

Memorandum

MIAMI-DADE
COUNTY

Date: April 8, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

Agenda Item No. 1(F)3

From: Carlos A. Gimenez
Mayor

Subject: Sunset Review of County Boards for 2014 – Community Small Business Enterprise
Advisory Board

In accordance with the provisions of Section 2-11.40 of the Code of Miami-Dade County, I am transmitting the 2014 Sunset Review of County Boards Report for the Community Small Business Enterprise Advisory Board.

The Community Small Business Enterprise Advisory Board approved the attached report at its meeting of December 16, 2013 and has recommended the continuation of its board.



Edward Marquez
Deputy Mayor

mayor04414

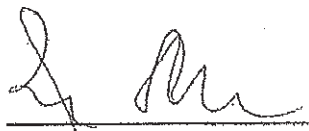
Date: February 3rd, 2014
To: Carlos A. Gimenez
Mayor
From: Ismalia Rashid
Vice Chairperson, Community Small Business Enterprise Advisory Board
Subject: Sunset Review of County Boards for 2014 - Community Small Business Enterprise
Advisory Board

Pursuant to Section 2-11.40 of the Code of Miami-Dade County, I am submitting the 2014 Sunset Review of County Boards Report for the Community Small Business Enterprise Advisory Board for transmittal to the Board of County Commissioners (BCC). The Board approved the attached report at its meeting of December 16, 2013.

It is recommended that the BCC approve the continuation of the Community Small Business Enterprise Advisory Board.

BACKGROUND

The Community Small Business Enterprise (CSBE) Advisory Board was created May 20, 1997, for the purpose of providing general program oversight and assisting the Small Business Development (SBD), a Division of Internal Services Department (ISD) in tracking and monitoring the results and effectiveness of the CSBE Program. The Board should continue to function as a part of the CSBE Program to ensure continued success and maximize the benefits to small construction businesses seeking contracts with Miami-Dade County. The Advisory Board provides guidance to the BCC and oversight to SBD staff, to ensure that CSBE Program goals are met.

 ISMALIA RASHID

Board Vice Chairperson

**SUNSET REVIEW QUESTIONNAIRE
MIAMI-DADE COUNTY BOARDS
2014**

I. GENERAL INFORMATION

1. Name of Board reporting: Community Small Business Enterprise Advisory Board
2. Indicate number of board members, terms of office, and number of vacancies:
Number of Board Members: There are currently Fourteen (14) Organizations serving on the Advisory Board –13 organizations have an appointed member seated.
Terms of Office: Appointed for two (2) year terms
Number of Vacancies: One (1)
3. Identify number of meetings and members' attendance (Attach records reflecting activity from **Jan. 1, 2012** through **December 31, 2013**):
Number of Meetings: 11
Number of Meetings with a Quorum: 9
Attendance Records: See Attachment No.1

What is the source of your funding? There is no budgeted funding source for the associated costs.
4. Date of Board Creation: May 20, 1997
5. Attach a copy of the ordinance creating the Board (Please include all subsequent amendments).
See Attachment No. 2
6. Include the Board's Mission Statement or state its purpose:
The Community Small Business Enterprise Advisory Board was created for the purpose of reviewing the CSBE Program activities and results, and for making recommendations to the Small Business Development (SBD) a division of Internal Services Department and the Board of County Commissioners (BCC) on matters pertaining to the program. The Community Small Business Enterprise Advisory Board membership mission is to enhance the CSBE program, increase small business participation on construction contracts and as a result ensure viable and sustained growth. The Board promotes innovative technology and fair business practices be established with all CSBE firms. The Board also encourages a commitment from all certified firms to provide excellent service and competitiveness in conjunction with meeting the needs of county departments that utilize their service.
7. Attach the Board's standard operating procedures, if any.
There are no standard operating procedures.
8. Attach a copy of the Board's By-Laws, if any.
No bylaws exist.
9. Attach a copy of the Board minutes approving the Sunset Review Questionnaire, **including a vote of the membership.**
See Attachment No. 3

II. EVALUATION CRITERIA

1. Is the Board serving the purpose for which it was created? (Please provide detailed information) Yes, the Advisory Board is serving an important purpose in overseeing the CSBE program. Since implementation the Board has provided assistance and recommendations to SBD to increase benefits to small construction businesses

SUNSET REVIEW QUESTIONNAIRE
MIAMI-DADE COUNTY BOARDS
2014

seeking contracts with Miami-Dade County. The Advisory Board provides guidance to the BCC and oversight to SBD staff to ensure that the CSBE program goals are applied and met. In summary, the Advisory Board is serving the purpose for which it was created.

2. Is the Board serving current community needs? (Please provide detailed information)
The Board is serving the community needs by acting as an advocate for the small business community participating or desiring to participate on County construction contracts.
3. What are the Board's major accomplishments?
 - a. Last 24 months The Board monitored and reviewed the CSBE participation for 7 Construction Management (CM) type contracts or contracts valued greater than \$25 million, reviewed and addressed concerns from the CSBE community on the new Airport miscellaneous construction contract (MCC-08) and the rotation process administered by the Internal Services Department for contracts issued under the County's miscellaneous construction contract (MCC-7040 Plan). The Board members was assigned as the Construction Bond Task Force responsible for reviewing the processes by which CSBEs obtain construction bonding, identify any actual or potential obstacles in obtaining bonds and study the best practices of other jurisdiction around the County. The findings and recommendation was submitted in a report to the BCC. The Board also advocated on behalf of small businesses participating on the MCC 7040 Contract the exemption of construction project valued at five hundred thousand dollars and below from being accessed the UAP fees. The Board was successful in both issues.
 - b. Since established The Board has overseen a number of enhancements to the CSBE Program, to include amending the Ordinance to increase the size standards to improve CSBE overall participation, updates to the program that serve to encourage private sector utilization of CSBEs on major Seaport, Water and Sewer, Airport and Jackson Memorial Hospital projects. Guidance has been provided in the Certification process, Mentor-Protégé and Bonding and Financial Assistance Programs. (Bonding Statistics – Attached)
4. Is there any other board, either public or private, which would better serve the function of this board?
No, there are no other boards which would better serve the function of this board.
5. Should the ordinance creating the Board be amended to better enable the Board to serve the purpose for which it was created? (If "Yes", attach proposed changes)
No amendments are being proposed at this time.
6. Should the Board's membership requirements be modified?
No
7. What is the operating cost of the Board, both direct and indirect? Small Business Development Staff

**SUNSET REVIEW QUESTIONNAIRE
MIAMI-DADE COUNTY BOARDS
2014**

8. Describe the Board's performance measures developed to determine its own effectiveness in achieving its stated goals.

The CSBE Advisory Board's performance measures are to ensure that a minimum of 10% of dollars spent on construction projects are sheltered for CSBEs and is met as dictated by Section 10-33.02 of the code of Miami Dade County. Accordingly, on a quarterly basis, the Board reviews the summary of all projects awarded by the County, the dollar amount of the awards and the corresponding dollars set aside for CSBE participation. Total dollars awarded to CSBE for FY 2011/2012 - \$69.2 million & FY 2012/2013 - \$72.4 million both dollar values exceeded the County's 10% minimum objective.



