

## Implementing Order



**Implementing Order No.: 3-41**

**Title: SMALL BUSINESS ENTERPRISE (SBE) PROGRAM FOR THE PURCHASE OF GOODS AND SERVICES**

**Ordered: 7/10/2018**

**Effective: 7/20/18**

**AUTHORITY:**

Sections 1.01, 2.02 and 5.02 of the Miami-Dade County Home Rule Amendment and Charter and Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade County.

**SUPERSEDES:**

This Implementing Order supersedes previous Implementing Order 3-41, ordered May 3, 2011 and effective May 13, 2011.

**POLICY:**

- A. This Small Business Enterprise ("SBE") Program shall apply to all County and Public Health Trust contracts for the purchase of goods ("SBE-Goods") or services ("SBE-Services"), respectively, including professional services other than architectural, engineering, architectural landscape and land surveying and mapping professional services of seven hundred thousand dollars (\$700,000.00) or less, governed by Florida Statutes Section 287.055. The SBE Program shall not apply to construction or construction management services of seven hundred thousand dollars (\$700,000.00) or less; purchase, leases or rental of real property; licenses and permits; concessions; franchise agreements; or contracts for investment banking services.
- B. It is the policy of Miami-Dade County that County departments expend with SBEs one hundred (100) percent of the total value of contracts one hundred thousand dollars (\$100,000.00) or less for goods or services.
- C. Small Business Enterprise Measures may be applied to contracts greater than \$100,000.
- D. The application of contract measures to contracts for goods or services purchased by the Public Health Trust shall be governed by this Implementing Order, except that the Public Health Trust shall establish its own administrative procedures consistent with this Implementing Order to govern the application of contract measures to its purchases of goods or services except for construction and/or architectural and engineering services. The Public Health Trust shall provide data on a quarterly basis of all contracts awarded to SBEs.

I. DEFINITIONS:

This Implementing Order incorporates completely, definitions listed in the SBE Goods Program ordinance and SBE Services Program ordinance. Additional terms necessary for the understanding of this Implementing Order, are listed below:

- A. Anniversary Date means twelve (12) months from the date of which a firm received approval for its SBE certification, recertification or continuing eligibility.
- B. Billing means any request for payment by a SBE, whether through a regular invoice, change order, claim, etc.
- C. Board means the Board of County Commissioners of Miami-Dade County, Florida.
- D. Business Tax Receipt means a document verifying that a firm is registered by Miami-Dade County to do business in Miami-Dade County.
- E. Certificate of Assurance means the departmental form submitted with bid documents whereby the Bidder acknowledges: (i) Small Business Enterprise ("SBE") measures apply to the project; and (ii) Bidder will submit its list of certified SBEs to satisfy the measures via Miami-Dade County's web-based system, within the specified time frame.
- F. Compliance Audit is generated the month after payment is made from the County to the successful bidder/proposer ("Successful Bidder" or "Successful Proposer" or "Successful Bidder/Proposer") and requires the Successful Bidder/Proposer to report payments made to subcontractors, and for the subcontractors to confirm receipt of these payments, via the County's web-based system within the timeframe specified by SBD.
- G. Compliance Monitor means the Director of Small Business Development or designee from the Minority Affairs Division of the Miami-Dade Aviation Department or designee assigned to review compliance with Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade County, as amended, and this Implementing Order.
- H. Continuing Eligibility means authorization following an annual review of a Miami-Dade County certified SBE firm to verify that program eligibility requirements are maintained.
- I. Contract means an agreement for the purchase of goods or services, including professional services. Professional services includes, but is not limited to accounting, legal, health care, consulting and management services. For SBE-Goods, Contract does not mean: (i) an agreement to purchase, lease or rent real property; or (ii) a grant, license, permit, franchise or a concession. For SBE-Services, Contract does not mean: (i) an agreement to purchase, lease, or rent real property; (ii) a grant,

license, permit, franchise or a concession; (iii) an agreement to acquire professional architectural, engineering, landscape architectural or land surveying and mapping services of seven hundred thousand dollars (\$700,000.00) or less; or (iv) a contract for construction or construction management services of seven hundred thousand dollars \$700,000.00) or less.

- J. Contract Measure means a contract set-aside, a subcontract goal, a bid preference, or a selection factor, singly or in any combination.
- K. Contracting Officer means a department director or his/her designee, who prior to award manages the bid process or post award and has primary responsibility to manage the contract and enforce contract requirements.
- L. County means Miami-Dade County, Florida, a political subdivision of the State of Florida.
- M. Debar means to exclude a contractor, its individual officers, its shareholders with significant interests, its qualifying agent, or its affiliated businesses from county contracting and subcontracting for a specified period.
- N. Graduation means the SBE has exceeded either the personal net worth or the specific size limits stated for the program and may no longer be eligible to participate in the Program.
- O. Joint Venture means a business arrangement of two or more parties, in which at least one is a SBE that agrees to pool its resources for the purpose of accomplishing a specific task, and is registered with SBD.
- P. Make-up Plan means a plan whereby a bidder submits via the County's web-based system its commitment that if awarded the contract, it will fulfill all or a portion of any pending SBE-Goods or SBE-Services makeup requirement and identify the certified SBE firm(s) to be utilized to fulfill the make-up requirement that is in excess of any SBE goal(s) required on the project, and the percentage, dollar value and description of the work that needs to be made up within the time frame specified by SBD.
- Q. Mentor means a firm with an established business which has applied for and been approved by SBD, in accordance with applicable procedures, for participation as a mentor in the Mentor-Protégé Program. A Mentor may not provide mentoring services to more than one (1) Protégé firm at any one time, but is allowed to serve as a Mentor for an unlimited number of times (pursuant to SBD approval).
- R. Mentor-Protégé Program is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging small business enterprises in order for the latter to benefit from the knowledge and experience of the established mentor firms. Specific details of this program are provided in this Implementing Order.

- S. Mentor-Protégé Program Coordinator means the Small Business Development staff designated as the individual(s) responsible for coordinating and administering the various activities of the Mentor-Protégé Program.
- T. Mentor-Protégé Project Plan is a description of the type of training the Mentor will provide to the Protégé during the identified project. This document will be developed by the Mentor with the Protégé's input and submitted along with a signed Mentor-Protégé Development Agreement; all to be reviewed and approved by Small Business Development.
- U. Mentor-Protégé Development Agreement a signed agreement between a Mentor (prime) and a certified CSBE firm (subcontractor/sub-consultants) Protégé.
- V. NAICS means North American Industry Classification System.
- W. NIGP means National Institute of Governmental Purchasing.
- X. Protégé means a firm: (i) certified as a SBE with SBD; (ii) actively conducting business for a minimum of two (2) years; (c) maintaining an actual place of business where it provides its products and services, in Miami-Dade County; (d) in good legal standing with the State of Florida, Miami-Dade County, and all other local jurisdictions; and (e) without any SBE violations within the preceding two (2) year period from its application to the MPP. Such participation cannot exceed two (2) years, and a firm may only be a Protégé one time. A Protégé agrees to follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD.
- Y. Review Committee or RC means the committee established by the County Mayor or designee to review proposed projects for the application of contract measures where SBD and the contracting department have not established consensus and when the public input requires deliberation regarding the measures/goals recommendation. The RC will make recommendations to the Mayor or designee as needed.
- Z. SBD means the Division of Small Business Development or successor division or department.
- AA. Small Business Enterprise (SBE) means a business entity certified by SBD, providing goods or services, which has a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, an actual place of business in Miami-Dade County, not a Virtual Office, and whose three year average gross revenues does not exceed the following contracting participation levels:
  - i. Micro Tier 1 — \$0 to \$750,000;
  - ii. Micro Tier 2 — \$750,000.01 to \$2,000,000; or

iii. Tier 3 — \$2,000,000.01 to \$5,000,000.

