

Implementing Order



Implementing Order No.: 3-68

Title: Use of locally headquartered businesses for the performance of professional architectural, landscape architectural, engineering, or surveying and mapping services

Ordered: 5/7/2024

Effective: 5/17/2024

AUTHORITY:

The Miami-Dade County Home Rule Amendment and Charter including, among others, Sections 1.01 and 2.02(A) and Section 2-10.4 of the Code of Miami-Dade County, Florida (the "Code").

POLICY:

It is the policy of Miami-Dade County to promote the use of locally headquartered businesses in the purchase of services within the scope of this Implementing Order, consistent with a fair and transparent procurement process, all in accordance with the requirements of law.

SCOPE:

This Implementing Order establishes the process for the use of locally headquartered businesses in the County's purchases of services covered by the Consultants' Competitive Negotiation Act, Section 287.055 of the Florida Statutes (the "CCNA") and Section 2-10.4 of the Code, as the same may be amended. This Implementing Order applies to all project specific, miscellaneous, and other awards of contracts. The Public Health Trust (PHT) shall be governed by this Implementing Order. The Strategic Procurement Department (SPD) and PHT are responsible for ensuring that the requirements are included in all applicable contracts, not including those issued through the Equitable Distribution Program (EDP). The Office of Small Business Development (SBD), or successor department, is responsible for including requirements in EDP contracts and for compliance and enforcement of such requirements on covered contracts.

ELIGIBILITY REQUIREMENTS

In addition to meeting the requirements set forth in Section 2-8.5 of the Code, defining the term "Locally Headquartered Business," the following shall constitute eligibility requirements for a Locally Headquartered Business:

1. A Locally Headquartered Business must possess the necessary occupational license needed to conduct business in the State of Florida and in Miami-Dade County, must perform a commercially useful function (as such term is defined in Section 2-10.4.01 of the Code), must be prequalified pursuant to Section 2-10.4 of the Code and I.O. 3-39 and with an actual place of business in Miami-Dade County.
2. The County will review firms undergoing recent changes in ownership, control, or location to ensure that the changes are the result of ordinary market considerations and that the firms perform commercially useful functions (as such term is defined in Section 2-10.4.01 of the Code).

3. Eligibility as a Locally Headquartered Business shall be determined at the time of proposal submittal except for qualifying under the EDP as outlined herein. While a change in status as a Locally Headquartered Business will affect the firm's future ability to participate as a Locally Headquartered Business, the change of status shall not affect the award of the professional services agreement.

PROJECT REQUIREMENTS:

SPD shall develop, and SPD and PHT shall include within each Notice to Professional Consultants, a Letter of Qualifications (LOQ). The LOQ shall disclose the prime consultant and sub-consultants utilized for the locally headquartered business preference, and the prime's commitment as to the percentage of work to be performed (which will eventually equate to the percentage of dollars paid to sub-consultants) by the sub-consultants. The sub-consultants identified, and the subcontract amounts to be used, shall bear a reasonable resemblance to the County's planned project, as set forth in the applicable County planning document, including the use of the same Technical Certification categories.

SPD shall develop, and SPD and PHT shall include within each Notice to Professional Consultants, an affidavit (Eligibility Affidavit or "Locally Headquartered Business Affidavit") to be provided for each prime and sub-consultant to be used for the locally headquartered business preference attesting to such firm's status as a current Locally Headquartered Business.

SPD shall develop, and SPD and PHT shall include within each Notice to Professional Consultants, a Letter of Commitment (LOC) for each of the sub-consultants to be used for the locally headquartered business preference. The LOC shall be executed by duly authorized representatives of the prime and sub-consultants and shall state the clear and irrevocable commitment of the prime to subcontract with the subcontractor the value of work indicated in the LOC. Failure to submit a properly completed LOQ, Eligibility Affidavit, or LOC in the manner required in the Notice to Professional Consultants may result in the firm not receiving locally headquartered business points.

For reference only, the LOQ, Eligibility Affidavit, and LOC forms can be found online at: <https://www.miamidade.gov/global/strategic-procurement/architectural-engineering-legislation.page>. Proposers shall only use and submit the forms that are included as part of the Notice to Professional Consultants.

Proposers may cure immaterial irregularities in the required documents, or equivalent, provided they are submitted not later than forty-eight (48) hours following written notification by SPD. Immaterial irregularities shall be those which, in the sole discretion of SPD, do not affect the assurances of agreements between the prime and sub-consultant or the proposer's assurances to the County that the locally headquartered business measures will be met.