Miami-Dade Legislative Item File Number: 971886

File Number: 971886 **File Type:** Ordinance **Status:** Adopted
Version: 0 **Reference:** O-97-52 **Control:** County Commission
File Name: COMMUNITY SMALL BUSINESS ENTERPRISE (CSBE) **Introduced:** 5/22/1997
Requester: NONE **Cost:** **Final Action:** 5/20/1997
Agenda Date: 5/20/1997 **Agenda Item Number:** 4D

Notes: FINAL **Title:** ORDINANCE CREATING COMMUNITY SMALL BUSINESS
VERSION ENTERPRISE ('CSBE') PROGRAM APPLICABLE TO COUNTY
AS AND PUBLIC HEALTH TRUST CONSTRUCTION CONTRACTS;
ADOPTED PROVIDING DEFINITIONS; PROVIDING FOR USE OF
(See CONTRACT MEASURES, INCLUDING PROGRAM INCENTIVES;
971377) PROVIDING PENALTIES; AMENDING SECTION 2-8.1 OF THE
DADE COUNTY CODE TO AUTHORIZE COUNTY MANAGER
TO DETERMINE WHETHER TO UTILIZE REQUESTS FOR
PROPOSALS AND REQUESTS FOR QUALIFICATIONS AS
ALTERNATIVE METHODS FOR SELECTION OF
CONTRACTORS TO PERFORM PUBLIC IMPROVEMENTS
INVOLVING EXPENDITURES OF \$500,000 OR LESS AND TO
REQUIRE REVIEW OF PROJECTS PRIOR TO
ADVERTISEMENT TO DETERMINE WHETHER BREAK UP
INTO SMALLER SIZE CONTRACTS WILL INCREASE
OPPORTUNITIES FOR CSBE PARTICIPATION; AMENDING
SECTION 2-8.5 OF THE DADE COUNTY CODE TO PROVIDE
LOCAL PREFERENCE SHALL NOT BE AVAILABLE ON
CERTAIN CONTRACTS; AMENDING SECTION 10-38 OF THE
DADE COUNTY CODE TO PROVIDE FOR DEBARMENT FOR
VIOLATION OF CSBE PROGRAM; CREATING ADVISORY
BOARD FOR OVERSIGHT OF CSBE PROGRAM, INCLUDING
CONFLICT OF INTEREST WAIVER; AND PROVIDING
SEVERABILITY, INCLUSION IN CODE AND EFFECTIVE DATE

Indexes: COMMUNITY SMALL BUSINESS
ENTERPRISE(CSBE)

Sponsors: Betty T. Ferguson, Prime
Sponsor

Sunset Provision: No

Effective Date:

Expiration Date:

Registered Lobbyist: None Listed

Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
County Attorney	5/22/1997		Assigned	R. A. Cuevas, Jr.		5/22/1997	
Board of County Commissioners	5/20/1997	4D AMENDED	Adopted as amended				P
REPORT: There being no objection, the Board considered Agenda Item 4(D), 4(T) and 7(A)4 together inasmuch as they were related. Chairperson Margolis expressed concern with the foregoing proposed ordinance as related to private contractors. She explained that although she felt the language was excellent as related to the public contracts, she felt the private contractors should be excluded from the provisions of this ordinance. Commissioner Moss noted on the contrary, the public sector was already required to adhere to anti-discrimination laws. He contended that steps must be taken to address the lack of diversity that mainly existed in the private sector where the major construction contracts for rises, shopping centers, etc. were predominately controlled by a small group of private contractors who were not required to adhere to anti-discriminatory laws. With regard to Agenda Item 4(D) & 4(T) Supplement, regarding fiscal impact statement on the ordinances creating the CSBE Program, Commissioner Ferguson noted the language contained within the second paragraph, page one of this ordinance provided that "The CSBE Ordinance presents a pro forma budget requirement between \$12 million and \$18 million depending on certain percentage assumptions regarding the size of the CSBE program as it relates to the County's overall annual capital budget". She asked that this figure be amended to provide for a pro forma budget requirement of \$12.5 million, and that funding be appropriated on an as need basis in subsequent years. Mr. Fraizer suggested that the language be worded to state "an amount not less than \$12.5 million, but that sufficient funding be provided." County Manger Vidal concurred and clarified that as proposed, there would be a minimum participation of \$12.5 million and that the funds would be increased as the program expanded. He noted, however, that this matter would be remanded to this Commission if at any time funds for this program were insufficient. Commissioner Ferguson referred to the language contained within paragraph one on page two, Definition [page 5(n)]: which provided that "CSBE Objective means the objective of assuring that not less than 10% nor more than 15% of the County's total annual expenditures..." She asked that this language be amended to state "no more than 10%", and to delete "no more that 15%. County Manager Vidal indicated that the numbers would be adjusted in accordance with the \$12.5 million. Commissioner Ferguson advised that her request was to amend this language to delete "no more than 15%", thereby eliminating the ceiling. Following further discussion, Mr. Fraizer noted he supported this proposed amended, with a proviso that the percentage be adjusted annually pursuant to the committee's recommendation. With regard to the third paragraph on page two of Agenda Item 7 (A)4, entitled Proposed Changes to CSBE Ordinance, County Manager Vidal noted he was proposing to amend [page 8(p)] re the definition of handicapping, to eliminate the handicap of 2% per level crossed when a firm pre-qualified in one bonding capacity level bids on a contract in a lower bonding capacity level. He noted this proposed amendment was necessary to prohibit a firm pre-qualified in one bonding capacity from bidding on a contract in a lower bonding capacity level. Following discussion, Commissioner Ferguson and Mr. Fraizer indicated they had no objection to the County Manager's proposed amendment. In connection with Agenda Item 7(A)4, entitled Proposed Changes to CSBE Ordinance, relating to Prompt Payment Provisions, Commissioner Ferguson noted the County Manager recommended a time limit of no more than two (2) business weeks in which a County Department must process an invoice for payment; three (3) business days for the Finance Department to make payment; and two (2) business days for the prime contractor to make payment to subcontractors for non-disputed invoices. She asked that the existing language in the ordinance be maintained. Following a lengthy discussion regarding the foregoing, Commissioner Burke suggested this item be deferred to Thursday to allow ample opportunity to resolve issues of concern. Assistant County Attorney Robert Cuevas clarified for the record that as proposed, upon receipt of the bill from the prime, the County had 14 days to review it and issue a check to the prime, provided the bill							