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

No firm shall be certified as a SBE where the personal net worth of any of its owners is more than (\$1,500,000), exclusive of: (a) the value of the primary residence for which there is a homestead exemption; (b) the value of the business; and (c) funds invested in an individual retirement account ("IRA"), 401k, pension, or other official retirement account. The owner MUST provide information about the terms and restrictions of the account(s) to SBD, and certify that the retirement account(s) is legitimate. Representations as to a business entity's average gross revenues, personal net worth of owners and payroll shall be subject to audit.

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

BB. Utilization Plan means the plan whereby a Bidder submits via the County's web-based system its commitment that if awarded the contract, it will fulfill the SBE goal(s) required for the project and identify certified firms to fulfill goal(s) and percentages, dollar value, and description of the work to fulfill the SBE goal within the time frame specified by SBD. Subcontractor(s) listed will also be required to confirm their participation via the County's web-based system within the specified time frame. Bidders must enter into written subcontracts with the listed SBE(s).

CC. Vendor means one who sells goods or services.

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

## II. MANAGEMENT & TECHNICAL ASSISTANCE (MTA) PROGRAM

### A. Description

SBD will provide management and technical assistance and community outreach to certified SBEs performing as vendors and providing goods and/or

services in Miami-Dade County. These services will be referred to as the "MTA Program."

B. Program Requirements

For SBE firms to participate in the MTA Program they must meet certain program requirements, which includes regular meetings with SBD and participation in community outreach events.

C. Management and Technical Assistance Services

Small Business Development will be responsible for providing services to small businesses that should include, but should not be limited to pre and post-award services and access to business management services. Each firm will be assigned an SBD staff person (the "Technical Assistance Coordinator") in order to assess and address their particular needs.

1. After being certified\* by SBD in the SBE Program, the SBE will meet with the Technical Assistance Coordinator ("TAC"). The TAC will:

- a. Provide an overview of SBD functions;
- b. provide an overview of the SBE Program;
- c. provide the SBE with a packet containing forms for the MTA, Bonding and Financial Assistance Program, and Mentor-Protégé Program, as well as a Needs Assessment Form; and
- d. assist the SBE in filling out the Needs Assessment Form.

*\*Note* - in some instances, firms applying for SBE certification will be referred to the MTA Program for assistance before being certified.

2. The SBD TAC will review the SBE Needs Assessment Form to determine what needs the SBE has, and will make sure that the SBE meets all eligibility requirements for the various programs.

3. If participation in the Mentor-Protégé Program is recommended, the Bonding and Loan Coordinator ("BLC") will assist the SBE in filling out the forms to register for that program.

4. If participation in the Bonding and Financial Assistance Program (the "BFA Program") is recommended, the BLC will assist the SBE in filling out the necessary forms. If bonding assistance is identified as a need, the applicant shall fill out a bonding assistance questionnaire.

D. Community Outreach

Small Business Development shall provide community outreach to stimulate the interest of the small business community in the program. The department shall design and implement an outreach program that will communicate the advantages of the program as well as convincing potential participants that

contracting opportunities exist. The program shall provide on-going recruitment and assistance to small businesses.

#### E. Program Restrictions

The following restrictions shall apply to the program applicant:

1. An applicant who exceeds the SBE Program size standards after one year of being formally notified is prohibited from continued participation.
2. Firm must have an actual place of business in Miami-Dade County.
3. Loss of certification shall result in prohibition from the program.

### III. BONDING AND FINANCIAL ASSISTANCE PROGRAM

#### A. Program Description

Upon the Board's approval of a Bonding and Financial Assistance Program and award of the contracts necessary to implement same, SBEs that are certified and in good standing with Miami-Dade County may be eligible to receive bonding and financial assistance. The County shall establish guidelines and procedures for the implementation of the Financial Assistance program to include eligibility requirements for application.

The BFA Program will provide SBEs with assistance in obtaining bonding and/or financial assistance for goods and services contracts. Bonding assistance will include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes. Financial assistance will include providing financial assistance such as mobilization capital, line of credit and/or working capital loans through partnering relationships with financial institutions.

#### B. Program Requirements

##### 1. Bond Application Assistance Process

Upon completion of the bond application package, the same shall be reviewed for completeness and thereafter shall be submitted to the entities with whom the County contracts for the Program. Any additional information required by such entities shall be requested directly from the SBE with a copy of such request to SBD staff.

##### 2. Bonding and Financial Application Process

- a. The BFA Program participant will provide all the necessary documentation to complete a Bonding and/or Financial Assistance application. SBD, through partnering relationships with bonding agencies and lending institutions, shall assist SBEs in obtaining bonding and financial assistance.

- b. SBD shall assist the BFA Program participant in preparing and completing the Bonding and/or Financial Assistance application package.
- c. Upon completion of the Bonding and/or Financial Assistance application package, SBD staff will perform a review of the BFA Program participant's application for completeness and thereafter submit same to the entities with whom SBD has partnered for the BFA Program. SBD staff shall be notified of the approval status of the bonding or loan application.
- d. Any additional information required by bonding entities shall be requested directly from the SBE with a copy of such request to SBD staff.

C. Bonding and Loan Coordinator Responsibilities:

- 1. The BLC shall maintain a listing of surety bonding companies, which will be utilized in the BFA Program. This listing shall include treasury listed and state listed companies only.
- 2. The BLC shall coordinate between the County, eligible SBEs, and surety bonding companies.
- 3. The BLC shall solicit eligible lending institutions to participate in the BFA Program, and refer eligible SBEs to them as needed.
- 4. The BLC will keep records and files on all SBE firms that have applied to participate in any of the SBD training or assistance programs. The BLC will also set up appointments for SBE firms with the appropriate entities as applicable.
- 5. The BLC will coordinate regular workshops for SBE firms on how to do business with the County, to discuss County procurement processes and to develop specialized business related educational opportunities.
- 6. The BLC is responsible for marketing of the BFA Program.
- 7. The BLC is responsible for providing various reports to the Small Business Advisory Board. Such reports will include the: (a) number of clients that applied to the BFA Program; (b) number of clients that received bonding and/or loans; and (c) bonding or loan amount(s).

D. BFA Program Process and Segments

Firms wishing to be part of these programs will follow the steps below:

- 1. Certified SBE expresses need for financial assistance, through internal referral or outreach activities.



2. Referral is made to the BLC and financial needs assessment meeting appointment is made.
3. Financial needs assessment meeting is conducted and SBE's financial needs are addressed. BLC will assess the SBE's financial condition and present it with attainable options.
4. If a bonding need is identified, then BLC will refer SBE to a surety agent, and provide additional assistance as needed. BLC will follow up with surety agent and report outcome of bonding assistance request.
5. If loan assistance is needed, then BLC will refer the SBE to the most suitable lending partner, including commercial banks, alternative lenders, and microlenders. BLC will follow up with SBE and lending partner, provide additional assistance where needed in the process, and report outcome of lending assistance referrals.

#### IV. CERTIFICATION

##### A. Eligibility Requirements

1. SBD is the County agency responsible for certifying, decertifying and re-certifying applicants for the SBE Program.
2. SBE applicants must be profit-motivated businesses. Not-for-profit or non-profit corporations are not eligible for certification.
3. Only firms that meet personal net worth and size limits of SBEs as to average annual gross revenues for the last three (3) years may be certified as SBEs, or in the case of manufacturers and wholesalers – the number of full-time, permanent employees of the applicant firm and all of its domestic and foreign affiliates, may be certified as SBEs.
4. Size determinations for SBEs certification eligibility shall take into account the combined gross revenues of the applicant firm and all of its domestic and foreign affiliates, or in the case of manufacturers and wholesalers – the number of full-time, permanent employees of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included. Section E below provides additional information regarding affiliation determinations.

