Code to require use of Miami-Dade County's web-based system for County contracts; provide for application of certain goals for projects with an estimated value exceeding \$700,000.00; renaming and amending duties of the Miami-Dade County Advisory Board related to the an Small Business Enterprise Program; amending definitions, program components, enforcement, penalties, county responsibilities, and other relevant sections

Ordinance No. 18-33


The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Audrey M. Edmonson.

  
Abigail Price-Williams  
County Attorney

APW/cp

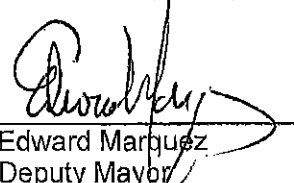
# Memorandum



**Date:** April 10, 2018  
**To:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners  
**From:** Carlos A. Gimenez   
Mayor  
**Subject:** Fiscal Impact for Ordinance Pertaining to Small Business Enterprise Programs

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Implementation of this ordinance will not have a fiscal impact to Miami-Dade County as it will not result in additional staffing needs or future operational costs. The cost of implementing this software was included in the Internal Services Department Small Business Development's FY 2017-18 adopted operating budget.

  
Edward Marquez  
Deputy Mayor

Fis03818 180276

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# Memorandum



**Date:** April 10, 2018

**To:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

**Subject:** Social Equity Statement for Ordinance Relating to Small Business Enterprise Programs, Amending Sections 10-33.02, 2-10.4.01, 2-8.1.1.1.1, 2-8.1.1.1.2, 2-11.16, 2-8.1, 2-8.8, and 2-8.9, and 10-34 of the County Code

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The proposed ordinance amends Sections 10-33.02, 2-10.4.01, 2-8.1.1.1.1, 2-8.1.1.1.2, 2-11.16, 2-8.1, 2-8.8, and 2-8.9, and 10-34 of the County Code to (1) require bidders to utilize the County's web-based system (Contract Compliance and Workforce Management System) and to submit make-up requirements, identify certified SBE firms and subcontractors used in work performed; (2) apply SBE Goods Program and SBE Services Program for any project exceeding \$700,000; and (3) change certain programs related to SBE Construction Services, Architecture and Engineering, Service Programs, Goods Program, Construction Contracts, Fair Subcontracting Practices, and the Living Wage Ordinance for County service contracts and County employees.

Increasing the usage of the above-mentioned web-based system, which tracks compliance with certain SBE contract requirements, Workforce Program requirements, and subcontractor payments, will provide meaningful accountability and transparency for both Miami-Dade County and firms conducting business with the County. The web-based system was designed to allow firms the ability to view contracts at a glance and submit required information with ease and efficiency.

A handwritten signature in black ink, appearing to read "Edward Marquez", written over a horizontal line.

Edward Marquez  
Deputy Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** April 10, 2018

**FROM:**   
Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 7(B)

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 \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 7(B)  
4-10-18

ORDINANCE NO. 18-33

ORDINANCE PERTAINING TO SMALL BUSINESS ENTERPRISE PROGRAMS; AMENDING SECTIONS 10-33.02, 2-10.4.01, 2-8.1.1.1.1, 2-8.1.1.1.2, 2-11.16, 2-8.1, 2-8.8, AND 2-8.9, AND 10-34 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO REQUIRE USE OF MIAMI-DADE COUNTY'S WEB-BASED SYSTEM FOR COUNTY CONTRACTS; PROVIDE FOR APPLICATION OF CERTAIN GOALS FOR PROJECTS WITH AN ESTIMATED VALUE EXCEEDING \$700,000.00; RENAMING AND AMENDING DUTIES OF THE MIAMI-DADE COUNTY ADVISORY BOARD RELATED TO THE SMALL BUSINESS ENTERPRISE PROGRAM; AMENDING DEFINITIONS, PROGRAM COMPONENTS, ENFORCEMENT, PENALTIES, COUNTY RESPONSIBILITIES, AND OTHER RELEVANT SECTIONS; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

**Section 1.** Section 10-33.02 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:<sup>1</sup>

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

\* \* \*

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

*Advisory board* means the Community Small Business Enterprise Board >>("CSBE Advisory Board")<<

<sup>1</sup> 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.

created for the purpose of reviewing program activities and results, and for making recommendations to ~~[[the Department—of]]~~ Small Business Development (>>“<<SBD>>”<<) and the Board of County Commissioners (~~[[BCE]]~~)>>“County Commission”<<) on matters pertaining to the program.

\* \* \*

>>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.<<

\* \* \*

Joint Venture means ~~[[an association of two (2) or more CSBEs]]~~ >>a business arrangement of two or more parties, in which at least one is a CSBE that agrees to pool its resources for the purpose of accomplishing a specific task<<.~~[[Joint ventures shall be subject to the size limitations set forth in this section; such size limitations include affiliates as set forth in Appendix A [which can be found in the County Clerk’s office attached to Ordinance Number 97-52].]]~~

>>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 Construction Services makeup requirement and identify the certified CSBE 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.<<

\* \* \*

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. ~~[[A copy of the Miami-Dade County Mentor-Protege Program is provided as Attachment 1 [which can be found in the County Clerk's office attached to Ordinance Number 97-52].]]~~ >>The details of this program shall be provided in Implementing Order No. IO 3-22.<<

\* \* \*

>>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 CSBE(s).<<

\* \* \*

(3) *Program Components:*

- A. *Application.* Except where federal or state laws or regulations mandate to the contrary, the provisions of this ordinance shall require review of all construction contracts 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 contract measures as set forth in this section. The County ~~[[Manager]]~~ >>Mayor<< shall prepare administrative orders, >>implementing orders,<< bid, and contract documents implementing the Bonding and Financial Assistance Program, the Management and Technical Assistance Programs, the Mentor-Protege Program and other related programs addressed in this section. 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 CSBE program in a manner consistent with

its application to County construction contracts. 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. The words "County ~~[[Manager]]~~ >>Mayor<<" in this section shall mean the County ~~[[Manager]]~~ >>Mayor<< or his or her designee.

- 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:

\* \* \*

2. *Mentor-Protege Program:* This program is a community based effort involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The program is an effort to overcome difficulties that typically inhibit or restrict the success of small businesses and is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. It is expected that as a result of the Mentor-Protege Program, Protege 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. The program will provide a community benefit by strengthening emerging businesses and providing them with opportunities for growth, expansion and increased participation in Miami-Dade County's economic development. To be eligible for incentives under the Mentor-Protege Program, the ~~[[M]]~~ >>m<<entors and ~~[[Protege]]~~ >>proteges<< must be registered by ~~[[the Department of Small Business Development]]~~ >>SBD<< in the Mentor-Protege Program.~~[[The specific details of the~~



~~proposed program are shown in Attachment 1  
[which can be found in the County Clerk's  
office attached to Ordinance Number 97-52].]~~

\* \* \*

6. *Subcontractor goals:*

- a. *In general.* The County Commission or Public Health Trust may establish subcontractor goals for any specialty and/or construction related trade or service portion of the work in a contract based on estimates made prior to bid advertisement of the quality, quantity and type of subcontracting opportunities provided by the contract, and of the availability of CSBEs to afford effective subcontracting competition therefor. >>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.<< After bid advertisement, or other formal public notice, the established subcontractor goal may be reduced only with the approval of the County Commission, >>or << Public Health Trust.

