

## **Broward County Business Opportunity Act of 2004**

Code of Broward County, Florida

### **ARTICLE XIV. SMALL DISADVANTAGED BUSINESS ENTERPRISES\***

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**\*Editor's note:** Ord. No. 2004-07, §§ 1--8, adopted April 13, 2004, amended former Art. XIV, §§ 20-275--20-279, in its entirety to read as herein set out. Former Art. XIV pertained to similar subject matter and derived from Ord. No. 93-17, § 2, adopted July 13, 1993.

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#### **Sec. 20-275. Title.**

This Ordinance may be cited as the "Broward County Business Opportunity Act of 2004."

(Ord. No. 2004-07, § 2, 4-13-04)

#### **Sec. 20-276. Statement of policy; legislative findings.**

(a) It shall be the continuing policy of the Board of County Commissioners to eliminate the effects of past active and passive discrimination relating to the County's procurement of goods and services. To achieve this goal, the Board of County Commissioners shall provide small business development programs and services, established pursuant to this act, to enhance the contracting and procurement opportunities of small, minority, women-owned and disadvantaged business enterprises for construction services, architectural and engineering services, professional services, business services, and the purchase of commodities.

(b) The Board of County Commissioners makes, and believes this policy to be justified and supported by, the following legislative findings:

(1) Racial, ethnic, and gender discrimination is contrary to the principles of liberty and equality embodied in the Constitution of the United States and the state of Florida;

(2) Historically, governmental and private discrimination has caused a disproportionate number of minority and women-owned businesses in Broward County to suffer competitive disadvantages in establishing and controlling viable business enterprises;

(3) The absence of economic opportunities due to racial, ethnic, and gender discrimination for minority and women-owned businesses in Broward County unnecessarily excludes such businesses from competing for and sharing in the distribution of the resources of Broward County;

(4) In 1991, Broward County commissioned its first disparity study, conducted by BPA Economics, Inc., to determine the extent to which minority and women-owned businesses were being disadvantaged because of the County's active or

passive participation in racial, ethnic, or gender discrimination through its procurement program for the goods and services needed by the county government;

(5) Based upon the findings and recommendations of this first generation disparity study, the Board of County Commissioners, in 1993, enacted the present Small Disadvantaged Business Enterprise Program which was designed to improve opportunities for minority and women-owned businesses, in large part, through race, ethnic, and gender conscious measures;

(6) As a result of judicial decisions by the United States Supreme Court and the United States Circuit Court of Appeals for the Eleventh Circuit placing further limitations concerning the use of race, ethnic, and gender conscious measures to remedy discrimination by governmental entities in procurement activities, in October 1999, Broward County commissioned a second-generation disparity study which was completed and accepted by the Board of County Commissioners in May 2001;

(7) The disparity study sought to determine the level of participation by minority and women-owned businesses in the County's procurement program, and whether the County's present Minority/Women Business Enterprise Program was appropriate and legally justified;

(8) This second generation disparity study revealed that while the County's efforts increased the opportunities for minority and women-owned businesses to compete for County contracts to provide the goods and services sought by the County government, a substantial number of such available businesses remained unable to access these economic opportunities;

(9) The study determined that substantial disparity existed between minority and women-owned businesses' ability to do business with Broward County and that of the similar non-minority male businesses;

(10) The substantial disparities were found in the County's procurement programs for construction services, architectural and engineering services, professional services, business services, and the purchase of commodities. Additionally, the study found the competitive improvements obtained by minority and women-owned businesses since 1993 would more likely not have occurred absent the Small Disadvantaged Business Enterprise Program;

(11) Based upon the evidence, findings, and recommendations contained in its second generation disparity study, the Board of County Commissioners finds and declares that Broward County has a compelling interest in continuing its Minority/Women Business Enterprise Program as modified in this act. The Board of County Commissioners further finds and declares that the elimination of racial, ethnic, and gender related barriers for businesses desiring to contract with Broward County to provide goods and services not only constitutes a compelling interest, but serves the best interests of the County, the business community, its labor force, and its taxpayers; and

(12) The Board of County Commissioners finds and declares the present program will be modified to add a small business enterprise component which, along with other race, ethnic, and gender neutral measures, will foster

competition and the Minority/Women Business Enterprise Program's compliance with the 14th Amendment to the United States Constitution.  
(Ord. No. 2004-07, § 3, 4-13-04)

**Sec. 20-277. Definitions.**

As used in the sections of this Ordinance, the following terms shall mean:

(a) *Affiliate* means a person or entity that directly, or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under common control with, or has the power to control, another person or entity.

