

1 **Sec. 1-81.1. Objectives and Definitions.**

2 (a) *Program objectives.*

3 (1) To ensure that small Broward County-based entities are provided
4 sufficient opportunities to meaningfully participate in the award of County-
5 funded contracts; and

6 (2) To ensure that only the entities that meet the eligibility criteria stated
7 herein are permitted to participate in the programs established by this Act.

8 (b) *Administrative Procedures.* The County Administrator, or his or her
9 designee, shall develop administrative procedures to fully implement the
10 provisions of this Act. However, to the extent that there is any conflict
11 between the provisions of this Act and those procedures, or between the
12 provisions of this Act and any provision of the Broward County
13 Administrative Code, the provisions of this Act shall control.

14 (b) *Program definitions.*

15 (1) *Affiliate* means any entity that is a parent or subsidiary of, or as
16 determined by the Program Director is related to, an entity certified or
17 seeking certification under this section.

18 (2) *Bid* means a response to any County procurement solicitation.

19 (3) *Bidder* means an entity that submits a response to any County
20 procurement solicitation.

21 (4) *Broker* means an entity that seeks to provide goods or services to the
22 County that the entity does not provide to other customers in the ordinary
23 course of its business. Where the procurement at issue primarily involves
24 the purchase of goods, an entity that does not, as determined by the

1 Program Director, stock in its inventory the general type of goods it seeks
2 to provide to the County is a broker. The preceding sentence shall not
3 apply when the cost of an individual unit of goods addressed by the
4 procurement exceeds twenty-five thousand dollars (\$25,000).

5 (5) *Broward County Small Business Development Program* means all
6 requirements of this Act, as well as any administrative policies or
7 procedures adopted pursuant to this Act.

8 (6) *Commercially useful function* means that a CBE or SBE has direct
9 contractual responsibility for the execution of a distinct element of the work
10 of a County contract; is required to carry out its contractual responsibilities
11 by actually providing, performing, managing, and supervising the work
12 involved in that contract; and does not act as a broker.

13 (7) *Continuous operating presence* means an entity with a current business
14 tax receipt issued by Broward County; that has a physical address number
15 and street name located within the geographical limits of Broward County
16 (not a P.O. Box); that has continuously maintained such address for at
17 least one (1) year prior to the time of application for certification; and that,
18 as determined by the Program Director, employs sufficient employees in
19 Broward County, or otherwise demonstrates that it has sufficient staffing,
20 to perform the work required under a contract covered by this section. A
21 CBE or SBE may not use a government-owned facility as a business
22 address for purposes of establishing a continuous operating presence.

23 (8) *County Business Enterprise or CBE* means an entity certified as a CBE by
24 the County as provided herein.

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1 (9) *OESBD* means the Broward County Office of Economic and Small
2 Business Development.

3 (10) *Personal net worth* means the value of the assets of an individual after
4 total liabilities (not including contingent liabilities) are deducted. For
5 purposes of CBE or SBE certification, an individual's personal net worth
6 shall not include either the individual's ownership interest in any CBE or
7 SBE applying for certification or certified by the County, or the individual's
8 equity in his or her primary place of residence.

9 (11) *Program Director* means the Director of OESBD, or his or her designee.

10 (12) *Prime Contractor* means an entity awarded a County contract.

11 (13) *Small Business Enterprise or SBE* means an entity certified as an SBE by
12 the County as provided herein.

13 (14) *Subcontractor* means an entity that enters into a contract with a prime
14 contractor to perform work required by a county contract.

15 **Sec. 1-81.2. Certification Standards.**

16 (a) The Program Director shall determine whether an entity is eligible for CBE
17 or SBE certification.

18 (b) *CBE Eligibility Requirements.* In determining whether an entity meets the
19 requirements for CBE eligibility, the Program Director shall consider the gross receipts
20 and personal net worth of both the applicant for certification and all its affiliates. An
21 entity is eligible for certification as a CBE if it meets the following criteria:

22 (1) The entity shall, when combined with any and all affiliates, have less than
23 \$5 million in average annual gross revenue calculated over the previous
24 three (3) calendar years. This average annual gross revenue figure shall

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1 be indexed annually commencing October 1, 2013, using the Council for
2 Community and Economic Research's ACCRA Cost of Living Index as
3 applied in Broward County;

4 (2) No person with a legal or beneficial ownership interest, direct or indirect, in
5 the entity or any affiliate of the entity shall have a personal net worth
6 exceeding seven hundred and fifty thousand dollars (\$750,000); and

7 (3) The entity shall have a continuous operating presence in Broward County.

