

PUBLIC/PRIVATE FUNDED IMPROVEMENTS ON COUNTY OWNED LAND SMALL BUSINESS, WAGE AND WORKFORCE REQUIREMENTS

APPLICABLE PROGRAMS

- Design: Small Business Enterprise - Architectural and Engineering (SBE-A&E)
 Small Business Enterprise - Goods and Services (SBE-G&S)
- Construction: Small Business Enterprise - Construction (SBE-Con)
 Small Business Enterprise - Goods and Services (SBE-G&S)
 Responsible Wages and Benefits (Wages)
 Community Workforce Program (CWP)
 Residents First Training and Employment Program (Residents 1st)
 Employ Miami-Dade Program (Employ M-D)

Small Business Enterprise (SBE) Programs reserve portions of or entire contracts for participation by certified small businesses through the application of small business measures. Applies to 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. This section shall not apply to privately funded construction on any County-owned facilities or property where the total value of the construction is \$200,000.00 or less.

Responsible Wages and Benefits requirements apply to all leases and contracts which provide for privately funded construction, alteration or repair of buildings or improvements located on County-owned land. Construction projects on County owned land valued \$5 million or less and financed 100% through private sources are exempt, as are, entities that meet all 3 of the following: 501(c)(3) and not-for-profit and community based. All contractors regardless of tier must pay employees the wage rate in the schedule that corresponds with the type of work being performed without regard to skill. The County's wage schedule is update annually. The wage schedule that applies is the one in effect for the year in which the work is being performed.

The **Community Workforce Program (CWP)** is designed to increase employment opportunities in the area of construction, for residents of underserved residential areas throughout Miami-Dade County identified as Designated Target Areas (DTA). The local workforce goal is a requirement that a percentage of the workforce performing construction trades work and labor under the contract be a resident of a DTA the project is located in. CWP applies to construction contracts funded in whole or in part by County funds or with private funds on County owned land valued greater than \$250,000.

The **Residents First Training and Employment Program** applies to County construction contracts and projects or leases for privately funded construction on County owned land valued in excess of \$1 million and requires all persons employed by the contractor to perform construction to have completed the OSHA 10-Hour construction safety training course established by the Occupational Safety & Health Administration of the United States Department of Labor; and contractors make best reasonable efforts to promote employment opportunities for local residents and achieve a project goal of having 51% of all Construction Labor hours performed by Miami-Dade County residents.

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The **Employ Miami-Dade Program** applies to contracts valued in excess of \$1 million or privately funded projects or leases valued in excess of \$1 million for construction, demolition, alteration or repair of buildings or improvements on County owned land shall make a good faith effort to fill at least 20% of the labor workforce required per Contractor's Construction Workforce Plan from the Employ Miami-Dade Register through Career Source South Florida.

Links to legislation, implementing documents, wage schedules and forms can be found at:

<http://www.miamidade.gov/smallbusiness/>

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PRE-AWARD PROCESS

Each project for the procurement of Construction and Architectural & Engineering services must be submitted to Miami-Dade County Small Business Development (SBD) prior to advertisement to review for maximum subcontracting opportunities for certified SBE-A&E, SBE-Construction and SBE-G&S firms and the establishment of measures accordingly. SBE-G&S measures apply to Construction and A&E contracts valued over \$750,000.

Responsibility of the Private Project Manager (Project Manager) - Project Submittal Process

Submit **ALL** Construction and Architectural & Engineering services project packages to SBD prior to advertisement to include:

- Detailed scope of services
- Complete breakdown of the project cost estimate identifying the sub-trade areas by division
- Listing of all special requirements (special licensure, manufacturer's certification, experience, payment/performance bond requirement, etc.)

Sample submittal package included. (Attachment 1)

Responsibility of SBD - Project Review and Analysis Process

SBD will review all project submittal documents to ensure the packages are complete, identifying all trade areas to properly bid the project. SBD will review all special requirements or conditions to ensure that there are no artificial barriers to prevent opportunities for Small Business participation.

- Each sub-trade will be reviewed for possible participation by small businesses.
- To determine whether certified firms are ready, willing and able to perform, firms will be surveyed and required to respond in writing.
- Firms will be sent project information submitted by the Project Manager on an availability form letter for their review and response accordingly.
- Only Firms certified in the various commodities included in project package will be surveyed.
- SBD will deliver measure recommendation through a Project Worksheet (Attachment 2) to Project Manager within 2 days for A/E projects and 5 days for construction projects. For construction the applicable CWP goal and applicable wage schedule will also be included.

Project Advertisement - Small Business Participation Compliance

- The Project Manager is required to notify SBD when the project is publicly advertised and provide a copy of the advertisement.
- The Project Manager must include all program requirements and Certificate of Assurance forms in each bid package/advertisement.

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- SBD will participate in all pre-bid meetings to ensure firms are aware of the SBE measures, wage and local hiring requirements; firms may ask questions prior to submittal of bid to ensure compliance with small business measures and other requirements.

Pre-Award Bid/Proposal Compliance Review

- After bid openings, the Certificates of Assurance must be submitted to SBD for compliance review. A Certificate of Assurance is a form submitted with bid documents whereby the Bidder acknowledges: (i) SBE measures apply to the project; and (ii) Bidder will submit its list of certified SBEs to satisfy the measure via Miami-Dade County's web-based reporting system, Business Management Workforce System (BMWS) within the specified timeframe.
- Upon receipt of the Certificates of Assurance the proposer will be asked to submit their SBE Utilization Plan, via BMWS
- SBD will submit a Pre-Award Compliance Review letter to disclose the firms' compliance status as it relates to the SBE goals
- Project Manager will not award project until it is determined that awardee is in compliance with established small business goals.

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POST AWARD COMPLIANCE

RESPONSIBILITIES OF AWARDEE/LESSEE

Small Business Enterprise Program

- Invite SBD to attend all Pre-Construction/Pre-Work meetings to advise awarded Prime of small business, wage and/or workforce requirements.
- Enter into subcontracts with SBE(s) for the price and scope reported on the Utilization Plan.
- Ensure SBEs maintain certification through the duration of the job, perform a commercially useful function and do not subcontract work further. SBEs must have a contractual responsibility for the execution of a distinct element of the work of a contract and carry out that responsibility by actually performing, managing and supervising the work involved. Acting as a broker is not considered a commercially useful function.
- Report payments to SBE(s) through BMWS and require SBEs reply to confirm payments reported.
- Ensure small businesses meeting goals are promptly paid within 2 days of receiving payment from the Developer/County.
- Submit requests to deviate from approved small business goals to the Director of SBD, through BMWS for approval prior to deviation;
- Forward complaints regarding small business utilization and/or payment to SBD for investigation

Responsible Wages and Benefits

- Ensure wage schedule is posted on the job site,
- Require prime and subcontractors at every tier level submit certified payrolls monthly via LCPtracker, a web-based Certified Payroll Management System.
- Verify payrolls have been submitted by all contractors prior to accepting their requisition.
- In the case of suspected underpayment to employees, withhold funds due to prime contractor/subcontractors to protect any wages due to employees upon receipt of a written stop payment request from SBD.
- Forward complaints of underpayment to SBD for investigation

Community Workforce Program

- Prior to issuance of Notice to Proceed ensure contractor submits list of subs and Construction Workforce Plan (Form RFTE 1) and it is deemed acceptable by SBD.
- New hires must be recruited from the project Designed Target Area.
- SBD must be notified of changes in workforce.

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Residents First Training and Employment Program

- Ensure completed Responsible Contractor Affidavit (Form RFTE 1) is submitted with bid
- Prior to issuance of Notice to Proceed ensure contractor submits list of subs, Responsible Subcontractor Affidavits (Form RFTE 1) and Construction Workforce Plan (Form RFTE 1) and it is deemed acceptable by SBD.
- All employees found on-site must have OSHA-10 Safety Training.
- SBD must be notified of changes in workforce.
- Collect Workforce Performance Report (Form RFTE 4) within 30 days of completion of work and it is deemed acceptable by SBD prior to final payment.

Employ Miami-Dade Program

- Prior to issuance of Notice to Proceed ensure contractor submits list of subs and Construction Workforce Plan (Form RFTE 1) and it is deemed acceptable by SBD.
- New hires must be recruited through CareerSource Florida.
- SBD must be notified of changes in workforce.
- Collect Workforce Performance Report (Form RFTE 4) within 30 days of completion of work and it is deemed acceptable by SBD prior to final payment.

RESPONSIBILITIES OF SBD - POST AWARD

- Review Residents 1st affidavits prior to contract award
- Attend pre-construction meetings to explain program requirements
- Review CWP, Residents 1st and Employ Miami-Dade Construction Workforce Plans (Form RFTE 2) prior to issuance of Notice to Proceed
- Obtain and review the subcontract agreements for the certified small business meeting goals
- Conduct on-site interviews of employees to ensure compliance with SBE, wage, and workforce requirements
- Review Compliance Audits and Certified Payrolls submitted through the County's web-based system
- Process SBE deviation requests
- Investigate complaints and administer compliant process
- 50% and 75% SBE goal compliance review
- Final compliance review for small business and workforce requirements

PUBLIC/PRIVATE FUNDED IMPROVEMENTS ON COUNTY OWNED LAND SMALL BUSINESS, WAGE AND WORKFORCE REQUIREMENTS

IMPORTANT LINKS

Applicable legislation, wage schedules and forms: <http://www.miamidade.gov/smallbusiness/>
Business Management Workforce System (BMWS) and LCPtracker: <https://mdcsbd.gob2g.com/>

For training or questions about BMWS or LCPtracker, please contact BMWS@miamidade.gov or call (305) 375-3111.

ATTACHMENTS

Sample Pre-Award Project Submittal Package
Sample Project Worksheet
Applicable Legislation



Date: October 10, 2019

To: Gyselle Pino, Director of Contracts and Procurement
PortMiami

From: Diana Beauchamp Lopez, P.E. *D. Beauchamp*
Vice President Port Development
MSC Cruises Miami Cruise Terminal LLC

Subject: SBE Goal Recommendations for MSC Cruises Miami Cruise Terminals Project

In accordance with the Terminal Development Management and Lease Agreement between Miami-Dade County and MSC Miami Cruise Terminal LLC to Design, Build, Operate, Finance and Maintain a Cruise Terminal and Office Complex at PortMiami, this Memorandum serves to provide a recommendation for Small Business Enterprise (SBE) measures/goals for Architectural & Engineering (A/E), Construction (CON), Goods & Services (G&S), and Community Workforce Program (CWP).

The approximate duration of the project is approximately 730 calendar days, including Complete Design and Construction, with an expected direct cost of \$283,440,000, broken down as follows:

\$254,241,547.00	Estimated Construction Cost
\$20,000,000.00	Estimated Architecture & Engineering Cost
\$4,113,623.00	Art in Public Places (1.5%)
\$5,084,830.00	Permit Allowance (2%)
\$283,440,000.00	Total Estimated Cost

The project is expected to include the following: demolition of site and utilities as needed to make space for the construction of two new cruise terminals with an office element, construction of a parking garage structure element, construction of two new berths (Berths 8 and 9) and expansion of the apron via a new bulkhead and seawall, installation of utilities for the apron to service vessels, dredging of the waterway for the berthing of two (2) cruise ships, construction of provisioning and intermodal areas, site improvements and development, construction of a connecting roadway system within the Ground Lease area connecting to the PortMiami public roadway, and connection and improvement of all utilities as needed for the operation of the Project.



For the firms providing A/E design services for this Project, the following Technical Certification Categories will be required:

<i>Technical Certification No.</i>	Type	Description	Percentage	Amount
5.02	Lead A/E	Port and Waterway Systems – Architectural Design	34%	\$6,800,000
5.03	Lead A/E	Port and Waterway Systems – Cruise Terminal Design	15%	\$3,000,000
18	Lead A/E	Architectural Construction Management	8.00%	\$1,600,000
22	Lead A/E	ADA Title II Consultant	1.00%	\$200,000
5.04	Other	Port and Waterway Systems – Cruise Terminal Equipment Design	1.00%	\$200,000
5.08	Other	Port and Waterway Systems – Marine Engineering	6.50%	\$1,300,000
5.09	Other	Port and Waterway Systems – Environmental Design	1.50%	\$300,000
5.10	Other	Port and Waterway Design – Transportation Systems	1.50%	\$300,000
8	Other/SBE-AE	Telecommunication Systems	2.00%	\$400,000
9.02	Other	Soils, Foundations, and Material Testing – Geotechnical and Materials Engineering Services	0.50%	\$100,000
9.03	Other	Soils, Foundations, and Material Testing – Concrete and Asphalt Testing Services	0.50%	\$100,000
9.04	Other	Soils, Foundations, and Material Testing – Non-Destructive Testing and Inspection	0.50%	\$100,000
11	Other	General Structural Engineering	5.00%	\$1,000,000
12	Other	General Mechanical Engineering	3.00%	\$600,000
13	Other	General Electrical Engineering	3.00%	\$600,000
14	Other/SBE-AE	Architecture	1.00%	\$200,000
15.01	Other/SBE-AE	Surveying and Mapping – Land Surveying	0.50%	\$100,000
15.03	Other/SBE-AE	Surveying and Mapping – Underground Utility Location	0.50%	\$100,000
16	Other/SBE-AE	General Civil Engineering	2.00%	\$400,000



17	Other/SBE-AE	Engineering Construction Management	4.00%	\$800,000
20	Other/SBE-AE	Landscape Architecture	4.00%	\$800,000
N/A	Other	Miscellaneous/Specialty Engineering	5.00%	\$1,000,000
Total Estimated A/E Services			100%	\$20,000,000

It is recommended that the SBE goals be set at 14% for Architectural and Engineering Services, 10.01% for Construction, and 2.20% for Goods and Services. Additionally, a recommendation for a Community Workforce Plan goal of 10% is recommended.

MSC Cruises - Terminals AA & AAA
Project Analysis for Goal Recommendation (SBE-CON)

	Estimated Cost	SBE-Con Analysis	% of Item to Base Bid
-DIVISION 1 - GENERAL REQUIREMENTS	\$ 12,712,077.35		
-DIVISION 2 - EXISTING CONDITIONS	\$ 635,603.87	\$ 635,603.87	0.25%
-DIVISION 3 - CONCRETE	\$ 55,933,140.34		
-DIVISION 4 - MASONRY	\$ 5,084,830.94	\$ 5,084,830.94	2.00%
-DIVISION 5 - METALS	\$ 5,084,830.94		
-DIVISION 6 - WOOD, PLASTICS, AND COMPOSITES	\$ 1,525,449.28		
-DIVISION 7 - THERMAL AND MOISTURE PROTECTION	\$ 6,356,038.68		
-DIVISION 8 - OPENINGS	\$ 11,440,869.62		
-DIVISION 9 - FINISHES	\$ 15,890,096.69		
Painters and Allied Trades		\$ 2,383,514.50	0.94%
-DIVISION 10 - SPECIALTIES	\$ 2,542,415.47		
-DIVISION 11 - EQUIPMENT	\$ 3,813,623.21		
-DIVISION 12 - FURNISHINGS	\$ 4,322,106.30		
-DIVISION 13 - SPECIAL CONSTRUCTION	\$ 63,560,386.75		
-DIVISION 14 - CONVEYING EQUIPMENT	\$ 5,720,434.81		
-DIVISION 21 - FIRE SUPPRESSION	\$ 5,084,830.94	\$ 5,084,830.94	2.00%
-DIVISION 22 - PLUMBING	\$ 6,356,038.68		
-DIVISION 23 - HVAC	\$ 8,135,729.50		
Sheet Metal Workers		\$ 2,847,505.33	1.12%
-DIVISION 25 - INTEGRATED AUTOMATION	\$ 1,525,449.28		
-DIVISION 26, 27 & 28 - ELECTRICAL, COMM, SAFETY	\$ 22,881,739.23		
Low Voltage		\$ 6,864,521.77	2.70%
-DIVISION 31 - EARTHWORK	\$ 4,576,347.85		
-DIVISION 32 - EXTERIOR IMPROVEMENTS	\$ 2,542,415.47	\$ 2,542,415.47	1.00%
-DIVISION 33 - UTILITIES	\$ 4,703,468.62		
LEED Allowance	\$ 3,813,623.21		
TOTALS	\$ 254,241,547.00	\$ 25,443,222.82	10.01%

MSC Cruises - Terminals AA & AAA

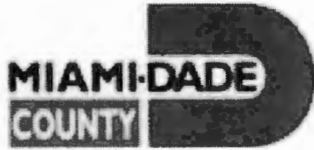
Project Analysis for Goal Recommendation (SBE-G&S)

Sub-trade	Estimate Cost	% of Item to Base Bid
Field Surveying	\$ 635,603.87	0.25%
Temporary Utilities / Portable Toilets	\$ 889,845.41	0.35%
LEED Consultant (General Contractor's Rep.)	\$ 2,542,415.47	1.00%
Trash / Storage Containers (20 ton.)	\$ 1,525,449.28	0.60%
Estimated Construction Cost (SBE)	\$ 5,593,314.03	2.20%
Estimate Construction Cost (Total)	\$ 254,241,547.00	100.00%

MSC Cruises - Terminals AA & AAA

Project Analysis for Goal Recommendation (SBE-CWP)

Trade/Skills Required	Estimated Cost	% of Item to Base Bid	Est. # of Workforce Required Per Trade	Est. # of days to Complete Job
-DIVISION 2 - EXISTING CONDITIONS	\$635,603.87	0.25%	6	730
-DIVISION 3 - CONCRETE	\$55,933,140.34	22.00%	130	730
-DIVISION 4 - MASONRY	\$5,084,830.94	2.00%	15	680
-DIVISION 5 - METALS	\$5,084,830.94	2.00%	18	730
-DIVISION 6 - WOOD, PLASTICS, AND COMPOSITES	\$1,525,449.28	0.60%	9	130
-DIVISION 7 - THERMAL AND MOISTURE PROTECTION	\$6,356,038.68	2.50%	18	730
-DIVISION 8 - OPENINGS	\$11,440,869.62	4.50%	27	730
-DIVISION 9 - FINISHES	\$15,890,096.69	6.25%	49	730
-DIVISION 10 - SPECIALTIES	\$2,542,415.47	1.00%	5	170
-DIVISION 11 - EQUIPMENT	\$3,813,623.21	1.50%	17	280
-DIVISION 12 - FURNISHINGS	\$4,322,106.30	1.70%	12	360
-DIVISION 13 - SPECIAL CONSTRUCTION	\$63,560,386.75	25.00%	85	950
-DIVISION 14 - CONVEYING EQUIPMENT	\$5,720,434.81	2.25%	12	380
-DIVISION 21 - FIRE SUPPRESSION	\$5,084,830.94	2.00%	16	610
-DIVISION 22 - PLUMBING	\$6,356,038.68	2.50%	20	680
-DIVISION 23 - HVAC	\$8,135,729.50	3.20%	35	680
-DIVISION 25 - INTEGRATED AUTOMATION	\$1,525,449.28	0.60%	4	160
-DIVISION 26, 27 & 28 - ELECTRICAL, COMM, SAFETY	\$22,881,739.23	9.00%	60	730
-DIVISION 31 - EARTHWORK	\$4,576,347.85	1.80%	16	375
-DIVISION 32 - EXTERIOR IMPROVEMENTS	\$2,542,415.47	1.00%	8	265
-DIVISION 33 - UTILITIES	\$4,703,468.62	1.85%	10	450
General Requirements	\$12,712,077.35	5.00%		
LEED Allowance	\$3,813,623.21	1.50%		
Estimated Construction Cost	\$254,241,547.00	100.00%	572	



Small Business Development Division

Project Worksheet

Project/Contract Title: Cruise Terminals AA/ AAA (MSC Cruise Terminal)
 Project/Contract No: 2017-001.01 (DESIGN)
 Department: Seaport
 Estimated Cost of Project/Bid: \$20,000,000.00
 Description of Project/Bid: MSC Cruises Cruise Terminal Design/Build

Received Date: 10/28/2019

Funding Source: Private

Contract Measures

<u>Measure</u>	<u>Program</u>	<u>Goal Percent</u>
Goal	SBE - A&E	14.00%

Reasons for Recommendation

SMALL BUSINESS ENTERPRISE - ARCHITECTURAL & ENGINEERING (SBE-A&E)

An analysis of the factors contained in the project package, as well as the factors contained in Section V. C. of Implementing Order 3-32 indicates a 14.00% SBE-A&E goal is appropriate for this contract in the following Technical Categories: 8.00 - Telecommunications Systems at 2.00%; 14.00 - Architecture at 1.00%; 15.01 - Surveying And Mapping-Land Surveying at 0.50%; 15-03 - Underground Utility Location at 0.50%; 16.00 - General Civil Engineering at 2.00%; 17.00 Engineering Construction Management at 4.00% and 20 - Landscape Architecture at 4.00%.