Where a first tier subcontractor goal has been imposed, bid documents shall require bidders to submit a ~~[[Schedule Intent Affidavit]]~~ >>Certificate of Assurance<<[[;]] on the bid submittal due date >>and a Utilization Plan, via the County's web-based system within the time frame specified by SBD.<<[[~~identifying all CSBEs to be utilized to meet the first tier subcontractor goal and the trade designation of work each will perform.~~]] Where a second, third and fourth tier subcontractor goal has been imposed, the bid documents shall require bidders to >>include a commitment of the bidder to meet such goals in the aforementioned Certificate of

Assurance.<<[[submit a commitment letter committing the bidder to meet such goal. Upon notification by the Department of Small Business Development, bidders may cure correctable defects that exist on the Schedule of Intent Affidavit within forty-eight (48) hours after notification by SBD.]] Failure to submit the required [[Schedule of Intent Affidavit or commitment letter]] >>Certificate of Assurance<< at the time of bid submission shall render the bid>>der<< non-[[responsive]] >>compliant to the contract requirement and this section<<. [[Failure to correct identified defects on the Schedule of Intent Affidavit, within forty-eight (48) hours shall render the bid non-responsive.]] >>A CSBE firm may fulfill a subcontractor goal in only one goal type per contract.<<

Bidders whose bids fail to meet the specified first tier subcontractor goal, in order to remain eligible for award of the contract, must submit evidence, [[on the bid submission due date]] >>with the Utilization Plan<<, proving the lack of available CSBEs to afford effective competition therefor.

A successful prime bidder that is a CSBE or a joint venture may perform up to fifty (50) percent of a first tier CSBE subcontractor goal with its own forces. The remaining percentage of such first tier subcontractor goal work shall be performed by other CSBEs.

Bid documents shall provide that:

- (i) Only expenditures to CSBEs for performing a commercially useful function shall be counted toward meeting a specified subcontractor goal[[;]]>><<

- (ii) Expenditures to CSBEs for acting essentially as a conduit to transfer funds to a non-CSBE shall not be counted toward meeting a subcontractor goal unless such conduct receives prior approval from ~~[[the Department of Small Business Development]]~~ >>SBD<< as consistent with normal industry practice~~[[;and]]~~>>.<<
- (iii) Expenditures to CSBEs who subcontract work further to non-CSBEs shall not be counted toward meeting a subcontractor goal unless such subcontracting receives prior approval from ~~[[the Department of Small Business Development]]~~ >>SBD<< as consistent with normal industry practice.
- (iv) Only expenditures to CSBEs made under a written first tier subcontract executed by both the prime contractor and the CSBE shall be counted towards meeting a first tier subcontractor goal. If the prime contractor exceeds the first-tier CSBE subcontractor goal, the amount by which the first-tier CSBE subcontractor goal is exceeded shall count towards fulfillment of the second, third and fourth tier subcontractor goal on that contract. Only expenditures made under a written second, third or fourth tier subcontract executed by both the next tier level subcontractor and the lower tier CSBE subcontractor shall be counted towards meeting a second, third or fourth tier subcontracting goal.
- (v) The bidder who is awarded a contract having a second, third or fourth tier subcontractor goal shall notify SBD in writing, prior to initiating the process to select lower tier CSBEs whose participation will be utilized to meet

such goal, of the name, address and tier level of the subcontractor who will award the lower tier subcontract to a CSBE, the scope of work for such lower tier subcontract and the bid submission date for such lower tier subcontract. The prime contractor shall obtain SBD's approval prior to the award of any lower tier subcontract that will be utilized to meet a lower tier subcontractor goal.

- (vi) Contracts in excess of twenty-five million dollars (\$25,000,000.00) which have subcontractor goals shall require the prime contractor during the term of the contract to make a quarterly presentation to the ~~[[Review Committee]]~~ >>CSBE Advisory Board<< on his or her performance in meeting such goal.

Bid documents shall allow bidders to challenge or protest a subcontractor goal established under this section by submitting no later than ten (10) business days prior to the scheduled bid opening date the reasons for such challenge or protest in writing to the department responsible for the contract. Challenges or protests to a CSBE subcontractor goal by bidders after the time specified in the preceding sentence shall not be heard by the County Commission or Public Health Trust.

b. *Application to Construction Manager-at-Risk contracts.*

- (i) *Construction management services portion.* For Construction Manager-at-Risk contracts, the County Commission may establish, where appropriate and upon the recommendation of ~~[[the Review Committee]]~~ >>SBD<<, first tier CSBE subcontractor goals

applicable to the construction management portion thereof. Such goal shall not be applicable to the procurement of trade packages on the actual construction project. Bidders for CM-at-Risk contracts to which a first tier CSBE subcontractor goal has been established for construction management services under this paragraph shall submit the ~~[[Schedule of Intent Affidavit]]~~ >>Certificate of Assurance<< and follow the procedures and timing therefor applicable to contracts in general under subpart a) above.

(ii) *Actual construction portion of the work.* For CM-at-Risk contracts, subcontractor goals for the actual construction portion of the work may be established where appropriate by the County ~~[[Manager]]~~ >>Mayor<< or the ~~[[Manager's]]~~ >>Mayor's<< designee for 1st, 2nd, 3rd or 4th tier subcontractors upon the recommendation of ~~[[the Review Committee]]~~ >>SBD<< based on estimates made prior to advertisement of the bid package of the quality, quantity and type of subcontracting opportunities provided by the bid package and of the availability of CSBEs to afford effective subcontracting therefor.

(a) *Overall subcontracting goal.* Where an overall CSBE subcontracting goal has been established for the actual construction portion of the work, the CM-at-Risk shall submit the ~~[[Schedule of Intent Affidavit]]~~ >>Utilization Plan<< to the County at the time the Final Guaranteed Maximum Price is due identifying

all CSBEs utilized to meet the overall goal, and the trade designation of work and percentage of the Final Guaranteed Maximum Price each will perform.