Applicants and certified SBEs must be properly licensed to conduct business in Miami-Dade County, must perform a commercially useful function with an actual place of business in Miami-Dade County, not a Virtual Office, must have a valid business tax receipt issued by Miami-Dade County at least one (1) year prior to certification, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified. In addition, a firm shall not be certified unless it contributes to the economic development and well-being of Miami-Dade County's tax base. When determining whether the

applicant has an actual place of business in Miami-Dade County, SBD shall consider evidence such as, but not limited to:

- a. The existence and location of secretarial or other administrative staff.
  - b. Offices, premises related to business, or other facilities within Miami-Dade County at which the goods or services to be provided are produced or performed.
  - c. Local Business Tax Receipt issued by Miami-Dade County.
5. Interested parties shall complete an SBE certification application via the County's web-based system. An explanation of the certification requirements is also available on SBD's Web Page at [www.miamidade.gov/smallbusiness](http://www.miamidade.gov/smallbusiness).

B. Terms of Certification

1. Certification for a SBE firm is valid for a three (3) year period. Certification for SBE is continuous within the three (3) year period with the firm's submission of an Affidavit for Continuing Eligibility. SBD shall require that all SBE firms, in order to continue eligibility, submit an affidavit for Continuing Eligibility annually on or before the Anniversary Date via the County's web-based system. The Affidavit for Continuing Eligibility shall include, at a minimum:
  - a. Most recent, signed, complete business tax return(s) or extension(s) for the firm and all affiliates.
  - b. Current business, professional licenses and certifications, and Local Business Tax Receipt issued by Miami-Dade County.
  - c. Current lease agreement or warrantee deed for the firm's actual place of business.
  - d. Notarized, sworn affiliation affidavit.
2. Additional supporting documentation may be required by SBD to verify eligibility.
3. SBD will take the following action if a SBE firm's Affidavit for Continuing Eligibility is not received on or before the Anniversary Date:
  - a. SBD shall prepare a "Notice of Certification Removal".
  - b. SBD shall mail the Notice to the SBE firm.
  - c. SBD shall allow the SBE firm fifteen (15) days from the date of the notice to provide the "Affidavit for Continuing Eligibility" and supporting documentation.

- d. If the SBE firm does not provide the "Affidavit for Continuing Eligibility" and supporting documentation within the timeframe stipulated above, SBD shall decertify the firm and notify the firm in writing of the decertification.
  - e. The "Notice of Certification Removal" will be dated the day following the deadline established pursuant to "c." above.
- 4. A SBE firm, its individual officers, its shareholders, its qualifying agent or its affiliated businesses that has been denied certification or continuing eligibility, or that has been decertified, is not eligible to apply for certification for twelve (12) months from the time of the denial or, decertification. Firms that have been decertified for non-submittal of documents, may apply for recertification once said documents have been submitted and verified by SBD. Graduating firms may be eligible to reapply for certification, after filing and submitting their most recent corporate tax return subsequent to graduation, if and only if, said tax return was not previously considered.
  - 5. A SBE Enterprise must be certified by the applicable type of goods or services it provides in accordance with the applicable NAICS/NIGP Commodity Code in which the SBE is licensed (if applicable). A SBE can be certified in more than one NAICS/NIGP Commodity Codes. SBD will determine the appropriate codes for certification under the program based on the licenses held by the firm and experience submitted to SBD.
  - 6. A business owner, alone or as a member of a group, shall own or control only one SBE firm at a time and shall not own or control another separate business certified under the Small Business Enterprise Program. If a non-SBE in the same or similar line of business as a SBE has an equity ownership of such SBE that exceeds ten (10) percent, the SBE shall not be certified or recertified.
  - 7. Certified SBEs shall provide written notice to SBD of any changes that affect their eligibility as SBEs. SBEs shall submit a Change of Request Form and supporting documentation describing the nature of the change, and stating the effective date of the change(s) to SBD within thirty (30) calendar days of the effective date of the change(s). Change Request Forms will be available on-line or upon receipt of written notification from the firm. This form must be completed and returned to SBD in order for the change to be processed by SBD.
  - 8. A SBE must have a valid certification in effect at time of bid submittal. For successful bidders, certification must be maintained from bid award throughout the duration of the agreement. With the exception of graduation from the SBE Program, loss of SBE certification may lead to removal of the firm from continued participation in the SBE Program. SBD staff shall not be limited to Eligibility Review Meetings (ERMs) and/or site visits when attempting to determine continuing compliance with certification requirements.

C. Certification Process

1. SBD shall collect, analyze and verify all information needed to establish the eligibility of an applicant and continued eligibility of SBEs.
2. SBD shall not certify an applicant, shall not grant continuing eligibility to a SBE, and shall decertify a SBE who:
  - a. Fails to comply with the criteria or procedures of the SBE Ordinance, this Implementing Order and/or participation provisions;
  - b. Fails to complete the application process;
  - c. Fails to provide full disclosure;
  - d. Falsifies information; or
  - e. Has been debarred by the County.
3. SBD shall certify each SBE/Micro Enterprise by the type of good and/or service it performs in accordance with the applicable NAICS/NIGP code(s).
4. SBD shall give written notice, including the reasons for its decision, to applicants who are denied certification and to SBEs who are decertified, or denied continuing eligibility recertification, or have graduated.
5. SBD may require applicants and SBEs to submit information regarding their business operations including, but not limited to, a breakdown of the applicant's or SBE's ownership and gross annual sales receipts.
6. SBD shall provide written procedures and/or forms for continuing eligibility to certified SBEs no later than thirty (30) calendar days prior to their Anniversary Date.
7. SBD shall maintain an updated list of SBEs, based on each NAICS/NIGP commodity code(s) by which the SBE is certified.

D. Decertification

1. If during the period of certification, the County receives information that a SBE received certification improperly or that the firm no longer qualifies to be certified as a SBE, then SBD shall conduct an investigation of the allegations.
2. SBD shall decertify the firm if the investigation indicates that:
  - a. The firm cannot be contacted at the last known address;

- b. The firm is no longer in business;
- c. The firm is no longer licensed to do the type of business for which it was certified;
- d. The firm obtained its original certification and/or recertification through false representation or deceit; or
- e. The firm has been debarred by Miami-Dade County.

3. When decertifying a SBE, SBD shall either:

- a. Give notice to the SBE that the decertification decision will be effective at the completion of any appeal under this Implementing Order; or
- b. Suspend the certification of the SBE during any appeal of the decertification decision.

E. Affiliation Determination

General: Only small firms that meet size limits of SBEs as to average annual adjusted gross revenues for the last three years or number of employees for manufacturers and/or wholesalers may be certified as SBEs. Size determinations for SBE shall take into account the combined gross revenues and/or employees of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included.

- 1. Affiliation: Firms are considered affiliates of each other when either directly or indirectly:
  - a. One firm controls or has the power to control the other, or
  - b. A third party or parties controls or has the power to control both, or
  - c. An identity of interest between or among parties exists such that affiliation may be found.
- 2. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, related business lines or related scopes of work, common facilities, common management, and contractual relationships. Examples of affiliation include:
  - a. Nature of control in determining affiliation
    - 1) Every firm is considered to have one or more parties who directly or indirectly control or have the power to control it.

Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

- 2) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.
- b. Identity of interest between and among persons as an affiliation determinant. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one firm. In determining who controls or has the power to control a firm, persons with an identity of interest may be treated as though they were one person.
3. Affiliation through stock ownership.
4. Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another firm.
5. Affiliation through common facilities. Affiliation generally arises where one firm shares office space and/or employees and/or other facilities with another firm, particularly where such firms are in the same or related industry or field of operations, or where such firms were formerly affiliated.
6. Affiliation with a newly organized firm. Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one firm organize a new firm in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the firm is furnishing or will furnish the other firm with sub-consulting agreements, financial or technical assistance, proposal or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.
7. Affiliation through contractual relationships. Affiliation generally arises where one firm is dependent upon another firm for consulting agreements and business to such a degree that its economic viability would be in jeopardy without such agreements/business.
8. Affiliation under joint venture arrangements

## V. JOINT VENTURES BIDDING ON CONTRACTS WITH SBE MEASURES

### A. Approval of Joint Ventures

Only joint ventures registered with SBD in accordance with this Implementing Order are eligible to participate as joint ventures in the SBE program. Joint ventures must be lawfully established. At least one

member of the joint venture must be certified as a SBE before the joint venture can be approved. Joint ventures can participate under the SBE program on contracts with set-asides, subcontractor goals, bid preferences and selection factors.