SMALL BUSINESS ENTERPRISE - GOODS & SERVICES (SBE-G&S)

An analysis of the factors contained in section VIII. B. of Implementing Order 3-41 & Ordinance 14-41 indicates that a No Measure is appropriate for the services portion of this contract.

MDC-TCC 08 TELECOMMUNICATION SYSTEMS, MDC-TCC 14 ARCHITECTURE, MDC-TCC 16 GENERAL CIVIL ENGINEERING, MDC-TCC 17 ENGINEERING CONSTRUCTION MANAGEMENT, MDC-TCC 20 LANDSCAPE ARCHITECTURE, MDC-TCC 15-01 Surveying and Mapping - Land Surveying, MDC-TCC 15-03 Underground Utility Location

Small Business Contract Measure

<u>Sub-trade</u>	<u>Category</u>
Telecommunication Systems	SBE - A&E
Architecture	SBE - A&E
General Civil Engineering	SBE - A&E
Architectural Construction Management	SBE - A&E
Engineering Construction Management	SBE - A&E
Management Surveying and Mapping - Land Surveying	SBE - A&E
Underground Utility Location	SBE - A&E
Landscape Architecture	SBE - A&E

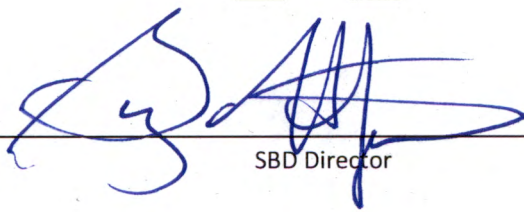
Living Wages: YES ☐ NO ☒

Highway: YES ☐ NO ☒

Heavy Construction: YES ☐ NO ☒

Responsible Wages: YES ☐ NO ☒

Building: YES ☐ NO ☒



SBD Director

10-31-19

Date



Small Business Development Division

Project Worksheet

Project/Contract Title: Cruise Terminals AA/ AAA (MSC Cruise Terminal)

Received Date: 10/28/2019

Project/Contract No: 2017-001.01 (BUILD)

Funding Source: Private

Department: Seaport

Estimated Cost of Project/Bid: \$254,241,547.00

Description of Project/Bid: MSC Cruises Cruise Terminal Design/Build

Contract Measures

<u>Measure</u>	<u>Program</u>	<u>Goal Percent</u>
Goal	SBE - Con	10.01%
Goal	SBE - Goods	2.20%
Workforce Goal	CWP	10.00%

Reasons for Recommendation

SMALL BUSINESS ENTERPRISE - CONSTRUCTION (SBE-Con)

An analysis of the factors contained in Section VI. C. of Implementing Order 3-22 indicates that a 10.01% Small Business Enterprise – Construction (SBE-Con) subcontractor goal is appropriate for the trades of: Masonry Contractors; Electrical Contractors and Other Wiring Installation Contractors; Painting and Wall Covering Contractors; Plumbing, Contractors; Other Building Finishing Contractors and All Other Specialty Trade Contractors.

SMALL BUSINESS ENTERPRISE - GOODS (SBE-Good)

An analysis of the factors contained in section VIII. B. of Implementing Order 3-41 & Ordinance 14-41 indicates that a 2.20% is appropriate for the goods portion of this contract in; Builder's Supplies; Electrical Cable and Wire, Not Electronic; Electrical Equipment and Supplies, Except Cable and Wire; Electronic Equipment, Components, Parts, and Accessories and Plumbing Equipment, Fixtures, and Supplies.

SBE-Con and SBE-G or S subcontractor Goals can be met by 1st, 2nd and 3rd Tier Subcontractor.

CWP Estimated Workforce: CWP Workforce Recommendation

NAICS 238140 Masonry Contractors, NAICS 238210 Low voltage electrical work, NAICS 238220 Fire sprinkler system installation, NAICS 238220 Heating, ventilation and air-conditioning (HVAC) contractors, NAICS 238220 Plumbing contractors, NAICS 238390 Other Building Finishing Contractors, NAICS 238990 All Other Specialty Trade Contractors, NAICS 238320 Painting and Wall Covering Contractors, NIGP 15000 BUILDER'S SUPPLIES, NIGP 28000 ELECTRICAL CABLE AND WIRE, NOT ELECTRONIC, NIGP 28500 ELECTRICAL EQUIPMENT AND SUPPLIES, EXCEPT CABLE AND WIRE, NIGP 28700 ELECTRONIC EQUIPMENT, COMPONENTS, PARTS, AND ACCESSORIES (SEE CLASS 730 FOR TESTING OR ANALYZING TYPE), NIGP 67000 PLUMBING EQUIPMENT, FIXTURES, AND SUPPLIES, NAICS 238210 Electrical Contractors and Other Wiring Installation Contractors

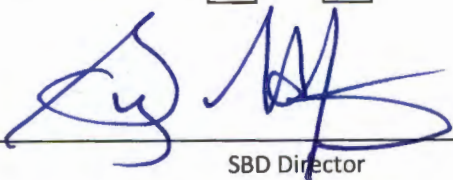
Small Business Contract Measure

<u>Sub-trade</u>	<u>Category</u>
All Other Specialty Trade Contractors	SBE - Con
Electrical Contractors And Other Wiring Installation Contractors	SBE - Con
Masonry Contractors	SBE - Con
Plumbing Contractors	SBE - Con

Fire Sprinkler System Installation	SBE - Con
Low Voltage Electrical Work	SBE - Con
Other Building Finishing Contractors	SBE - Con
Heating, Ventilation And Air-Conditioning (HVAC) Contractors	SBE - Con
Painting And Wall Covering Contractors	SBE - Con
Plumbing Equipment, Fixtures, And Supplies	SBE - Goods
Electrical Cable And Wire, Not Electronic	SBE - Goods
Plumbing Equipment, Fixtures, And Supplies	SBE - Goods
Electronic Equipment, Components, Parts, and Accessories	SBE - Goods

Living Wages: YES ☐ NO ☒ Highway: YES ☐ NO ☒ Heavy Construction: YES ☐ NO ☒

Responsible Wages: YES ☒ NO ☐ Building: YES ☒ NO ☐



 SBD Director

10-31-19
 Date

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

- (1) *Title.* This Section shall be referred to as the Miami-Dade County Small Business Enterprise Architecture & Engineering ("CBE" or "CBE-A/E") Program.
- (2) *Definitions.* For purposes of this section:
 - A. *Agreement* means an agreement proposed by the County or Public Health Trust staff, or approved by the County Commission or Public Health Trust for architectural, landscape architectural, engineering, and surveying and mapping professional services.
 - B. *Available or availability* means to have, prior to proposal submission, the ability to provide professional services under an agreement or subconsultant agreement by having:
 - (1) Reasonably estimated, uncommitted capacity and expertise;
 - (2) All licenses, permits, registrations, insurances and certifications;
 - (3) The ability to obtain bonding that is reasonably required to perform the agreement or subconsultant agreement consistent with normal industry practice; and
 - (4) The ability to otherwise meet all the proposal specifications.
 - C. *A/E Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise Architecture & Engineering Program.
 - D. *Bonding Assistance* may include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes.
 - E. *Business day* means a regular weekday (Monday through Friday) normally starting at 8:00 a.m. and finishing at 5:00 p.m., excluding Saturdays and Sundays and excluding all legal holidays recognized by the Federal, State or Miami-Dade County governments.
 - F. *CBE-A/E Objective* means the objective of assuring that not less than 10 percent of the County's total annual expenditures for professional architectural, landscape architectural, engineering, and surveying and mapping services, are expended with CBE-A/Es certified under this section, for projects specific and multiple project contracts. The foregoing CBE-A/E objective may be increased by subsequent resolution of the Board of County Commissioners, adopted after recommendation for an increase by the County Mayor or designee.
 - G. *CBE-A/E Program* is the Small Business Enterprise Program for the Architectural, Engineering, Landscape Architectural, Surveying and Mapping Professionals.
 - H. *Calendar day* means a twenty-four (24) hour period covering all days of the week (Monday through Sunday including all holidays), starting at 12:00 a.m. and finishing at 11:59 p.m.
 - I. *Certificate of Assurance* means the departmental form submitted with proposal documents whereby the Proposer acknowledges: (i) Small Business Enterprise ("SBE") measures apply to the project; and (ii) Proposer will submit its list of certified SBEs to satisfy the measures via Miami-Dade County's web-based system, within the specified time frame.
 - J. *Commercially useful function* means contractual responsibility for the execution of a distinct element of the work of an agreement by a firm and the carrying out of the contractual responsibilities by actually performing, managing, and supervising the work involved. Acting as a broker is not considered a commercially useful function. The determination of whether an activity is a commercially useful function shall include:
 1. The evaluation of the amount of work subconsulted;
 2. Normal industry practices;
 3. The skills, qualifications, or expertise of the firm to perform the work;
 4. Whether the firm's own personnel perform, manage, and/or supervise the work involved; and other relevant factors.

- K. *Construction* means the building, renovating, retrofitting, rehabbing, restoration, painting, altering, or repairing of a public improvement.
- L. *Continuing contract* shall mean the term "continuing contract" as defined in Section 2-10.4(1)(f).
- M. *Debar* means to exclude a consultant, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses from County agreements, whether as a prime consultant or subconsultant, for a specified period of time, not to exceed five (5) years.
- N. *Design-build contract* means a single contract with a design-build firm for the design and construction of a public construction project.
- O. *Design-build firm* means a partnership, corporation, or other legal entity which:
 - 1. Partnership or joint venture, having at least one partner in compliance with either of the following two requirements:
 - a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
 - b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219, Florida Statutes, to practice architecture; or certified under Section 481.319, Florida Statutes, to practice landscape architecture.
 - 2. An individual corporation or other legal entity in compliance with the following two requirements:
 - a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and
 - b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219, Florida Statutes, to practice architecture; or certified under Section 481.319, Florida Statutes, to practice landscape architecture.
- P. *Firm* means any individual, firm, partnership, corporation, association, joint venture or other legal entity permitted by law to practice architecture, engineering, landscape architecture, design-build, and land surveying and mapping services, which has a valid business tax receipt issued by Miami-Dade County at least one (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.
- Q. *Graduation* means the CBE-A/E has exceeded either the personal net worth, or the specific size limits stated for the Program and thus may no longer be eligible for participation in the Program.
- R. *Joint venture* means a business arrangement of two or more parties, in which at least one is a CBE-A/E that agrees to pool its resources for the purpose of accomplishing a specific task. The details of Joint Venture participation in the CBE-A/E program shall be provided in Implementing Order No. IO 3-32.
- 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.
- 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).
- V. *Owned* means having all the customary incidents of ownership, including the right of disposition, and the right or obligation to share in all risks and profits commensurate with the degree of ownership interest.
- W. *Professional services* are those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
- X. *Project Specific awards* are contracts for professional services between Miami-Dade County and a firm whereby the firm provides professional services to the agency for work of a specified nature for a fixed capital study or planning activity.
- Y. *Prompt Payment*. It is the intent of the County that all firms, including CBE-A/Es providing professional services to the County, shall receive payments promptly in order to maintain sufficient cash flow.
 - 1. Contracts with CBE-A/E set-asides, or subconsultant goals shall require that billings from consultants under prime professional services agreements with Miami-Dade County, or the Public Health Trust that are a CBE-A/E contract set-aside or which contain a set-aside or subconsultant goal shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County, or the Trust.
 - 2. Small Business Development may investigate reported instances of late payments to CBE-A/Es. The County Mayor or designee shall establish an administrative procedure for the resolution of written complaints pertaining to underpayment of professional services.
- Z. *Proposal* means a proposal, letter of interest, letter of participation or offer by any proposer in response to any kind of invitation, request or public announcement to submit such proposal, letters of interest, letter of participation or offer to perform the agreement.
- AA. *Proposer* means any firm that submits a proposal to provide professional services.
- BB. *Qualifier* means the individual who qualifies the firm professional license holder as required by Florida Statute.
- CC. *Review Committee or RC* means the committee established by the County Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus and when public input requires deliberation regarding the measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed.
- DD. *SBD* means the Division of Small Business Development or successor division or department.
- EE. *Small Business Enterprise Architecture & Engineering* means a firm providing architectural, landscape architectural, engineering, or surveying and mapping professional services, including a design-build firm, which has a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, an actual place of business in Miami-Dade County, not a Virtual Office, and whose three (3) year average annual gross revenues do not exceed

\$500,000.00 for all Tier 1 CBE-A/Es, \$2,000,000.00 for all Tier 2 CBE-A/Es, \$4,500,000.00 for Tier 3 CBE-A/Es in the case of architectural services, or \$6,000,000.00 for Tier 3 CBE-A/Es in the case of landscape architectural services, engineering, and surveying and mapping services. 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.

- FF. *Subconsultant goal* means a proportion of a prime agreement value stated as a percentage to be subconsulted to Tier 1 and Tier 2 CBE-A/Es to perform a commercially useful function.
- GG. *Suspension* means temporary debarment for a period not to exceed two (2) years.
- HH. *Technical certification* means a certification approved by the Miami-Dade County Technical Certification Committee to allow a firm to submit proposals on, and receive award of, County agreements for architectural, engineering, landscape architecture, or surveying and mapping services. Firms may be certified in several different technical certification categories.
- II. *Tier 1 Set-Aside* means reservation for competition solely among Tier 1 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees is \$500,000.00 or less. Tier 2 CBE-A/Es may not compete for Tier 1 CBE-A/E set-asides as prime consultants, unless Tier 1 CBE-A/E prime consultant unavailability exists.
- JJ. *Tier 2 Set-Aside* means reservation for competition solely among Tier 1 and/or Tier 2 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants of a given prime County

agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees are between \$500,000.01 and \$2,000,000.00. Tier 1 CBE-A/Es may compete for Tier 2 CBE-A/E set-asides as prime consultants. Tier 3 CBE-A/Es may not compete for Tier 2 CBE-A/E set-asides as prime consultants, unless Tier 1 and Tier 2 CBE-A/E prime consultant unavailability exists.

- KK. *Tier 3 Set-Aside* means reservation for competition solely among Tier 1, Tier 2 and/or Tier 3 CBE-A/E prime consultants and Tier 1, Tier 2 and/or Tier 3 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees \$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.
- MM. *Virtual Office* means an agreement that provides a receptionist, mail and facsimile services, and similar services, that give the appearance of having a business presence at a location, but the business entity has no ongoing, full-time physical presence in the building. Virtual Offices are invalid for certification purposes.

(3) *Program Components:*

- A. *Application.* Except where federal or state laws or regulations mandate to the contrary, the provisions of this section shall require review of all project specific contracts, design-build contracts, and multiple contracts for architectural, landscape architecture, engineering, and surveying and mapping professional services funded in whole or in part with County funds and all leases and contracts for privately funded construction on County-owned land to determine the appropriateness of applying measures as set forth in this section. The CBE-A/E Program shall not apply to continuing contracts. The County Mayor or his or her designee shall take steps to ensure that the Small Business Enterprise Architecture & Engineering objective of assuring that not less than ten (10) percent of the County's total annual expenditures for professional architectural, landscape architectural, engineering, and surveying and mapping services, are expended with CBE-A/Es certified under this section is met. The provisions of this section shall apply to all departments and agencies of the County and the Public Health Trust. The words County Mayor in this section shall mean the County Mayor or his or her designee. All leases and contracts for privately funded construction on County-owned land for which measures are determined to be appropriate under this section shall contain specific provisions to implement the intent of the CBE program in a manner consistent with its application to County design contracts. A Small Business Enterprise Goods Program and Small Business Enterprise Services Program goal(s) may be applied to projects with an estimated value over \$700,000. Notwithstanding the foregoing, this section shall not apply to privately funded construction on any County-owned facilities or property where the total value of the construction is two hundred thousand dollars (\$200,000.00) or less.
- B. *Miami-Dade County Small Business Enterprise Architecture & Engineering Program:*
 - 1. *Agreement Set-Asides:* The County Commission, or Public Health Trust may determine it is in its best interest to set-aside a prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when determined, prior to proposal advertisement, that there are at least three (3) Tier 1, Tier 2, and/or Tier 3 CBE-A/Es available. On a set-aside agreement, the successful proposer must be a certified Tier 1, Tier 2, and/or Tier 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 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 Small Business Development as consistent with normal industry practice except as allowed under (commercially useful function) above.