- (b) *First tier subcontractor goal.*  
 Where a first tier CSBE subcontracting goal has been established, bidders to the CM-at-Risk for contracts as Primary Trade Contractors shall submit at the time of bid submission to the CM-at-Risk ~~[[the Schedule of Intent Affidavit]]~~ >>a Certificate of Assurance, on the bid submittal due date and a Utilization Plan within the time period specified by SBD,<< identifying all CSBEs to be utilized to meet such goal, the trade designation of the work and the percentage of the bid each identified CSBE will perform. Failure to submit the required ~~[[Schedule of Intent Affidavit]]~~ >>Certificate of Assurance and Utilization Plan<< within the required time frame may render the bid>>der<< non-~~[[responsive]]~~ >>compliant<<, or subject to sanctions or penalties as outlined in the contract or the>>Implementing<< ~~[[Administrative]]~~ Order. The use of CSBEs at the Primary Trade Contractor level and at the level of contractors that directly contract with the Primary Trade Contractors shall count towards meeting the first-tier CSBE subcontractor goal on the contract. In addition, if the CM-at-Risk exceeds the first-tier CSBE subcontractor goal, the amount by which the first-tier CSBE subcontractor goal is exceeded shall count towards

fulfillment of the second, third and fourth tier subcontractor goal on that contract. However, if the CM-at-Risk exceeds the second, third and fourth tier subcontractor goal, the amount that the second, third and fourth tier subcontractor goal is exceeded shall not count towards fulfillment of the first-tier subcontractor goal.

(c) *Second, third and fourth tier subcontractor goals.* Where a second, third or fourth tier subcontractor goal has been established for the actual construction portion of the work under a CM-at-Risk contract, the construction manager at risk awarded the contract shall notify SBD in writing, prior to initiating the process to select lower tier CSBEs whose participation will be utilized to meet such goal, of the name, address and tier level of the subcontractor who will award the lower tier subcontract to a CSBE, the scope of work for such lower tier subcontract and the bid submission date therefor. The construction manager at risk awarded the contract shall obtain SBD's approval prior to the award of any lower tier subcontract that will be utilized to meet a lower tier subcontract goal.

(iii) *Reduction in established subcontractor goal and periodic reporting to the Commission.* After bid advertisement, or other formal public notice, the established subcontractor goal on a CM-at-Risk contract for construction management services may be reduced only with the approval of the County

Commission or Public Health Trust. After bid advertisement or other formal notice, the established subcontractor goal applicable to the actual construction portion of the work may be reduced only with the approval of the ~~[[Manager]]~~ >>Mayor<<. The County ~~[[Manager]]~~ >>Mayor<< shall periodically report to the Board of County Commissioners on all goals on Construction Manager-at-Risk contracts.

(iv) *Compliance responsibilities.* The ~~[[construction manager at risk]]~~ >>Construction Manager-at-Risk<< shall comply with the requirements of this subsection regarding any CSBE subcontractor goal that has been applied to any portion of the work of the CM-at-Risk contract.

c. *Application to contracts for environmental services where construction tasks are involved.* For contracts for environmental services where construction tasks are involved, CSBE subcontractor goals may be established by the County ~~[[Manager]]~~ >>Mayor<< upon the recommendation of ~~[[the Review Committee]]~~ >>SBD<< based on estimates made prior to awarding such tasks and of the availability of CSBEs to afford effective subcontracting therefor.

\* \* \*

9. *Advisory board:* There is hereby created a ~~[[Miami-Dade County Advisory]]~~ >>Community Small Business Enterprise Advisory Board or CSBE Advisory Board<< ~~[[Board]]~~ for the CSBE Program. Board members shall be appointed by the Board of County Commissioners and shall consist of one each of the following:



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The terms of each member shall be two years.  
Members shall serve without compensation.

The ~~[[a]]~~ >>A<<dvisory board is created for the purpose of providing general program oversight and assisting ~~[[the Department of]]~~ Small Business Development in tracking and monitoring the results and effectiveness of the CSBE Program. The ~~[[a]]~~ >>A<<dvisory board shall not assume ~~[[the Department of]]~~ Small Business Development's administrative or other responsibilities. The ~~[[a]]~~ >>A<<dvisory board may serve as liaison between program participants and the local business community, recommend additional program incentives, participate in the recruitment of prospective participant's for the CSBE program, and review and report on the program's progress.

~~[[Within one (1) year after inception of the CSBE program, the advisory board shall recommend to the County Commission the maximum length of time a CSBE may participate in the program.]]~~

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

The County Mayor or designee shall approve the replacement of any of the delineated recommending organizations above, where said organization(s) fails to either (i) provide a list of recommended appointees within thirty (30) days of written notice from ~~[[the Department of]]~~ Small Business Development, or (ii) continue to operate in Miami-Dade County, or the appointed CSBE Advisory Board member fails to participate in board activities for a period of six (6) months. The current CSBE Advisory

Board shall provide the name(s) of a recommended replacement organization(s) to be considered by the County Mayor, by majority vote.

\* \* \*

(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.

1. Small Business Development shall maintain [[and ~~publish at least every other week~~]] an updated list of CSBEs, identifying each listed CSBE based on each Standard Industry Classification (SIC) category or North American Industry Classification System (NAICS) code and each specialty trade the CSBE is certified in, and noting what contracting participation level the firm is classified in.

\* \* \*

(5) *Enforcement:* Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's violation of or failure to comply with this ordinance or its implementing orders may result in the imposition of one (1) or more of the following sanctions:

- i. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
- ii. Work stoppage;
- iii. Termination, suspension, or cancellation of the contract in whole or part;

- iv. In the event a bidder or CSBE attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Miami-Dade County Code, the County shall, whenever practicable, terminate the contract or require the termination or cancellation of the first tier subcontract for the project on which the bidder or CSBE committed such acts. In addition, and as a further sanction, the County Mayor or ~~[[his]]~~ >>Mayor's<< designee may impose any of the above-stated sanctions on any other contracts or first tier subcontracts the bidder or CSBE has on County projects. In each instance, the bidder or CSBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The bidder or CSBE may also be subject to debarment.
- v. The foregoing notwithstanding, the County Mayor or designee shall include language in all prospective contracts containing a CSBE measure which provides that, in addition to any other sanction for failure to fulfill the CSBE measure requirements, the contractor's eligibility to receive any future ~~[[e]]>>C<<ounty~~ contracts may be conditioned upon the contractor making up the deficit in CSBE participation in such future contracts by having CSBE(s) perform equal to double the dollar value of the deficiency in the CSBE measure in the prior contract. Contract language shall provide that in order to be eligible for future county contracts, a contractor who fails to meet an established CSBE goal shall submit a CSBE Make-up Plan for the approval of the Director. A Make-up Plan ~~[[and a corresponding Schedule of Intent Affidavit]]~~ must be submitted as part of any bid or proposal ~~[[submitted]]~~ for future contracts ~~[[at the time of bid or proposal submittal]]~~ >>as part of the Utilization Plan submitted via the County's web-based system<<. The ~~[[Schedule of Intent Affidavit]]~~ >>Make-up Plan<< must identify all CSBEs to ~~[[be utilized to]]~~ meet the first tier

subcontractor goal and the trade designation of work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to >>submit<< ~~[[include]]~~ the required ~~[[Schedule of Intent Affidavit]]~~ >>Make-up Plan<< with ~~[[bids or proposals]]~~ >>the Utilization Plan<< for any future contracts shall result in the submittal being deemed ~~[[nonresponsive]]~~ >>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 ~~[[p]]~~>>P<<lan, 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 ~~[[p]]~~>>P<<lan, 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 ~~[[p]]~~>>P<<lan, 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 ~~[[e]]~~>>C<<ounty 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 CSBE measure otherwise applicable to the future contract.