was not under dispute; upon receipt of payment from the County, the prime must pay the subcontractor two business days; and that in no event shall the entire time frame exceed thirty (30) days from the day the subcontractor submits the bill to the prime. Upon further discussion, County Manager Vidal concurred that the existing language would be sufficient as previously proposed by Commissioner Ferguson, provided that copies of invoices from the subcontractors and all other supporting documents were forwarded by the prime along with their invoices to the County. Mr. Cuevas noted and Mr. Fraizer concurred that only those invoices from subcontractors that had been reviewed and approved by the prime would be forwarded to the County for payment. Commissioner Ferguson noted subcontractor must be notified by the prime within seven days of any invoice under dispute. Chairperson Margolis concurred with Commissioner Burke that this matter should have been deferred. She expressed concern that an ordinance of this magnitude should not be developed on diaz, but that the major issues should be discussed, debated and resolved at the committee level. County Manager Vidal explained that the ordinance before the Board today was prepared by the County Attorney and that in his final review of this ordinance, he had some concerns which were expressed in Agenda Item 7A4, the memorandum entitled as Proposed Changes to the CSBE Ordinance Agenda Item 4(d). He noted prior to preparing this memorandum, he and his staff had met with Commissioner Ferguson and her staff and discussed these issues. However, due to time constraints, he did not have an opportunity to discuss these changes with the County Attorney and he apologize to Mr. Cuevas, whom he noted had not had sufficient time to review his memorandum. Commissioner Ferguson apologized to her colleagues, but urged their indulgence in working through the County Manager's proposed changes, particularly considering the existing moratorium on construction. Proceeding, Commissioner Ferguson referred the language in the County Manager's memorandum relating to the Bonding and Financial Assistance Program, Commissioner Ferguson that the references to "start-up capital" be deleted, and that this language be worded to state an intent to provide "mobilization capital". County Manager Vidal and Mr. Fraizer noted the foregoing proposed amendment was acceptable. In connection with the County Manager's memorandum, and his recommendation that all references to the Department of Business Development be changed to read County Manger or his or her designee, Commissioner Ferguson asked and County Manager Vidal and Mr. Fraizer concurred that the existing language contained within the ordinance be maintained. Upon concluding the foregoing, the Board resumed consideration of the County Manager recommendation relating to the Prompt Payment Provision. Assistant County Attorney Cuevas advised that appropriate language would be prepared to provide that in no event shall the entire time frame exceed thirty (30) days from the day the subcontractor invoiced the prime. Following further discussion, Mr. Cuevas asked that the proposed amendment remain as is, pending the development of an Administrative Order implementing the ordinance, which he noted would be forwarded for committee review prior to being forwarded to the Board. It was moved by Commissioner Ferguson that Agenda Item 4D be adopted as amended. This motion was seconded by Commissioner Burke. Ms. Marsha Jackman, Department of Business Development, responded to questions from Commissioners Carey and Sorenson regarding the method to be used to inform small businesses and other participants regarding this program. She noted assuming this ordinance was adopted today, it would be the responsibility of the Department of Business Development in conjunction with the task force, to advertise and promote this program and to develop an expedited certification process. Mr. Steve Spratt, Director, Office of Management and Budget responded to Commissioner Morales' question regarding the language contained on page 76 of the ordinance relating to the administrative cost of this program. Ms. Jackman explained that the additional cost would be used to fund the management, technical, financial components of the bonding and the mentor prot,g, programs; which she noted were not a part of the old program. Mr. Spratt concurred and noted staff had estimated that an additional \$900,000,00 and 14 staff persons would be needed to monitor this program, and that it was anticipated that additional revenues would be generated from certification revenue and contract review fees assessed on capital projects for this purpose. Mr. Spratt noted funding had not yet been identified for systems development and reprogramming which would be required to monitor this activity, but efforts would be made to identify funding prior to the upcoming budget updates. In response to Commissioner Morales' question, Mr. Spratt noted the \$6 million for bonding guarantee funds were reflected in this year's proposed budget, and although funding for additional staffing for DBE was not reflected, a funding source had been identified and would be reflected in the budget update to be submitted in July. Mr. Spratt noted with the exception of the funding for systems development and reprogramming,

general fund revenues would not be used to fund this program. Assistant County Attorney Robert Cuevas asked that a scrivener's error existing on Page 9 of this proposed ordinance relating to the definition of qualifier and that the word "validity" should be changed to "certificate of eligibility". Also, the effective date needed to be inserted on Section 5 - page 30 of the foregoing proposed ordinance. Ms. Jackman responded at Commissioner Ferguson's request. She suggested that the date inserted should be after the moratorium was lifted, which would not end until around June 15, 1997. In connection with Agenda Item 4T, Commissioner Sorenson proposed that the sanctions and disbarment provisions contained within this item also be included in Agenda Item 4D in the event the bidder or CSBE attempted to comply with the provisions of this ordinance through fraud, misrepresentation or material misstatement. She also asked that the word "discrimination" be added. Mr. Cuevas indicated he had no objection to the foregoing proposed amendment. Ms. Jackman responded to Commissioner Moss' question regarding the method to be used to document and monitor the success of this program. County Manager Vidal clarified that the ordinance would become effective June 15th, however, there was a potential for a 30-day gap until July 15th, which would provide more than sufficient time for all contracts to be reviewed in accordance with the ordinance. There being no further discussion, the Board voted on the foregoing motion, and upon being put to a vote, passed unanimously by those members present. In connection with Agenda Item 4T, Chairperson Margolis suggested the foregoing proposed ordinance be deferred and remanded to the Economic Development and Human Services Committee for further review, particularly with regard to private-owned businesses. Commissioner Ferguson noted although she had no objection a deferral, she felt that any concern regarding this ordinance should be voiced by members of the Board today. Pursuant to the foregoing, Commissioner Sorenson asked that the criteria for qualifying and training hearing officers as well as the provisions for sexual harassment be established by the committee and incorporated into the ordinance. She also asked that the word "sex" as contained within the ordinance be changed to "gender". Chairperson Margolis noted any additional issues or concerns would be submitted to Commissioner Ferguson in writing. She suggested the provisions of the ordinance be limited to government contracts, noting her concern that the government did not have the authority to control private-owned businesses and that as proposed, this ordinance could potentially result in litigation against the County. It was moved by Chairperson Margolis that the proposed foregoing ordinance be deferred and referred to the Economic Development and Human Services Committee for review, and forwarded for consideration by the Board at the June 3, 1997 Regular Meeting. This motion was seconded by Commissioner Ferguson, and upon being put to a vote, passed unanimously by those members present.

Legislative Text

TITLE

ORDINANCE CREATING COMMUNITY SMALL BUSINESS ENTERPRISE ('CSBE') PROGRAM APPLICABLE TO COUNTY AND PUBLIC HEALTH TRUST CONSTRUCTION CONTRACTS; PROVIDING DEFINITIONS; PROVIDING FOR USE OF CONTRACT MEASURES, INCLUDING PROGRAM INCENTIVES; PROVIDING PENALTIES; AMENDING SECTION 2-8.1 OF THE DADE COUNTY CODE TO AUTHORIZE COUNTY MANAGER TO DETERMINE WHETHER TO UTILIZE REQUESTS FOR PROPOSALS AND REQUESTS FOR QUALIFICATIONS AS ALTERNATIVE METHODS FOR SELECTION OF CONTRACTORS TO PERFORM PUBLIC IMPROVEMENTS INVOLVING EXPENDITURES OF \$500,000 OR LESS AND TO REQUIRE REVIEW OF PROJECTS PRIOR TO ADVERTISEMENT TO DETERMINE WHETHER BREAK UP INTO SMALLER SIZE CONTRACTS WILL INCREASE OPPORTUNITIES FOR CSBE PARTICIPATION; AMENDING SECTION 2-8.5 OF THE DADE COUNTY CODE TO PROVIDE LOCAL PREFERENCE SHALL NOT BE AVAILABLE ON CERTAIN CONTRACTS; AMENDING SECTION 10-38 OF THE DADE COUNTY CODE TO PROVIDE FOR DEBARMENT FOR VIOLATION OF CSBE PROGRAM; CREATING ADVISORY BOARD FOR OVERSIGHT OF CSBE PROGRAM, INCLUDING CONFLICT OF INTEREST WAIVER; AND PROVIDING

SEVERABILITY, INCLUSION IN CODE AND EFFECTIVE DATE**BODY**

WHEREAS, data from the President's 1995 Report on the State of Small Business as well as data from the Small Business Administration's 1995 Small Business Profile for the State of Florida indicate that small businesses contribute greatly to employment, with 53% of all workers being employed by small firms (53% on a national basis; 55% for the State of Florida). In addition, small-business-dominated industries added jobs to the economy at a rate more than 1.3 times the national rate. The President's Report also indicates that governmental procurement greatly influences a firm's chances of survival - the dissolution rate of small Federal contractors was about half the rate of similar firms in the economy, and employment growth was also substantially higher in the firms that had government contracts; and WHEREAS, a program which affords opportunities to small businesses to participate in the County's construction of public improvements would foster growth in the economy of Metro-Dade County, by affording small businesses a chance to gain the experience, knowledge and resources necessary to compete and survive, both in the government construction contracting arena as well as in the private construction contracting arena; and

WHEREAS, at the request of the County, a Committee comprised of representatives of all segments of the local construction industry has developed the following Community Small Business Enterprise Program to afford small construction businesses the opportunity to gain experience, knowledge and resources by participating in County and Public Health Trust construction contracting; and

WHEREAS, the Committee recommends adoption of the Program on the condition that this Commission appropriates not less than \$12 and « million to implement the Program's first year of operation in accordance with the budget attached hereto as Attachment 6, to be adjusted in future years as needed,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA:

Section 1. Article II (Bidding on Public Projects) of Chapter 10 of the Code of Metropolitan Dade County, Florida, is hereby amended to add the following as new Section 10-33.02, entitled Community Small Business Enterprise Program:

(1) Title. This Section shall be referred to as the Metropolitan Dade County Community Small Business Enterprise ("CSBE") Program.