2. *Subconsultant goals:* The County Commission, or Public Health Trust may establish subconsultant goals to be applied to a particular agreement based on estimates made prior to proposal advertisement of the quality, quantity and type of subconsulting opportunities provided by the agreement, and of the availability of first, second, and third tier CBE-A/Es to afford effective subconsulting competition therefor. After proposal advertisement, or other formal public notice, the established subconsultant goal may be reduced only with the approval of the County Commission or Public Health Trust.

Proposal documents shall require proposers to submit a Certificate of Assurance acknowledging all Small Business Enterprise goals assigned to the project and the submittal of a Utilization Plan via the County's web-based system within the time frame identified by SBD. The Utilization Plan, shall be submitted by the prime and the subconsultant and shall at a minimum state the type of work that the subconsultant will perform, the technical certification category, and the percentage that the amount of the fees payable to the subconsultant bears to the overall fees payable under the contract. Failure to submit the required Certificate of Assurance at the time of proposal submission, and submit the Utilization Plan via the County's web-based system within the time frame specified by SBD, shall render the proposer non-compliant. A CBE-A/E firm may fulfill a subconsultant goal in only one (1) goal type per contract.

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

Proposal documents shall provide that:

- (i) Only expenditures to CBE-A/Es for performing a commercially useful function shall be counted toward meeting a specified subconsultant or subcontractor goal;
 - (ii) Expenditures to CBE-A/Es for acting essentially as a conduit to transfer funds to a non-CBE-A/E shall not be counted toward meeting a subconsultant or subcontractor goal unless such conduct receives prior approval from Small Business Development as consistent with normal industry practice; and
 - (iii) Expenditures to CBE-A/Es who subconsult work further to non-CBE-A/Es shall not be counted toward meeting a subconsultant goal unless such subconsulting receives prior approval from Small Business Development as consistent with industry practice.
 - (iv) Only expenditures to CBE-A/Es made under written subconsultant agreement executed by both the prime proposer and the CBE-A/E shall be counted towards meeting the subconsultant goal.
3. *Graduation:* Upon review, any CBE-A/E that exceeds the personal net worth or Tier 2 CBE-A/E size limits established by this section shall be graduated from the CBE-A/E program

upon notification by SBD. These firms shall be allowed to complete any currently awarded agreements and remain eligible to be awarded agreements as primes or subconsultants for proposal(s) submitted prior to notice of graduation. However, the graduated firm will not be eligible to receive any new agreements under the CBE-A/E program.

4. *Bonding and Financial Assistance Program:* This program will provide CBEs with assistance in obtaining bonding and/or financial assistance for architectural, landscape architecture, engineering, and surveying and mapping professional services, and design-build contracts. Bonding assistance will include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes. Financial assistance will include providing financial assistance such as mobilization capital, line of credit and/or working capital loans through partnering relationships with financial institutions.
- C. *A/E Advisory Board.* There is hereby created a Miami-Dade County Advisory Board for the Small Business Enterprise Architecture & Engineering Program.
1. The A/E Advisory Board will operate as a focal point for the public and with the assistance of the County Mayor or designee, will collect, input, and disseminate information related to economic opportunities within Miami-Dade County government for CBE-A/E business owners.
 2. The A/E Advisory Board shall consists of fifteen (15) members, as follows:
 - a. Two (2) members to be appointed by the Mayor.
 - b. One (1) member to be appointed by each County Commissioner.
 3. The term of the mayoral appointees and that of each commissioner shall be coterminous with the term of the appointing Mayor and commissioner, respectively.
 4. In no event shall an A/E Advisory Board member serve more than four (4) consecutive years.
 5. Members shall serve without compensation.
 6. The A/E Advisory Board may submit interim reports as it deems appropriate.
 7. SBD shall provide appropriate staff support.
 8. Sections 2-11.1(c) and (d) of the Conflict of Interest and Code of Ethics Ordinance of Miami-Dade County are waived for A/E Advisory Board members for transactions arising from the exercise of those powers given the A/E Advisory Board by this section.
 9. The County Mayor shall prepare a report with respect to the A/E Advisory Board pursuant to Section 2-11.37 of the Code of Miami-Dade County.
- (4) *Certification Requirements:* The County Mayor or designee shall implement eligibility criteria and administrative procedures for firms to be certified as CBE-A/Es based on regulations outlined in this section. Firms exceeding size limits established hereunder and under Appendix A of the ordinance from which this section derives are not eligible for measures or participation in these programs.
1. Small Business Development shall maintain an updated list of CBE-A/Es.
 2. SBD shall not certify an applicant, shall not recertify a CBE-A/E, and shall decertify a CBE-A/E that fails to comply with the criteria or procedures for obtaining or maintaining certification. SBD shall have authority to suspend the certification of a CBE-A/E during any appeal of a certification decision. Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD.
 3. Applicants and certified CBE-A/Es must be properly licensed to conduct business with the State of Florida and in Miami-Dade County, must have a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, and must perform a commercially useful function with an actual place of business in Miami-Dade County, not a Virtual Office, and must

continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified. A qualifier can only qualify one CBE-A/E firm. In addition, a Firm shall not be certified unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to the retention and expansion of employment opportunities and the support and increase to the County's tax base.

4. The applicant qualifier of the certified CBE-A/E firm must own at least twenty-five (25) percent of the certified firm's issued stock or have at least a twenty-five (25) percent ownership interest in the certified firm. A CBE-A/E firm may be certified in other technical categories for which the firm has received Technical Certification in accordance with Section 2-10.4 of the Miami-Dade County Code, through a non-owner qualifier.
 5. The County Mayor or designee shall establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners. Certification must be in effect at the time of proposal submittal. For successful proposers, certification must be maintained throughout the selection process and contract award. With the exception of provisions previously described for graduation from the CBE-A/E program, loss of CBE-A/E certification will lead to removal of the firm from continued participation in the CBE-A/E program. CBE-A/Es experiencing changes in address or ownership shall notify SBD within thirty (30) days of the effective date of such changes.
 6. A business owner, alone or as a member of a group, shall own or control only one CBE-A/E at a time. A business owner, alone or as a member of a group, and any CBE-A/E may not hold more than a ten (10) percent equity ownership in any other CBE-A/E.
 7. Applicants for CBE-A/E certification shall, as part of their application, disclose the information specified in subsections (d) (1) and (2) of Appendix A of this Code.
 8. SBD may require applicants and CBE-A/Es to submit information regarding their business operations, including but not limited to a breakdown of the applicant's or CBE-A/E's ownership, gross annual sales and/or workforce; however, the race, national origin, gender, shall not be used in the consideration.
- (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 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 report payments to subconsultants or subcontractors via the County's web-based system, or failure of subconsultants or subcontractors to confirm payments upon notification by the prime contractor, within the specified time frame;
5. Failure to comply with CBE-A/E certification requirements, including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
6. Failure to maintain certification as a CBE-A/E;
7. Deviation from the Utilization Plan without prior approval from SBD;
8. Termination of the CBE-A/E's agreement without prior approval from SBD;
9. Reduction of the scope of work of a CBE-A/E subconsultant agreement without prior approval from SBD;
10. Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from SBD;

11. Failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a Utilization Plan; and
 12. Failure to pay subconsultants promptly and in accordance with the administrative procedures under this section.
- (6) *Administrative penalties.* For violation of or noncompliance with this section or its implementing order, proposal(s), and/or competitive selection documents, the County Mayor or designee may impose penalties that include, but are not limited to, the following:
1. The loss of eligibility to be certified as a CBE-A/E for a specified period of time, not to exceed three (3) years, for an applicant or a CBE-A/E, its individual officers, its shareholders with significant interests, and its affiliated businesses.
 2. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the noncomplying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County construction contracts for a period not [to] exceed three (3) years.
 3. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to 20 percent of the amount thereof; for the second deficit, a penalty in an amount equal to 40 percent thereof; for the third and successive deficits, a penalty in an amount equal to 60 percent thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 10-33.02 of the Code of Miami-Dade County.
 4. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal therefrom, the noncomplying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.
- (7) *Appeals.*
1. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, and fix a time for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of Sections 2-10.2, or 3-11.1 or otherwise.
 2. Upon completion of the administrative hearing, the hearing officer shall transmit his/her findings of facts, conclusions and recommendations together with a transcript of all evidence taken before him/her 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.

3. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.
- (8) *County responsibilities.* Small Business Development (or other County department designated by the County Mayor) shall:
 1. Administer, or provide oversight for, the CBE-A/E programs and incentives outlined in this section;
 2. Provide staff assistance to the Review Committee and the CBE-A/E Advisory Board;
 3. Compile and maintain the data necessary to make the appropriate determinations as to the certification and decertification of CBE-A/Es, and to make recommendations for the application of measures to a given agreement;
 4. Ensure that an integrated system exists for information gathering, reporting, and statistical analysis including (but not limited to) interfacing with other County financial systems such as FAMIS, Seaport, Aviation, MDHA and MDWASD to obtain actual amount of work orders authorized to firms versus the project award amount (for successful proposers as well as for subconsultants), and interfacing with the GSA mainframe system to access data on vendors and awards;
 5. Monitor all agreements for which program measures have been applied in terms of consultant and subconsultant compliance with the provisions of this section;
 6. Provide assistance in technical and financial matters including:
 - a. Assistance in increasing the ability of CBE-A/Es to compete effectively on contracts;
 - b. Conduct of seminars on project management; and
 - c. Assistance in identifying and solving problems on projects.
 7. Review and investigate reports of non-compliance, and make the appropriate recommendations to the County Manager or his or her designee as to penalties to be invoked; and
 8. Prepare an annual report for the Board of County Commissioners on the results of the CBE-A/E Program.
- (9) Notwithstanding the requirements of this Section, the Mayor or his designee is hereby expressly authorized and directed to establish an expedited process for the creation, review and approval of measures relating to Economic Stimulus Projects subject to Section 2-8.2.7 of this Code. Such process shall be set forth in an administrative order.

(Ord. No. 01-103, § 1, 6-5-01; Ord. No. 04-120, § 1, 6-8-04; Ord. No. 08-70, § 1, 6-3-08; Ord. No. 08-92, § 2, 7-17-08; Ord. No. 10-83, § 1, 12-7-10; Ord. No. 12-05, § 1, 2-7-12; Ord. No. 11-24, § 1, 5-3-11; Ord. No. 14-61, § 1, 7-1-14; Ord. No. 14-98, § 2, 10-7-14; Ord. No. 15-02, § 1, 2-3-15; Ord. No. 15-29, § 2, 5-5-15; Ord. No. 15-30, § 2, 5-5-15; Ord. No. 15-141, § 2, 12-1-15; Ord. No. 16-84, § 1, 9-7-16; Ord. No. 18-33, § 2, 4-10-18)

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

(1) *Title.* This section shall be referred to as the Miami-Dade County Small Business Enterprise Construction Services ("CSBE") Program.

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

Advisory board means the Community Small Business Enterprise Board ("CSBE Advisory Board") created for the purpose of reviewing program activities and results, and for making recommendations to Small Business Development ("SBD") and the Board of County Commissioners ("County Commission") on matters pertaining to the program.

Aggregate Set-Aside means an aggregated value of small construction contracts, no one contract of which exceeds five million dollars, which are to be bid during a fixed period of time on a contract-by-contract basis with bidding therefor reserved solely among qualified CSBEs classified in the applicable Contracting Participation Level and SIC or NAICS Code for the contract.

Available or *availability* means to have, prior to bid submission, the ability to provide construction services under a prime contract that is being considered for a set-aside or under a first or second, third, or fourth tier subcontract on a contract being considered for a first or lower tier subcontractor goal by having:

1. Reasonably estimated, uncommitted capacity and expertise;
2. All licenses, permits, registrations and certifications;
3. The ability to obtain bonding that is reasonably required to perform the contract or subcontract consistent with normal industry practice; and
4. The ability to otherwise meet bid specifications.

Bid means a quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letters of interest or offer to perform the contract.

Bid preference means an amount deducted (for evaluation purposes only) from the total bid price in order to calculate the bid price to be used to evaluate the bid on a competitively bid prime county construction contract, which is not set-aside for bidding solely by CSBEs.

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

Bonding assistance may include providing assistance in preparing and completing bond packages as well as providing ending to be used for bonding purposes.

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

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

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.

Commercially useful function means contractual responsibility for the execution of a distinct element of the work of a contract by a business enterprise 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 subcontracted;
2. Normal industry practices;

3. The skills, qualifications, or expertise of the enterprise to perform the work;
4. Whether the business' own personnel perform, manage, and/or supervise the work involved; and
5. Other relevant factors.

Commitment letter means a letter signed by an officer or other authorized representative of a bidder or proposer for a County construction contract containing a second, third or fourth tier subcontractor goal which specifically commits the bidder or proposer to meet such subcontractor goal.

Construction means the building, renovating, retrofitting, rehabing, restoration, painting, altering or repairing of a public improvement.

Construction Manager-at-Risk ("CM-at-Risk") replaces the general contractor and works for a fee with the County and the Architect through the design phase to contain the budget and schedule. The CM-at-Risk may provide a guaranteed maximum price ("GMP"), and bids the work out to local trade contractors. The CM-at-Risk mobilizes to the site and manages the trade contractors for quality and schedule.

Construction Services means construction, maintenance, painting, alteration, installation, or repair of a public improvement or any performance of work offered for public consumption that does not consist primarily of goods.

Contract means an agreement proposed by the County or Public Health Trust staff, or approved by the County Commission or Public Health Trust for construction.

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

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

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

CSBE objective means the objective of assuring that not less than ten (10) percent of the County's total annual expenditures for construction are expended with CSBEs. The foregoing CSBE objective may be increased by subsequent resolution of the Board of County Commissioners, adopted after recommendation for an increase by the Advisory Board. Forty (40) percent of the foregoing objective may be accomplished through set-aside of smaller prime contracts and use of subcontractor goals on larger prime contracts falling within Standard Industrial Classification (SIC) code 15; forty (40) percent of the foregoing objective may be accomplished through set-aside of smaller prime contracts and use of subcontractor goals on larger prime contracts falling within SIC 16; and twenty (20) percent of the foregoing objective may be accomplished in prime contracts falling within SIC 17. The percentage of the overall CSBE objective allocated to each SIC category may be adjusted by resolution of the Board of County Commissioners in direct correlation to CSBE availability.

Draw means a request for payment submitted by the prime contractor to the County or County's designee. A scheduled draw occurs, according to the contract's payment schedule, when the prime contractor is allowed to submit its request for payment. The date(s) of a scheduled draw may be stated with specificity in the contract in the form of a payment schedule or may be stated as a reoccurring event taking place, for example, on the 30th of each month.

Graduation means the CSBE has exceeded either the personal net worth, or the specific size limits stated for the program, based on the firm's three-year average annual gross revenues, and will no longer be eligible for participation in the program.

Guaranteed maximum price ("GMP") is the cost of the project that the CM-at-Risk guaranteed will not be exceeded.

Joint Venture means 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.

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.

Management and Technical Assistance (MTA) means a program designed to provide direct and indirect assistance for small business enterprise development. Specific details of the program are shown in Attachment 3 [which can be found in the County Clerk's office attached to Ordinance Number 97-52].

Mentor-Protege 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 3-22.

Miscellaneous Construction Contracts are open contracts designed to consolidate an indeterminate number of individual small construction, repair, installation, or alteration activities which may be needed over a fixed period of time, or open contracts that are work order based where no specific item quantities have been determined prior to bid (unit price contracts).

Prequalification is defined as provided elsewhere in this ordinance.

Primary Trade Contractor means those contractors who directly contract with the CM-at-Risk. This definition only applies to contracts for a construction manager-at-risk.

Program incentive is an incentive that a firm can choose to use in a bid or proposal based on the firm's participation in certain programs. The incentive consists of either a bid preference or selection factor that will be used in evaluating the firm's bid on a specific project. The program incentives available are as follows:

1. For participation in the Mentor-Protege' Program—Two (2) percent of bid price or up to ten (10) percent of the total evaluation points;
2. For participation in the Worker Training Program—Two (2) percent of the bid price or up to ten (10) percent of the total evaluation points.

Qualifier means the individual who has qualified a contractor for its current, valid certificate of competency or eligibility as required by Subsection (a) of Section 10-3 of this Code.

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.

SBD means the Miami-Dade County Department of Small Business Development, or successor agency.

Selection factor means a percentage of total evaluation points added to the points scored by a proposer responding to an RFP or RFQ for a prime County construction contract which is not set-aside for competition solely amongst CSBEs.

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

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

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

Small Business Enterprise for Construction Services (CSBE) means a construction related enterprise, including a design-build firm, and any firm providing trades and/or services for the completion of a construction project, as defined in Chapter 10 of the Code of Miami-Dade County, which has an actual place of business in Miami-Dade County and whose average annual gross revenues for the last three (3) years do not exceed: ten million dollars (\$10,000,000.00) for SIC 15 - Building Construction, General Contractors and Operative Builders; six million dollars (\$6,000,000.00) for SIC 16 - Heavy Construction, other than Building Construction; or five million dollars (\$5,000,000.00) for SIC 17 - Specialty Trade Contractors. CSBEs shall be categorized by the type of construction they perform in accordance with the two-digit Standard Industrial Classification (SIC) code, or the six-digit North American Industry Classification System (NAICS), of the Census applicable to such type of construction. A CSBE will graduate out of the program upon notification by SBD that it has exceeded these size limits based on its three-year average annual gross revenues. A certified CSBE that graduates out of the program shall continue to submit financial information as to cumulative gross revenue and bonding capacity to SBD annually for 3 years thereafter in order to further the County's ability to assess the effectiveness of the program.

The County Mayor or designee shall be authorized to adjust the CSBE-size limits every five (5) years at his/her discretion based on the local Consumer Price Index for All Urban Consumers (CPI-U) calculated by the U.S. Department of Commerce or other appropriate tool of inflation measures as applied to Miami-Dade County for the preceding five (5) years. The first indexing adjustment shall occur for the 2013—2014 calendar year using the figures provided for the calendar year ended December 31, 2012, and every five (5) years thereafter. The County Mayor or designee shall advise the Board of any such adjustment.