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

1. A CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE but which is being performed by a non-CSBE firm;

2. A prime contractor not meeting CSBE Program trade set-aside or subcontractor goal requirement;
3. Not obtaining or retaining CSBE certification while performing work designated for CSBE firms.
4. Failure >>of the prime contractor<< to ~~[[submit monthly utilization reports]]~~ >>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 CSBE 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 CSBE<<;
7. Deviation from the ~~[[schedule of participation]]~~ >>Utilization Plan<< without prior approval from SBD;
8. Termination of the CSBE's contract without prior approval from SBD;
9. Reduction of the scope of work of a first tier CSBE subcontract without prior approval from SBD. Reduction of the scope of work of a second, third or fourth tier CSBE subcontract utilized to meet a second, third or fourth tier subcontractor goal without prior approval of SBD;
10. Modifications to the terms and/or prices of payment to a CSBE without prior approval from SBD;
11. Failure to enter into a written first tier subcontract with a CSBE after listing the firm on a ~~[[schedule of intent affidavit]]~~ >>Utilization Plan<<.
12. Failure to enter into a written second, third or fourth tier subcontract with a CSBE utilized to meet a second, third or fourth tier subcontractor goal.

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(7) *Penalties for ~~[[Schedule of Intent]]~~ >>Utilization Plan<< violations.* If on three (3) separate occasions, a subcontractor executed a ~~[[Schedule of Intent ("SOI") Affidavit]]~~ >>Utilization Plan<< and subsequently becomes unavailable to perform or complete the work

for the prime contractor during the contract period, SBD shall suspend said subcontractor from certification for one (1) year. If SBD suspends the same subcontractor three (3) times due to its failure to perform pursuant to ~~[[an SOI]]~~ >>a Utilization Plan<< as stated above, SBD shall suspend the subcontractor for a minimum of five (5) years, or until such time as the subcontractor can show SBD that it is ready, willing and able to perform if five (5) years has elapsed.

\* \* \*

(9) *County responsibilities.* ~~[[The Department of]]~~ Small Business Development (or other County department designated by the County Mayor or designee) shall:

\* \* \*

7. Review and investigate reports of noncompliance, and make the appropriate recommendations to the County ~~[[Manager]]~~ >>Mayor<< as to penalties to be invoked;

\* \* \*

11. Upon completion of a contract or after final payment on a contract SBD shall review the final ~~[[Monthly Utilization Report]]~~ >>reporting of payments to subcontractors<< and other project documents to include final payments and make a determination as to whether the bidder met the CSBE measure. If the bidder has not met the CSBE measure, SBD will notify the bidder in writing of the deficit and corresponding sanctions for contractual violations.

\* \* \*

**Section 2.** 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 the purposes of this section:

\* \* \*

>>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.<<

[[H]]>>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.

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

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

[[L]]>>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.

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

[[N]]>>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[[3]], Florida Statutes,[[H]] to practice architecture; or certified under Section 481.319[[E]], Florida Statutes,[[H]] 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[[E]], Florida Statutes,[[H]] to practice architecture; or certified under Section 481.319[[E]], Florida Statutes,[[H]] to practice landscape architecture.

[[Θ]]>>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 (1) 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 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 average gross revenues, personal net worth of owners and payroll shall be subject to audit.

[[P]]>>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.

[[Q]]>>R<<.

*Joint venture* means ~~[[an association of two or more CBE-A/Es]]~~ >>a business arrangement of two or more parties, in which at least one is a CBE-A/E that agrees to pool its resources for the purpose of accomplishing a specific task. The details of Joint Venture participation in the CBE-A/E program shall be provided in Implementing Order No. IO 3-32<<. ~~[[Joint ventures shall be subject to the size limitations set forth in this section; such size limitations include affiliates as set forth in Appendix A to the ordinance from which this section derives.]]~~

>>S.

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 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 3-32.<<

[[R]]>>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 2-10.4(1)(e)(1) and (2).

[[S]]>>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.

[[F]]>>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.

[[U]]>>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.

[[V]]>>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. ~~[[The Department of]]~~ 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.

~~[[W]]~~>>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.

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

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

~~[[Z]]~~>>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.

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

[[BB]]>>EE<<. *Small Business Enterprise Architecture & Engineering* [(CBE-A/E)—] 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. 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.

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.

~~[[CC]]~~>>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.

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

~~[[EE]]~~>>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.



[[FF]]>>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.

[[GG]]>>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 \$500,00.01 and \$[[H]]>>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.

[[HH]]>>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 \$[[1]]>>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.

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

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

(3) *Program Components:*

A. *Application.* Except where federal or state laws or regulations mandate to the contrary, the provisions of this section shall require review of all project specific contracts, design-build contracts, and multiple contracts for architectural, landscape architecture, engineering, and surveying and mapping professional services funded in whole or in part with County funds and all leases and contracts for privately funded construction on County-owned land to determine the appropriateness of applying measures as set forth in

this section. The CBE-A/E Program shall not apply to continuing contracts. The County ~~[[Manager]]~~>>Mayor<< or his or her designee shall take steps to ensure that the Small Business Enterprise Architecture & Engineering ~~[[CBE-A/E]]~~ 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 ~~[[Manager]]~~>>Mayor<< in this section shall mean the County ~~[[Manager]]~~>>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,<< and/or Tier ~~[[2]]~~>>3<< CBE-A/Es available. On a set-aside agreement,

the successful proposer must be a certified Tier 1>>, Tier 2,<< and/or Tier [[2]]>>3<< 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 [[2]]>>3<< 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 ~~[[the Department of]]~~ 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 ~~[[F]]~~first>>, second,<< and ~~[[second]]~~>>third<< tier~~[[F]]~~ 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 ~~[[Letter of Agreement]]~~ >>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.<<[[, or equivalent, for each subconsultant to be utilized in satisfaction of a subconsultant goal.]] The ~~[[Letter of Agreement]]~~>>Utilization Plan<<[[, or equivalent,]] shall be ~~[[signed]]~~>>submitted<<

by the prime and the subconsultant and shall ~~[[be required to confirm]]~~ 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 ~~[[Letter of Agreement or equivalent,]]~~ >>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 ~~[[proposal nonresponsive]]~~ >>proposer non-compliant. A CBE-A/E firm may fulfill a subconsultant goal in only one (1) goal type per contract <<. ~~[[Proposers may cure immaterial irregularities in the Letter of Agreement submitted not later than forty eight (48) hours following written notification by the Department of Small Business Development. Immaterial irregularities shall be those items which, in the County's sole discretion, do not, affect either the assurance of agreement between the prime proposer and the subconsultant or the proposer's assurances to the County that the stated measure will be met. Immaterial irregularities include those correctable items specifically identified in the form approved by the Director of Small Business Development for purposes of verifying compliance. Failure of a proposer to cure the immaterial irregularities within the stated period following notification shall result in disqualification of the proposer for contract award.]]~~

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 ~~[[Letter of Agreement, or equivalent]]~~ >>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.