#### B. Program Requirements and Incentives

Joint Ventures must submit their joint venture agreements for approval by SBD, no later than thirty (30) calendar days prior to the date set for receipt of bids on an eligible project. SBD shall review the joint venture agreements for approval by considering the following factors:

1. Allocation of profits and losses to each venture partner;
2. allocation of the management and control; and
3. capital investment from each venture partner.

As a Joint Venture under the SBE programs, a written joint venture agreement must be completed by all parties, lawfully established with the State of Florida, and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner. The agreement must state that the Joint Venture will continue for the duration of the project, at minimum.

A proposal/bid submitted by a Joint Venture that does not include a written joint venture agreement approved by SBD in accordance with the requirements of this IO, shall be deemed a non-qualified Joint Venture, and ineligible to participate in the SBE Program. An eligible Joint Venture may bid on County projects. Upon the approval of the contracting department and SBD, all projects valued over \$5,000,000 shall require each bidder to be a Joint Venture, as long as availability exists.

Joint Ventures will receive a Bid Preference or Selection Factor based on the percentage ownership of the SBE, as follows:

- a. Less than ten percent (10%) SBE ownership will result in a 0% bid preference or 0% selection factor.
- b. Between ten percent (10%) to twenty percent (20%) SBE ownership will result in a 3% bid preference or 3% selection factor.
- c. Between twenty-one (21%) to fifty percent (50%) SBE ownership will result in a 5% bid preference or 5% selection factor.
- d. Fifty-one percent (51%) and greater SBE ownership will result in a 10% bid preference or 10% selection factor.

The Joint Venture will receive credit towards any CBE-A/E measures based on the percentage ownership of the SBE that is part of the joint venture. A Joint Venture that includes fifty-one percent (51%) or above CBE-A/E ownership may also bid on set-aside contracts.

### C. Joint Venture Responsibilities

Joint ventures must submit prior to bid submission a Joint Venture Agreement containing the following information:

1. A description of the financial contribution of each member;
2. a list of the personnel and equipment used by each member;
3. a detailed breakdown of the responsibility of each member and the work to be performed by each member;
4. an explanation of how the profits and/or losses will be distributed;
5. the bonding capacity of each member;
6. a description of any management or incentive fees for any of the members;
7. a statement of the percentage of the joint venture that is owned and controlled by the qualifying member(s) and the basis for claiming such percentage; and
8. a copy of any required State of Florida certificates or registrations.

### D. SBD Responsibilities

SBD shall collect, assemble and verify all information needed to determine if at least one of the members of a joint venture is a SBE, and to approve the joint venture agreement and register said Joint Venture, as applicable. A Joint Venture Agreement is complete when it includes all required supporting information.

## VI. PROGRAM MANAGEMENT

### A. Contracts \$100,000 and Under

1. County departments/agencies that issue or use contracts are required within the fiscal year to expend one hundred (100) percent of the total value of contracts one hundred thousand dollars \$100,000.00 or less for goods or services on certified SBEs. The departmental requirement shall be complied with unless SBD determines that there is either not enough capacity, or the contract(s) can only be handled by a non-SBE firm(s).
2. Bids or quotes submitted by any SBE that is a Micro Tier 1 or Micro Tier 2 shall automatically receive a ten (10) percent bid preference and a Tier 3 SBE shall automatically receive a five (5) percent bid preference, when not set-aside for SBEs. When set-aside, the preference shall be: ten (10) percent for Micro Tier 1 SBEs; five (5) percent for Micro Tier 2 SBEs; and zero (0) percent for Tier 3 SBEs. County departments shall deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation, and are also required to solicit bids or quotes from at least four (4) firms where available (two available certified SBEs and two non-certified firms).



3. SBD shall review reports of the utilization of SBEs and shall inform departments failing to meet the requirements set forth herein. Additionally, SBD shall report awards to SBEs to the Board annually.

B. Contracts Greater than \$100,000

1. Prior to advertisement, each contract, purchase, or blanket purchase of goods or services in excess of one hundred thousand dollars (\$100,000), and each purchase order that may accumulate an aggregate amount greater than one hundred thousand dollars (\$100,000) shall be reviewed for the application of contract measures.
2. Departments shall submit contracts to SBD to review for the application of measures and shall work in conjunction with SBD in making a recommendation. SBD shall seek concurrence with the issuing and user departments when making a recommendation. Departments shall advise SBD of any contract advertisement dates that are in excess of 120 days of the initial RC recommendation. Departments shall also advise SBD of any projects not advertised within 180 days of the recommendation. Those contracts not advertised within 180 days will be re-submitted to SBD for reconsideration.
3. Departments shall advise SBD of any changes in bid specifications, post award changes and all contracts with measures that are cancelled.
4. The County Mayor or designee may approve emergency purchases with measures that meet the County's definition of emergency. Such measures shall be submitted presented to SBD for ratification.
5. Standard participation provisions shall be included in all contract documents with applied measures unless SBD approves substitute proposal documents.

VII. CONTRACT ADMINISTRATION

A. Pre-Award Compliance Review

1. Bid documents shall require bidders to submit a completed-Certificate of Assurance at the time of bid submission, acknowledging the required measure and submission of a Utilization Plan via the County's web-based system. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform therefore. Failure to submit the required Certificate of Assurance and Utilization Plan shall deem the bid/proposal non-compliant.
2. The Compliance Monitor shall notify the bidder in writing stating the facts and the reasons on which the noncompliance is based. Upon notification from SBD, the bidder may request a meeting in writing within two

business days from the date of the notification of noncompliance. The bidder shall supply further relevant information as required by the Compliance Monitor. No new altered Utilization Plan will be accepted.

3. The Compliance Monitor shall issue a written recommendation to the Contracting Officer that includes facts and reasons for the bidder's compliance or noncompliance.

## VIII. APPLICATION OF CONTRACT MEASURES

### A. Set-asides:

The County Commission or Public Health Trust may determine it is in its best interest to waive competitive bidding or selection requirements and set-aside a contract for SBEs where, prior to bid advertisement, there are at least three (3) available SBEs to perform the set-aside contract.

1. Where applicable : (i) contracts from \$100,000.01 to \$750,000 shall be set-aside for Micro Tier 1 SBEs; (ii) contracts from \$750,000.01 to \$2,000,000 shall be set-aside for Micro Tier 2 SBEs; and (iii) contracts from \$2,000,000.01 to \$5,000,000 shall be set-aside for Tier 3 SBEs.
2. When set-aside, the bid preference shall be: ten (10) percent for Micro Tier 1 SBEs; five (5) percent for Micro Tier 2 SBEs; and zero (0) percent for Tier 3 SBEs. The departments shall deduct the preference amount from the total bid or quoted price in order to calculate the price to be used for evaluation.
3. In the event there is no availability in the designated SBE tier, SBD may assign a set-aside to the next level tier which will retain a set-aside recommendation. Lower tier SBE firms may bid on higher tier set-asides, but higher tier SBEs may not bid on a lower tier set-asides.

### B. Subcontractor Goals:

A recommendation to apply a subcontractor goal is appropriate when there are three (3) or more certified firms available to provide the portion of the contract.