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

1. Level I—Three-year average gross revenues of \$0.00—\$2,000,000.00;
2. Level II—Three-year average gross revenues above \$2,000,000.00 but not exceeding \$5,000,000.00; or
3. Level III—Three-year average gross revenues above \$5,000,000.00 but not exceeding \$10,000,000.00.

A firm's eligibility to participate in the CSBE program and the contracting participation level at which it will participate shall be determined based on the three-year average gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A [which can be found in the County Clerk's office attached to Ordinance Number 97-52]. No firm shall be certified as a CSBE where

the individual net worth of any of its owners is more than one million five hundred thousand dollars (\$1,500,000.00). Representations as to average gross revenues, personal net worth of owners and payroll shall be subject to audit.

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

Subcontractor goal means a proportion of a prime contract value stated as a percentage to be subcontracted to CSBEs to perform a commercially useful function. A first tier subcontract goal may be imposed where there is CSBE availability at such tier level. A second, third and fourth tier subcontract goal may be imposed on those contracts whose estimated cost exceeds twenty-five million dollars (\$25,000,000.00) where there is CSBE availability at such lower tier levels.

Trade set-aside means that an entire specialty trade component(s) of a County miscellaneous construction contract is reserved for first tier subcontracting amongst certified CSBEs (for example, the entire plumbing or roofing or electrical component of a specific contract is reserved for limited competition amongst certified CSBEs). All such subcontracts shall be in writing and shall be executed by the prime contractor and the first tier CSBE subcontractor.

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).

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.

Worker Training Program is a qualified training program or technical school or other such construction industry related training program, as approved by the advisory board.

(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 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 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 Mayor" in this section shall mean the County 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:
 1. Prompt payment.

- a. The County Mayor or designee and the President of the Public Health Trust shall establish administrative procedures requiring that billings from contractors under prime construction contracts with Miami-Dade County or the Public Health Trust that are a CSBE contract set-aside or which contain a trade set-aside or subcontractor goal, shall be promptly reviewed and payment made to the prime contractor by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust.

The County and Trust shall notify the prime contractor, and the Department of Small Business Development (SBD), in writing, of those billings submitted by the prime which are in dispute, and the reasons why they are in dispute, within fourteen (14) calendar days of receipt of such billing by the County or Trust. This provision is applicable regardless of whether the disputed billing pertains to the work performed and/or billing of CSBE subcontractors. Reference is hereby made to Section 2-8.1.4(6) of the Code, which sets forth the procedures for improper invoices and resolution of disputes.

- b. A prime contractor shall include in its billing to the County or Trust copies of those billings from CSBE subcontractors utilized to meet the subcontractor goal applicable to the contract which the contractor approves and whose cost is included in the payment requested from the County or Trust. A prime contract which contains a second, third or fourth tier subcontractor goal shall require all subcontractors in direct privity with a second or lower tier CSBE subcontractor, and all successive subcontractors on up to and including the first tier subcontractor level, to include portions of any lower tier CSBE subcontractor's billings which are approved by such subcontractors and are included in any payment amount they request.

Undisputed portions of billings from CSBEs that are submitted to the prime at least five (5) days or more before the date of the prime's next scheduled draw, must be submitted by the prime to the County in the prime's next scheduled draw, according to the contract's payment schedule. For example: if the County's billing cycle on the specific contract allows the prime to submit its draw on the 30th of each month, a CSBE that submits its billing to the prime on or before the 25th of the month shall have its billing included in the prime's next scheduled draw submitted to the County on the 30th.

Undisputed portions of billings from CSBEs that are submitted to the prime less than five (5) days before the prime's next scheduled draw, may be submitted in the next draw; however, said billings shall be submitted no later than in the prime's next subsequent scheduled draw. For example, if the County's billing cycle on the specific contract allows the prime to submit its draw on the 30th of each month, a CSBE that submits its billing to the prime after the 25th of the month but before the 30th of the month shall, at the latest, have its billing included in the prime's subsequent scheduled draw submitted to the County on the 30th of the following month.

Failure by the prime to include the CSBE's billing(s) in its next scheduled draw or subsequent scheduled draw to the County as outlined above, and absent notification of disputes, as set forth in subsection (3)(A)(1) herein, shall result in the prime making full payment directly to the CSBE for the full amount of the submitted billing(s). Full payment to the CSBE subcontractor for the particular billing(s) shall be made within the same number of days that the County has mandated as the billing cycle for said contract in operation, or within forty (40) calendar days of submittal of such billing(s) by the CSBE to the prime, whichever is less, regardless of whether the prime has received its payment from the County.

- c. If for any reason, the prime contractor chooses not to submit any billings to the County on its next or subsequent scheduled draw, the prime contractor shall make full

payment to the CSBE subcontractor(s) for billings submitted by the CSBE subcontractor(s) in accordance with the subsection above. Full payment to the CSBE subcontractor(s) for the particular billing(s) shall be made by the prime contractor within the same number of days that the County has mandated as the billing cycle for said contract in operation, or within forty (40) calendar days of submittal of such billing(s) by the CSBE subcontractor(s) to the prime contractor, whichever is less, regardless of whether the prime has received its payment from the County.

- d. Prime construction contracts to which a CSBE trade set-aside or subcontractor goal has been applied shall require that billings from CSBEs at whatever subcontractor tier level for which the contract measure has been applied, shall be promptly reviewed and payment made to such CSBEs on those amounts not in dispute within two (2) business days of receipt of payment therefor. The foregoing obligation to promptly review and pay CSBE billings shall apply to prime contractors and subcontractors who are in direct privity with the CSBE and to each successive subcontractor on up the line to the level of prime contractor. The two (2) day payment provision shall equally apply to retainage payments received by prime contractors from the County, and subsequently passed on to subcontractors.
- e. The prime contractor agrees to the contract requirements of Miami-Dade County, Florida Code, Section 10-35, Release of Claim by Subcontractors Required. The requirements found in Section 10-35 are hereby fully incorporated into this CSBE Prompt Payment Subsection and non-compliance, by failing to pay subcontractors and failing to provide the requisite subcontractor affidavit and/or consent of surety to requisition payment, shall be enforceable through this Subsection.
- f. The prime contractor on a prime construction contract to which a CSBE trade set-aside or a first tier subcontractor goal has been applied shall inform the Department of Small Business Development, the Contracting Officer, and the first tier CSBE subcontractor, in writing, of those amounts billed by the CSBE which are in dispute, and the specific reasons why they are in dispute, within five (5) calendar days of submittal of such billing by the first tier CSBE subcontractor to the prime contractor. Prime contracts to which a second or lower tier subcontractor goal has been applied shall provide that subcontractors in direct privity with any CSBE utilized to meet such lower tier subcontractor goal, shall inform the affected CSBE in writing, with copies to the prime contractor and the Department of Small Business Development, of those amounts of such CSBE's billings that are disputed and the specific reasons therefor within five (5) calendar days of submittal of such billing from the CSBE.

Failure of the prime contractor to comply with the applicable requirements of this Subsection shall result in the prime contractor's forfeiture of the right to use the dispute as justification for not paying the first tier CSBE subcontractor and payment shall be forthcoming from the prime contractor. Prime contracts to which a second or lower tier subcontractor goal has been applied shall provide that a subcontractor in direct privity with a CSBE utilized to meet such goal who fails to comply with the applicable provisions of this Subsection shall result in such subcontractor's forfeiture of the right to use the dispute as justification for not paying the CSBE subcontractor and payment shall be forthcoming from such subcontractor.

- g. None of the provisions of Section (3)(B)1 requiring the prime contractor to make full payment on any billing by a subcontractor due to failure to comply with this section shall be construed as also requiring the County to make a similar full payment of that billing to the prime contractor. The County shall not be precluded from disputing billings submitted by prime contractors in accordance with the notice requirements of subsection (3)(B)1a as stated herein.

- h. Failure of the prime contractor to comply with any of the requirements found in Section 10-33.02 (3)(B)1 et seq. shall result in the imposition of one (1) or more of the following sanctions:
 - 1. The suspension of any payment or part thereof until such time as the issues concerning compliance have been resolved;
 - 2. Work stoppage;
 - 3. Termination, suspension, or cancellation of the contract in whole or part;
 - 4. The contractor may also be subject to debarment.
- i. The County Manager, or his or her designee, shall establish administrative procedures to apply similar provisions, as found in this subsection, (3)(B)1, to CSBEs that are being used to meet 2nd, 3rd and/or 4th tier CSBE measures on County contracts.
- j. In addition to any sanction available pursuant to Subsection (3)(B)1.h. above, construction contracts to which a CSBE trade set-aside or subcontractor goal at any subcontractor tier level has been applied shall provide that failure of the prime contractor or any subcontractor in direct privity to the CSBE to make prompt payment as provided in Section 10-33.02(3)(B)1. et seq., shall result in the imposition of a penalty of \$75.00 per day for each day payment to a CSBE subcontractor is not made within the time frames specified in these provisions. Any such penalty shall be deducted from the prime contractor's next invoice. Monies received from payment of penalties imposed hereunder shall be utilized to defray SBD's cost of administering this ordinance.

Contractual documents shall also require the prime contractor or any subcontractor in direct privity to the CSBE to make payment to the CSBE of one (1) percent interest per month on any balance not paid by the time frame specified in these provisions; unpaid balance shall bear interest from thirty (30) days after the due date at a rate of one (1) percent per month. The CSBE must invoice the prime contractor for any interest accrued in order to receive the interest payment. Any overdue period of less than one (1) month shall be considered as one (1) month in computing interest. Unpaid interest shall compound monthly. With respect to each past due payment, interest shall cease to accrue after interest on that payment has accrued for twelve (12) months. For purposes of this section, one (1) month shall constitute a period beginning on any day of one month and ending on the same day of the following month. No contract between the prime contractor and the CSBE or any subcontractor in privity thereto shall prohibit the CSBE from invoicing for late payment interest charges allowed under this section.

- 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 mentors and proteges must be registered by SBD in the Mentor-Protege Program.
- 3. *Bonding and Financial Assistance Program:* This program will provide CSBEs with assistance in obtaining bonding and/or financial assistance for construction projects. Bonding assistance will include providing assistance in preparing and completing bond

packages as well as providing funding to be used for bonding purposes. Financial assistance will include providing financial assistance such as mobilization capital, line of credit and/or working capital loans through partnering relationships with financial institutions. The specific details of the proposed program are shown in Attachment 2 as amended.

4. *Management and Technical Assistance Program:* This program will provide direct and indirect assistance for small business development. Program management provides direction, coordinates access to services, and maintains continual communications to assure knowledge and use of available resources. Technical assistance will also be provided such as accounting services and business plan preparation, which will assist firms in developing documents needed for bonding and financial assistance as well as business and management workshops and seminars. CSBEs may have access to resources that focus on developing their management capacity and enhancing the marketability of their products. Specific details of the proposed program are shown in Attachment 3 [which can be found in the County Clerk's office attached to Ordinance Number 97-52].
5. *Trade set-asides:* Trade set-aside means that an entire specialty trade component(s) of a County contract or a miscellaneous construction contract which the prime contractor shall subcontract at the first tier level to certified CSBEs (for example, the entire plumbing or roofing or electrical component of a specific contract). All such subcontracts shall be in writing and shall be executed by the prime contractor and the first tier CSBE subcontractor. Miscellaneous construction contract shall mean a construction contract managed by a construction manager selected on the basis of a management fee that will be added to the cost of specialty trade work for various projects bid by the construction manager as a trade set-aside for CSBEs.
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 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. 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. Failure to submit the required Certificate of Assurance at the time of bid submission shall render the bidder non-compliant to the contract requirement and this section. 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, 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 SBD as consistent with normal industry practice.
- (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 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 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 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 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 Mayor or the Mayor's designee for 1st, 2nd, 3rd or 4th

tier subcontractors upon the recommendation of 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 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 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 Certificate of Assurance and Utilization Plan within the required time frame may render the bidder non-compliant, or subject to sanctions or penalties as outlined in the contract or the Implementing 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 Mayor. The County 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 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 Mayor upon the recommendation of SBD based on estimates made prior to awarding such tasks and of the availability of CSBEs to afford effective subcontracting therefor.

[7. *Reserved.*]

8. *Contract measures:*

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

1. Level I—Three-year average gross revenues of \$0.00—\$2,000,000.00
2. Level II—Three-year average gross revenues above \$2,000,000.00 but not exceeding \$5,000,000.00
3. Level III—Three-year average gross revenues above \$5,000,000.00 but not exceeding \$10,000,000.00

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

CSBEs prequalified in one (1) Contracting Participation Level (e.g. those in Contracting Participation Level III) may not bid on a lower level prime County contract set-aside for CSBEs (e.g., a three hundred thousand dollar (\$300,000.00) project which falls into Level I). However, a CSBE prequalified in a lower level may bid on contracts whose estimated cost falls within a higher level (e.g., a Level I CSBE may bid on a Level II or III contract).

Transferring to a non-CSBE through subcontracting or otherwise all or part of the actual work of a set-aside contract is prohibited unless such transfer receives prior approval from the Department of Small Business Development as consistent with normal industry practice.

A CSBE may compete for any set-aside prime construction contract in the SIC or NAICS code which the CSBE is certified.

In the case of an Aggregate Set-Aside, the aggregated value of the set-aside shall be established after taking into account the CSBE objective and the effect of any measures that may be applied to other County construction contracts not included in the Aggregate Set-Aside. The particular level of CSBEs that may bid for a particular contract under an Aggregate Set-Aside shall be determined by Contracting Participation Level based on the contract's estimated cost and by SIC or NAICS Code. At the time a proposed Aggregate Set-Aside is presented to the County Commission for waiver of competitive bidding and set-aside for CSBEs, staff shall present an analysis of the availability of sufficient CSBEs in the various Contracting Participation

Levels to compete for the contracts proposed to be included in the aggregated value of contracts proposed for the Aggregate Set-Aside. As part of such presentation, staff shall advise the Commission of the mechanisms that will be applied to assure an equitable distribution of awards to all qualified CSBEs.

- b. *Selection factor:* A contractor responding to an RFP or RFQ for a prime county construction contract which is not set-aside for competition solely amongst CSBEs shall be entitled to a program incentive of up to ten (10) percent of the total evaluation points for participation in the Worker Training Program or the Mentor-Protege Program. The County Manager shall establish a sliding scale which provides the extent of preference given a contractor hereunder. In no event shall the cumulative effect of the selection factor hereunder, exceed ten (10) percent of the total evaluation points on any one (1) RFP or RFQ.

Any committee formed to evaluate a response to an RFP or RFQ with a CSBE selection factor shall include a voting representative from the Department of Small Business Development.

- c. *Bid preference:* A contractor bidding on a competitively bid prime county construction contract which is not set-aside for competition solely amongst CSBEs shall be entitled to a program incentive of up to two (2) percent of such contractor's bid price (for bid evaluation purposes only) for participation in the Worker Training Program or the Mentor-Protege Program. The County Manager shall establish a sliding scale which provides the extent of preference given a contractor hereunder. In no event shall the cumulative effect of the bid preference hereunder, exceed two (2) percent of such contractor's bid price.
- d. *Trade set-aside:* The County Commission or Public Health Trust may authorize a trade set-aside as outlined in this section.
- e. *Subcontractor goals:* The County Commission or Public Health Trust may establish subcontractor goals as outlined in this section.

- 9. *Advisory board:* There is hereby created a Community Small Business Enterprise Advisory Board or CSBE Advisory 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:
 - 1. One (1) member from the list of recommended appointees submitted by the Allied Minority Contractor's Association, Inc.;
 - 2. One (1) member from the list of recommended appointees submitted by the South Florida Chapter of the Associated General Contractors of America;
 - 3. One (1) member from the list of recommended appointees submitted by the BAC Funding Corporation;
 - 4. One (1) member from the list of recommended appointees submitted by the Construction Association of Florida, Inc.;
 - 5. One (1) member from the list of recommended appointees submitted by the Engineering Contractor's Association of South Florida, Inc.;
 - 6. One (1) member from the list of recommended appointees submitted by the Latin Builders' Association;
 - 7. One (1) member from the list of recommended appointees submitted by the Underground Contractors' Association of South Florida, Inc.;
 - 8. One (1) member from the list of recommended appointees submitted by the Miami-Dade Chamber of Commerce;

9. One (1) member from the list of recommended appointees submitted by the Contractor's Resource Center;
10. One (1) member from the list of recommended appointees submitted by the UPPAC;
11. One (1) member from the list of recommended appointees submitted by the National Association of Black Women in Construction;
12. A representative of the local bonding industry;
13. A representative of the local banking and financial industry;
14. A certified CSBE; and
15. One (1) member from the list of recommended appointees submitted by the CSBE Association.

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

The Advisory board is created for the purpose of providing general program oversight and assisting Small Business Development in tracking and monitoring the results and effectiveness of the CSBE Program. The Advisory board shall not assume Small Business Development's administrative or other responsibilities. The Advisory 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.

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 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.

10. *Graduation:* Upon review, any CSBE that exceeds the personal net worth or size limits, based on the firm's three-year average gross revenues, established by this section shall be graduated from the CSBE program upon notification by SBD and may no longer be eligible for participation in the CSBE Program. These firms shall be allowed to complete any currently awarded contract and remain eligible to be awarded contracts as primes or subcontractors for bids submitted prior to notice of graduation. However, the graduated firm will not [be] eligible to receive any new contracts under the CSBE program.
- (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 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.
 2. Small Business Development shall not certify an applicant, shall not recertify a CSBE, and shall decertify a CSBE that fails to comply with the criteria or procedures for obtaining or maintaining certification. Small Business Development shall have authority to suspend the

certification of a CSBE during any appeal of a decertification decision. Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD.