~~[[Proposers who believe that they will fail to meet the specified subconsultant goal due to lack of available first and second tier CBE-A/Es, in order to remain eligible for award of the agreement, must notify SBD in writing at least fourteen (14) calendar days prior to proposal submitted date, advising SBD of the lack of available first and second tier CBE-A/Es and providing full documentation of their efforts to obtain the services of first and second tier CBE-A/Es to meet the goal.]]~~

Proposal documents shall provide that:

- (i) Only expenditures to ~~[[first and second tier—]]~~ CBE-A/Es for performing a commercially useful function shall be counted toward meeting a specified subconsultant >> or subcontractor << goal;
- (ii) Expenditures to ~~[[first and second tier]]~~ 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 ~~[[the Department of—]]~~ Small Business Development as

consistent with normal industry practice;  
and

(iii) Expenditures to ~~[[first and second tier]]~~ 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 ~~[[the Department of]]~~ Small Business Development as consistent with industry practice.

(iv) Only expenditures to ~~[[first and second tier--]]~~ CBE-A/Es made under written subconsultant agreement executed by both the prime proposer and the ~~[[ first and second tier]]~~ 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) *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.

1. ~~[[The Department of--]]~~ Small Business Development ~~[[SBD]]~~ shall maintain~~[[and~~

~~publish at least monthly]]~~ an updated list of CBE-A/Es.

\* \* \*

- (5) *Sanctions for contractual violations:* Proposal and agreement documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a proposer's or subconsultant's violation of or failure to comply with this section or its implementing administrative orders may result in the imposition of one or more of the following sanctions:
- i. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
  - ii. The issuance of fines upon prime consultants for violations of this section;
  - iii. Work stoppage;
  - iv. The issuance of a make-up requirement up to two times the value of subconsultant goal;
  - v. Termination, suspension, or cancellation of the agreement in whole or part;
  - vi. In the event a proposer or CBE-A/E attempts to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Miami-Dade County Code, the County shall, whenever practicable, terminate the agreement or require the termination or cancellation of the subconsultant agreement for the agreement on which the proposer or CBE-A/E committed such acts. In addition, and as a further sanction, the County ~~[[Manager]]~~>>Mayor<< or his or her designee may impose any of the above-stated sanctions on any other agreements or subconsultant agreements the proposer or CBE-A/E has on County projects. In each instance, the proposer or CBE-A/E shall be responsible for all direct and indirect costs



associated with such termination or cancellation including attorney's fees and costs. The proposer or CBE-A/E may also be subject to debarment.

- >>vii. The foregoing notwithstanding, the County Mayor 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 Director. A Make-up Plan must be submitted as part of any proposal for future contracts as part of the Utilization Plan submitted via the County's web-based system. The Make-up Plan must identify all CBE-A/Es to meet the subconsultant goal and the work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to submit the required Make-up Plan with the Utilization Plan for any future contracts shall result in the submittal being deemed non-compliant. Any proposer subject to an approved Make-up Plan that fails to comply with any of the material terms of that Make-up Plan, without good cause, shall be subject to an automatic suspension from proposing and/or otherwise participating on County contracts as a prime or subconsultant for a six (6) month period. A proposer that fails to comply with any of the material terms of a second Make-up Plan, without good cause, shall be subject to an automatic suspension from proposing and/or otherwise participating on County contracts as a prime or subconsultant for a one (1) year period. A proposer that fails to comply with any of the material terms of a third Make-up Plan, without good cause, 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 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.<<

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 ~~[[submit monthly utilization reports]]>>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 ~~[[Letter of Agreement, or equivalent,]]>>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 ~~[[Letter of Agreement, or equivalent,]]~~ >>Utilization Plan; and<<[[
12. Failure to pay subconsultants promptly and in accordance with the administrative procedures under this section.

\* \* \*

(8) *County responsibilities.* ~~[[The Department of -]]~~ Small Business Development (or other County department designated by the County Mayor) shall:

\* \* \*

**Section 3.** Section 2-8.1.1.1.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

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

\* \* \*

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

\* \* \*

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

web-based system, within the specified time frame.<<

[[7]]>>8<<. *Commercially useful function* means contractual responsibility for the execution of a distinct element of the work of a contract by a SBE and the carrying out of its contractual responsibilities by actually performing, managing, and supervising the work involved. The determination of whether an activity is a commercially useful function shall include the evaluation of the amount of work subcontracted; normal industry practices; the skills, qualifications, or expertise of the enterprise to perform the work; whether the business owner performs, manages, and/or supervises the work involved; and other relevant factors. Acting as an authorized representative of a manufacturer as is normal industry practice is considered a commercially useful function. Commercially useful function shall also include a distributor authorized by a manufacturer to distribute the manufacturer's products locally. Acting as a broker is not considered a commercially useful function.

[[8]]>>9<<. *Contract* means an agreement for the purchase of services, including professional services. Professional services as used in this section includes but is not limited to accounting, legal, health care, consulting and management services. Contract does not mean: an agreement to purchase, lease, or rent real property; a grant, license, permit, franchise or a concession; an agreement to acquire professional architectural, engineering, landscape architectural or land surveying and mapping services of

seven hundred thousand dollars (\$700,000.00) or less; or a contract for construction or construction management services of seven hundred thousand dollars (\$700,000.00) or less.

[[9]]>>10<<. *Graduation* means the SBE has exceeded either the personal net worth, or the specific size limits stated for the program and may no longer be eligible to participate in the program.

[[10]]>>11<<. *Gross Revenue* is defined to include all revenue in whatever form received or accrued from whatever source, including sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns and allowances. However, proceeds from sales of capital assets, and investments, proceeds from transaction between a firm and its domestic and foreign affiliates are excluded.

[[11]]>>12<<. *Joint venture* means ~~[[an association of two or more persons, partnerships, corporations or other business entities under a contractual agreement to conduct a specific business enterprise for a specified period with both sharing profits and losses.]]~~>>a business arrangement of two (2) or more parties, in which at least one (1) is a SBE that agrees to pool its resources for the purpose of accomplishing a specific task. The details of Joint venture participation in the SBE-Services program shall be provided in Implementing Order No. IO 3-41.

13. *Make-up Plan* means a plan whereby a bidder submits via the County's web-based system its commitment that if awarded the contract, it will fulfill 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.<<.

[[12]]>>14<<. *Management and Technical Assistance (MTA)* means a program designed to provide direct and indirect assistance for small business enterprise development.

[[13]]>>15<<. *Mentor-Protege Program* is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging SBEs in order for the latter to benefit from the knowledge and experience of the established [[M]]>>m<<entor firms.>> The details of this program shall be provided in Implementing Order No. IO 3-41.<<

[[14]]>>16<<. *Prompt Payment* is the intent of the Board that all firms, including SBEs providing services to the county, receive payments promptly as specified herein.

[[15]]>>17<<. *Review Committee* or *RC* means the committee established by the Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus and when public input requires deliberation regarding the measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed.