1. Subcontractor goals may be applied to a contract based on estimates made prior to bid advertisement of the quality, quantity and type of subcontracting opportunities provided by the contract and the availability of SBEs to perform such work. Bid documents for contracts to which a SBE subcontract goal is applied shall provide that only SBEs certified to provide the type of goods or services for which a goal is imposed shall be counted towards meeting a goal. The bid documents shall further provide that a bidder must be found in compliance with the requirements of subsections 2 and 3 below in order to be eligible for award of the contract.
2. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that bidders must submit with its bid a completed Certificate

of Assurance acknowledging the required measure and submission of a Utilization Plan via the County's web-based system. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required timeframe, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform therefore. The solicitation documents for any competitive selection involving a separate evaluation of sealed price envelopes shall require that the technical submission contain a Certificate of Assurance acknowledging the required measure and submission of a Utilization Plan via the County's web-based system listing the certified SBEs to fulfill the measure. Each Utilization Plan shall be executed by the bidder and the SBE via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a SBE may itself meet the goal to the extent it is certified to provide the type of services that are the subject of the contract. Bidder must include in bid documents a Certificate of Assurance acknowledging the required measure and submission of a Utilization Plan via the County's web-based system listing itself to fulfill the measure. The Utilization Plan shall be executed by the bidder via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform. Bid documents for contracts to which a SBE subcontractor goal is applied shall provide that a bidder that is a joint venture one or more of whose venturers is an SBE must submit with its bid a copy of the joint venture agreement in order for such venturer(s)'s participation to be eligible to be counted towards meeting the goal. The joint venture agreement shall be in writing, signed by all venturers, and shall specify the ownership, control, profits and financial risk assumed by each venturer, including the SBE venturer(s). The joint venture agreement shall also specify the portion of the contract work (i.e., the services to be provided) to be performed by the SBE venturer(s) in detail separately from the work to be performed by the non-SBE member. The bidder shall receive credit towards meeting the goal to the extent that the combined dollar value of the SBE's participation as shown in the joint venture agreement submitted in conformity with and meeting the requirements of this paragraph bears to the total contract price bid by the bidder. Bidder must include in bid documents a Certificate of Assurance acknowledging the required measure and submission of a Utilization Plan via the County's web-based system listing the certified SBEs to fulfill the measure. The Utilization Plan shall be executed by the bidder and the SBE(s) via the County's web-based system upon notification of SBD within the required time frame, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform. A SBE may fulfill a subcontractor goal in only one (1) goal type per contract.

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

C. Bid Preference:

1. A bid preference shall apply to all contracts which are to be awarded on the basis of price (excluding RFPs, RFIs and RFQs) and are not set-aside. The preference shall be utilized for bid evaluation, and shall not affect the contract price. The preference accorded on contracts from \$100,000.01 to \$1 million shall be ten percent (10%) of the price bid for all tiers. The preference accorded on contracts greater than \$1 million shall be five percent (5%) of the price bid for all tiers. SBEs are not accorded a bid preference on contracts of less than or equal to \$100,000. Contract documents shall include standard language indicating the application of a bid preference.
2. On contracts on which a preference is applied, SBD shall conduct a periodic review of contracts hereunder and will prepare a report to the issuing department's director.

D. SBE Selection Factor

1. Any bidder that is a SBE or a joint venture with a SBE, shall be accorded a selection factor on RFPs, RFQs, and RFIs for contracts greater than \$100,000 that are not set-aside for bidding solely by SBEs. Contract documents shall include standard language indicating the application of a selection factor.
2. RFPs, RFQs and RFIs that assign weights to evaluation or selection criteria, shall provide that a bidder entitled to a selection factor shall receive an additional ten percent (10%) of the evaluation points scored on the technical portion of such bidder's proposal. RFPs, RFQs and RFIs that do not assign weights to evaluation or selection criteria, shall provide that whenever there are two best ranked proposals that are substantially equal and only one of the two so ranked is submitted by a

bidder entitled to a selection factor, the selection factor shall be the deciding factor for award.

#### E. Review Process

1. SBD shall publish a list of projects under review daily on the department's webpage. SBD shall review the proposed contracts and the departmental recommendations. Should SBD and the department(s) not reach consensus, on recommended measures or goals, and when public input requires deliberation regarding the measure/goal, the contract will go through the Review Committee Process, as detailed below. Upon obtaining departmental concurrence with the recommended measure, SBD shall post projects and recommended goals daily on the SBD web page.
2. SBD shall consider public comments in writing on projects pre- and post measure or goal recommendations.
3. All projects with recommended measures shall contain language to allow for public comment to be submitted to SBD within thirty-six (36) hours of posting via a designated email address or mail.
4. All advertised projects shall contain language to allow for public comments to be submitted to SBD within thirty-six (36) hours of date of advertisement via a designated email address or mail. SBD and the contracting department shall review comments and make recommendations, as applicable, to the Mayor or designee.
5. Changes to goal recommendations, approved by the Mayor or designee, as a result of public comment shall require issuance of an addendum to the project advertisement.

#### F. Review Committee Process

SBD is responsible for recommending to the Mayor or designee whether to apply SBE set-asides or subcontractor goals to a contract. The Mayor or designee may accept, reject, modify or otherwise alter SBD's or Review Committee's recommendation.

1. All recommendations shall be agreed upon between SBD and the contracting department, prior to final recommendation to the Mayor or designee.
2. The Mayor or designee shall establish a standing Review Committee (RC) to meet periodically, or as often as needed, to review projects in which consensus was not established between SBD and the contracting department and when public input requires deliberation regarding the measure/goal. The RC will make recommendations to the Mayor or designee.

3. The RC shall conduct public deliberations and make recommendations whether to apply SBE set-asides or subcontractor goals to a contract. The Mayor or designee may accept, reject, modify or otherwise alter SBD's or Review Committee's recommendation.
4. The standing members of the RC shall include: Director, Transportation and Public Works Department; Director, Internal Services Department; a rotating Director of the County's capital departments or their designees; and a County Mayor appointed Chairperson. A quorum of the RC shall be three (3) members. Staff support shall be provided to the Review Committee by SBD.
5. SBD shall staff the RC and make recommendations of measures to the RC and County Mayor or designee.
6. The RC shall meet as needed. SBD shall timely publish meetings, listing the meeting location, date, and time. All RC meetings are subject to Government-in-the-Sunshine requirements. The chair shall allow participation of the public at RC meetings consistent with accomplishing the agenda of the RC.
7. The RC shall have authority to promulgate rules of general application to carry out its responsibilities, which rules are subject to review and approval by the County Mayor or designee.
8. The RC may, after public deliberation and consideration of alternatives, accept, reject, modify or otherwise alter the staff recommendation. The County Mayor or designee may accept, reject, modify or otherwise alter SBD's recommendations. The Board of County Commissioners may accept, reject, modify or otherwise alter the County Mayor's recommendations. The Mayor may accept or veto the Board of County Commissioners' recommendations. In accordance with the policy established by the Board of County Commissioners, the Board of County Commissioners may overrule the Mayor's veto.

IX. BIDDER'S RESPONSIBILITY WHERE A SBE SUBCONTRACTOR GOAL IS APPLIED:

Bid documents to which a SBE subcontractor goal is applied shall require bidders to submit a Certificate of Assurance at the time of bid submission acknowledging the required measure and submission of a Utilization Plan via the County's web-based system. Each Utilization Plan shall be executed by the bidder and the SBE upon notification of SBD within the required timeframe, and shall specify the type of services the SBE is to provide and the percentage of work the SBE is to perform therefore. The Successful Bidder shall enter into a written subcontract agreement for approval, corresponding in all respects to the Successful Bidder's Utilization Plan to include the type of services the SBE is to provide and the percentage and price. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Goods Program and Services Program.