3. Applicants and certified CSBEs must be properly licensed to conduct business in Miami-Dade County, must have a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, must perform a commercially useful function with an actual place of business in Miami-Dade County, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified. In addition, a firm shall not be certified unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to the retention and expansion of employment opportunities and the support and increase to the County's tax base.
 4. The qualifier of the certified CSBE firm must own at least ten (10) percent of the certified firm's issued stock.
 5. The County Mayor or designee shall establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners. Certification must be in effect at the time of bid submittal. Successful bidders must be certified at the time of bid submittal, bid award, and throughout the duration of the contract. With the exception of provisions previously described for graduation from the CSBE program, loss of CSBE certification may lead to removal of the firm from continued participation in the CSBE program. CSBEs experiencing changes in ownership shall notify the County within thirty (30) days of the effective date of such changes.
 6. A business owner, alone or as a member of a group, shall own or control only one (1) CSBE at a time. A business owner, alone or as a member of a group, and any CSBE may not hold more than a ten (10) percent equity ownership in any other CSBE.
 7. Applicants for CSBE certification shall, as part of their application, disclose the information specified in Subsections (d)(1) and (2) of Section 2-8.1 of this Code.
 8. Small Business Development may require applicants and CSBEs to submit information regarding their business operations, including, but not limited to, a breakdown of the applicant's or CSBE's ownership, management, and/or workforce as to race, national origin, gender, and gross annual sales.
- (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 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 contract or require the termination or cancellation of the first tier subcontract for the project on which the bidder or CSBE committed such acts. In addition, and as a further sanction, the County Mayor or Mayor's designee may impose any of the above-stated sanctions on any other contracts or first tier subcontracts the bidder or CSBE has on County projects. In each instance, the bidder or CSBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The bidder or CSBE may also be subject to debarment.
 - v. The foregoing notwithstanding, the County Mayor or designee shall include language in all prospective contracts containing a CSBE measure which provides that, in addition to any other

sanction for failure to fulfill the CSBE measure requirements, the contractor's eligibility to receive any future County contracts may be conditioned upon the contractor making up the deficit in CSBE participation in such future contracts by having CSBE(s) perform 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 must be submitted as part of any bid or proposal for future contracts as part of the Utilization Plan submitted via the County's web-based system. The Make-up Plan must identify all CSBEs to meet the first tier subcontractor goal and the trade designation of work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to submit the required Make-up Plan with the Utilization Plan for any future contracts shall result in the submittal being deemed non-compliant. Any contractor subject to an approved Make-up Plan that fails to comply with any of the material terms of that Make-up Plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a six (6) month period. A contractor that fails to comply with any of the material terms of a second Make-up Plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a one (1) year period. A contractor that fails to comply with any of the material terms of a third Make-up Plan, without good cause, 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 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 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 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 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.
- (6) *Administrative penalties.* For violation of or noncompliance with this ordinance or its implementing orders, bid, and competitive selection documents, the County Mayor or designee may impose penalties that include, but are not limited to, the following:
1. The loss of eligibility to be certified as a CSBE for a specified period of time, not to exceed three (3) years, for an applicant or a CSBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.
 2. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the non-complying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.
 3. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to 20% of the amount thereof; for the second deficit, a penalty in an amount equal to 40% thereof; for the third and successive deficits, a penalty in an amount equal to 60% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 10-33.02 of the Code of Miami-Dade County.
 4. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal therefrom, the noncomplying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.
- (7) *Penalties for Utilization Plan violations.* If on three (3) separate occasions, a subcontractor executed a Utilization Plan and subsequently becomes unavailable to perform or complete the work for the prime contractor during the contract period, SBD shall suspend said subcontractor from certification for one (1) year. If SBD suspends the same subcontractor three (3) times due to its failure to perform pursuant to a Utilization Plan as stated above, SBD shall suspend the subcontractor for a minimum of five (5) years, or until such time as the subcontractor can show SBD that it is ready, willing and able to perform if five (5) years has elapsed.
- (8) *Appeals.*
- A. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, and fix a time for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of Sections 2-10.2, or 3-11.1, or otherwise.
 - B. Upon completion of the administrative hearing, the hearing officer shall transmit his/her findings of facts, conclusions and recommendations together with a transcript of all evidence taken before him/her 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.

C. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.

(9) *County responsibilities.* Small Business Development (or other County department designated by the County Mayor or designee) shall:

1. Administer, or provide oversight for, the CSBE program and incentives outlined in this section;
2. Provide staff assistance to the review committee and the advisory board;
3. Compile and maintain the data necessary to make the appropriate determinations as to the certification and decertification of CSBEs, and to make recommendations for the application of contract measures to a given contract;
4. Ensure that an integrated system exists for information gathering, reporting, and statistical analysis including (but not limited to) interfacing with other County financial systems such as FAMIS, Seaport, Aviation, HUD and WASAD to obtain actual amount of work orders authorized to firms versus the project award amount (for prime contractors as well as for subcontractors), and interfacing with the GSA mainframe system to access data on vendors and awards;
5. Monitor all contracts for which program measures have been applied in terms of contractor and subcontractor compliance with the provisions of this ordinance;
6. Provide assistance in technical and financial matters including:
 - a. Assistance in increasing the ability of CSBEs to compete effectively on contracts;
 - b. Conduct of seminars on contract management; and
 - c. Assistance in identifying and solving problems on projects;
7. Review and investigate reports of noncompliance, and make the appropriate recommendations to the County Mayor as to penalties to be invoked;
8. Prepare an annual report for the Board of County Commissioners on the results of the CSBE Program;
9. Prepare quarterly reports for the advisory board on the results of the CSBE Program;
10. SBD shall assign a CSBE coordinator to each county department issuing capital construction contracts whose responsibility shall be to seek out contracting opportunities for CSBEs and serve as liaison between SBD and the department; and
11. Upon completion of a contract or after final payment on a contract SBD shall review the final 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.

(10) Notwithstanding the requirements of this Section, the Mayor or his designee is hereby expressly authorized and directed to establish an expedited process for the creation, review and approval of measures relating to Economic Stimulus Projects subject to Section 2-8.2.7 of this Code. Such process shall be set forth in an administrative order.

(Ord. No. 97-52, § 1, 5-20-97; Ord. No. 97-158, § 1, 9-23-97; Ord. No. 99-31, § 1, 3-18-99; Ord. No. 00-17, § 1, 2-8-00; Ord. No. 01-65, § 1, 3-20-01; Ord. No. 01-116, § 1, 7-10-01; Ord. No. 01-158, § 1, 9-25-01; Ord. No. 02-29, § 1, 2-26-02; Ord. No. 03-121, § 1, 5-6-03; Ord. No. 05-119, § 1, 7-7-05; Ord. No. 07-16, § 1, 2-6-07; Ord. No. 08-40, § 1, 4-8-08; Ord. No. 08-92, § 3,

7-17-08; Ord. No. 09-41, § 1, 6-2-09; Ord. No. 10-89, § 1, 12-7-10; Ord. No. 11-22, § 1, 5-3-11; Ord. No. 12-05, § 2, 2-7-12; Ord. No. 14-60, § 1, 7-1-14; Ord. No. 14-98, § 3, 10-7-14; Ord. No. 15-29, § 3, 5-5-15; Ord. No. 15-30, § 3, 5-5-15; Ord. No. 16-50, § 1, 5-17-16; Ord. No. 16-83, § 1, 9-7-16; Ord. No. 18-33, § 1, 4-10-18)

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

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

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

1. *Agreement* is a duly executed legally binding contract.
2. *Available* or *availability* means to have prior to bid submission, the ability to provide services under a contract, by having:
 - a. Reasonably estimated, uncommitted capacity;
 - b. All necessary licenses, permits, registrations and certifications, including Small Business Enterprise (SBE) certification to provide the type of services being purchased under the contract;
 - c. The ability to obtain financing/insurance that is reasonably required and consistent with normal industry practice; and
 - d. The ability to otherwise meet bid specifications.
3. *Bid* means a quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letter of interest or offer for a contract.
4. *Bid preference* means an amount deducted from the total bid price in order to calculate the bid price to be used to evaluate the bid submitted by a SBE on a competitively bid contract to be awarded on the basis of price (as opposed to an RFP, RFI or RFQ) which is not set aside.
5. *Bidder* or *Proposer* means any person, partnership, corporation or other business entity that submits a bid or proposal.
6. *Board* means the Board of County Commissioners of Miami-Dade County, Florida.
7. *Certificate of Assurance* means the departmental form submitted with bid documents whereby the Bidder acknowledges: (i) Small Business Enterprise ("SBE") measures apply to the project; and (ii) Bidder will submit its list of certified SBEs to satisfy the measures via Miami-Dade County's web-based system, within the specified time frame.
8. *Commercially useful function* means contractual responsibility for the execution of a distinct element of the work of a contract by a SBE and the carrying out of its contractual responsibilities by actually performing, managing, and supervising the work involved. The determination of whether an activity is a commercially useful function shall include the evaluation of the amount of work subcontracted; normal industry practices; the skills, qualifications, or expertise of the enterprise to perform the work; whether the business owner performs, manages, and/or supervises the work involved; and other relevant factors. Acting as an authorized representative of a manufacturer as is normal industry practice is considered a commercially useful function. Commercially useful function shall also include a distributor authorized by a manufacturer to distribute the manufacturer's products locally. Acting as a broker is not considered a commercially useful function.
9. *Contract* means an agreement for the purchase of services, including professional services. Professional services as used in this section includes but is not limited to accounting, legal, health care, consulting and management services. Contract does not mean: an agreement to purchase, lease, or rent real property; a grant, license, permit, franchise or a concession; an agreement to acquire professional architectural, engineering, landscape architectural or land surveying and mapping services of seven hundred thousand dollars (\$700,000.00) or less; or a contract for construction or construction management services of seven hundred thousand dollars (\$700,000.00) or less.
10. *Graduation* means the SBE has exceeded either the personal net worth, or the specific size limits stated for the program and may no longer be eligible to participate in the program.

11. *Gross Revenue* is defined to include all revenue in whatever form received or accrued from whatever source, including sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns and allowances. However, proceeds from sales of capital assets, and investments, proceeds from transaction between a firm and its domestic and foreign affiliates are excluded.
12. *Joint venture* means a business arrangement of two (2) or more parties, in which at least one (1) is a SBE that agrees to pool its resources for the purpose of accomplishing a specific task. The details of Joint venture participation in the SBE-Services program shall be provided in Implementing Order No. IO 3-41.
13. *Make-up Plan* means a plan whereby a bidder submits via the County's web-based system 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.
14. *Management and Technical Assistance (MTA)* means a program designed to provide direct and indirect assistance for small business enterprise development.
15. *Mentor-Protege Program* is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging SBEs in order for the latter to benefit from the knowledge and experience of the established mentor firms. The details of this program shall be provided in Implementing Order No. IO 3-41.
16. *Prompt Payment* is the intent of the Board that all firms, including SBEs providing services to the county, receive payments promptly as specified herein.
17. *Review Committee* or *RC* means the committee established by the Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus and when public input requires deliberation regarding the measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed.
18. *SBD* means the Division of Small Business Development or successor division or department.
19. *Selection factor* means a factor considered in evaluating the response submitted to an RFP, RFQ or RFI by a bidder that is:
A SBE,

A joint venture with one or more SBEs.
20. *Small Business Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise Program(s).
21. *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.

22. *Service* means work offered for public or private consumption that does not consist primarily of goods.
 23. *Set-aside* means the designation of a given contract for competition among SBEs.
 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).
 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.
 27. *Work* means the provision of services, as defined herein.
- (3) *Program.*
- (a) *Application.* Except where federal or state laws or regulations mandate to the contrary, the provisions of this section shall be applicable to Miami-Dade and Public Health Trust contracts (as defined in this section) funded in whole or in part by County funds. The Public Health Trust shall provide data on a quarterly basis of all contracts awarded to SBEs. The County Mayor or designee shall prepare implementing orders, bid and contract documents implementing the provisions of this section. The County Mayor or designee by implementing order may exclude classes of contracts, or parts thereof, from application of this section. The words County Mayor or designee in this section shall mean the County Mayor or designee.
 - (b) *Contracts of \$100,000 or less.*
 1. Within the fiscal year, it is required that County departments expend with SBEs one hundred (100) percent of the total value of contracts one hundred thousand dollars (\$100,000.00) or less for services. The departmental requirement shall be complied with unless SBD determines that there is either not enough capacity, or the contract(s) can only be handled by a non-SBE firm(s).
 2. Bids or quotes submitted by any SBE that is a Micro Tier 1 or Micro Tier 2 shall automatically receive a ten (10) percent bid preference and a Tier 3 SBE shall automatically receive a five (5) percent bid preference, when not set-aside for SBEs. When set-aside, the preference shall be: ten (10) percent for Micro Tier 1 SBEs; five (5) percent for Micro Tier 2 SBEs; and zero (0) percent for Tier 3 SBEs. The departments shall deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation.

3. Annually, SBD shall provide a report of awards to SBEs to the Board.
- (c) *Contracts Greater than \$100,000.* The following SBE measures may be applied to contracts greater than one hundred thousand dollars (\$100,000.00):
1. *Set-asides:*
 - a. Competitive bidding requirements may be waived (by the County Mayor or County Commission depending on whether the amount of the contract is above or below the minimum amount established by ordinance for competitive bidding) for a contract and the contract set-aside for bidding solely by SBEs where prior to bid advertisement, there are at least three (3) available SBEs to perform the contract, and where such set-aside is in the best interest of the County. Where applicable: (i) contracts from \$100,000 to \$750,000 shall be set-aside for Micro Tier 1 SBEs; contracts from \$750,000.01 to \$2 million shall be set-aside for Micro Tier 2 SBEs; and (iii) contracts from \$2,000,000.01 to \$5 million shall be set-aside for Tier 3 SBEs.
 - b. In the event there is no availability in the designated SBE tier, SBD may assign a set-aside to the next level tier which will retain a set-aside recommendation. Lower tier SBE firms may bid on higher tier set-asides.
 - c. Transferring to a non-SBE through subcontracting or otherwise all or part of the actual work of a set-aside contract to a non-SBE is prohibited unless such transfer receives prior approval from SBD.
 - d. When set-aside, the bid preference shall be: ten (10) percent for Micro Tier 1 SBEs; five (5) percent for Micro Tier 2 SBEs; and zero (0) percent for Tier 3 SBEs. The departments shall deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation. The County Mayor or the County Mayor's designee shall implement this subsection no later than 60 days from the effective date of this ordinance.
 2. *Subcontractor goals:*
 - a. Subcontractor goals may be applied to a contract based on estimates made prior to bid advertisement of the quality, quantity and type of subcontracting opportunities provided by the contract and the availability of SBEs to perform such work. Bid documents for contracts to which a SBE subcontract goal is applied shall provide that only SBEs certified to provide the type of services be counted towards meeting a goal. The bid documents shall further provide that a bidder must be found in compliance with the requirements of subsections b and c below in order to be eligible for award of the contract.
 - b. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that bidders must submit with its bid a completed Certificate of Assurance acknowledging the required measure and submission of a Utilization Plan via the County's web-based systems. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform therefore. The solicitation documents for any competitive selection involving a separate evaluation of sealed price envelopes shall require that the technical submission contain a 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.

- c. A bidder that is a SBE may meet up to 100% of the subcontractor goal with its own forces. A bidder that is a joint venture having one or more SBE venturers may comply with the goal based on the percentage participation of the SBE joint venturer(s) in the ownership, control and profits of the joint venture, and in the performance of the contract work.
- d. Bid documents shall provide only expenditures to SBEs for performing a commercially useful function. These expenditures shall be counted toward meeting a subcontractor goal, expenditures to SBEs who subcontract work further to non-SBEs shall not be counted toward meeting a specified goal unless such subcontracting receives prior approval from SBD.
- e. Successful bidder shall submit to the Contracting Officer, for approval, a written subcontract agreement corresponding in all respects to the Successful Bidder's Schedule of Intent Affidavit to include the type of goods and services the SBE is to provide and the percentage and/or price. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Services Program.

3. *Bid Preference:*

- a. A bid preference shall apply to all contracts which are to be awarded on the basis of price (excluding RFPs, RFIs and RFQs) and are not set-aside. The preference shall be used only to evaluate a bid and shall not affect the contract price.
- b. The preference accorded on contracts from \$100,000.01 to \$1 million shall be ten (10) percent of the price bid for all tiers. The preference accorded on contracts greater than \$1 million shall be 5% of the price bid for all tiers.

Preferences shall be applied to the bid price of bidders that:

- I. Are SBEs; or

II. Are joint ventures with at least one SBE.

- c. The County Mayor or the County Mayor's designee shall implement this subsection no later than 60 days from the effective date of this ordinance.

4. *SBE Selection Factor.*

- a. Any bidder that is an SBE, a joint venture with an SBE, shall be accorded a selection factor on all RFPs, RFQs and RFIs for contracts greater than \$50,000 that are not set aside for bidding solely by SBEs.
 - b. RFPs, RFQs and RFIs that assign weights to evaluation or selection criteria, shall provide that a bidder entitled to a selection factor shall receive an additional ten (10%) percent of the evaluation points scored on the technical portion of such bidder's proposal. RFPs, RFQs and RFIs that do not assign weights to evaluation or selection criteria, shall provide that whenever there are two best ranked proposals that are substantially equal and only one of the two so ranked is submitted by a bidder entitled to a selection factor, the selection factor shall be the deciding factor for award.
- (d) *Administrative Procedure.* The County Mayor or designee shall establish an administrative procedure for the review of each proposed County contract greater than one hundred thousand dollars (\$100,000.00) to which this section applies.
 - (e) *Management and Technical Assistance.* Small Business Development will provide Management and Technical Assistance and community outreach to business entities certified as SBEs with Miami-Dade County.
 - (f) *SBE Bonding and Financial Assistance.* This program will provide SBEs/Micro Enterprises with assistance in obtaining bonding and/or financial assistance for goods and services contracts. Bonding assistance will include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes. Financial assistance will include providing financial assistance such as mobilization capital, line of credit and/or working capital loans through partnering relationships with financial institutions.
 - (g) *Small Business Advisory Board.* There is hereby created a Miami-Dade County Advisory Board for the Small Business Enterprise Program(s).
 - 1. The Advisory Board will operate as a focal point for the public and with the assistance of the County Manager, will collect, input and disseminate information related to economic opportunities within Miami-Dade County government for small business owners.
 - 2. The Board shall consist of 15 members, as follows:
 - a. One member to be appointed by the Mayor.
 - b. One member to be appointed by each County Commissioner.
 - c. One member to be appointed by the County Manager.
 - 3. The term of the mayoral appointee and that of each commissioner shall be coterminous with the term of the appointing Mayor and commissioner.
 - 4. The terms of each County Manager appointed member shall be at the will and discretion of the County Manager.
 - 5. In no event shall a Board member serve more than four (4) consecutive years.
 - 6. Members shall serve without compensation.
 - 7. The Board may submit interim reports as it deems appropriate.
 - 8. SBD shall provide appropriate staff support.