8 (c) *SBE Eligibility Requirements.* In determining whether an entity meets the
9 requirements for SBE eligibility, the Program Director shall consider the gross receipts
10 and personal net worth of both the applicant and all affiliates. An entity is eligible for
11 certification as an SBE if it meets the following criteria:

12 (1) The entity shall employ twenty-five (25) or fewer permanent full-time
13 employees. In addition, eligibility is subject to the following gross revenue
14 limitations: Professional consultants, when combined with any and all
15 affiliates, shall have less than five hundred thousand dollars (\$500,000) in
16 average annual gross revenue calculated over the previous three (3)
17 calendar years. Firms in contractual services shall, when combined with
18 any and all affiliates, have less than one million dollars (\$1,000,000) in
19 average annual gross revenue calculated over the previous three (3)
20 calendar years. Firms in construction services shall, when combined with
21 any and all affiliates, have less than three million dollars (\$3,000,000) in
22 average annual gross revenue calculated over the previous three (3)
23 calendar years. Firms offering to sell commodities to the County shall be
24 subject to the employee limitation stated above in this paragraph but are

1 not subject to any gross revenue limitation with regard to a certification as
2 a commodities firm;

3 (2) No person with a legal or beneficial ownership interest, direct or indirect,
4 with the entity or any affiliate of the entity shall have a personal net worth
5 exceeding seven hundred and fifty thousand dollars (\$750,000); and

6 (3) The entity shall have a continuous operating presence in Broward County.

7 (d) *Discriminatory actions forbidden.* No person or entity shall be denied CBE
8 or SBE certification on the basis of race, color, sex, religion, national origin, disability,
9 age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity
10 and expression.

11 (e) *Application for Certification.*

12 (1) An entity seeking certification as a CBE or SBE shall submit an application
13 demonstrating that the entity meets the eligibility requirements of
14 paragraphs (b) or (c) above, as applicable. In addition, the entity must
15 identify which goods or services it provides or sells in the ordinary course
16 of its business to customers other than the County. An entity will only be
17 certified to provide goods or services to the County that the entity also
18 provides to other customers in the ordinary course of its business.
19 Brokers are not eligible for certification.

20 (2) Applications for certification must be submitted in a form and manner
21 determined by the Program Director.

22 **Sec. 1-81.3. CBE Goals and Reserves.**

23 (a) *Establishment of Cumulative Annual CBE Goal.* A cumulative annual goal
24 of at least twenty-five percent (25%) participation by CBEs is hereby established for the

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1 total dollar value of all County contracts, except those contracts that are subject to other
2 participation goals (e.g., federal DBE program, SBE reserves) and those contracts to
3 which goals are not assigned (e.g., sole-source contracts). This cumulative annual goal
4 may be adjusted by the Board of County Commissioners effective October 1 of any
5 year. If the Program Director determines that an adjustment to the cumulative annual
6 goal is appropriate based on available data, the Program Director shall present written
7 justification for the proposed adjustment to the Board by August 15 of the applicable
8 year.

9 (b) *Contract goals shall be established as follows:*

10 (1) Unless the Program Director determines that no CBE goal should be set
11 on a contract for the reasons set forth below, the Program Director shall
12 establish CBE goals on each County contract in a manner designed to
13 achieve, as nearly as practicable, the cumulative annual CBE goal then in
14 effect.

15 (2) A CBE goal is not required to be set for each contract, and goals set on
16 any given contract may be higher or lower than the cumulative annual
17 goal, depending on factors including whether the contract contains scopes
18 of work suitable for performance by subcontractors; the capacity and
19 availability of CBEs to perform the work required under the particular
20 contract; and CBE participation on other County contracts.

21 (3) A CBE goal shall not be set when the Purchasing Director determines,
22 pursuant to the County's Procurement Code, that a County solicitation will
23 be for a sole source purchase.
24

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1 (4) A CBE goal shall not be set on those contracts that are subject to other
2 participation goals (e.g., federal DBE program, SBE reserves).