[[16]]>>18<<. *SBD* means the Division of Small Business Development or successor division or department.

[[17. ~~*Schedule of Intent Affidavit (SOI)*~~ means a form contained in the bid documents of an SBE contract set aside or a contract with subcontractor goals in which bidders list at the time of bid submission all SBEs to be used to meet the set aside or the goal, and the scope of work each will perform, including the services to be provided, and the percentage value of such work.]]

[[18]]>>19<<. *Selection factor* means a factor considered in evaluating the response submitted to an RFP, RFQ or RFI by a bidder that is:

A SBE,

A joint venture with one or more SBEs.

[[19]]>>20<<. *Small Business Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise Program(s).

[[20]]>>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) 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.

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.

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



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

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

>>25. *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).<<

[[24]]>>26<<. *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.

[[25]]>>27<<. *Work* means the provision of services, as defined herein.

(3) *Program.*

\* \* \*

(c) *Contracts Greater than \$100,000.* The following SBE measures may be applied to

contracts greater than one hundred thousand dollars (\$100,000.00):

\* \* \*

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 [[Schedule of Intent Affidavit with those SBE subcontractors the bidder proposes to utilize in order for such proposed participation to be eligible to be counted -- towards -- meeting the goal]]>>Certificate of Assurance acknowledging the required measure and submission of a Utilization Plan via the County's web-based systems.<< Each [[Schedule of Intent Affidavit -- shall be -- in writing,]]>>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 ~~[[document duly executed by the proposer and any SBE proposed to be used in satisfaction of a goal which states the percentage that the amount of the SBE's contract bears to the overall contract amount. Copies of the Schedule of Intent Affidavits reflecting the amounts constituting the stated percentages shall be included together with the pricing proposal. Each Schedule of Intent Affidavit shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Services Program. Upon notification from SBD, bidders are allowed up to 48 hours to cure correctable defects on the Schedule of Intent Affidavit.]]>>~~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-Services firm may fulfill a subcontractor goal in only one (1) goal type per contract.<<

\* \* \*

(j) *Sanctions.* Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's violation of or failure to comply with this section or its implementing administrative orders may result in the imposition of one or more of the following sanctions:

1. 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, 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, 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, SBE has on County projects. In each instance, the bidder, SBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs

The foregoing notwithstanding, the County Mayor shall include language in all prospective contracts containing a SBE subcontractor goal which provides that, in addition to any other sanction for failure to fulfill the SBE subcontractor goal requirements for such contract, the contractor's eligibility to receive any future County contract shall be conditioned upon the contractor making up the deficit in SBE participation in such future contract by having SBEs perform work equal to double the dollar value of the deficiency in the SBE subcontractor goal in the prior contract.>>>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 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, 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 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.

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 ~~[[schedule of intent affidavit]]>>Utilization Plan<<~~, may result in the imposition of one or more of the sanctions listed in Subsection (j) above.

\* \* \*

**Section 4.** 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.

\* \* \*

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

[[7]]>>8<<. *Commercially useful function* means contractual responsibility for the execution of a distinct element of the work of a contract by a SBE and the carrying out of its contractual responsibilities by actually performing, managing, and supervising the work involved. The determination of whether an activity is a commercially useful function shall include the evaluation of the amount of work subcontracted; normal industry practices; the skills, qualifications, or expertise of the enterprise to perform the work; whether the business owner performs, manages, and/or supervises the work involved; and other relevant factors. Acting as an authorized representative of a manufacturer as is normal industry practice is considered a commercially useful function. Commercially useful function shall also include a distributor authorized by a manufacturer to distribute the manufacturer's products locally. Acting as a broker is not considered a commercially useful function.

[[8]]>>9<<. *Contract* means an agreement for the purchase of goods. Contract does not mean: an agreement to purchase, lease, or rent real property; or a grant, license, permit, franchise or a concession.

[[9]]>>10<<. *Goods* means any tangible product, material or supply that is not a service.

[[10]]>>11<<. *Graduation* means the SBE has exceeded either the personal net worth, or the specific size limits stated for the program and may no longer be eligible to participate in the program.

[[11]]>>12<<. *Gross Revenue* is defined to include all revenue in whatever form received or accrued from whatever source, including sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns and allowances. However, proceeds from sales of capital assets, and investments, proceeds from transaction between a firm and its domestic and foreign affiliates are excluded.

[[12]]>>13<<. *Joint venture* means ~~[[an association of two or more persons, partnerships, corporations or other business entities under a contractual agreement to conduct a specific business enterprise for a specified period with both sharing profits and losses.]]~~>>a business arrangement of two (2) or more parties, in which at least one (1) is a SBE that agrees to pool its resources for the purpose of accomplishing a specific task. The details of Joint venture participation in the SBE-Goods program shall be provided in Implementing Order No. IO 3-41.

14. Make-up Plan means a plan whereby a bidder submits via the County's web-based system its commitment that if awarded the contract, it will 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.<<

[[13]]>>15<<. *Management and Technical Assistance ("MTA")* means a program designed to provide direct and indirect assistance for small business enterprise development.

[[14]]>>16<<. *Mentor-Protégé Program* is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging SBEs in order for the latter to benefit from the knowledge and experience of the established Mentor firms.>> The details of this program shall be provided in Implementing Order No. IO 3-41.<<

[[15]]>>17<<. *Prompt Payment* is the intent of the Board that all firms, including SBEs providing services to the county, receive payments promptly as specified herein.

[[16]]>>18<<. *Review Committee* or *RC* means the committee established by the Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus and when public input requires deliberation regarding the

measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed.

[[17]]>>19<<.SBD means the Division of Small Business Development or successor division or department.

[[18. ~~Schedule of Intent Affidavit ("SOI") means a form contained in the bid documents of an SBE contract set aside or a contract with subcontractor goals in which bidders list at the time of bid submission all SBEs to be used to meet the set aside or the goal, and the scope of work each will perform, including the services to be provided, and the percentage value of such work.]]~~

[[19]]>>20<<.Selection factor means a factor considered in evaluating the response submitted to an RFP, RFQ or RFI by a bidder that is:

A SBE,

A joint venture with one or more SBEs.

[[20]]>>21<<.Small Business Advisory Board is the board established for the purpose of supporting and promoting the Small Business Enterprise Program(s).

[[21]]>>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:

- (iv) Micro Tier 1 — \$0 to \$750,000;
- (v) Micro Tier 2 — \$750,000.01 to \$2,000,000; or
- (vi) 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 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.

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

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

>>25. *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).<<

[[24]]>>26<<. *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.

[[25]]>>27<<. *Work* means the provision of goods, as defined herein.

(3) *Program.*

\* \* \*

- (c) *Contracts Greater than \$100,000.* The following SBE measures may be applied to contracts greater than one hundred thousand dollars (\$100,000.00):

\* \* \*

2. *Subcontractor goals:*

3.