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

(a) Advisory Board means the Community Small Business Enterprise Board created for the purpose of reviewing Program activities and results, and for making recommendations to the Department of Business Development (DBD) and the Board of County Commissioners (BCC) on matters pertaining to the Program.

(b) Available or availability means to have, prior to bid submission, the ability to provide construction services under a contract or first tier subcontract by having:

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

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

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

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

(f) Bonding Assistance may include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes.

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

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

(i) Commercially useful function means contractual responsibility for the execution of a distinct element of the work of a contract by a business enterprise and the carrying out of the contractual responsibilities by actually performing, managing, and supervising the work involved. Acting as a broker is not considered a commercially useful function. The determination of whether an activity is a commercially useful function shall include:

1. the evaluation of the amount of work subcontracted;
2. normal industry practices;
3. the skills, qualifications, or expertise of the enterprise to perform the work;
4. whether the business' own personnel perform, manage, and/or supervise the work involved; and
5. other relevant factors.

(j) Community Small Business Enterprise (CSBE) means a construction related enterprise, including a design-build firm, which has an actual place of business in Dade County and whose average annual gross revenues for the last three (3) years do not exceed: \$2,000,000 for SIC 15 - Building Construction, General Contractors and Operative Builders; \$2,000,000 for SIC 16 - Heavy Construction, other than Building Construction; or, \$1,000,000 for SIC 17 - Specialty Trade Contractors. CSBEs shall be categorized by the predominant type of construction they perform in accordance with the two-digit Standard Industrial Classification (SIC) code of the Census applicable to such type of construction. A CSBE will graduate out of the Program once it has exceeded these Size Limits based on its three year average annual gross revenues.

CSBEs must be certified by SIC code, and classified into one of the three Contracting Participation Levels by the firm's bonding capacity. The lack of bonding capacity shall not preclude an applicant from being certified as a CSBE. As part of the certification process, CSBEs must go through a prequalification process which will be used to determine which of the three Contracting Participation

Levels the CSBE will be placed in based on the firm's bonding capacity; the prequalification process will utilize the current AIA Document A305 Contractor's Qualification Statement or equivalent (see Attachment 3). The levels of bonding capacity are as follows:

1. Level I - bonding capacity of up to \$500,000 per contract:
2. Level II - bonding capacity above \$500,000 but not exceeding \$1,000,000 per contract; or
3. Level III - bonding capacity above \$1,000,000 but not exceeding \$3,000,000 per contract.

A firm's eligibility to participate in the CSBE program and the contracting participation level at which it will participate shall be determined based on the cumulative gross revenues and bonding capacities of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A. No firm shall be certified as a CSBE where the aggregate net worth of all its owners is more than seven hundred fifty thousand dollars. Representations as to gross revenues and net worth of owners shall be subject to audit.

(k) Construction means the building, maintaining, painting, altering, or repairing of a public improvement.

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

(m) Contracting Participation Level refers to the level in which a CSBE firm is classified based on the combined bonding capacity of the applicant firm and that of all the firm's affiliates. A CSBE's level of bonding capacity shall be determined by utilizing the American Institute of Architect's (AIA) Document A305 Contractor's Qualification Statement or its equivalent. In addition, construction contracts of \$3,000,000 or less (which may be reserved for limited competition amongst CSBEs) will be classified into one of the three Contracting Participation Levels based on estimated project cost. The three contracting participation levels are:

1. Level \$0-\$500,000
2. Level II \$500,001-\$1,000,000
3. Level III. \$1,000,001-\$3,000,000

Prime contracts with estimated project construction cost in excess of \$3,000,000 shall be "open market" contracts which all firms can bid on.

(n) CSBE Objective means the objective of assuring that not less than 10% of the County's total annual expenditures for construction are expended with CSBEs. The foregoing CSBE objective may be increased by subsequent resolution of the Board of County Commissioners, adopted after recommendation for an increase by the Advisory Board. Forty percent (40%) of the foregoing objective may be accomplished in contracts falling within Standard Industrial Classification (SIC) code 15 and first tier subcontracts under such contracts; forty percent (40%) of the foregoing objective may be accomplished in contracts falling within SIC 16 and first tier subcontracts under such contracts; and twenty percent (20%) of the foregoing objective may be accomplished in prime contracts falling within SIC 17. The percentage of the overall CSBE objective allocated to each SIC category may be adjusted by resolution of the Board of County Commissioners in direct correlation to CSBE availability.

(o) Graduation means the CSBE has exceeded the specific size limits stated for the Program, based on the firm's three year average annual gross revenues, and will no longer be eligible for participation in the Program.

(p) Joint venture means an association of two or more CSBEs. Joint ventures shall be subject to the size limitations set forth in this ordinance; such size limitations include affiliates as set forth in Appendix A of this ordinance.

(q) Management & Technical Assistance (MTA) means a program designed to provide direct and indirect assistance for small business enterprise development. Specific details of the program are shown in Attachment 3.

(r) Mentor-Prot,g, Program is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging small business enterprises in order for the latter to benefit from the knowledge and experience of the established Mentor firms. A copy of the Metro-Dade County Mentor-Prot,g, Program is provided as Attachment 1.

(s) Prequalification is defined as provided elsewhere in this ordinance.

(t) Program Incentive is an incentive that a firm can choose to use in a bid or proposal based on the firm's participation in certain programs. The incentive consists of either a bid preference or selection factor that will be used in evaluating the firm's bid on a specific project. The Program Incentives available are as follows:

1. For participation in the Mentor-Prot,g, Program - 2% of bid price or up to 10% of the total evaluation points;
2. For participation in the Worker Training Program - 2% of the bid price or up to 10% of the total evaluation points.

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

(v) Review Committee - the County Manager shall establish an administrative procedure for the review of each proposed County contract to which this ordinance applies, including the establishment of a committee to recommend whether CSBE measures provided in this ordinance should be applied.

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

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

(y) Set-aside means reservation for competition solely among CSBEs of a given prime County contract whose estimated cost is \$3,000,000 or less.

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

(aa) Subcontractor goal means a proportion of a prime contract value stated as a percentage to be subcontracted at the first tier level to CSBEs to perform a commercially useful function.

(ab) Trade Set-aside means that an entire Specialty Trade component(s) of a County miscellaneous construction contract is reserved for first tier subcontracting amongst certified CSBEs (for example, the entire plumbing or roofing or electrical component of a specific contract is reserved for limited competition amongst certified CSBEs). No CSBE may be awarded more than one trade set-aside on any one specific miscellaneous construction contract.

(ac) Worker Training Program is a qualified training program or Technical School or other such construction industry related training program, as approved by the Advisory Board.