(b) *Architectural and Engineering Services* means professional services procured pursuant to the requirements of § 287.055, Florida Statutes, and Chapter 21, Broward County Administrative Code.

(c) *Availability* means to have, prior to bid submission, the ability to provide goods and services under a contract, by having:

- (1) Reasonably estimated, uncommitted capacity;
- (2) All necessary licenses, permits, registrations, and certifications;
- (3) The ability to obtain bonding that is reasonably required consistent with normal industry practice; and
- (4) The ability to otherwise meet bid specifications.

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

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

(f) *Board* means Broward County Board of County Commissioners.

(g) *Broker* means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful service other than acting as a conduit between his or her supplier and his or her customers.

(h) *Business Development* means efforts to assist in the production, growth, or management of the material health of emerging small businesses.

(i) *Business Services* means general support services performed by an independent contractor requiring specialized knowledge, experience, or expertise that includes, but is not limited to, pest control, janitorial, laundry, catering, security, lawn maintenance, and maintenance of equipment.

(j) *Certified* or *Certification* means official recognition of the SBE, DBE, MBE, or WBE status of a business by Small Business Development Division.

(k) *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 its contractual responsibilities by actually performing, managing, and supervising the work involved. The determination of whether a DBE, SBE, MBE, and WBE is performing a commercially useful function shall include an evaluation of the amount of work subcontracted; normal industry practices, the skills, qualifications, or expertise of the SBE, DBE, MBE, or WBE to perform the work; whether the business owner himself or herself performs,

manages, or supervises the work involved; and other relevant factors. Acting as a broker is not considered a commercially useful function.

(l) *Commodities* means goods including, but not limited to, supplies, equipment, materials, and printed matter.

(m) *Concession Contract* means a written agreement between Broward County and a provider of goods or services wherein the County grants the provider a specific privilege to offer those goods or services for sale at a County-owned or County-operated airport, seaport, convention center, park, or other facility.

(n) *Construction Services* means services for the construction, rehabilitation, alteration, conversion, demolition, extension, or repair of buildings, utility systems, pavements, highways, or other improvements to real property owned or under the control of Broward County. The term does not include the routine operation, repair, or maintenance of existing structures, buildings, or other real property.

(o) *Contract* means any binding agreement, regardless of how called, for the procurement or disposal of supplies, services, or construction awarded by any officer or agency of the County and whose cost is to be paid from funds belonging to or administered by the Board. The term does not include a delegate agency contract, lease, purchase, or sale of real property, or collective bargaining agreement.

(p) *Contractor* means any person or business entity that enters into a contract with Broward County or the Broward County Board of County Commissioners, and includes all partners and all joint ventures of such person. (General contractor shall mean the same as a general or prime consultant.)

(q) *County* means Broward County Administrator or designee.

(r) *Delegate Agency Contract* means a contract with a not-for-profit or for-profit organization which provides services including, but not limited to, job training and placement, education, day care, emergency shelter, home-delivery meals, and health care to targeted communities under agreement with the Broward County Board of County Commissioners which are funded, totally or in part, by federal, state, or local grants and paid on a pass-through basis.

(s) *Departmental/Division Liaison* means a designee of a department or division head who will act as the primary point of contact and responsibility for the Small Business Development Division for the activities of the using department or division, and for those seeking information for the goal-setting, monitoring, and tracking activities of the department or division. This liaison will be responsible for setting contract goals using the methodology established by the Small Business Development Division and the conduct of bid evaluations, contract monitoring, close-out evaluations, and complaint monitoring.