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

(h) *Certification.*

1. Small Business Development shall implement eligibility criteria and administrative procedures for entities to be certified as SBEs.
2. Any SBE that exceeds the personal net worth or size limits shall immediately be graduated from the program after formal written notification. Such SBE shall be allowed to remain through the contract period on awarded contracts and any options to renew on the contract. The graduated firm shall not be eligible for any new contracts under the SBE program under the existing certification. With exception of provisions described in the ordinance for graduation from the SBE program, loss of certification may lead to removal of the firm from continued participation in the Small Business Enterprise program.
3. Small Business Development shall maintain an updated list of firms that identifies each listed SBE based on the nature of the services the SBE shall be certified to provide.
4. Small Business Development shall not certify an applicant, shall not recertify an SBE, and shall decertify an SBE that fails to comply with the criteria or procedures for obtaining or maintaining certification. SBD shall have authority to suspend the certification of a SBE during any appeal of a decertification decision. Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD.
5. The County Mayor or designee shall establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners. Certification must be in effect at the time of bid submission; at bid award, and throughout the duration of the contract. SBEs experiencing changes in address or ownership shall notify SBD within thirty (30) days of the effective date of such changes.
6. Applicants and certified SBEs must have a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, and an actual place of business in Miami-Dade County, not a Virtual Office, at which they perform a commercially useful function in the provision of the type of services for which certification is sought in order to be eligible for certification or remain certified. In addition, a firm shall not be certified unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to the retention and expansion of employment opportunities and the support and increase to the County's tax base.
7. A business entity shall be eligible to be certified as an SBE only if the owner holding at least ten (10) percent shares or ownership in the business entity personally possesses any regulatory licenses and satisfies the qualifying requirements required in order to engage in the business of providing the type of services for which certification is sought.
8. A business owner alone or as a member of a group, shall own or control only one SBE at a time and shall not own and control another separate business certified under the Small Business Enterprise Program.
9. Small Business Development may require applicants and SBEs to submit information regarding their business operations in order to determine eligibility for certification.

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

1. All firms, including SBEs providing services to the County, shall receive payments promptly in order to maintain sufficient cash flow. Billings from prime vendors under goods and services contracts with Miami-Dade County or the Public Health Trust, that are a

SBE/Micro Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on these amounts not in dispute within 14 calendar days of receipt of such billing by the County, or the Trust.

2. The County or Public Health Trust shall establish administrative procedures requiring that billings from SBE prime vendors on contracts shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or Trust.
 3. A prime vendor on a contract with SBE measures shall include in its billings to the County or Trust copies of undisputed billings from SBE subcontractors within 14 calendar days of receipt of such billings, or by the next scheduled billing whichever comes first. The prime vendor shall pay those amounts not in dispute to subcontracting SBEs within 2 days of receipt of payment from the County. If the prime vendor fails to submit undisputed billings from an SBE to the County as specified herein or chooses not to submit any billing to the County pursuant to the billing schedule, the prime vendor must pay the full amount of the received SBE billings by the next billing cycle or 40 calendar days from receipt, whichever is less.
 4. The County or prime vendor in direct privity with a SBE on a contract with SBE measures must notify the SBE and SBD, in writing, of those amounts billed by the SBE which are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing, or by the next scheduled billing whichever comes first. Failure by the County or prime vendor to comply with the applicable requirements of this subsection shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE and payment shall be forthcoming from the County or prime vendor as appropriate by the next billing date or 40 calendar days from receipt of billing, whichever is less.
 5. An SBE may invoice the County or prime vendor, as appropriate, 1% interest per month for any undisputed amount that is not promptly paid.
- (j) **Sanctions.** Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's violation of or failure to comply with this section or its implementing 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 Utilization Plan, may result in the imposition of one or more of the sanctions listed in Subsection (j) above.

- (k) *Administrative Penalties.* The County Mayor may impose, notwithstanding any other provision of this section, one or more of the following penalties for violation of or noncompliance with this section or its implementing administrative orders and bid documents:
1. The exclusion from county contracting and subcontracting for a specified period of time, not to exceed three (3) years, of a contractor, its individual officers, its shareholders with significant interests, and its affiliated businesses.
 2. The loss of eligibility to be certified as an SBE for a specified period of time, not to exceed three (3) years, for an applicant or a SBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.
 3. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, and SBE certification for a specified period of time, not to exceed five (5) years.
 4. If any individual or corporation, partnership or other entity, or any individual officer, shareholder with significant interests, director or partner of such entity or affiliated business of such entity participates in an attempt to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, subcontracting, and SBE certification, for a specified period of time, not to exceed five (5) years.
 5. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the noncomplying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County construction contracts for a period not [to] exceed three (3) years.
 6. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to 20 percent of the amount thereof; for the second deficit, a penalty in an amount equal to 40 percent thereof; for the third and successive deficits, a penalty in an amount equal to 60 percent thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 10-33.02 of the Code of Miami-Dade County.
 7. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal therefrom, the noncomplying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.
- (l) *Appeals.*

1. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, and fix a time for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of Sections 2-10.2, or 3-11.1 or otherwise.

Upon completion of the administrative hearing, the hearing officer shall transmit his/her findings of facts, conclusions and recommendations together with a transcript of all evidence taken before him/her 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.

2. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.

(Ord. No. 05-29, § 1, 2-1-05; Ord. No. 07-179, § 1, 12-4-07; Ord. No. 10-82, § 1, 12-7-10; Ord. No. 11-23, § 1, 5-3-11; Ord. No. 12-13, § 1, 3-6-12; Ord. No. 14-41, § 1, 4-8-14; Ord. No. 14-98, § 1, 10-7-14; Ord. No. 15-02, § 2, 2-3-15; Ord. No. 15-29, § 1, 5-5-15; Ord. No. 15-30, § 1, 5-5-15; Ord. No. 15-31, § 1, 5-5-15; Ord. No. 15-89, § 1, 9-16-15; Ord. No. 15-141, § 1, 12-1-15; Ord. No. 16-85, § 1, 9-7-16; Ord. No. 16-109, § 1, 10-5-16; Ord. No. 18-33, § 3, 4-10-18)

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

- (1) *Title*. This section shall be referred to as the Small Business Enterprise Goods Program.
- (2) *Definitions*. The following definitions shall apply in this section.
 1. *Agreement* is a duly executed legally binding contract.
 2. *Available* or *availability* means to have prior to bid submission, the ability to provide goods under a contract, by having:
 - a. Reasonably estimated, uncommitted capacity;
 - b. all necessary licenses, permits, registrations and certifications, including Small Business Enterprise ("SBE") certification to provide the type of goods being purchased under the contract;
 - c. the ability to obtain financing/insurance that is reasonably required and consistent with normal industry practice; and
 - d. the ability to otherwise meet bid specifications.
 3. *Bid* means a quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letter of interest or offer for a contract.
 4. *Bid preference* means an amount deducted from the total bid price in order to calculate the bid price to be used to evaluate the bid submitted by a SBE on a competitively bid contract to be awarded on the basis of price (as opposed to an RFP, RFI or RFQ) which is not set aside.
 5. *Bidder* or *Proposer* means any person, partnership, corporation or other business entity that submits a bid or proposal.
 6. *Board* means the Board of County Commissioners of Miami-Dade County, Florida.
 7. *Certificate of Assurance* means the departmental form submitted with bid documents whereby the Bidder acknowledges: (i) Small Business Enterprise ("SBE") measures apply to the project; and (ii) Bidder will submit its list of certified SBEs to satisfy the measures via Miami-Dade County's web-based system, within the specified time frame.
 8. *Commercially useful function* means contractual responsibility for the execution of a distinct element of the work of a contract by a SBE and the carrying out of its contractual responsibilities by actually performing, managing, and supervising the work involved. The determination of whether an activity is a commercially useful function shall include the evaluation of the amount of work subcontracted; normal industry practices; the skills, qualifications, or expertise of the enterprise to perform the work; whether the business owner performs, manages, and/or supervises the work involved; and other relevant factors. Acting as an authorized representative of a manufacturer as is normal industry practice is considered a commercially useful function. Commercially useful function shall also include a distributor authorized by a manufacturer to distribute the manufacturer's products locally. Acting as a broker is not considered a commercially useful function.
 9. *Contract* means an agreement for the purchase of goods. Contract does not mean: an agreement to purchase, lease, or rent real property; or a grant, license, permit, franchise or a concession.
 10. *Goods* mean any tangible product, material or supply that is not a service.
 11. *Graduation* means the SBE has exceeded either the personal net worth, or the specific size limits stated for the program and may no longer be eligible to participate in the program.
 12. *Gross Revenue* is defined to include all revenue in whatever form received or accrued from whatever source, including sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns and allowances. However, proceeds from sales of

capital assets, and investments, proceeds from transaction between a firm and its domestic and foreign affiliates are excluded.

13. *Joint venture* means a business arrangement of two (2) or more parties, in which at least one (1) is a SBE that agrees to pool its resources for the purpose of accomplishing a specific task. The details of Joint venture participation in the SBE-Goods program shall be provided in Implementing Order No. IO 3-41.
14. *Make-up Plan* means a plan whereby a bidder submits via the County's web-based system 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.
15. *Management and Technical Assistance ("MTA")* means a program designed to provide direct and indirect assistance for small business enterprise development.
16. *Mentor-Protégé Program* is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging SBEs in order for the latter to benefit from the knowledge and experience of the established Mentor firms. The details of this program shall be provided in Implementing Order No. IO 3-41.
17. *Prompt Payment* is the intent of the Board that all firms, including SBEs providing goods to the county, receive payments promptly as specified herein.
18. *Review Committee* or *RC* means the committee established by the Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus and when public input requires deliberation regarding the measures/goals recommendations. The RC will make recommendations to the Mayor or designee as needed.
19. *SBD* means the Division of Small Business Development or successor division or department.
20. *Selection factor* means a factor considered in evaluating the response submitted to an RFP, RFQ or RFI by a bidder that is:
 A SBE,
 A joint venture with one or more SBEs.
21. *Small Business Advisory Board* is the board established for the purpose of supporting and promoting the Small Business Enterprise Program(s).
22. *Small Business Enterprise ("SBE" or "SBE-Goods")* means a business entity certified by SBD, providing services, which has a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, an actual place of business in Miami-Dade County, not a Virtual Office, and whose three year average gross revenues does not exceed the following contracting participation levels:
 - (i) Micro Tier 1 — \$0 to \$750,000;
 - (ii) Micro Tier 2 — \$750,000.01 to \$2,000,000; or
 - (iii) Tier 3 — \$2,000,000.01 to \$5,000,000.

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

No firm shall be certified as a SBE where the personal net worth of any of its owners is more than 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.

23. *Set-aside* means the designation of a given contract for competition among SBEs.
 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).
 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.
 27. *Work* means the provision of goods, as defined herein.
- (3) *Program.*
- (a) *Application.* Except where federal or state laws or regulations mandate to the contrary, the provisions of this section shall be applicable to Miami-Dade and Public Health Trust contracts (as defined in this section) funded in whole or in part by County funds. The Public Health Trust shall provide data on a quarterly basis of all contracts awarded to SBEs. The County Mayor or designee shall prepare implementing orders, bid and contract documents implementing the provisions of this section. The County Mayor or designee by implementing order may exclude classes of contracts, or parts thereof, from application of this section. The words County Mayor or designee in this section shall mean the County Mayor or designee.
 - (b) *Contracts of \$100,000 or less.*
 1. Within the fiscal year, it is required that County departments expend with SBEs one hundred (100) percent of the total value of contracts one hundred thousand dollars (\$100,000.00) or less for goods. The departmental requirement shall be complied with unless SBD determines that there is either not enough capacity, or the contract(s) can only be handled by a non-SBE firm(s).
 2. Bids or quotes submitted by any SBE that is a Micro Tier 1, or Micro Tier 2 (which shall also include manufacturers with fifty (50) or less employees, and wholesalers with fifteen (15) or less employees), shall automatically receive a ten (10) percent bid preference, and a Tier 3 SBE (which shall also include manufacturers with fifty-one (51) to one-hundred (100) employees, and wholesalers with sixteen (16) to fifty (50) employees), shall automatically receive a five (5) percent bid preference, when not set-aside for SBEs. When set-aside, the preference shall be: ten (10) percent for Micro Tier 1 SBEs; five (5) percent

for Micro Tier 2 SBEs, which shall also include manufacturers with fifty (50) or less employees, and wholesalers with fifteen (15) or less employees; and zero (0) percent for Tier 3 SBEs, which shall also include wholesalers with sixteen (16) to fifty (50) employees, and manufacturers with fifty-one (51) to one-hundred (100) employees. The departments shall deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation.

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

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

1. *Set-asides:*

- a. Competitive bidding requirements may be waived (by the County Mayor or Board depending on whether the amount of the contract is above or below the minimum amount established by ordinance for competitive bidding) for a contract and the contract set-aside for bidding solely by SBEs where prior to bid advertisement, there are at least three (3) available SBEs to perform the contract, and where such set-aside is in the best interest of the County. Where applicable: (i) contracts from \$100,000 to \$750,000 shall be set-aside for Micro Tier 1 SBEs; contracts from \$750,000.01 to \$2 million shall be set-aside for Micro Tier 2 SBEs; and (iii) contracts from \$2,000,000.01 to \$5 million shall be set-aside for Tier 3 SBEs, wholesalers, and manufacturers.
- b. In the event there is no availability in the designated SBE tier, SBD may assign a set-aside to the next level tier which will retain a set-aside recommendation. Lower tier SBE firms may bid on higher tier set-asides.
- c. Transferring to a non-SBE through subcontracting or otherwise all or part of the actual work of a set-aside contract to a non-SBE is prohibited unless such transfer receives prior approval from SBD.
- d. When set-aside, the bid preference shall be: ten (10) percent for Micro Tier 1 SBEs; five (5) percent for Micro Tier 2 SBEs, which shall also include manufacturers with fifty (50) or less employees, and wholesalers with fifteen (15) or less employees; and zero (0) percent for Tier 3 SBEs, which shall also include wholesalers with sixteen (16) to fifty (50) employees, and manufacturers with fifty-one (51) to one-hundred (100) employees. The departments shall deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation. The County Mayor or the County Mayor's designee shall implement this subsection no later than 60 days from the effective date of this ordinance.

2. *Subcontractor goals:*

- a. Subcontractor goals may be applied to a contract based on estimates made prior to bid advertisement of the quality, quantity and type of subcontracting opportunities provided by the contract and the availability of SBEs to perform such work. Bid documents for contracts to which a SBE subcontract goal is applied shall provide that only SBEs certified to provide the type of goods be counted towards meeting a goal. The bid documents shall further provide that a bidder must be found in compliance with the requirements of subsections b and c below in order to be eligible for award of the contract.
- b. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that bidders must submit with its bid a completed Certificate of Assurance acknowledging the required measure and a Utilization Plan shall be submitted via the County's web-based system. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of goods the SBE is to provide and the percentage of work the SBE is to perform therefore. The solicitation documents for

any competitive selection involving a separate evaluation of sealed price envelopes shall require that the technical submission contain a 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.

- c. A bidder that is a SBE may meet up to 100 percent of the subcontractor goal with its own forces. A bidder that is a joint venture having one or more SBE venturers may comply with the goal based on the percentage participation of the SBE joint venturer(s) in the ownership, control and profits of the joint venture, and in the performance of the contract work.
- d. Bid documents shall provide only expenditures to SBEs for performing a commercially useful function. These expenditures shall be counted toward meeting a subcontractor goal, expenditures to SBEs who subcontract work further to non-SBEs shall not be counted toward meeting a specified goal unless such subcontracting receives prior approval from SBD.
- e. Successful bidder shall submit to the Contracting Officer, for approval, a written subcontract agreement corresponding in all respects to the Successful Bidder's Schedule of Intent Affidavit to include the type of goods and services the SBE is to provide and the percentage and/or price. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Goods Program.

3. *Bid Preference:*

- a. A bid preference shall apply to all contracts which are to be awarded on the basis of price (excluding RFPs, RFIs and RFQs) and are not set-aside. The preference shall be used only to evaluate a bid and shall not affect the contract price.
- b. The preference accorded on contracts from \$100,000.01 to \$1 million shall be ten (10) percent of the price bid for all tiers, wholesalers, and manufacturers. The preference accorded on contracts greater than \$1 million shall be five percent (5%) of the price bid for all tiers, wholesalers, and manufacturers.

Preferences shall be applied to the bid price of bidders that:

- I. Are SBEs; or
 - II. Are joint ventures with at least one SBE.
- c. The County Mayor or the County Mayor's designee shall implement this subsection no later than 60 days from the effective date of this ordinance.
- (d) *Administrative Procedure.* The County Mayor or designee shall establish an administrative procedure for the review of each proposed County contract greater than one hundred thousand dollars (\$100,000.00) to which this section applies.
 - (e) *Management and Technical Assistance.* SBD will provide management and technical assistance and community outreach to business entities certified as SBEs with Miami-Dade County.
 - (f) *SBE Bonding and Financial Assistance.* This program will provide SBEs with assistance in obtaining bonding and/or financial assistance for goods and services contracts. Bonding assistance will include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes. Financial assistance will include providing financial assistance such as mobilization capital, line of credit and/or working capital loans through partnering relationships with financial institutions.
 - (g) *Small Business Advisory Board.* The Small Business Advisory Board shall be the advisory board for the Small Business Enterprise Program(s), as codified in Section 2-8.1.1.1(3)(g) of the Code of Miami-Dade County Florida.
 - (h) *Certification.*
 - 1. Small Business Development shall implement eligibility criteria and administrative procedures for entities to be certified as SBEs.
 - 2. Any SBE that exceeds the personal net worth or size limits shall immediately be graduated from the program after formal written notification. Such SBE shall be allowed to remain through the contract period on awarded contracts and any options to renew on the contract. The graduated firm shall not be eligible for any new contracts under the SBE program under the existing certification. With exception of provisions described in the ordinance for graduation from the SBE program, loss of certification may lead to removal of the firm from continued participation in the Small Business Enterprise program.
 - 3. Small Business Development shall maintain an updated list of firms that identifies each listed SBE based on the nature of the goods the SBE shall be certified to provide.
 - 4. Small Business Development shall not certify an applicant, shall not recertify an SBE, and shall decertify an SBE that fails to comply with the criteria or procedures for obtaining or maintaining certification. SBD shall have authority to suspend the certification of a SBE during any appeal of a decertification decision. Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD.
 - 5. The County Mayor or designee shall establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners. Certification must be in effect at the time of bid submission; at bid award,

and throughout the duration of the contract. SBEs experiencing changes in address or ownership shall notify SBD within thirty (30) days of the effective date of such changes.