X. PROMPT PAYMENT:

It is the County's intent that all firms, including SBEs providing goods and/or services to the County, shall receive payments promptly in order to maintain sufficient cash flow. The prime vendor in direct privity with the SBE must notify the SBE, the managing agency and SBD, in writing, of those amounts billed by the SBE that are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing by the SBE. Failure of the prime vendor to comply with the applicable requirements of this Section shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE and payment shall be forthcoming.

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

1. All firms, including SBEs providing services to the County, shall receive payments promptly in order to maintain sufficient cash flow.
2. Billings from prime vendors under goods and/or services contracts with the County or Public Health Trust ("Trust"), that are a SBE contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or Trust.
3. A prime vendor on a contract with SBE measures shall include in its billings to the County or Trust copies of undisputed billings from SBE subcontractors within fourteen (14) calendar days of receipt of such billings, or by the next scheduled billing whichever comes first. The prime vendor shall pay those amounts not in dispute to subcontracting SBEs within two (2) days of receipt of payment from the County. If the prime vendor fails to submit undisputed billings from an SBE to the County as specified herein or chooses not to submit any billing to the County pursuant to the billing schedule, the prime vendor must pay the full amount of the received SBE billings by the next billing cycle or forty (40) calendar days from receipt, whichever is less.
4. The County or prime vendor in direct privity with a SBE on a contract with SBE measures must notify the SBE and SBD, in writing, of those amounts billed by the SBE which are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing, or by the next scheduled billing whichever comes first. Failure by the County or prime vendor to comply with the applicable requirements of this subsection shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE and payment shall be forthcoming from the County or prime vendor as appropriate by the next billing date or forty (40) calendar days from receipt of billing, whichever is less.

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

B. Contracting Officer's Responsibilities

1. The Contracting Officer administering a contract with a SBE measure shall forward undisputed billings from SBE prime contractors to the Finance Department for payment within fourteen (14) calendar days of receipt of such billings.
2. The Contracting Officer must notify the SBE prime contractor and SBD, in writing, of those amounts billed by the SBE that are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing by the SBE. Failure of the Contracting Officer to comply with the applicable requirements of this Section shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE and payment shall be forthcoming from the County by the next billing date or fourteen (14) calendar days from receipt of billing, whichever is less.
3. A SBE prime contractor may invoice the County 1% interest per month for any undisputed amount that is not paid promptly as provided by this Section.
4. SBD may investigate reported instances of late payment to SBEs.
5. Departments shall report disputed invoices to the Board on a quarterly basis.

XI. POST AWARD COMPLIANCE AND MONITORING

- A. SBD shall monitor and enforce the compliance of the vendor with the requirements of this Implementing Order, and any related program requirements, during the duration of the contract and may monitor for up to one year after notice of completion of the work or full payment of contract obligations, whichever comes last.
- B. Successful Bidders and SBE shall permit the County to have access during normal business hours to all books and records relating to the compliance with the contract measure applied to the contract or relating to compliance with certification requirements. This right of access shall be granted for one year after completion of the work or full payment of contract obligations, whichever comes last, or for one year after the expiration of SBE certification.
- C. Successful Bidders and SBEs shall permit the County to have access to employees performing work during normal business hours in order to conduct visual inspections and interviews that may be conducted privately when necessitated by County staff.



- D. Successful Bidders and SBEs shall comply with all reporting requirements established by SBD. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County.
- E. In the event that during the performance of a contract containing a SBE subcontractor goal, a SBE is not able to provide the services specified in the Utilization Plan submitted at the time of bid, the Successful Bidder must locate a SBE to substitute. The Successful Bidder must receive approval for substitution from SBD. A Successful Bidder that cannot secure a substitute SBE must provide a written statement to the Compliance Monitor.
- F. SBD shall be responsible for monitoring the performance of the Successful Bidder regarding compliance with a contract measure applied to the contract. The Compliance Monitor may, at his or her discretion, investigate deviations in the utilization of SBEs from that required by the contract and make recommendations regarding compliance to the Contracting Officer. Contracting Officer shall not make a final determination without a recommendation regarding compliance from the Compliance Monitor. Deviations from the contract measure stated in the contract that shall be monitored include, but are not limited to:
1. Termination of an SBE's subcontract agreement.
  2. Reduction in the scope of work to be performed by an SBE.
  3. Modifications to the terms of payment or price to be paid to an SBE.
  4. Failure to enter into a contract with an SBE being utilized to meet a contract measure.
- G. If, after execution of a subcontract agreement, the Successful Bidder submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not reasonably have been aware, until subsequent to the date of execution of such subcontract, a SBE, who entered into such subcontract has committed a material breach of the subcontract agreement, the Successful Bidder shall be entitled to exercise such rights as may be available to him/her to terminate the subcontract agreement. The procedures of paragraphs H and I below apply to this paragraph.

It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a performance and payment bond(s), if so requested by the prime contractor after execution of a written subcontract and prior to commencement of the subcontractor's work. In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor, furnish a performance and payment bond(s) wherein the prime contractor shall be named the obligee, guaranteeing (i) prompt performance of such subcontract and (ii) the payment of all claims for labor and materials furnished or used in and about the work to be done and

performed under such subcontract, the prime contractor may reject such bid and make a substitution of another subcontractor subject to the bid specifications. Such bond(s) may be required at the expense of the subcontractor only if the prime contractor in its written or published request for sub-bids (1) specifies that the expense for such bond(s) shall be borne by the subcontractor, and (2) clearly specifies the amount and requirements of such bond(s).

If the bond process for the subcontractor is not completed before the later of either the prime contractor's contract approval and award date, or ninety (90) days prior to the commencement of work of subcontractor, it shall be the prime contractor's sole discretion to extend time for the bond to be obtained or waive the bond requirement.

H. County's Determination of Bidder's Excusal or Termination of SBE Subcontract Agreement.

If the Successful Bidder at any time submits a written request to the Contracting Officer under the prior two paragraphs, the Contracting Officer as soon as practicable, shall determine whether the Successful Bidder has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the Successful Bidder, upon notice, an opportunity to present pertinent information and arguments. The procedures of paragraph I below apply to this paragraph.

I. Alternative Subcontracts.

If the Successful Bidder is excused from entering into a subcontract or rightfully terminates a subcontract under this Implementing Order and without such subcontract the Successful Bidder will not achieve the level of SBE participation upon which the contract was awarded, the Successful Bidder shall make every reasonable effort to propose and submit a substitute SBE via the County's web-based system and enter into an alternative subcontract or subcontract for the same work to be performed by another available SBE as appropriate, for a subcontract price or prices totaling not less than the subcontract price under the excused or terminated subcontract, less all amounts previously paid thereunder. The Successful Bidder must submit to the Compliance Officer a request for substitution and subcontract agreement with the new SBE and provide all documentation required by the County. A Successful Bidder that cannot secure a substitute SBE must provide all supporting documentation required by the County. The procedures of paragraphs 1 and 2 below apply to this paragraph:

1. The Compliance Monitor may require the Successful Bidder to produce such information, as the Compliance Monitor deems appropriate and may obtain further information from other sources. The Compliance Monitor shall make his/her recommendation under this paragraph to the Contracting Officer and forward a copy to the bidder.
2. The Contracting Officer will consider objections to the Compliance Monitor's recommendation only if such written objections are received by

the Contracting Officer within five (5) business days from the Successful Bidder's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, and as he/she in his/her discretion may determine, will reply to the Successful Bidder's written objection within ten (10) business days of receipt of these objections.