- 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 ~~[[Schedule of Intent Affidavit with those SBE subcontractors the bidder proposes to utilize in order for such proposed participation to be eligible to be counted towards meeting the goal]]~~>>Certificate of Assurance acknowledging the required measure

and a Utilization Plan shall be submitted via the County's web-based system.<< Each ~~[[Schedule of Intent Affidavit shall be in writing,]]~~>>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 ~~[[document duly executed by the proposer and any SBE proposed to be used in satisfaction of a goal which states the percentage that the amount of the SBE's contract bears to the overall contract amount. Copies of the Schedule of Intent Affidavits reflecting the amounts constituting the stated percentages shall be included together with the pricing proposal. Each Schedule of Intent Affidavit shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Goods Program. Upon notification from SBD, bidders are allowed up to 48 hours to cure correctable defects on the Schedule of Intent Affidavit.]]~~>>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 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 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 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 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 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.<<

\* \* \*

(j) *Sanctions.* Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's violation of or failure to comply with this section or its implementing administrative orders may result in the imposition of one or more of the following sanctions:

1. 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, 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, 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, SBE has on County projects. In each instance, the bidder, SBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs.

The foregoing notwithstanding, the County Mayor shall include language in all prospective contracts containing a SBE subcontractor goal which provides that, in addition to any other sanction for failure to fulfill the SBE subcontractor goal requirements for such contract, the contractor's eligibility to receive any future County contract shall be conditioned upon the contractor making up the deficit in SBE participation in such future contract by having SBEs perform work equal to double the dollar value of the deficiency in the SBE subcontractor goal in the prior contract.>>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.

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 ~~[[schedule of intent affidavit]]~~>>Utilization Plan<<, may result in the imposition of one or more of the sanctions listed in Subsection (j) above.

\* \* \*

**Section 5.** Section 2-11.16 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 2-11.16. County construction contracts.**

\* \* \*

- (b) The specifications for each competitively bid County contract in excess of one hundred thousand dollars (\$100,000.00) for the construction, alteration and/or repair, including painting or decorating, of public buildings or public works shall specify an initial overall per hour rate to be paid to each craft or type of employee necessary to perform the contract work as listed in local area nondiscriminatory negotiated contracts (hereinafter referred to for purposes of this subsection (b) as "negotiated contracts") between organizations which represent employees and contractors. In ascertaining the initial overall per hour rate to be paid, the minimum standard shall be the combined overall dollar value on an hourly basis of the wages (paid as set forth below) and of the hospitalization, medical, pension and life insurance benefits (paid as set forth below) for such craft or type of employee under negotiated contracts in effect as of January 1st of the calendar year in which said proposal bid is expected to be advertised, or, in the case of a lease or contract providing for privately funded construction on County-owned land subject to this

Section, under the negotiated contracts in effect as of January 1st of the calendar year in which said proposed lease or contract is expected to be executed. Thereafter, the specifications shall provide that the overall per hour rate to be paid for work performed under the contract during each subsequent calendar year shall be the overall per hour rate in effect as of January 1st, of the year in which the work is performed. If a particular craft or type of employee is not listed in such negotiated contracts, in ascertaining the initial overall per hour rate to be paid those employees, the minimum standard shall be the combined overall dollar value on an hourly basis of the "basic hourly rate of pay" (as defined in 29 CFR 5.24) (paid as set forth below) and of the fringe benefits payments (paid as set forth below) for hospitalization, medical pension and life insurance benefits for such craft or type of employee under the Secretary of Labor's wage determination (made pursuant to the provisions of the Davis-Bacon Act) in effect for Miami-Dade County, Florida, as of the end of the calendar year in which the proposed bid is expected to be advertised. The foregoing and the provisions of Section 2-11.16(e) notwithstanding, where not otherwise precluded by state or federal law, the overall per hour rate shall be the higher rate under this Section 2-11.16 or the rate of wages to be paid under the requirements of the Davis-Bacon Act; provided, further, that the overall per hour rate shall not be the higher rate if the federal government requires the County as a condition of receiving federal funds for a project to pay no more than the wages as determined by the U.S. Department of Labor under the Davis-Bacon Act on project contracts. The specifications for such contracts shall:

- (i) Include a sum certain in dollars and cents as an initial overall per hour rate for each craft or type of employee to be paid for work performed during the period commencing on the date of issuance of the notice to proceed and continuing through the calendar year (or, in the case of a lease or contract providing for privately funded construction on County-owned land subject to this Section, ending the last day of the calendar year in which the lease or contract was executed). The specifications shall further provide that the overall per hour rate to be

paid for work performed during the year period commencing the next January 1st after the date of issuance of the notice to proceed (or, in the case of a lease or contract providing for privately funded construction on County-owned land subject to this Section after the date of execution of such lease or contract) shall be such rate (as determined in accordance with subsection (b) above) for that calendar year and shall be updated thereafter on each subsequent January 1st to the rate (as determined in accordance with subsection (b) above) for the ensuing calendar year until completion of the contract work; and

- (ii) Mandate the contractor to whom the contract is awarded, and any of its subcontractors performing any of the contract work, pay not less than the specified overall per hour rate adjusted over the term of the contract as provided in subsubsection (i); and
- (iii) Provide that the contractor, and any of its subcontractors, may fulfill the obligation to pay such specified overall per hour rate by payment to the employee of the hourly wage rate listed in the negotiated contracts (or, if applicable, under subsubsection (i) above, the "basic hourly rate of pay" as defined in 29 CFR 5.24 contained in the Secretary of Labor's wage determination) for such craft or type of employee plus either: (i) payment on the employee's behalf of the cost (on an hourly basis) of the hospitalization, medical, pension and life insurance benefits specified for such craft or type of employee; or, (ii) payment to the employee (in addition to the listed hourly wage rate, or "basic hourly rate of pay if applicable) of an amount equal to the hospitalization, medical, pension and life insurance benefits (on an hourly basis) contractors are required to provide under the negotiated contracts (or, if applicable, under subsubsection (i) above, an amount equal to the fringe benefit payments on an hourly basis for hospitalization, medical, pension and life insurance benefits contained in the Secretary of Labor's wage determination) for such craft or type of employee.