6. Applicants and certified SBEs must have a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, and an actual place of business in Miami-Dade County, not a Virtual Office, at which they perform a commercially useful function in the provision of the type of goods for which certification is sought in order to be eligible for certification or remain certified. In addition, a firm shall not be certified unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to the retention and expansion of employment opportunities and the support and increase to the County's tax base.
 7. A business entity shall be eligible to be certified as an SBE only if the owner holding at least ten (10) percent shares or ownership in the business entity personally possesses any regulatory licenses and satisfies the qualifying requirements required in order to engage in the business of providing the type of goods for which certification is sought.
 8. A business owner alone or as a member of a group, shall own or control only one SBE at a time and shall not own and control another separate business certified under the Small Business Enterprise Program.
 9. Small Business Development may require applicants and SBEs to submit information regarding their business operations in order to determine eligibility for certification.
- (i) *Prompt Payment.* The prompt payment provisions of this section shall take precedence over Section 2-8.1.4 of the Code ("Sherman S. Winn Prompt Payment Ordinance"), as to the contracts specified below:
1. All firms, including SBEs providing goods to the County, shall receive payments promptly in order to maintain sufficient cash flow. Billings from prime vendors under goods contracts with Miami-Dade County or the Public Health Trust, that are a SBE contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within 14 calendar days of receipt or such billings by the County, or Trust.
 2. The County or Public Health Trust shall establish administrative procedures requiring that billings from SBE prime vendors on contracts shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or Trust.
 3. A prime vendor on a contract with SBE measures shall include in its billings to the County or Trust copies of undisputed billings from SBE subcontractors within fourteen (14) calendar days of receipt of such billings, or by the next scheduled billing whichever comes first. The prime vendor shall pay those amounts not in dispute to subcontracting SBEs within two (2) days of receipt of payment from the County. If the prime vendor fails to submit undisputed billings from an SBE to the County as specified herein or chooses not to submit any billing to the County pursuant to the billing schedule, the prime vendor must pay the full amount of the received SBE billings by the next billing cycle or forty (40) calendar days from receipt, whichever is less.
 4. The County or prime vendor in direct privity with a SBE on a contract with SBE measures must notify the SBE and SBD, in writing, of those amounts billed by the SBE which are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing, or by the next scheduled billing whichever comes first. Failure by the County or prime vendor to comply with the applicable requirements of this subsection shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE and payment shall be forthcoming from the County or prime vendor as appropriate by the next billing date or forty (40) calendar days from receipt of billing, whichever is less.

5. An SBE may invoice the County or prime vendor, as appropriate, one percent (1%) interest per month for any undisputed amount that is not promptly paid.
- (j) *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 Utilization Plan, may result in the imposition of one or more of the sanctions listed in Subsection (j) above.

- (k) *Administrative Penalties.* The County Mayor may impose, notwithstanding any other provision of this section, one or more of the following penalties for violation of or noncompliance with this section or its implementing administrative orders and bid documents:
1. The exclusion from county contracting and subcontracting for a specified period of time, not to exceed three (3) years, of a contractor, its individual officers, its shareholders with significant interests, and its affiliated businesses.
 2. The loss of eligibility to be certified as an SBE for a specified period of time, not to exceed three (3) years, for an applicant or a SBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.
 3. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, and SBE certification for a specified period of time, not to exceed five (5) years.
 4. If any individual or corporation, partnership or other entity, or any individual officer, shareholder with significant interests, director or partner of such entity or affiliated business of such entity participates in an attempt to comply with the provisions of this section through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, subcontracting, and SBE certification, for a specified period of time, not to exceed five (5) years.

5. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the noncomplying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.
6. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to twenty (20) percent of the amount thereof; for the second deficit, a penalty in an amount equal to forty (40) percent thereof; for the third and successive deficits, a penalty in an amount equal to sixty (60) percent thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 10-33.02 of the Code of Miami-Dade County.
7. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal therefrom, the noncomplying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.

(I) *Appeals.*

1. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within thirty (30) days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer pursuant to Section 8CC-2 of the Code of Miami-Dade County, Florida, and fix a time for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of Sections 2-10.2, or 3-11.1 or otherwise.

Upon completion of the administrative hearing, the hearing officer shall transmit his/her findings of facts, conclusions and recommendations together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the Mayor or designee, who (i) may sustain, reverse or modify the hearing officer's recommendations and (ii) shall render a final decision, in writing. The determination of the Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

2. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.

(Ord. No. 15-90, § 1, 9-16-15; Ord. 16-28, § 1, 3-8-16; Ord. No. 16-82, § 1, 9-7-16; Ord. No. 18-33, § 4, 4-10-18)

Sec. 2-1701. - Community Workforce Program.

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

- A. *Capital Construction Contract* means the building and or improvement of a specific fixed asset as approved in the Capital Budget, or for the purpose of this Ordinance, open contract infrastructure work where the individual work orders are distributed throughout the County.
- B. *Construction Trade Work* means skilled laborers.
- C. *Contract* means a contract for Capital Construction.
- D. *Department* means department or agency administering a Capital Construction Contract to which a local workforce goal has been applied.
- E. *Designated Target Area (DTA)* means any geographic area of Miami-Dade County designated as an Empowerment/Enterprise Zone, any geographic area of Miami-Dade County designated by the Board of County Commissioners as a Targeted Urban Area (TUA), Community Development Block Grant (CDBG) Eligible Block Group or Focus Area.
- F. *Enterprise Zone* means a geographic area of Miami-Dade County designated as an Enterprise Zone or a Satellite Enterprise Zone pursuant to the Florida Enterprise Zone Act of 1994, as amended.
- G. *Empowerment Zone* means a geographical area of Miami-Dade County designated by the federal government as an empowerment zone.
- H. *CDBG Eligible Block Group* means a geographical area whose residents are lower to moderate income.
- I. *Focus Area* means a geographical area slated for economic revitalization.
- J. *Job* means a specific trade such as painting, electrical, plumbing, etc., in which a person hired by the contractor or subcontractor as part of the workforce used towards a workforce goal compliance and which the length of the job may aggregate to less than 120 days due to the nature of the job. Jobs that will be less than 30 days for completion may not be considered towards compliance with a workforce goal.
- K. *Labor Force* means individuals (the workforce) that may count towards compliance to a workforce goal.
- L. *Labor Work* means unskilled construction work.
- M. *Local Workforce Goal* means a requirement that a percentage of the workforce performing construction trades work and labor under a Capital Construction Contract/Work Orders be residents of a Designated Target Area.
- N. *New Hire* means any individual meeting the requirements of resident as defined below, employed by the contractor or subcontractor and on the contractor's or subcontractor's payroll, pursuant to the County's approval of the Workforce Plan by the contractor (or subcontractor to perform any construction trades work or labor under a contract to which a local workforce goal has been applied, and who remains employed by the contractor/subcontractor and performs the job as listed and approved on the contractor's or subcontractor's workforce plan to include any approved revisions to the workforce plan, for a minimum duration of one hundred twenty (120) days or the length of the job whichever is less.
- O. *Resident.* Resident means a person who has resided in Miami-Dade County in any designated target area for the past year (12 months).
- P. *Review Committee or RC* means the committee established by the Mayor or the Mayor's Designee to review proposed contracts for the application of local workforce goals.
- Q. *Scope of Services or Scope of Work* means the work to be performed under a Contract.

- R. *Subcontractor* means any person, firm, entity, or organization at any tier, other than the employees of the contractor, performing construction trade work and labor under a contract to which a local workforce goal has been applied pursuant to this ordinance. This term shall include employment agency furnishing personnel to a contractor or subcontractor.
- S. *Targeted Urban Area* means a geographical area of Miami-Dade County that has been designated by the County Commission as a Targeted Urban Area under Section 30A-129 of the Code.
- T. *Work* means the construction and services required by the contract including all labor, materials, equipment and services to be provided by the contractor to fulfill the contractor's obligations. The work may constitute the whole or a part of the contract.
- U. *Workforce Plan* or *Plan* means a plan delineating the number and category of administrative, construction trades and labor personnel necessary to perform the work under a Capital Construction Contract to which a local workforce goal has been applied, and the proposed steps that will be taken to meet the goal. The Plan shall be organized by trade and indicate the number and category of positions already filled and the number and category of positions that require recruitment; the anticipated date that the hiring process will be initiated; the deadline for referrals; the anticipated position commencement date; and the duration of the position.
- V. *Workforce Development Organization or WDO* means an organization providing construction trades skills training or providing skills training that are recognized and accepted by all federation members of the respective trade, who are instrumental in its design and provides certification after participation or apprenticeship training or any construction related training. The firm must be registered with the Department of Small Business Development (SBD).
- W. *Workforce Recruitment/Referral Organization or WRO* means an organization providing qualified construction employment recruitment/referral services and employability skills training, including application process, interviewing, and appropriate attire. The organization must be registered with SBD.
- X. *Worker Training Program or WTP* is a certified training program, technical school, apprenticeship program or other such construction industry related training program.
- Y. *Work Order* means issuance of specific work based on an open work contract with fixed unit prices.

(2) *Program Components:*

- A. *Application:* Except where state, or federal laws or regulations mandate to the contrary, the provisions of this ordinance shall require review of Capital Construction Contracts/Work Orders for public improvements located in Designated Target Areas to determine the appropriateness of applying a local workforce goal requiring that a minimum of 10% of the persons performing the construction trades and labor work under the contract be residents of Designated Target Areas as set forth in this ordinance. The provisions of this ordinance shall apply to all such Capital Construction Contracts/Work Orders entered into and issued by the County, its departments and agencies including the Public Health Trust or funded in whole or in part by County funds or with private funds on County property. The foregoing notwithstanding, the Board may by Implementing Order provide that Contracts and/or Work Orders below a certain dollar amount shall not be subject to the requirements of this ordinance.
- B. *Establishment of local workforce goal:* A local workforce goal may be applied to a Capital Construction Contract/Work Orders subject to review under this section based on the Scope of Work the relative local unemployment rate, and an estimate of the trades and workforce necessary to perform construction trades work and labor under the contract. The RC is responsible for recommending to the Mayor or the Mayor's Designee whether a workforce goal should be applied to a Capital Construction Contract/Work Order. The contract language for a Capital Construction Contract/Work Order to which a local workforce goal is applied shall specify that a certain percentage of the workforce performing construction trades and labor work under such contract be residents of Designated Target Areas as provided herein.

- C. *Workforce Plan:* Bid and proposal documents for Capital Construction Contracts/Work Order to which a local workforce goal has been applied shall require the contractor, to develop and submit to the County, within fifteen (15) days of notification of award of the contract, a Workforce Plan outlining how the goal will be met and containing all of the information and elements required by this Section. The Plan shall specify the total number of persons that will be used by the contractor (as well as by all subcontractors) to perform all of the construction trades and labor work of the contract, broken down by trade and labor category, minimum qualifications for each category, and the number of persons to be utilized in each category. The Plan shall identify by name, address and trade category of all persons proposed to perform work under the contract currently on the contractor's (or on any proposed subcontractor's) payroll who reside in any Designated Target Area. The Plan shall also indicate the number of positions shown on the work, trade categories and minimum qualifications therefore of the positions to be hired by the contractor (or by any proposed subcontractors) to perform the construction trades and labor work under the contract. The County will not enter into the contract until it receives the contractor's Workforce Plan and deems the Plan acceptable. The contract language of a contract subject to a local workforce goal shall provide that in the event that at contract completion, the contractor fails to comply with the established local workforce goal, liquidated damages equal to a minimum of \$3,000.00 per position or the salary that would be payable for such position had the person(s) been hired for the position as listed on the approved workforce plan to include all approved revisions to the workforce plan, whichever is greater shall be withheld from the contractor's final payment as liquidated damages and be applied to pay part of the costs of the Community Workforce Program under this ordinance. In calculating the salary, a minimum of eight (8) hours per day times (i) the position's wage rate or (ii) the applicable Responsible Wages and Benefits Schedule wage rate will be used. An updated Plan shall be submitted to SBD on a monthly basis. In the event that during the contract time a new hire or a person identified in the Plan as already on the contractor's (or any proposed subcontractor's) payroll to meet the local workforce goal is replaced, Miami-Dade County will require the contractor to immediately contact SBD identifying the replacement. Notwithstanding anything to the contrary above, the contractor may be relieved from the requirements of this ordinance, in part or in whole, if such contractor can demonstrate to SBD that it has utilized its best efforts to achieve the goal in accordance with the prescribed Implementing Order.
- D. *Goal compliance:* The following shall count towards compliance with a local workforce goal. Within 15 days of approval of the Workforce Plan, the contractor shall complete and submit a Job Order Request Form (in the form attached to Resolution No. R-1145-99, the Clearinghouse for posting of job opportunities) to the Employee Relations Department for each position designated in the approved Workforce Plan for recruitment. The employer/contractor Information portion of the Job Order Request Form shall provide the relevant information for the contractor or subcontractor who will employ the new hire. Persons designated in the approved Workforce Plan as already on the contractor's (or on any proposed subcontractor's) payroll at the time of bid submittal who reside in the DTA in which the public improvement is located and who perform any construction trades work or labor of the contract shall count towards meeting the local workforce goal. Each New Hire residing in the DTA where the public improvement project is located who is hired to any position designated in the approved Workforce Plan who performs construction trades or labor work of the contract for a minimum duration of one hundred twenty (120) days or the length of the job whichever is less, shall also count towards meeting the goal. Persons that reside in a DTA other than the DTA in which the public improvement is located, may be counted towards meeting the goal provided the first priority in hiring for such position was given to persons residing in the Designated Target Area in which the public improvement is located, and when the hiring party as well as the WDOs and WROs have demonstrated to SBD that they have been unable to identify a qualified resident of the Designated Target Area in which the public improvement is located. In the event that at contract completion, goal compliance cannot be determined due to the contractor's failure to submit and obtain SBD approval for a revised Workforce Plan, \$10,000.00 shall be withheld from the

contractor's final payment as liquidated damages, and applied to pay costs of the Community Workforce Program.

- E. *Exceptions:* Due to the regional significance of Airport and Seaport public improvement projects as sources of employment, contractors performing work at the Airport and Seaport may hire residents of DTAs other than the DTA where the project is located and are not required to give first priority to persons residing in the DTA where the project is located. Persons designated in the approved Workforce Plan as already on the Airport or Seaport contractor's (or on any proposed subcontractor's) payroll at the time of bid submittal who reside in any DTA and who perform any construction trades work or labor of the contract shall count towards meeting the local workforce goal. Each New Hire residing in any DTA who is hired to any position designated in the approved Workforce Plan who performs construction trades or labor work on the Airport or Seaport Capital Construction Contract for a minimum duration of one hundred twenty (120) days or the length of the job whichever is less, shall also count towards meeting the goal.
- (3) *WDO and WRO Registration.* SBD shall register WDOs and WROs, and shall maintain and publish an updated list of WDOs and WROs, identifying areas of expertise and services. SBD shall collect, assemble, and verify information needed to establish eligibility for such registration.
- (4) *Training.* The County Manager or designee may initiate the development of a training program for construction related trades.
- (5) *Monitoring.* The County shall maintain staff for the purpose of monitoring compliance with this ordinance. Assigned individuals will be on site quarterly to review the progress towards meeting the local workforce goal. The contractor, WDO, WRO, and all subcontractors performing work on a contract to which a local workforce goal has been applied shall maintain, and make readily available, all records pertaining to employment by the contractor and subcontractors on the contract. The contractor shall submit monthly reports itemizing, by trade, all new hires performing work under the contract including, but not limited to the trade, the time period the work was performed and the permanent residence.
- (6) *Incentives.* It is the County's plan to encourage contractors to access incentives available in Designated Target Areas. Included are incentives established for Enterprise/Empowerment Zones, and Targeted Urban Areas such as the Work Opportunity Tax Credit, Business Registry Incentives, and Qualified Targeted Industries Incentives (QTI), and any other applicable incentives. A contractor, WDO or WRO, is responsible for applying for any incentive for which they may be eligible.

(Ord. No. 03-01, § 1, 1-23-03; Ord. No. 03-237, § 1, 11-4-03; Ord. No. 10-39, § 1, 6-3-10; Ord. No. 13-66, § 1, 7-2-13; Ord. No. 18-86, § 1, 9-7-16)

Sec. 2-11.17. - Residents First Training and Employment Program.