## XII. CONTRACTUAL SANCTIONS

- A. Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's or SBE's violation of or failure to comply with the Small Business Enterprise Program Ordinance and this Implementing Order may result in the imposition of one or more of the following sanctions:
  - 1. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
  - 2. Work stoppage; or
  - 3. Termination, suspension, or cancellation of the contract in whole or part.
- B. In the event a bidder or SBE attempts to comply with the provisions of this Implementing Order through fraud, misrepresentation, or material misstatement, the County shall, whenever practicable, terminate the contract or require the termination or cancellation of the subcontract for the project on which the bidder or SBE committed such acts. In addition, and as a further sanction, the County may impose any of the above-stated sanctions on any other contracts and subcontracts the bidder or SBE has on other County projects. In each instance, the bidder or SBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The bidder or SBE may also be subject to debarment.
- C. The foregoing notwithstanding, the Mayor or designee shall include language in all prospective projects containing a SBE goal which provides that, in addition to any other sanction for failure to fulfill the SBE goal requirements for such contract, the contractor's eligibility to receive any future County contract shall be conditioned upon the contractor making up the deficit in SBE participation in such future contract by having SBEs perform work equal to double the dollar value of the deficiency in the SBE goal in the prior contract. Contract language shall provide that in order to be eligible for future county contracts, a contractor who fails to meet an established SBE goal shall submit a SBE Make-up Plan for the approval of the Director. A Make-up Plan must be submitted as part of any bid or proposal for future contracts as part of the Utilization Plan submitted via the County's web-based system. The Make-up Plan must identify all SBEs to meet the subcontractor goal and the work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to submit the required Make-up Plan with the Utilization Plan for any future contracts shall result in the submittal being deemed non-compliant. Any contractor subject to an approved Make-up Plan that fails to comply with any of the material terms of

that Make-up Plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a six (6) month period. A contractor that fails to comply with any of the material terms of a second Make-up Plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a one (1) year period. A contractor that fails to comply with any of the material terms of a third Make-up Plan, without good cause, may be subject to debarment and shall automatically be referred to the debarment committee. After serving a debarment for failure to satisfy a make-up plan for no good cause, the subject firm shall be deemed ineligible for bidding on County contracts with measures for one (1) additional year unless the County Mayor or designee determines that an emergency exists justifying such participation, and the Board of County Commissioners approves such decision. The foregoing obligation shall be in addition to any SBE measure otherwise applicable to the future contract.

- D. The foregoing obligation shall be in addition to any SBE goal otherwise applicable to the future contract. The procedures for making up the SBE deficit shall follow SBD policy.
- E. Some of the contractual violations that may result in the imposition of sanctions listed in this Implementing Order include, but are not limited, to the following:
  - 1. A SBE serving as a conduit for SBE work awarded to a firm as a SBE, but which is being performed by a non-SBE firm;
  - 2. A prime contractor not meeting SBE set-aside or subcontractor goal requirement;
  - 3. Not obtaining or retaining SBE certification while performing work designated for SBE firms;
  - 4. Failure of the prime contractor to report payments to subcontractors via the County's web-based system upon notification of payment by the County, or failure of subcontractors to confirm payments upon notification by the prime contractor, within the specified time frame;
  - 5. Failure to comply with SBE certification requirements, including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
  - 6. Failure to maintain certification as a SBE;
  - 7. Deviation from the Utilization Plan without prior approval from SBD;
  - 8. Termination of the SBE's contract without prior approval from SBD;

9. Reduction of the scope of work of a SBE subcontractor agreement without prior approval from SBD;
10. Modifications to the terms and/or prices of payment to a SBE without prior approval from SBD;
11. Failure to comply with the Living Wage Ordinance pursuant to Section 2-8.9 of the Code of Miami-Dade County;
12. Failure to enter into a written subcontract with a SBE after listing the firm on a Utilization Plan; and
13. Failure to pay subcontractors promptly and in accordance with this Implementing Order.

### XIII. Administrative Penalties

Administrative penalties may range from de-certification to debarment. The County Mayor or designee may impose, notwithstanding any other provision of this section, one or more of the following penalties for violation of or noncompliance with this Implementing Order and bid documents:

- A. The exclusion from County contracting and subcontracting for a specified period of time, not to exceed three (3) years, of a contractor, its individual officers, its shareholders with significant interests, and its affiliated businesses.
- B. The loss of eligibility to be certified as a SBE for a specified period of time, not to exceed three (3) years, for an applicant or a SBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.
- C. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this Implementing Order through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, and SBE certification for a specified period of time, not to exceed five (5) years.
- D. If any individual or corporation, partnership or other entity, or any individual officer, shareholder with significant interests, director or partner of such entity or affiliated business of such entity participates in an attempt to comply with the provisions of this Implementing Order through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, subcontracting, and SBE certification, for a specified period of time, not to exceed five (5) years.
- E. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated,

and that the noncomplying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County contracts for a period not exceed three (3) years.

- F. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to twenty percent (20%) of the amount thereof; for the second deficit, a penalty in an amount equal to forty percent (40%) thereof; for the third and successive deficits, a penalty in an amount equal to sixty percent (60%) thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade County, as amended.
- G. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal therefrom, the noncomplying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County contracts for a period not to exceed three (3) years.

#### XIV. Appeals Process

- A. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of Sections 2-8.1.1.1.1 and 2-8.1.1.1.2, Code of Miami-Dade County, as amended, or this Implementing Order may appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee to be established by implementing order, within thirty (30) days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Mayor or designee shall appoint a hearing officer pursuant to [Section 8CC-2](#) of the Code of Miami-Dade County, Florida, and fix a time for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of Sections [2-10.2](#), or 3-11.1 or otherwise.

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

reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

B. Decisions by the County Mayor under this Implementing Order shall be final.

C. PROCEDURES FOR ADMINISTRATIVE HEARING:

The procedure for administrative hearings shall provide that:

1. SBD will schedule a hearing date before a hearing officer, upon timely receipt of a request for an administrative hearing along with a \$250 nonrefundable filing fee to appeal certification denial, decertification or a determination of noncompliance with the requirements of Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade County, or this Implementing Order.
2. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.
3. SBD shall serve upon the firm, contractor (or subcontractor) and/or lessee a notice of hearing following the Clerk of Court's designation of the administrative hearing officer. Such notice shall include:
  - a. A copy of SBD's determination of noncompliance, as appropriate, outlining alleged prohibited practices upon which it is based;
  - b. A description of the administrative penalties being considered; and
  - c. The notice shall advise the appellant that he or she may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them.
4. SBD shall schedule a hearing before a hearing officer within 90 days from the date of the request for administrative hearing and receipt of the \$250 filing fee, unless the parties rescind their request for hearing in writing.
5. Within five (5) days after completion of the administrative hearing, the administrative hearing officer shall transmit his/her findings of facts, conclusions, and recommendations together with all evidence taken before him/her, all exhibits received by him/her, to the Mayor or designee, in addition to a transcript of the hearing prepared by the County, who (i) may sustain, reverse or modify the hearing officer's recommendations and (ii) shall render a final decision, in writing. The determination of the Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

D. QUALIFICATIONS OF HEARING OFFICERS:

1. Administrative hearing officers shall be residents of Miami-Dade County who possess outstanding reputations for civic price, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the County Mayor or designee pursuant to Section 8CC-2 of the Code of Miami-Dade County. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk. The Clerk shall submit an annual report to the Board on the number of women who have served as administrative hearing officers.
2. The County Mayor or designee shall appoint as many administrative hearing officers as are deemed necessary. Every effort will be made to ensure that the appointment of hearing officers reflect the diversity of the demographics of Miami-Dade County. Appointments shall be made for a term of two (2) years. Any administrative hearing officer may be reappointed at the discretion of the County Mayor, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual administrative hearing officer; provided, however, that a determination as to reappointment must be made for each administrative hearing officer at the end of his or her one year term. The County Mayor shall have the authority to remove administrative hearing officers at any time. Appointments to fill a vacancy shall be for the remainder of the unexpired term.
3. Administrative hearing officers shall not be County employees but shall be compensated for their services.
4. The Miami-Dade County Attorney's Office shall serve as general counsel to the administrative hearing officer.