3 (5) CBE goals shall be set as a percentage of the total value of the contract,
4 excluding the amount that the County reimburses to a Prime Contractor
5 pursuant to the contract.

6 (6) The criteria used and calculations performed to establish each contract
7 goal, or the rationale for deciding not to establish a goal for a particular
8 contract, shall be maintained in writing by the Program Director.

9 (7) The Program Director may waive the application of any previously-
10 established CBE contract goal, or may modify any CBE contract goal,
11 after issuance of a solicitation but before the time of bid submissions,
12 whenever the Program Director determines that such waiver or
13 modification would be in the best interest of the County.

14 (8) The Board of County Commissioners may waive the application of, or may
15 modify, any CBE goal at any time.

16 (d) *Establishing CBE Reserves.* A contract may be reserved for CBEs when
17 the Program Director, after consultation with the Purchasing Director, determines that
18 establishing such reserves is appropriate to meet the cumulative annual CBE goal, or to
19 create opportunities for CBEs to gain experience as prime contractors. However, no
20 contract shall be reserved for CBEs when the Program Director determines that no CBE
21 or only one (1) CBE is available to perform the work required under the contract.

22 (e) *Solicitations Involving Reserves.* When a CBE reserve is established in
23 connection with a County solicitation, CBEs and non-CBEs may respond to the
24 solicitation. If a CBE is available with capacity to perform the reserved work, the

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1 reserved work will be awarded to a CBE (consistent with all applicable terms and
2 conditions of the County's Procurement Code). If no CBE firm is available to perform
3 the reserved work, a non-CBE firm may be awarded the contract or the County may
4 reject all bids and responses submitted.

5 (f) *CDBE Goals in Executory Contracts.* All Community Disadvantaged
6 Business Enterprise (CDBE) goals in effect upon the enactment of this Act shall remain
7 in full force and effect.

8 **Sec. 1-81.4. SBE Reserves.**

9 (a) When the County issues a solicitation that is anticipated to result in a
10 contract with a value of less than two hundred and fifty thousand dollars (\$250,000), the
11 contract shall be reserved for SBEs. However, no contract shall be reserved for SBEs
12 when the Program Director determines that no SBE or only one (1) SBE is certified to
13 perform the work required under the contract.

14 (b) If an SBE reserve is established, only SBEs will be eligible to bid on the
15 solicitation. Only an SBE shall be awarded a contract with an SBE reserve, except
16 when (1) no SBE responds to the solicitation; or (2) no SBE is responsive to the terms
17 of the solicitation. In the event that no SBE responds or no SBE is responsive, the
18 Purchasing Director shall cancel the solicitation and the using agency shall submit it to
19 OESBD to determine whether a CBE reserve should be established for any new
20 solicitation.

21 (c) Notwithstanding anything to the contrary in paragraphs (a) and (b) above,
22 in the event that none of the responses to an SBE reserve solicitation would result in a
23 contract with a value of less than two hundred and fifty thousand dollars (\$250,000), the
24 Purchasing Director may elect to either accept the response(s) and proceed to the

1 award stage, or reject the response(s) and request that OESBD determine whether a
2 CBE reserve should be established for any new solicitation.

3 **Sec. 1-81.5. Satisfaction of CBE Goals; Good Faith Effort.**

4 (a) A bid shall be considered non-responsible unless a bidder meets either
5 the CBE goal established for the contract or demonstrates good faith effort to meet the
6 CBE goal.

7 (b) In order to meet the CBE goal of a solicitation, a bidder entity must submit
8 the following information:

9 (1) The names and addresses of each CBE that will participate in the
10 contract;

11 (2) A description of the work that each CBE will perform;

12 (3) The percentage of the contract value that each CBE will receive.

13 (4) Written documentation, in a form acceptable to OESBD, of the bidder's
14 commitment to use each CBE whose participation the bidder submits to
15 meet the contract goal; and

16 (5) Written confirmation, in a form acceptable to OESBD, from each CBE that
17 it will participate in the contract as indicated by the bidder.

18 (c) The bidder should submit the above information as follows:

19 (1) Under sealed bid procedures, the information should be provided with the
20 sealed bid response; or

21 (2) Under requests for letters of interest or requests for proposals, the
22 information should be provided with the initial letter of interest or proposal.