(3) Program Components:

A. Application. Except where federal or state laws or regulations mandate to the contrary, the provisions of this ordinance shall require review of all construction contracts funded in whole or in part with County funds to determine the appropriateness of applying contract measures as set forth in this Ordinance. The County Manager shall prepare administrative orders, bid, and contract documents implementing the Bonding and Financial Assistance Program, the Management and Technical Assistance Programs, the Mentor-Protegé Program and other related programs addressed in this Ordinance. The words County Manager in this section shall mean the County Manager or his or her designee.

B. Dade County Community Small Business Enterprise (CSBE) Program: The prompt payment provisions of this section shall take precedence over Section 2-8.1.4 of the Code ("Sherman S. Winn Prompt Payment Ordinance"), as to the contracts specified below:

1. Prompt payment.

a. The County Manager and the President of the Public Health Trust shall establish administrative procedures requiring that billings from contractors under prime construction contracts with Dade County or the Public Health Trust that are a CSBE contract set-aside or which contain a trade set-aside or subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust. A contractor shall include in its billing to the County or Trust copies of those billings from its first tier CSBE subcontractors which the contractor approves and whose cost is included in the payment amount requested from the County or Trust.

b. Prime construction contracts to which a CSBE trade set-aside or subcontractor goal has been applied shall require that billings from CSBEs under first tier subcontract with the prime contractor, shall be promptly reviewed and payment made by the prime contractor to such CSBEs on those amounts not in dispute within two (2) business days of receipt of payment therefor by the prime contractor. The foregoing notwithstanding, the prime contractor shall pay billings from its first tier CSBE subcontractors that are not in dispute within the time frame recommended by the Advisory Board and implemented by Administrative Order of the County Manager approved by the County Commission.

c. The prime contractor on a prime construction contract to which a CSBE trade set-aside or subcontractor goal has been applied shall inform the Department of Business Development, the Contracting Officer, and the first tier CSBE subcontractor, in writing, of those amounts billed by the CSBE which are in dispute, and the specific reasons why they are in dispute, within seven (7) calendar days of submittal of such billing by the first tier CSBE subcontractor to the prime contractor.

d. Failure of the prime contractor to comply with the requirements of Section (3) 1 (c) above shall result in the prime contractor's forfeiture of the right to use the dispute as justification for not paying the first tier CSBE subcontractor and payment shall be forthcoming from the prime contractor.

2. Mentor-Prot,g, Program: This program is a community based effort involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The Program is an effort to overcome difficulties that typically inhibit or restrict the success of small businesses and is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. It is expected that as a result of the Mentor-Prot,g, Program, Prot,g, will experience a greater than industry average success rate and realize the growth and profitability objectives of their business plans as well as long range stability. The Program will provide a community benefit by strengthening emerging businesses and providing them with opportunities for growth, expansion and increased participation in Metro-Dade County's economic development. To be eligible for incentives under the Mentor-Prot,g, Program, the Mentors and Prot,g, must be registered by the Department of Business Development in the Mentor-Prot,g, Program. The specific details of the proposed program are shown in Attachment 1.

3. Bonding and Financial Assistance Program: This program will provide CSBEs with assistance in obtaining bonding and/or financial assistance for construction projects. Bonding assistance will include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes. Financial assistance will include providing financial assistance such as mobilization capital and/or working capital needed for specific projects. The specific details of the proposed program are shown in Attachment 2.

4. Management and Technical Assistance Program: This program will provide direct and indirect assistance for small business development. Program management provides direction, coordinates access to services, and maintains continual communications to assure knowledge and use of available resources. Technical assistance will also be provided such as accounting services and business plan preparation, which will assist firms in developing documents needed for bonding and financial assistance as well as business and management workshops and seminars. CSBEs may have access to resources that focus on developing their management capacity and enhancing the marketability of their products. Specific details of the proposed program are shown in Attachment 3.

5. Trade Set-Asides: Trade Set-aside means that an entire Specialty Trade component(s) of a County miscellaneous construction contract which the prime contractor shall subcontract at the first tier level to certified CSBEs (for example, the entire plumbing or roofing or electrical component of a specific contract). All such subcontracts shall be in writing and shall be executed by the prime contractor and the first tier CSBE subcontractor. Miscellaneous construction contract shall mean a construction contract managed by a construction manager selected on the basis of a management fee that will be added to the cost of specialty trade work for various projects bid by the construction manager as a trade set-aside for CSBEs.

6. Subcontractor goals: The County Commission or Public Health Trust may establish subcontractor goals for any Specialty Trade portion of the work in a contract based on estimates made prior to bid advertisement of the quality, quantity and type of first tier subcontracting opportunities provided by the contract, and of the availability of CSBEs to afford effective subcontracting competition therefor. After bid advertisement, or other formal public notice, the established subcontractor goal may be reduced only with the approval of the County Commission or Public Health Trust.

Bid documents shall require bidders to submit a Schedule of Participation form at the time of bid

submission identifying all CSBEs to be utilized to meet the subcontractor goal, the trade designation of work each will perform, and the dollar value of such work. In order to assure at the time of bid submission agreement upon the above information between the bidder and the CSBE, bid documents shall also require bidders to submit a form no later than two (2) business days after bid submission due date confirming such information through signed documents from the CSBE involved. Failure to submit the required form at the time of bid submission shall render the bid non-responsive. Submission of a defective form shall render the bid voidable.

Bidders whose bids fail to meet the specified subcontractor goal, in order to remain eligible for award of the contract, must submit evidence, no later than two (2) business days after bid submission, proving the lack of available CSBEs to afford effective competition therefor.

A successful prime bidder that is a CSBE or a joint venture may perform up to 50% of a CSBE subcontractor goal with its own forces. The remaining subcontractor goal work shall be performed by other CSBEs.

Bid documents shall provide that:

- (i) only expenditures to CSBEs for performing a commercially useful function shall be counted toward meeting a specified subcontractor goal;
- (ii) expenditures to CSBEs for acting essentially as a conduit to transfer funds to a non-CSBE shall not be counted toward meeting a subcontractor goal unless such conduct receives prior approval from the Department of Business Development as consistent with normal industry practice; and
- (iii) expenditures to CSBEs who subcontract work further to non-CSBEs shall not be counted toward meeting a subcontractor goal unless such subcontracting receives prior approval from the Department of Business Development as consistent with normal industry practice.
- (iv) only expenditures to CSBEs made under written first tier subcontract executed by both the prime contractor and the CSBE shall be counted towards meeting the subcontractor goal.

Bid documents shall allow bidders to challenge or protest a subcontractor goal established under this section by submitting no later than the time of bid submission the reasons for such challenge or protest in writing to the department responsible for the contract. Challenges or protests to a CSBE subcontractor goal by bidders after the time of bid submission shall not be heard by the County Commission or Public Health Trust.

7. Contract Measures:

a. Contract Set-Asides: The County Commission or Public Health Trust may determine it is in its best interest to waive any competitive bidding or selection requirement and set-aside a prime County construction contract for CSBEs when determined, prior to bid advertisement, that there are at least three (3) CSBEs available in the Standard Industrial Classification (SIC) category, as well as in the Contracting Participation Level that the contract is classified in (based on the estimated project construction cost). Contracts with estimated project construction cost less than or equal to \$3,000,000 may be set-aside for competition by CSBEs. Such contracts will be placed into one of three (3) Contracting Participation Levels based on the estimated project construction cost, and will be classified by Standard Industrial Classification (SIC) code. The three (3) contracting participation levels are:

- 1. Level I..... ..\$0-\$500,000

2. Level II.. ..\$500,001-\$1,000,000

3. Level III . \$1,000,001-\$3,000,000

CSBEs will also be categorized by Contracting Participation Level, which will be determined by the Department of Business Development (based, in part, on the CSBE's prequalification package).