- (1) *Title.* This section shall be referred to as the Miami-Dade County Residents First Training and Employment Program.
- (2) *Definitions.* For purposes of this section the following definitions shall be effective:
 - (a) *County Construction Contracts* means (i) a County contract valued in excess of \$1,000,000 for the construction, demolition, alteration and/or repair of public buildings or public works, or (ii) a contract or lease valued in excess of \$1,000,000 which provides for privately funded construction, demolition, alteration or repair of buildings or improvements located on County-owned land.
 - (b) *Department* means the department, agency or other party responsible for awarding a County Construction Contract as designated by the County.
 - (c) *Implementing Order ("IO")* means the implementing order developed by the Mayor or Mayor's designee and approved by this Board of County Commissioners (the "Board") to give effect to the provisions of this section.
- (3) *Program Scope.*
 - (a) The provisions of this ordinance shall apply to County Construction Contracts which are subject to Section 2-11.16 of the Code of Miami-Dade County, Florida (the "Code"), entered into after the effective date of the ordinance by the County, and its Departments.
 - (b) The provisions of this Section shall be applied to reinforce and complement the provisions of Sections 2-11.16 and 2-1701 of the Code.
- (4) *General Program Requirements.*
 - (a) Except where state or federal laws or regulations mandate to the contrary, all contractors and subcontractors of any tier performing on a County Construction Contract shall satisfy the requirements of this Section.
 - (b) As a condition of submitting a bid or proposal for a County Construction Contract, a general contractor, construction manager or other contractor seeking award of a contract shall submit a Responsible Contractor Affidavit with its bid or proposal.
 - (c) The Responsible Contractor Affidavit shall be completed on a standard form prepared by the County and shall reference the County Construction Contract for which a bid or proposal is being submitted by name and contract or project number. Any agency, department, or other party responsible for awarding a County Construction Contract shall require contractors to use the standard form prepared by the County.
 - (d) A County Construction Contract shall not be executed until all requirements of this Section have been fulfilled.
 - (e) Prior to awarding or approving future County Construction Contracts, the County shall review prior work performed by proposed contractors and subcontractors, including their compliance with the terms of the Responsible Contractor Affidavit.
 - (f) The County shall provide notice to any contractor who fails to submit a Responsible Contractor Affidavit, that said contractor has forty-eight (48) hours from the time of notification to submit a Responsible Contractor Affidavit or its bid or proposal will be deemed nonresponsive and disqualified.
- (5) *Responsible Contractor Affidavit.*
 - (a) *Required Affidavit.* A construction manager, general contractor or other contractor submitting a bid or proposal for a County Construction Contract shall verify the following information on its Responsible Contractor Affidavit form:

- (i) Prior to working on the project, all persons employed by the contractor to perform construction shall have completed, the OSHA 10 Hour safety training course established by the Occupational Safety and Health Administration of the United States Department of Labor. Such training does not need to be completed at the time of bidding but shall be completed prior to the date persons are employed on the project.
 - (ii) The contractor will make its best reasonable efforts to promote employment opportunities for local residents and seek to achieve a project goal of having fifty-one percent (51%) of all Construction Labor hours performed by Miami-Dade County residents. To verify workers' residency, firms shall require each worker to produce a valid driver's license or other form of government-issued identification. County residents employed in furtherance of the goal set forth in the County's Community Workforce Program shall be counted towards the fifty-one percent (51%) goal.
 - (b) *Subcontractor Affidavits.* After the contractor has received the Notice of Award of the contract but prior to the issuance by the County of the Notice to Proceed, the contractor shall also submit
 - (i) a list of all subcontractors that will be used on the project, and
 - (ii) provide Responsible Subcontractor Affidavits for all such subcontractors to the County. Responsible Subcontractor Affidavits shall be executed by the respective subcontractors on forms prepared by the County and shall contain the same information required in Responsible Contractor Affidavits.
 - (c) *Construction Workforce Plan.* Documentation regarding a contractor's construction workforce plan (the "Plan") shall be provided. The Plan shall specify the total number of persons that will be used by the contractor (as well as by all subcontractors) to perform all of the construction trades and labor work of the contract, broken down by trade and labor category, minimum qualifications for each category, and the number of persons to be utilized in each category. The Plan shall identify by name, address and trade category of all persons proposed to perform work under the contract currently on the contractor's (or on any proposed subcontractor's) payroll who reside in Miami-Dade County. The Plan shall also indicate the number of positions shown on the work, trade categories and minimum qualifications therefore of the positions to be hired by the contractor (or by any proposed subcontractors) to perform the construction trades and labor work under the contract.
- (6) *Workforce Performance Reports.*
- (a) Within thirty (30) days of completion of a County Construction Contract, the contractor responsible for the project shall submit a Workforce Performance Report to the County, which shall include the following information on the workforce employed in the execution of the contract:
 - (i) the total number of Construction Labor work hours performed on the project, and the number and percentage of such work hours performed by Miami-Dade County residents;
 - (ii) supporting documentation verifying Construction Labor work hours performed by Miami-Dade County Residents;
 - (iii) the total amount of funds the contractor expended during the course of the project on other related skill and safety training programs; and
 - (iv) supporting documentation verifying reasonable efforts to promote employment opportunities for local residents.
 - (b) No contractor shall receive final payment for completion of a County Construction Contract until the County receives a completed workforce performance report submitted pursuant to this Section.
 - (c) When evaluating a prospective contractor's bids or proposals for future County Construction Contracts, the Department shall review past Contractor's Workforce Reports, as well as other performance evaluations and reports on the contractor's work, to ensure it meets appropriate qualification and contractor responsibility standards.

- (7) *Implementation.* The Mayor or Mayor's designee shall prepare and submit to the Board for approval, an Implementing Order within ninety (90) days of the effective date of this ordinance, which shall at a minimum:
- (a) Set forth procedures to determine contractor compliance with the requirement to make its best reasonable efforts to promote employment opportunities for local residents and seek to achieve a project goal of having fifty-one percent (51%) of all Construction Labor hours performed by Miami-Dade County residents.
 - (b) Establish a procedure for review and investigation of allegations of noncompliance with the provisions of this ordinance and IO.
 - (c) Establish a procedure to determine appropriate sanctions for failure to comply with the terms of this ordinance and IO.
 - (d) Require that all solicitations for County Construction Contracts and the resulting contracts, include the requirements of the Residents First Training and Employment Program.

(Ord. No. 14-26, § 1, 3-4-14)

Administrative Order



Administrative Order No.: IO 3-63

Title: EMPLOY MIAMI-DADE PROGRAM

Ordered: 6/1/2016

Effective: 6/1/2016

AUTHORITY:

Section 5.02 of the Miami-Dade County Home Rule Amendment and Charter; Chapter 2, Article I, Section 2-8.1 of the Code of Miami-Dade County Florida.

POLICY:

Employ Miami-Dade is an initiative in which Miami-Dade County, CareerSource South Florida, Neighbors and Neighbors Association, and other local agencies partner to offer construction certification training to help put eligible Miami-Dade County residents back to work. The goal of the Employ Miami-Dade initiative is to provide skill training and employment opportunities for participants.

To promote Employ Miami-Dade, except where federal or state laws or regulations mandate to the contrary, all County Construction Contracts shall include notification to the Contractor regarding the use of the Employ Miami-Dade Register, the minimum number of participants to be used on the contract, and details regarding the County's evaluation of the Contractor's efforts to promote Employ Miami-Dade by using participants on the contract which will be used as part of the responsibility review for consideration on new County contract awards.

The provisions of this Administrative Order (AO) shall apply to (i) a County contract valued in excess of \$1,000,000 for the construction, demolition, alteration or repair of public buildings or public works projects, funded completely or partially by Miami-Dade County, and (ii) privately-funded projects or leases valued in excess of \$1,000,000 for the construction, demolition, alteration or repair of buildings or improvements on County-owned land, and which are subject to Section 2-11.16 of the Code of Miami-Dade County. The provisions of this AO shall not apply to work order driven purchases off of blanket or pool contracts (i.e., contracts with pre-qualified contractors).

This AO applies to County Construction Contracts. However, in order to promote Employ Miami-Dade, competitive solicitations for professional services issued pursuant to A.O. 3-39, *Standard Process for Construction of Capital Improvements, Acquisition of Professional Services, Construction Contracting, Change Orders and Reporting*, shall include information regarding Employ Miami-Dade for informational purposes.

PURPOSE:

This AO establishes the procedures for including Employ Miami-Dade provisions in County Construction Contracts; for ensuring that the applicable solicitations for County Construction Contracts include the requirements herein, including the documents/affidavits to be developed and made available by the County, and completed by potential firms/businesses doing business with the County or Contractors selected, as applicable; for evaluation of Contractors' efforts to promote Employ Miami-Dade by using participants on County Construction Contracts; and for the inclusion of an advertisement in professional services solicitations.

I. DEFINITIONS:

- A. Administrative Order ("AO") means the administrative order developed by the Mayor or Mayor's designee to give effect to the promotion of Employ Miami-Dade in County Construction Contracts.
- B. Code means the Code of Miami-Dade County, Florida.
- C. Compliance Officer means the Director of the Small Business Development Division of the Internal Services Department, or his or her designee, or the Director of Miami-Dade Aviation Department, Office of Minority Affairs, or his or her designee, who reviews a contract(s), lease(s), and associated documents to determine Contractor's compliance with, and efforts to promote Employ Miami-Dade by using participants on County Construction Contracts.
- D. Construction Workforce Plan - means the form provided by the County, and submitted by a Contractor that includes the Contractor's workforce plan for the specific Contract.
- E. Contracting Officer means the County staff person assigned under a contract (i.e., a department director or his or her designee), with the primary responsibility to manage contract requirements.
- F. Contractor means any general contractor, construction manager, other contractor, individual, corporation, partnership, or other legal entity that directly or indirectly (e.g., through an affiliate) submits an offer(s) for, or is awarded, or reasonably may be expected to submit an offer(s) for or be awarded, a County contract subject to the requirements of this AO.
- G. Contractor Commitment Affidavit means the affidavit submitted with a bid/proposal indicating the Contractor's commitment to use the Employ Miami-Dade Register and abide by the requirements of this AO.
- H. County means Miami-Dade County.
- I. County Construction Contract means (i) a County contract valued in excess of \$1,000,000 for the construction, demolition, alteration or repair of public buildings or public works projects, funded completely or partially by Miami-Dade County, and (ii) privately-funded projects or leases valued in excess of \$1,000,000 for the construction, demolition, alteration or repair of buildings or improvements on County-owned land, and which are subject to Section 2-11.16 of the Code of Miami-Dade County (Responsible Wages and Benefits).
- J. Department means the department, agency or other party responsible for awarding a County Construction Contract as designated by the County.
- K. Employ Miami-Dade Register shall mean the database compiled and maintained by CareerSource South Florida which shall be a listing of unemployed persons from Employ Miami-Dade, to be made available to Contractors as a source for their construction employment needs.
- L. Lessee means a lessee of County-owned land under a lease on such land subject to the requirements of this AO.
- M. Workforce Performance Report – means the report forms provided by the County, and submitted by a Contractor that includes information on the workforce employed by the Contractor, and subcontractor if applicable, in the execution of the County Construction Contract.

II. RESPONSIBILITY

A. RESPONSIBILITY OF ISSUING DEPARTMENT/CONTRACTING OFFICER:

1. INCLUDE REQUIREMENTS IN SOLICITATION AND CONTRACT DOCUMENTS

- a. The issuing department/Contracting Officer shall include the provisions of this AO in solicitation and contract documents for County Construction Contracts, except where state or federal laws or regulations mandate to the contrary. In addition to specifying the requirements herein, the information in the solicitation and contract documents shall include the following contract language:

"The awarded Contractor is hereby notified that the County will consider whether the Contractor made its best reasonable efforts to promote Employ Miami-Dade on this contract, as defined in AO 3-63, as a part of the County's evaluation and responsibility review of the Contractor for new County contract awards."

- b. The issuing department/Contracting Officer shall include for use by bidders/proposers on County Construction Contracts the various affidavits and forms as part of the applicable solicitation and contract documents.
- c. The issuing department/Contracting Officer shall include the following referral procedures in solicitation and contract documents:
 - i) CareerSource South Florida shall compile and maintain the Employ Miami-Dade Register.
 - ii) The Contractor will notify CareerSource South Florida of the vacancy by completing a Job Opening Form on the Employ Miami-Dade website (<https://iapps.southfloridaworkforce.com/employmiami/>). The job order must contain a detailed description of the job responsibilities and qualifications.
 - iii) CareerSource South Florida will then provide a list of qualified candidates available to the Contractor with a copy to the Compliance Officer.
 - iv) The Contractor will review the resumes and qualifications of the candidates, conduct interviews with those candidates who satisfy the minimum competency requirements, and make a good faith effort to fill at least 20% of the labor workforce required per Contractor's Construction Workforce Plan from the Employ Miami-Dade Register through CareerSource South Florida.
 - v) Positions filled from the Employ Miami-Dade Register must be full-time, for at least 120 days, or the length of the County Construction Contract if the County Construction Contract is less than 120 days, in order to be considered towards attainment of the 20% labor workforce threshold herein.
 - vi) If the 20% labor workforce threshold per Contractor's Construction Workforce Plan from the Employ Miami-Dade Register is not met on the contract, the Contractor must provide the Compliance Officer with a detailed explanation of its efforts.
 - vii) CareerSource South Florida may have funds to pay a portion of the salaries for Employ Miami-Dade participants. It shall be the responsibility of the Contractor to contact CareerSource South Florida directly to determine eligibility for, and make arrangements as applicable with, CareerSource South Florida to pay a portion of the salaries for a specified period and/or

during on the job training for the Employ Miami-Dade participants employed on the contract.

2. AFTER NOTICE OF AWARD BUT PRIOR TO ISSUANCE OF NOTICE TO PROCEED

- a. After a Notice of Award, but prior to the issuance of a Notice to Proceed, the issuing department/Contracting Officer must verify that the Contractor has submitted and complied with the following:
 - i) Provided a Construction Workforce Plan and supporting documentation.
 - ii) The Construction Workforce Plan must:
 - 1. Specify the total number of positions by trade that will be used by the Contractor (as well as by all subcontractors) to perform all of the construction labor work of the contract; and
 - 2. Indicate the number of positions to be filled by the Contractor from the Employ Miami-Dade Register.
- b. The Contracting Officer shall not issue a Notice to Proceed until all applicable documents required above, in this AO, have been fulfilled. Failure to provide the documents as specified may result in rescission of award or termination of the contract. For a County Construction Contract that is phased or will have multiple Notice to Proceed documents issued, the applicable documents required in this paragraph shall mean those documents required for the portion of the County Construction Contract that falls within the instant Notice to Proceed.

3. CONTRACT ADMINISTRATION

- a. Within thirty (30) business days of completion of a County Construction Contract, the Contracting Officer shall require the Contractor to submit a Workforce Performance Report to the County, which shall include the following information on the workforce employed in the execution of the contract:
 - i) The total number of construction labor work positions used on the County Construction Contract, and the number of such positions performed by Employ Miami-Dade participants;
 - ii) Supporting documentation verifying construction labor work positions performed by Employ Miami-Dade participants; and
 - iii) Supporting documentation verifying reasonable efforts to promote Employ Miami-Dade if 20% labor workforce threshold was not met per Contractor's Construction Workforce Plan from the Employ Miami-Dade Register.
- b. Contractor shall submit an updated Construction Workforce Plan to the Contracting Officer on a monthly basis.
- c. The Contracting Officer shall forward copies of all versions of the Construction Workforce Plan and Workforce Performance Report to the Compliance Officer.
- d. The Contractor's failure to provide a completed Workforce Performance Report will result in a finding by the County that the Contractor failed to satisfy this AO. This finding will be included in the Compliance Officer's report pursuant to Section III, Monitoring, Paragraph D, herein.

B. RESPONSIBILITIES OF THE CONTRACTOR AND SUBCONTRACTORS:

1. Throughout the performance of the contract, the Contractor, or subcontractors as applicable, shall keep on file a copy of each Employ Miami-Dade participant's verification documentation.
2. If the Contractor, or subcontractor as applicable, has a need to hire employees to perform labor work on a County Construction Contract, Contractor will document its efforts to hire workers from Employ Miami-Dade, including following the referral procedure described in this AO.

III. MONITORING

- A. County staff shall perform random audits of documents and/or unannounced visits to the County Construction Contract project site to verify employment of Employ Miami-Dade participants.
- B. The Compliance Officer shall review information collected by the Contracting Officer or designee during on site field interviews and issue written notices to Contractor when he/she determines the 20% labor workforce threshold from the Employ Miami-Dade Register will not be met or best reasonable efforts are not being performed.
- C. At project completion on a County Construction Contract, the Compliance Officer shall review the Workforce Performance Report and applicable supporting documents such as employee performance reviews, payrolls, and payments to employees, and shall ascertain whether employees will be retained beyond the contract.
- D. The Compliance Officer shall report his/her determination of whether the Contractor successfully met the 20% labor workforce threshold from the Employ Miami-Dade Register and, if not, whether the Contractor used its best reasonable efforts to promote Employ Miami-Dade as further detailed in this AO. Such report shall, at a minimum, be included in the County's Capital Improvement Information System (CIIS) with a copy to CareerSource South Florida.

In making such determination, the Contracting Officer shall consider:

1. Whether the Contractor followed the referral procedures in this AO;
 2. Whether minimum requirements were established for available positions beyond reasonable requirements to complete the job;
 3. The availability of candidates from the Employ Miami-Dade Register for the trades required on the County Construction Contract;
 4. The number of referred candidates interviewed for the position; and
 5. The Contractor's labor force and the number of Employ Miami-Dade participants employed on the County Construction Contract by the Contractor (or its subcontractors if applicable) for at least 120 days of full-time work, 40 hours per week, or for the length of the County Construction Contract if the County Construction Contract is less than 120 days.
- E. The County's determination as to whether a Contractor has met the 20% labor workforce threshold from the Employ Miami-Dade Register or made best reasonable efforts is final and binding.

IV. EVALUATION OF CONTRACTOR

- A. For County Construction Contracts, the Contracting Officer shall review prior work performed by the proposed Contractor, including the Compliance Officer's determination(s) whether the Contractor successfully met the 20% labor workforce threshold from the Employ Miami-Dade Register and, if not, whether the Contractor used its best reasonable efforts to promote Employ Miami-Dade as further detailed in this AO on prior contracts. Bidders/Proposers will be deemed non-responsible and their bids/proposals rejected if the Contractor has been found to have failed to successfully meet the 20% labor workforce threshold from the Employ Miami-Dade Register or use its best reasonable efforts to promote Employ Miami-Dade as further detailed in this AO on one (1) or more projects in the last three (3) years.
- B. In the event the Contractor or subcontractor attempts to comply with the provisions of this AO 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 Code, the County shall, whenever practicable, terminate the contract, or require the removal of the subcontractor, from the project on which the acts were committed. In each instance, the Contractor shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The Contractor may also be subject to debarment pursuant to Section 10-38 of the Code of Miami-Dade County.

V. RESPONSIBILITY OF DEPARTMENTS LEASING COUNTY-OWNED LAND FOR CONSTRUCTION OF PRIVATELY FUNDED IMPROVEMENTS THEREON

Any project or lease of County-owned land on which privately funded improvements will be constructed shall stipulate in such contract or lease the provisions of this AO, if applicable.

VI. ADVERTISEMENTS IN SOLICITATIONS FOR PROFESSIONAL SERVICES

The provisions of this section of the AO only applies to solicitations for professional services subject to A.O. 3-39, *Standard Process for Construction of Capital Improvements, Acquisition of Professional Services, Construction Contracting, Change Orders and Reporting*. The issuing department/Contracting Officer shall include, except where state or federal laws or regulations mandate to the contrary, the following language in solicitation documents:

"The County has an initiative to provide construction labor employment and training opportunities for Miami-Dade residents through the Employ Miami-Dade initiative. Contractors are encouraged to visit the Employ Miami-Dade website at <https://www.employ-miamidade.com> to learn more about this continuing effort."

Approved by the County Attorney as
to form and legal sufficiency _____