Payments to employees shall be counted towards fulfillment of the above obligation only to the extent that such payments are made by check or money order; and

- (iv) Provide that the contractor, and each subcontractor under him >>or her<<, shall post in a conspicuous place on the site where such contract work is performed: (1) the schedule of the specified overall per hour rate for each applicable classification specified by such negotiated contracts; (2) the amount of liquidated damages for any failure to pay such rates; and (3) the name and address of the responsible official in Miami-Dade County to whom complaints should be given; and
- (v) Provide that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to employees employed by the contractor (or any subcontractor under him >>or her<<) in the performance of the contract work the difference between the overall per hour rate required by the contract to be paid employees on the work and the amounts received by such employees and not refunded to the contractor, and any of its subcontractors or their agents; and
- (vi) Require the contractor and each subcontractor under him>> or her<< to ~~[[keep, or cause to be kept,]]~~>>submit via the County's web-based system<< accurate written records signed under oath as true and correct showing the names, Social Security numbers, and craft classifications of all employees performing work on said contract, the hours and fractions of hours for every type of work performed by each employee, the combined dollar value of all wages, any contributions to benefit plans and payments made to each employee of the overall per hour rate required by this Section and further require the contractor to submit to the County a list of all subcontractors and the names and Social Security numbers of all employees thereof who performed work each day on the contract and further require each subcontractor to

also submit to the County a list of the names and Social Security numbers of its employees who performed work each day on the contract>>. The contractor and each subcontractor shall, by the 10th of each month, submit to the County (or if requested, within the requested time frame) certified payroll showing the employer's payroll records for work performed in the previous month via the County's web-based system. Upon request by the County, the covered employer shall produce for inspection and copying its payroll records for any or all of its covered employees for the prior three-year period<<; and

- (vii) Provide that no contractor (or subcontractor under him >>or her<<) may terminate an employee performing work on the contract because of the employee's filing a complaint regarding payment of required overall per hour rates.
- (c) Miami-Dade County shall periodically examine the records required to be kept under subsection (vi) of subsection (b) of this section.
- (d) The County Mayor shall establish an administrative procedure for monitoring compliance with and enforcement of the requirements of this Section. Such procedure shall provide that:
  - (i) SBD may conduct investigations of compliance with the requirements of this Section and issue written notices to a contractor (or subcontractor under the contractor) when it determines based on such investigation that the contractor (or subcontractor) has not complied herewith;
  - (ii) The contractor or subcontractor shall respond in writing to the notice of noncompliance;
  - (iii) Based on the response, ~~[[D]]~~>>S<<BD may determine to rescind the notice of noncompliance or to conduct a Compliance Meeting with the affected contractor or subcontractor at which any additional evidence may be presented;

- (iv) ~~[[D]]>>S<<BD~~ shall make a written compliance determination following any Compliance Meeting. A determination that the contractor or subcontractor has not complied with the requirements of this Section shall state the basis therefore and shall advise the contractor or subcontractor of its right to file a written request >>along with a nonrefundable filing fee to be established by implementing order, within thirty (30) days of issuance of the notice,<< with the County ~~[[Manager]]>>Mayor<< within 30 calendar days to schedule an administrative hearing before a hearing officer to appeal the determination as provided below; and~~
  
- (v) A contractor or subcontractor who fails to respond to a notice of noncompliance, fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by ~~[[D]]>>S<<BD~~ after a Compliance Meeting shall be deemed not to have complied with the requirements of this ordinance as stated in the notice or determination of non-compliance and, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the employee and the contractor or subcontractor shall be fined the applicable penalty for such underpayment as provided in this subsection (d). A contractor or subcontractor who does not make the required payment of the underpaid wages or who does not pay any fine imposed hereunder shall not be deemed responsible to perform subsequent County construction contracts and shall be ineligible to be awarded such contracts for so long as the identified underpayment or any penalties imposed therefor remain outstanding, not to exceed three years.
  
- (vi) Upon timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of noncompliance, ~~[[the County Mayor shall appoint a hearing officer and fix a time for an administrative hearing thereon.]]>>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.

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.<<

A notice of hearing (together with a copy of SBD's determination of noncompliance) shall be served upon the contractor (or subcontractor). Upon completion of the hearing, the hearing officer shall submit proposed written findings and recommendations together with a transcript of the hearing to the County Mayor within a reasonable time. The County Mayor shall determine whether the contractor (or subcontractor) failed to comply with the requirements of this ordinance. If the Mayor's determination is that the contractor (or subcontractor) failed to comply, and that such failure was pervasive, the Mayor may order that the contract work be suspended or terminated, and that the noncomplying contractor (or subcontractor) and the principal owners thereof be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration and/or repair, including painting or decorating of public buildings or public works for a period of up to three

(3) years. In addition, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the affected employees and the contractor or subcontractor shall be fined the penalties provided below. If the Mayor's determination is that the contractor (or subcontractor) failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor may, in the case of underpayment of the required overall per hour rate, order an amount equal to the amount of such underpayment be withheld from the contractor and remitted to the employee, and may also fine the contractor or subcontractor for such noncompliance as follows: for the first underpayment, a penalty in an amount equal to 20% of the amount thereof; for the second underpayment, a penalty in an amount equal to 40% thereof; for the third and successive underpayments, a penalty in an amount equal to 60% thereof. A fourth violation, shall constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering this ordinance. If the required payment is not made within a reasonable period of time, the noncomplying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration, and/or repair, including painting or decorating of public buildings or public works for a period of three (3) years.

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**Section 6.** Section 2-8.1 of the Code of Miami-Dade County, Florida, is hereby

amended to read as follows:

**Sec. 2-8.1. Contracts and purchased generally.**

\* \* \*

(f) *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<<.~~[[--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. Section 10-34 of this Code governs the subcontractor listing requirements for contracts for public improvements.]]~~ 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.

\* \* \*

**Section 7.** Section 2-8.8 of the Code of Miami-Dade County, Florida, is hereby

amended to read as follows:

**Sec. 2-8.8. Fair subcontracting practices.**

\* \* \*

- (4) *Reporting of subcontracting policies procedures and payments.* For all contracts in which a bidder may use a Subcontractor, prior to contract award, the bidder shall provide a detailed statement of its policies and procedures for awarding subcontracts. Failure to provide the required statement shall preclude the bidder from receiving the contract. As a condition of final payment under a contract, the contractor shall >>submit to the County via its web-based system<<[~~identify~~] all subcontractors used in the work, the amount of each subcontract, and the amount paid and to be paid to each subcontractor. In the event that the contractor intends to pay less than the subcontract amount, the contractor shall deliver to the County a statement explaining the discrepancy or any disputed amount. The County Mayor or Mayor's designee shall include language in the specifications of applicable County contracts to give effect to the intent of this section.

\* \* \*

**Section 8.** Section 2-8.9 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

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

\* \* \*

*Implementation.*

\* \* \*

- (D) *Reporting Payroll.* [~~No less frequently than every six (6) months or otherwise at the County's request, t~~]]>>T<<he covered employer shall >>by the 10th of each month,<< submit to the County (or if by request within the requested time frame) [~~a complete~~]]<<certified payroll showing the employer's payroll records for each Covered Employee working on the contract(s) for covered services for the [~~applicable payroll period~~]] >>previous month via the County's

web-based system<<. Upon request by the County, the covered employer shall produce for inspection and copying its payroll records for any or all of its covered employees for the prior three-year period. ~~[[It shall be the responsibility of the Applicable Department to examine all payrolls for compliance within sixty (60) days of receipt.]]~~

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**Section 9.** Section 10-34 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 10-34. Listing of subcontractors required.**

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.

**Section 10.** 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 11.** 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 12.** 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: April 10, 2018

Approved by County Attorney as  
to form and legal sufficiency:

ADW

Prepared by:

CGS for DSH

David Stephen Hope

Prime Sponsor: Vice Chairwoman Audrey M. Edmonson