CSBEs prequalified in one bonding capacity (e.g. those in bonding capacity Level III) may not bid on a lower level prime County contract set-aside for CSBEs (e.g., a \$300,000 project which falls into Level I).

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

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

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

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

c. Bid preference: A contractor bidding on a competitively bid prime county construction contract which is not set-aside for competition solely amongst CSBEs shall be entitled to a program incentive equal to two percent (2%) of such contractor's bid price (for bid evaluation purposes only) for participation in the Worker Training Program or the Mentor-Protegé Program. In no event shall the cumulative effect of the bid preference hereunder, exceed 2% of such contractor's bid price.

d. Trade Set-Aside: The County Commission or Public Health Trust may authorize a Trade Set-Aside as outlined in this ordinance.

e. Subcontractor goals: The County Commission or Public Health Trust may establish subcontractor goals as outlined in this ordinance.

8. Advisory Board:

There is hereby created a Dade County Advisory Board for the CSBE Program. Board members shall be appointed by the Board of County Commissioners and shall consist of one each of the following:

1. one member from the list of recommended appointees submitted by the Allied Minority Contractor's Association, Inc.;
2. one member from the list of recommended appointees submitted by the South Florida Chapter of the Associated General Contractors of America;

3. one member from the list of recommended appointees submitted by the Association of Women Architects and Engineers;
4. one member from the list of recommended appointees submitted by the Black Business Association;
5. one member from the list of recommended appointees submitted by the Construction Association of Florida, Inc.;
6. one member from the list of recommended appointees submitted by the Engineering Contractor's Association of South Florida, Inc.;
7. one member from the list of recommended appointees submitted by the Latin Builders' Association;
8. one member from the list of recommended appointees submitted by the Air Conditioning and Refrigeration Association, Inc.;
9. one member from the list of recommended appointees submitted by the Underground Contractors' Association of South Florida, Inc.;
10. one member from the list of recommended appointees submitted by the Association of Black Architects and Engineers;
11. one member from the list of recommended appointees submitted by the Contractor's Resource Center;
12. one member from the list of recommended appointees submitted by the UPPAC;
13. a representative of the local bonding industry;
14. a representative of the local banking and financial industry; and
15. a certified CSBE.

The terms of each member shall be two (2) years. Members shall serve without compensation.

The Advisory Board is created for the purpose of providing general program oversight and assisting the Department of Business Development in tracking and monitoring the results and effectiveness of the CSBE Program. The Advisory Board shall not assume the Department of Business Development's administrative or other responsibilities. The Advisory Board may serve as liaison between Program participants and the local business community, recommend additional Program Incentives, participate in the recruitment of prospective participant's for the CSBE program, and review and report on the Program's progress. Within one (1) year after inception of the CSBE program, the Advisory Board shall recommend to the County Commission the maximum length of time a CSBE may participate in the program.

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

8. Graduation: Upon recertification review, any CSBE that exceeds the size limits, based on the firm's three year average annual gross revenues, established by this ordinance shall be immediately graduated from the CSBE program. These firms shall be allowed to complete any currently awarded contract. However, the graduated firm will not be eligible to receive any new contracts under the CSBE program.

(4) Certification Requirements:

The County Manager shall implement eligibility criteria and procedures for entities to be certified as CSBEs based on regulations outlined in this Ordinance. Firms exceeding size limits established hereunder and under Appendix A of this Ordinance are not eligible for contract measures or participation in these programs.

1. The Department of Business Development shall maintain and publish at least every other week an updated list of CSBEs, identifying each listed CSBE based on the SIC category and the Specialty Trade the CSBE is certified in, and noting what Contracting Participation Level the firm is classified in.

2. The Department of Business Development shall not certify an applicant, shall not recertify a CSBE, and shall decertify a CSBE that fails to comply with the criteria or procedures for obtaining or maintaining certification. The Department of Business Development shall have authority to suspend the certification of a CSBE during any appeal of a decertification decision.

3. Applicants and certified CSBEs must be properly licensed to conduct business in Dade County, must perform a commercially useful function with an actual place of business in Dade County, and must continue to perform a commercially useful function in Dade County to be eligible for certification or to remain certified.

4. The qualifier of the certified CSBE firm must own at least ten (10) percent of the certified firm's issued stock.

5. Certification shall be renewed annually, and must be in effect at the time of bid submittal. For successful bidders, certification must be maintained from the time of bid submittal throughout the duration of the contract. With the exception of provisions previously described for graduation from the CSBE program, loss of CSBE certification may lead to removal of the firm from continued participation in the CSBE program. CSBEs experiencing changes in ownership shall notify the County Manager within thirty (30) days of the effective date of such changes.

6. A business owner, alone or as a member of a group, shall own or control only one CSBE at a time. A business owner, alone or as a member of a group, and any CSBE may not hold more than a ten (10) percent equity ownership in any other CSBE.

7. Applicants for CSBE certification shall, as part of their application, disclose the information specified in subsections (d)(1) and (2) of Section 2-8.1 of this Code.

8. The Department of Business Development may require applicants and CSBEs to submit information regarding their business operations, including but not limited to a breakdown of the applicant's or CSBE's ownership, and/or workforce as to race, national origin, gender, and gross annual sales.

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

following sanctions:

- i. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
- ii. Work stoppage;
- iii. Termination, suspension, or cancellation of the contract in whole or part;
- iv. In the event a bidder or CSBE attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Dade County Code, the County shall, whenever practicable, terminate the contract or require the termination or cancellation of the first tier subcontract for the project on which the bidder or CSBE committed such acts. In addition, and as a further sanction, the County Manager or his designee may impose any of the above-stated sanctions on any other contracts or first tier subcontracts the bidder or CSBE has on County projects. In each instance, the bidder or CSBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs.

Some of the contractual violations that may result in the imposition of the sanctions listed in Section 1 (5) above include, but are not limited to, the following:

1. A CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE but which is being performed by a non-CSBE firm;
2. A prime contractor not meeting CSBE Program trade set-aside or subcontractor goal requirement;
3. Not obtaining or retaining CSBE certification while performing work designated for CSBE firms;
4. Failure to submit monthly utilization reports;
5. Failure to comply with CSBE certification requirements, including not maintaining a place of business in Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
6. Failure to maintain certification;
7. Deviation from the Schedule of Participation without prior approval from DBD;
8. Termination of the CSBE's contract without prior approval from DBD;
9. Reduction of the scope of work of a first tier CSBE subcontract without prior approval from DBD;
10. Modifications to the terms and/or prices of payment to a CSBE without prior approval from DBD;
11. Unjustified failure to enter into a written first tier subcontract with a CSBE after listing the firm on a Schedule of Participation.

(6) Administrative penalties. For violation of or non-compliance with this ordinance or its implementing administrative orders, bid, and competitive selection documents, the County Manager or his designee may impose the loss of eligibility to be certified as a CSBE for a specified period of time,

not to exceed three (3) years, for an applicant or a CSBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.

(7) County responsibilities. The Department of Business Development (or other County department designated by the County Manager) shall:

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

Section 2. Sections 2-8.1, 2-8.5 and 10-38 of the Code of Metropolitan Dade County, Florida are hereby amended as follows: 1

Section 2-8.1. Contracts and purchases generally.

(a) Scope. This section shall apply to all contracts for public improvements and purchases of all supplies, materials and services other than professional services.