SPD and PHT shall review the documents submitted for compliance with applicable requirements. In the event of an irregularity, SPD may, but shall not be required to, afford the proposer an opportunity to cure. SPD and PHT shall be entitled to reject any LOQ that contains a substantial deviation from the County's planned project as evident from the County's planning document. In such event, the proposer shall not be entitled to the points relevant to such identified irregularity.

SPD may, from time to time, modify any forms as part of the proposal submission to elicit such additional information as SPD determines is necessary to accomplish the Board's objectives in

granting a preference to locally headquartered businesses. To the extent such forms are updated, SPD and PHT shall ensure that the latest versions of such forms are included in the solicitation.

RESPONSIBILITY OF THE OFFICE OF SMALL BUSINESS DEVELOPMENT (SBD):

SBD shall be responsible for overseeing compliance with this Implementing Order. In addition to other duties set forth specifically in this Implementing Order, SBD shall:

1. Maintain any and all records relating to the use of locally headquartered businesses in contracts, including information relevant to such firm's compliance with the requirements of this Implementing Order.
2. Provide all administrative processes, written notices, dispute resolution and notices of decisions relating to this Implementing Order.
3. Commence all suspension proceedings for non-compliance with the locally headquartered business commitments under this Implementing Order.
4. SBD shall develop and maintain all EDP Registration with applicable affidavits (the "EDP Eligibility Affidavit"). Consultants registering as prime and sub-consultant to participate in the EDP program as locally headquartered businesses must execute an EDP Eligibility Affidavit attesting to the firm's status as a locally headquartered business.
5. SBD shall require all EDP Registered Members to submit an updated affidavit annually to affirm their firm's continuing eligibility status as a locally headquartered business. The EDP Eligibility Affidavit should be submitted on the anniversary date of their EDP Registration Approval.

COMPLIANCE AND MONITORING:

1. Subconsultant Agreements

The prime consultant shall enter a written subconsultant agreement with each Locally Headquartered Business corresponding in all respects to the completed LOQ and LOC and shall thereafter neither terminate any such subconsultant agreement, nor reduce the scope of work to be performed by or decrease the price to be paid to the Locally Headquartered Business, without in each instance obtaining prior written approval from the SBD Director. The prime consultant receiving a contract award from the County shall submit to SBD copies of the agreements with the Locally Headquartered Business.

2. Access to Records

In addition, the prime consultant shall permit the County to have access during normal business hours to books and records relating to the prime contractor's use of locally headquartered business subconsultants. This right of access shall be granted for one year after completion of the work for which the prime consultant received locally headquartered business preference or, if greater, for the period specified in the audit rights provision set forth in the applicable contract.

3. Access to Job Site

The prime consultant and Locally Headquartered Business shall permit the County to have access to project locations during normal business hours in order to conduct visual inspections and employee interviews.

4. Locally Headquartered Business Utilization Reporting

The prime consultant on a project with a locally headquartered business preference shall report payments to subconsultants via the County's web-based system by completing all required Compliance Audits generated by the County's web-based system. All subconsultants must confirm the payments reported by the prime consultant via the web-based system.

5. Deviations from the Letter of Qualifications and/or Letter of Commitment

In the event that, during the performance of an agreement, the Locally Headquartered Business is not able to provide the services specified on the LOQ/LOC, the prime consultant must utilize a Locally Headquartered Business to substitute for the unavailable Locally Headquartered Business, unless the respondent can prove to the satisfaction of the County the lack of an available Locally Headquartered Business to provide the services to be provided by the prior Locally Headquartered Business. The prime consultant must receive approval for substitution from SBD. The request must be submitted via the County's web-based system to include the substitute Locally Headquartered Business.

SANCTIONS FOR VIOLATIONS:

The County may suspend a consultant from receiving any benefit as a Locally Headquartered Business under the program, including its ability to receive points as a prime, or as a sub-consultant, to afford points to a prime, for a period of one year following a material violation of law or this implementing order. The SBD Director shall provide written notice of non-compliance with this Implementing Order to include associated sanctions.

In addition, the County may debar a consultant or sub-consultant for violation or non-compliance with the provisions of the County Code governing the program or this Implementing Order. Causes for debarment and the procedures set forth for debarment are set forth in Section 10-38 of the Code.

APPEALS PROCESS:

Any firm issued a determination of noncompliance with the requirements of this implementing order may appeal such action by submitting a written request to the SBD Director along with a \$250.00 nonrefundable filing fee within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the SBD Director shall appoint a hearing officer pursuant to Section 8CC-2 of the Code, and fix a time for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of Sections 2-10.2 or 3-11.1 of the Code, or otherwise.

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

County Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

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

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