23 (d) If the information required by section (b) above is not provided in
24 accordance with section (c) above, the information must be provided to the County

1 within three (3) business days after OESBD notifies the bidder that it has not provided
2 all the required information with its response. Failure to provide the County with this
3 information within such three (3) business days may be cause for the response to the
4 solicitation to be deemed non-responsible.

5 (e) Determination of Good Faith Effort.

6 (1) A bidder shall not be denied award of a contract due to failure to meet the
7 assigned contract goal if the bidder timely (within the timeframes provided
8 in paragraphs (c) and (d) above, as applicable) provides documentation
9 demonstrating, as determined by the Program Director, the bidder's good
10 faith effort to meet the goal. In making such determination, the Program
11 Director shall consider the quality, quantity, and extent of the various
12 efforts that the bidder has made to meet the goal.

13 (2) The efforts that may be considered by the Program Director include, but
14 are not limited to:

15 a. Soliciting through activities such as attendance at pre-bid meetings,
16 advertising, or written notices, the interest of certified CBEs (or
17 CBEs eligible for certification) that have the ability and capacity to
18 perform the contract work. The bidder must solicit this interest in a
19 timely manner to allow the CBEs to respond to the solicitation. The
20 bidder must take appropriate steps to follow up initial solicitations of
21 CBEs.

22 b. Identifying the portions of the contract that could reasonably be
23 performed by a CBE in order to increase the likelihood that the CBE
24 goals will be achieved. This may include, where appropriate and

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1 commercially practicable, separating contract work items into
2 segments more appropriate for participation by CBEs.

3 c. Providing each interested CBE with adequate information about the
4 plans, specifications, and requirements of the contract in a timely
5 manner.

6 d. Negotiating in good faith with each interested CBE. Evidence of
7 such negotiation includes the names, addresses, and telephone
8 numbers of CBEs that were considered; a description of the
9 information provided regarding the plans and specifications for the
10 work selected for subcontracting; and explaining why an agreement
11 could not be reached with an interested CBE to perform the work.
12 The fact that there may be some additional costs involved in
13 subcontracting with CBEs is not in itself sufficient reason for a
14 bidder's failure to meet the contract CBE goal, as long as such
15 additional costs are reasonable, as determined by the Program
16 Director in his or her sole discretion.

17 e. Rejecting an interested CBE as being unqualified for participation
18 only after diligently investigating the CBE's capabilities and
19 documenting the sound reasons justifying such rejection (with such
20 documentation to be provided to the Program Director).

21 (3) In determining whether a bidder has made a good faith effort, the Program
22 Director may also consider the level of participation proposed by the
23 bidder and the level of participation proposed by other bidders. The closer
24 the bidder's proposed participation is to the goal or to the proposed

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1 participation by other bidders, the greater the indication of good faith by
2 the bidder.

3 **Sec. 1-81.6. Participation Requirements and Enforcement.**

4 (a) CBEs and SBEs may not participate in a County contract unless they are
5 certified, at the time of bid submission/opening, to perform the type of work required by
6 the contract. However, if it becomes necessary to substitute a CBE or SBE in order to
7 meet the contract's participation requirements, a CBE or SBE may be substituted,
8 provided that such CBE or SBE is certified at the time of the substitution.

9 (b) Only the work actually performed by a CBE or SBE (whether as a prime
10 contractor or subcontractor) shall be counted toward satisfaction of the applicable goal.

11 (c) Contractors that use CBEs or SBEs as subcontractors on a County
12 contract must pay those subcontractors directly for all goods or services provided by the
13 subcontractor within fifteen (15) days of receipt of payment from the County.

14 (d) CBEs and SBEs may participate in a County contract only if they are
15 performing a commercially-useful function in the contract and are not acting as a broker.

16 (e) The administrative procedures adopted pursuant to this Act shall include
17 procedures by which OESBD will monitor CBE and SBE participation on County
18 contracts for which CBE and SBE goals or reserves are set.

19 (f) Each contract setting a CBE goal shall provide that when a CBE
20 subcontractor is terminated by a prime contractor for any reason, including for cause,
21 the prime contractor shall, with notice to and the concurrence of the Program Director,
22 substitute another CBE in order to meet the level of CBE participation provided in the
23 prime contractor's contract with the County. The contract shall also provide that such
24 substitution shall not be required in the event the termination results from the County

1 changing the scope of work under the contract and there is no available CBE to perform
2 the new scope of work.