(b) Bid requirements for certain purchases; delegation of authority to advertise, award and reject bids for certain purchases. Formal sealed bids shall be secured for all contracts and purchases within the

scope of this section when the transaction involves the expenditure of one hundred thousand dollars (\$100,000) or more, except that the Board of County Commissioners, upon written recommendation of the County Manager, may, by resolution adopted by two-thirds vote of the members present, waive competitive bidding when it finds this to be in the best interest of the County. The County Manager is hereby delegated the authority to advertise for bid, award and reject bids or proposals for contracts and purchases when the transaction involves the expenditure of five hundred thousand dollars (\$500,000) or less without the need for action by the County Commission. >>The County Manager is delegated the authority to utilize any of the following processes for selection of a contractor to perform contracts for public improvements involving the expenditure of five hundred thousand (\$500,000) or less: competitive price bidding, request for proposals, or request for qualifications without the need for prior approval of the County Commission. The County Manager shall review all construction projects to determine whether the break-up of the project into smaller contracts will increase the opportunity for CSBEs to participate therein. For those contracts where the County Manager requests authority from the County Commission to advertise, the request for such authority shall advise the steps taken to accomplish the foregoing sentence.<< The County Manager may designate appropriate County staff to exercise the authority delegated hereunder by administrative order, approved by the Board of County Commissioners.

* * *

Section 2-8.5. Procedure to provide preference to local business in county contracts for goods and services.

* * *

>>(7) Exemption of certain contracts. The provisions of this section shall not apply, and no local preference shall be accorded hereunder, to prime County or Public Health Trust construction contracts whose estimated cost is \$3,000,000 or less which have been set-aside for competition solely for CSBEs (Community Small Business Enterprises) under Section 10-33.02 of this Code.<<

* * *

Section 10-38. Debarment of Contractors from County Work.

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(h) Causes for Debarment:

>>(3) The debarment committee may debar a CSBE based upon a preponderance of evidence that the CSBE has forfeited a bond or has defaulted on financial assistance, either of which was provided under the CSBE program; or if any individual or corporation, partnership or other entity, or any individual officer, shareholder with a significant interests, director or partner of such entity, or affiliated business of such entity attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement.<<

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Metropolitan Dade County. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board and shall apply to construction contracts advertised after June 15, 1997.

Section 6. This ordinance does not contain a sunset provision.

1 Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

OTHER

APPENDIX A

SIZE ELIGIBILITY, CONTRACTING PARTICIPATION LEVELS, AND AFFILIATION DETERMINATION

A. General: Only small businesses that meet size limits as to average annual gross revenues for the last three years may be codified as CSBEs. Certified CSBEs will be further categorized by contracting participation levels in accordance with levels of bonding capacity determined during a prequalification process. Size determinations for certification eligibility and contracting participation levels shall take into account the combined gross revenues and bonding capacities of the applicant business concern and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included.

B. Affiliation: Business concerns are considered affiliates of each other when either directly or indirectly:

- i. One concern controls or has the power to control the other, or
- ii. A third party or parties controls or has the power to control both, or
- iii. An identity of interest between or among parties exists such that affiliation may be found.

1. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships. Variations of these factors are examined more closely below: a. Nature of control in determining affiliation.

(1) Every business concern 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.

(3) Control can arise through management positions where a concern's vote stock is so widely distributed that no effective control can be established.

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 concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

c. Affiliation through stock ownership.

(1) A person is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control fifty (50) percent or more of its voting stock.

(2) A person is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than fifty (50) percent of the concern's voting stock, if

the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(3) If two or more persons each owns, controls or has the power to control less than fifty (50) percent of the voting stock of a concern; such minority holdings are equal or approximately equal in size; and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each such person individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

d. Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

e. Affiliation under voting trusts.

(1) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction. However, if a voting trust is primarily entered into for a legitimate purpose other than that described above, and it is recognized within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination.

(2) Agreements to divest (including agreements in principle) are not considered to have a present effect on the power to control the concern.

f. 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 concern.

g. Affiliation through common facilities. Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated.

h. Affiliation with a newly organized concern. Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern 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 concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, bid or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.

i. Affiliation through contractual relationships. Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that its economic viability would be in jeopardy without such contracts/business.

j. Affiliation under joint venture arrangements.

(1) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(2) For the purpose of financial assistance to a joint venture, the parties thereto are considered to be

affiliated with each other. Where the financial assistance, however, is to a concern for its own use, outside the joint venture, an affiliation determination shall not automatically arise from the existence of the joint venture arrangement. In this latter situation, the existence of affiliation shall be determined under these regulations.

(3) Concerns bidding on a particular construction contract as joint ventures are affiliated with each other with regard to performance of the contract. This determination of affiliation does not extend to other contracts or business outside the joint venture arrangement.

(4) An ostensible subcontractor which performs or is to perform primary or vital requirements of a contract may have such a controlling role that it must be considered a joint venture affiliated on the contract with the prime contractor. In determining whether subcontracting arises to the level of affiliation as a joint venture, DBD considers whether the prime contractor has unusual reliance on the subcontractor.

(5) Even though a concern might not be an affiliate of its joint ventures for the purpose of operations apart from the joint venture, it nevertheless must include its proportionate share of the joint venture receipts or employees in determining its eligibility under the size standards.

k. Affiliation under franchise and license agreements. In determining whether the franchiser controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints, relating to standardized quality, advertising, accounting format and other provisions, imposed on a franchisee by its franchise agreement shall generally not be considered, provided that the franchise has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee may not be controlled by the franchiser by virtue of such provisions in the franchise agreement, control and, thus, affiliation could arise through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

1. C. Gross Annual Revenues.

a. In size determinations, size eligibility requires that the concern may not exceed the three year average gross annual revenues in the applicable standard.

b. Definitions. For the purpose of determining annual gross revenues of a concern:

(1) Accrual basis means a method of accounting in which accounts and notes receivable are recorded in the regular books of account for the period in which the firm first has a claim of right to them

(2) Claim of right has the meaning attributed to it by the U.S. Internal Revenue Service (IRS).

(3) Gross Revenues is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term revenues excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, amounts collected for another by a travel agent or real estate agent, and taxes collected for remittance to a taxing authority.

(4) Regular books of account means the general ledger or other book of final entry and, if used, the journals or other books of original entry.

(5) Completed fiscal year means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.

(6) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

c. Period of measurement.

(1) Annual gross revenues of a concern which has been in business for three (3) or more completed fiscal years means the arithmetic annual average revenue of the concern over its last three (3) completed fiscal years (total revenue compiled over the entire three (3) year period would be divided by three).

(2) Annual gross revenues of a concern which has been in business for less than three (3) fiscal years means the arithmetic annual average revenue over the time period the concern has been in business (total revenues compiled over the period the concern has been in business, divided by the number of weeks, including fractions of a week, the concern has been in business, multiplied by 52).

(3) Annual gross revenues of a concern which has been in business three or more years but has a short year in the last three years will be the arithmetic annual average revenue over the two full years and the short year. See paragraph 3.c.5. of this section. The short period may appear at the beginning, middle or end of the three year calculation period.

d. Method of determining annual gross revenues.

(1) Revenue may be taken from the regular books of account of the concern. If the concern so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the concern, then revenues shown on the federal income tax return of the concern may be used in determining annual gross revenues. Subject to the exception in paragraph 3.c.4. of this section, revenue shown on the regular books of account or the Federal Income tax return on a basis other than accrual must be restated to show revenue on an accrual basis for all fiscal years.