#### XVI. MENTOR-PROTÉGÉ PROGRAM:

##### A. Program Mission

Miami-Dade County seeks to build effective working relationships between leaders of mature established companies and emerging small business enterprises for the latter to benefit from the knowledge and experience of the established Mentor firms. Mentors will assist with the development of the Protégé's business plan by identifying the most critical needs to achieve the plan, and implementing the actions to obtain the desired results.

The Mentor-Protégé Program ("MPP") is a community-based effort, involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The MPP was created to assist in overcoming barriers that typically inhibit or restrict the success of small businesses. The program is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. As a result of the MPP, Protégés will experience a greater than industry average success rate and realize the growth and profitability objectives of their business plans, as well as long range stability. By implementing the MPP, Miami-Dade County will provide a



community benefit by strengthening emerging businesses and providing them with the tools to benefit from opportunities in Miami-Dade County's economic development.

## B. General Objectives

The primary objectives of Miami-Dade County's CBE-A/E MPP are:

1. To develop and strengthen Protégé firms through coaching and counseling from Mentors.
2. To expand business opportunities for Protégé firms.
3. To enable Protégés to become competent and viable well managed businesses subsequent to graduation.
4. To assist mentoring companies in carrying out their civic and corporate responsibilities by furnishing opportunities to provide development assistance to other emerging Miami-Dade County firms.
5. To enhance Miami-Dade County's overall business and economic environments.
6. Incentives – In addition to the benefits provided in the Program Mission section above, Mentors can be compensated for their participation in the MPP for one year (the "Commitment Period"), and will be eligible for an incentive on bidding on Miami-Dade County contracts for one year after completion of the Commitment Period. This incentive shall consist of either a (i) two percent (2%) bid preference or (ii) ten percent (10%) selection factor, for bid/proposal evaluation purposes only. The incentive may only be used for one contract award per Commitment Period, and must be utilized within one (1) year from the end of the Commitment Period. A Mentor claiming an incentive on bidding on Miami-Dade County contracts based on the MPP must continue to meet the eligibility requirements in this Implementing Order.

## C. Measurable Objectives

1. To create an environment that promotes a firm's ability to increase its capital, net earnings and profit margins; therefore, increasing its bonding capacity and credit rating.
2. Increase in Protégé firm's capacity to perform as depicted in equipment owned or leased, size of payroll, materials purchased, and overhead costs.
3. Identify tools to increase the volume and value of Protégé's current and future work.
4. Increase in Protégé's longevity and viability during and after concluding MPP participation.

5. Achievement of goals outlined in the Protégé's business plan.

#### D. MPP Eligibility Requirements

##### 1. Mentor Eligibility Requirements

- a. The Mentor shall be a company which is successful and productive in its area of work or services with a minimum of five (5) years of experience in its principal industry and which agrees to provide development assistance through the MPP.
- b. The Mentor must be and remain in good legal business standing with the State of Florida, Miami-Dade County and all other local jurisdictions. Mentors must be solvent and licensed to do business in Miami-Dade County.
- c. The Mentor shall follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibilities as a Mentor, including attending all meetings scheduled with Protégé and/or SBD. Additionally, Mentors shall not have any SBE violations within the preceding two (2) years from its application to the MPP.

##### 2. Protégé Eligibility Requirements

- a. The Protégé shall: (a) be a company certified as a CBE-A/E with SBD; (b) have been actively conducting business for a minimum of two (2) years; (c) be ready for expansion; and (d) agree to participate fully in the MPP.
- b. The Protégé must maintain an actual place of business where it provides its products and services, in Miami-Dade County throughout the duration of its MPP participation.
- c. The Protégé firm must be and remain in good legal standing with the State of Florida, Miami-Dade County, and all other local jurisdictions. Protégés must be solvent and licensed businesses when applicable.
- d. The Protégé agrees to follow all MPP guidelines and devote the necessary time, staff and resources to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD. Additionally, Protégés shall not have any SBE violations within the preceding two (2) years from its application to the MPP.

##### 3. Mentor Application Process

- a. The Mentor shall complete the application process to participate in the MPP. SBD may request additional documentation to ensure that eligibility requirements are met.

- b. All documentation and information provided by the Mentor throughout the application process is subject to verification by SBD.
- c. SBD will assign one Protégé to one Mentor. Both parties must sign a Mentor-Protégé Development Agreement to formalize their commitment to the MPP. Pairing Mentors with Protégés with a current or previous working relationship with each other, will be strongly discouraged since an objective of the MPP is to establish new productive relationships in the architecture and engineering industry.

#### 4. Protégé Application Process

- a. The Protégé shall apply with SBD on the appropriate application form to be considered for program participation as a Protégé. Accompanying the application should be a completed business plan and all required documentation, which may be pertinent to the Protégé's current financial standing, bonding level, capacity, staffing, workload, and other key business indicators. SBD may request additional documentation to determine MPP eligibility requirements are met.
- b. All documentation and information provided by the Protégé throughout the application process is subject to verification by SBD.
- c. SBD will assign one Protégé to one Mentor and both parties must sign a Mentor-Protégé Development Agreement to formalize their commitment to the MPP.

#### 5. Mentor Responsibilities

- a. Meetings - The Mentor shall conduct monthly face-to-face coaching and counseling meetings with the Protégé and assigned SBD staff, to review the Protégé's strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings shall be conducted in Miami-Dade County. The Protégé will also be expected to provide reports using SBD's approved format on its efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s). Both parties should establish target dates for any further improvements or enhancements.
- b. Informal Contacts - The Mentor is encouraged to routinely communicate with the Protégé to discuss daily problems and situations encountered by the Protégé and to provide periodic review.
- c. Introduction to Resources - The Mentor shall facilitate networking opportunities in the banking, bonding, management, and business industries.

- d. Independence - The Mentor must not assume managerial or administrative control of the Protégé during or following the mentorship period.
- e. Working Relationships - Nothing in Mentor-Protégé Program regulations shall prohibit Mentors and Protégés from working together on joint ventures or in contractor-subcontractor arrangements on architecture, landscape architecture, engineering, surveying and mapping, or other projects provided that control of the Protégé firm remains with the Protégé itself. Protégés may be used to meet subcontractor goals on which the Mentor bids.

#### 6. Protégé Responsibilities

- a. Goals and Objectives - The Protégé shall prepare and strive to achieve targeted goals and objectives, which shall serve as a guideline and benchmark for evaluating the Protégé's progress in the MPP.
- b. Meetings - The Protégé shall take part in monthly face to face coaching and counseling meetings with the Mentor and assigned SBD staff to review its strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings shall be conducted in Miami-Dade County. The Protégé will also be expected to provide reports using SBD's approved format on its efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s). Both parties should establish target dates for any further improvements or enhancements.
- c. Informal Contacts - The Protégé is encouraged to routinely communicate with the Mentor to discuss daily problems and situations encountered by the Protégé and to obtain periodic counseling and guidance as needed.
- d. Use of Training Resources - In an effort to enhance its business and industry knowledge and effectiveness, the Protégé is encouraged to attend training conferences, coursework, or workshops that will assist them in reaching targeted goals and objectives.
- e. Independence - The Protégé is not permitted to relinquish managerial or administrative control to the Mentor.

#### 7. Program Coordination

SBD is responsible for the overall coordination and administration of the CBE-A/E MPP. SBD's duties will include:

- a. Advertising and promoting the MPP.

- b. Organizing related business events.
- c. Identifying and approving Mentors.
- d. Identifying and certifying Protégés.
- e. Assigning Mentors to Protégés as available.
- f. Informing and reminding Mentors and Protégés of their roles and responsibilities.
- g. Attending Mentor-Protégé meetings to promote effective cooperation and participation.
- h. Reviewing meeting and progress status reports.
- i. Maintaining program records.
- j. Attracting the support of larger corporate sponsors.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Approved by the County Attorney as  
to form and legal sufficiency \_\_\_\_\_