3 (g) All entities that bid on or participate in County contracts subject to this Act
4 are responsible for meeting the requirements of this Act and the requirements of any
5 administrative procedures adopted pursuant to this Act. If an entity fails to comply with
6 these requirements, the County may exercise any administrative remedies it has under
7 the County's Procurement Code, administrative procedures adopted pursuant to this
8 Act, or any other right or remedy provided in the contract or under applicable law, with
9 all of such rights and remedies being cumulative.

10 **Sec. 1-81.7. Administrative Requirements.**

11 (a) *Required CBE Contract Language.* Each County contract that contains
12 CBE or SBE requirements, and each subcontract a prime contractor executes with a
13 CBE or SBE in connection with that County contract, shall include the following
14 assurance: "No party to this contract may discriminate on the basis of race, color, sex,
15 religion, national origin, disability, age, marital status, political affiliation, sexual
16 orientation, pregnancy, or gender identity and expression in the performance of this
17 contract. The County's contractor shall comply with all applicable requirements of the
18 Broward County Small Business Development Program in the award and administration
19 of this contract. Failure by the County's contractor to carry out any of these
20 requirements shall constitute a material breach of contract, which shall permit the
21 County to terminate its contract with the County's contractor or to exercise any other
22 remedy provided under the contract, under the Broward County Code of Ordinances or
23 Administrative Code, or under applicable law, with all of such remedies being
24 cumulative."

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1 (b) *Establishment of CBE/SBE Directory.* The Program Director shall
2 maintain a directory listing all certified CBEs and SBEs. The listing shall include each
3 entity's address, phone number, and the type(s) of work the entity has been certified to
4 perform as a CBE or SBE on a County contract. The directory shall be revised monthly,
5 and shall be made available to contractors and the public upon request. The Program
6 Director shall manage directory listings for the U.S. Department of Transportation
7 certification programs in accordance with the requirements of those programs and the
8 State of Florida Unified Certification Program.

9 (c) Whenever adjustments to criteria for CBE eligibility and adjustments to the
10 cumulative annual CBE goal are proposed, they shall be promptly published by the
11 Program Director on the website of OESBD.

12 **Sec. 1-81.8. Decertification and Appeals.**

13 (a) *Certification Review.* OESBD may, at its sole discretion, conduct a
14 certification review of any certified CBE or SBE. Upon request from OESBD, a certified
15 entity shall promptly provide OESBD with any documents or information related to the
16 entity's eligibility certification, and shall, upon request from OESBD, promptly provide
17 OESBD access to its premises. Failure to promptly provide documents, information, or
18 access may result in the decertification of the entity as provided below.

19 (b) *Notice of Decertification.* If OESBD determines that a certified entity no
20 longer meets the CBE or SBE eligibility requirements of this Act, or has otherwise
21 violated the provisions of this Act, OESBD shall send the entity a notice of
22 decertification and transmit a copy to the Director of Purchasing.

23 (c) *Reapplication.* An entity that is decertified pursuant to this section may
24 not reapply for certification until one (1) year after its decertification.

1 (d) *Appeals*. An entity that wishes to appeal a decertification may do so in
2 accordance with the administrative policies and procedures adopted pursuant to this
3 Act.

4 Section 2. SEVERABILITY.

5 If any portion of this Ordinance is determined by any Court to be invalid, the
6 invalid portion shall be stricken, and such striking shall not affect the validity of the
7 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion
8 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
9 or circumstance(s), such determination shall not affect the applicability hereof to any
10 other individual, group, entity, property, or circumstance.

11 Section 3. INCLUSION IN CODE.

12 It is the intention of the Board of County Commissioners that the provisions of
13 this Ordinance shall become and be made a part of the Broward County Code; and that
14 the sections of this Ordinance may be renumbered or relettered and the word
15 “ordinance” may be changed to “section,” “article,” or such other appropriate word or
16 phrase in order to accomplish such intentions.

17 Section 4. EFFECTIVE DATE.

18 This Ordinance shall become effective as provided by law.

19 ENACTED October 23, 2012

20 FILED WITH THE DEPARTMENT OF STATE November 6, 2012

21 EFFECTIVE November 6, 2012

22
23 BRS/mm
10/29/12
24 CBE/SBE Ordinance
12-0451

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