(2) Where the Federal Income tax return of a concern, restated if necessary pursuant to paragraph (d)(1) of this section to reflect the percentage of completion method, shows its annual gross revenues to be less than seventy-five (75) percent of the applicable size standard, the concern need not restate its revenue to an accrual basis prior to determining annual revenues.

(3) Where a short period is included in the concern's most recent three (3) years, annual gross revenues are calculated by dividing the sum of the revenues of the short year and the receipts of the two (2) full fiscal years by the sum of the number of weeks in the short fiscal year and the number of weeks in the two full fiscal years, and multiplying that figure (the weekly average revenues) by fifty-two (52).

e. Annual gross revenues of affiliates.

(1) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period or before certification, the annual gross revenues in determining size status include the revenues of both the applicant and the affiliate. Furthermore, this aggregation of the revenues of both the applicant and its affiliates applies for the entire applicable averaging period used in computing size (usually the preceding three (3) complete fiscal years) rather than only for the period after the affiliation arose.

(2) The annual gross revenues of a concern which had been an affiliate of the applicant during part of the period used in determining size (usually the preceding three complete fiscal years), but was not an affiliate at the time of certification, are not included within the computation of annual gross revenues in making size determinations. This exclusion of annual gross revenues of a former affiliate applies during the entire period used in computing size, rather than only for the period after which the affiliation ceased.

1 Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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**SUNSET REVIEW OF COUNTY BOARDS FOR 2014
COMMUNITY SMALL BUSINESS ENTERPRISE ADVISORY BOARD
SUMMARY MINUTES**

DATE: Monday, December 16, 2013

CALL TO ORDER TIME: 1:00 p.m.

MEMBERS PRESENT: Samuel Lee Gilmore
Kurt Dyer
Linda Forrest
Charles Nielson
Ismailia Rashid
Courtney Cunningham
Dorothy Brown-Alfaro

MEMBERS ABSENT: Rick Derrer
John Siegle
Jason Barket
Adrian Foster
Jessie Houston
Bob Baer

ISD/SBD
STAFF PRESENT: Laurie Johnson, SBD Supervisor

Board members were provided with a copy of the Sunset Review Package for 2014 for review, comments and approval. The package included the memorandum to be signed by the Advisory Board Chairperson recommending that the BCC approve the continuation of the Board, the Sunset Review Questionnaire, CSBE Advisory Board Attendance Record and a copy of the ordinance creating the board.

Vice-Chairperson Ismailia Rashid called the meeting to order. Introduction of members occurred and immediately following the Vice-Chairperson began the board's discussion on the Sunset Review Package for 2014. Board Members were directed to review the Attendance Record for the period of January 2012 to December 2013, to confirm that the report properly reflected their meeting attendance.

The Board approved the number of meetings held and meetings held with a quorum.

Before moving forward in the meeting Vice-Chairperson Ismailia Rashid advised the Board that she would read each question and the responses from the Sunset Review Questionnaire and any recommended changes or discussion to be held at the end.

The Board approved the Sunset Review Questionnaire with changes as noted below.
The response to question No. 2 of the questionnaire to state the following:

"The total number of organizations represented on the board is 14, of the 14 organization represented 13 has an appointed member serving. There is one (1) vacancy on the board."

The response to question No.6 of the questionnaire, add the additional language as follows:

"The Community Small Business Enterprise Advisory Board membership mission is to enhance the CSBE program, increase small business, participation on construction contracts and as result ensure viable and sustained growth. The Board promotes innovative technology and fair business practices be established with all CSBE firms. The Board also encourages a commitment from all certified firms to provide excellent services and competitiveness in conjunction with meeting the needs of the County".

The response to question No. II - 3 (a) of the questionnaire, add the additional statements to the Board's major accomplishment for the last 24 months as follows:

- The Board was appointed as the Construction Bond Task Force responsible for reviewing the processes by which CSBEs obtain construction bonds.
- The Board advocated on behalf of CSBEs participating in the MCC 7040 Program to not require the UAP fees to be applied on project \$500,000 and below.

Vice-Chairperson Ismailia Rashid in her conclusion of the Sunset Review Package reminded the Board that this was a special meeting called for that purpose only.

A motion was made by Board Member Charles Neilson and seconded by Samuel Gilmore to approve the 2014 Sunset Review report which was approved by the CSBE Advisory Board by a unanimous vote.

Prior to closing out the meeting Board Members Ismailia, Sam Gilmore and Dorothy Alfaro brought to the Board's attention new business items to be discussed at the February 18th 2014 meeting.

- Updates on a newly formed Prompt Payment Tasked Force assigned to oversee the payment process for projects awarded through the MCC-8.
- Discuss the Board participation or serving current community needs – members appointed to attend various community events.
- Discuss the Board's assistance provided to CSBEs with contract and payment issues.
-

Meeting Adjournment

The meeting was adjourned at approximately 2:05 p.m.

**Small Business Development
 Certified Firms Approved for Bonding
January 2012 to December 2013**

	<u>Date of Approval</u>	<u>Bond Amount</u>
LAT Power	1/19/2012	\$250,000
G7 Holdings	3/5/2012	\$240,000
Imhotep Construction	2/27/2012	\$100,000
SCR Mechanical, LLC	3/8/2012	\$250,000
Garbal Construction	3/23/2012	\$250,000
The Combined Group	3/22/2012	\$250,000
B-Line Construction	4/25/2012	\$250,000
Crisscross Concrete & Cutting	5/3/2012	\$130,570
Tequesta Construction Services	9/13/2012	\$250,000
Cobra Painting	10/24/2012	\$250,000
Eltec Construction	12/5/2012	\$250,000
Allied Electrical Services	12/27/2012	\$250,000
Qualita Construction	1/22/2013	\$250,000
Cast Development LLC	2/11/2013	\$250,000
Building & Remodeling	6/5/2013	\$150,000
MCQ Construction	3/29/2013	\$250,000
Milborne, LLC	5/8/2013	\$100,000
Cool Water Air Conditioning	6/12/2013	\$350,000
Becqtech Construction Enterprise	6/17/2013	\$350,000
S & G Services	6/11/2013	\$350,000
M & M Cleaning Services	6/12/2013	\$350,000
Qualita Construction	6/12/2013	\$350,000
Aztech South	6/13/2013	\$350,000
South Florida Coastal Electric, Inc	6/14/2013	\$350,000
DL & RR Services	6/14/2013	\$350,000
SLM Engineering, Inc	6/18/2013	\$350,000
G7 Holdings	6/24/2013	\$350,000
Office Elite Services	6/20/2013	\$350,000
Brown & Brown Electric	7/5/2013	\$350,000
Shasa Engineering	7/12/2013	\$250,000
Overnight Success	7/26/2013	\$350,000
Florida GC Solutions	8/7/2013	\$350,000
Florida Roofing Solutions	8/7/2013	\$350,000
Air Balance and Diagnostice Com	8/7/2013	\$350,000
Unique Construction	8/15/2013	\$350,000
Automated Port Solutions	8/15/2013	\$350,000
WGC General Construction	9/10/2013	\$350,000
Cobra Painting	10/9/2013	\$350,000
Electrical Alliance Corp	10/17/2013	\$400,000
Viking Defense Inc	12/6/2013	<u>\$350,000</u>
		\$11,720,570

**Small Business Development
Certified Firms Approved for Loans
Januanry 2012 to December 2013**

	<u>Bond Amount</u>	<u>Date of Approval</u>
Viking Defense	9/1/2012	\$50,000
Leadex	4/5/2013	\$30,000
GarBal Construction	4/2/2013	\$25,000
Viking Defense	9/25/2013	<u>\$100,000</u>
		\$205,000