(t) *Design-build contract* means a contract for the procurement of both the design and construction or reconstruction of a public work in a single contract with a single design-build contractor or combination of such contractors that are capable of providing the necessary design and construction or reconstruction services.

(u) *Disadvantaged Business Enterprise, or DBE*, means as defined in Title 49 C.F.R. Part 26, or other applicable federal or state law in connection with a

contract which is funded in whole or in part from state or federal governmental sources.

(v) *Established business* means a business entity which, by virtue of its size and capacity for competing in the markets in which it operates, does not need to be a participant in the program in order to effectuate the purposes of the program, as determined by the Director of the Small Business Development Division, pursuant to regulations to be adopted.

(w) *Goal* means the annual or contract percentage of SBE, DBE, MBE, or WBE, participation aspired to by Broward County. Separate participation goals shall be established for minority-owned or women-owned businesses unless prohibited by federal or state funding agencies for specific contracts.

(x) *Joint Venture* means an association of two (2) or more business entities contractually formed to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skills, and knowledge.

(y) *Mentorship Program* means a program used by Broward County as a tool to stimulate small business opportunities, by matching an established business owner with a DBE, SBE, MBE, or WBE on a specific County project for the purpose of developing certain business skills of the DBE, SBE, MBE, or WBE.

(z) *Minority Group* means any of the following racial or ethnic groups:

(1) Black Americans (which includes persons having origins in any of the Black racial groups of Africa);

(2) Hispanic Americans (which includes persons of Spanish or Portuguese culture, or persons with origins in North, South, or Central America or the Caribbean Islands, regardless of race);

(3) Asian Pacific Americans (which includes persons having origins in Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Phillipines, Samoa, Guam, the United States Trust Territories of the Pacific or the Northwest Marianas), or Asian-Indian Americans (which includes persons whose origins are from India, Ceylon, Pakistan, or Bangladesh);

(4) Native Americans (which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians);

(5) Other groups, or other individuals, when supported by an appropriate study and who are found by the Broward County Board of County Commissioners to be socially and economically disadvantaged and to have suffered actual racial or ethnic discrimination and decreased opportunities to compete in South Florida construction, architectural and engineering services, professional business services, commodities (other goods and services), and concessions or to do business with the Broward County Board of County Commissioners; and for purposes of contracts funded by state or federal governmental sources, groups found to be eligible by such governmental sources.

(aa) *Minority-owned Business* or *MBE* means a certified business which is an independent and continuing operation for profit performing a commercially useful function that is:

(1) At least fifty-one percent (51%) owned by one or more members of one minority group, or in the case of a publicly-held corporation, at least fifty-one

percent (51%) of the stock of which is owned by one or more members of one minority group;

(2) Whose management and daily business operations are controlled by one or more members of one minority group; and

(3) Which is an established business.

(bb) *MBE Percentage* means the goal established by the Director of the Small Business Development Division, or the using agencies, in accord with the standards set forth in the Broward County Administrative Code, as amended.

(cc) *Professional Services* means any services where Broward County is obtaining advice, instruction, or specialized work from an individual specifically qualified in a particular area. The term does not include those services designated pursuant to subsection (b).

(dd) *Letter of Intent* means a written communication from a contractor or consultant to the County with respect to a contract evidencing an understanding between a DBE, SBE, MBE, or WBE and the contractor or consultant that such DBE, SBE, MBE, or WBE has entered or will enter into a contractual relationship with the contractor or consultant on such contract or that such contractor or consultant will self-perform as a DBE, SBE, MBE, or WBE on such contract.

(ee) *Responsible Bidder* shall have the same meaning provided in Chapter 21, Broward County Administrative Code.

(ff) *Responsive Bidder* means as defined in Chapter 21, Broward County Administrative Code.

(gg) *Small Business Enterprise* or *SBE* means a certified business that has an occupational license and is located or doing business in Broward County. For professional consultants, annual gross sales averaged over the previous three-year period shall not exceed \$500,000; for firms in contractual services and commodities, annual gross sales averaged over the previous three-year period shall not exceed \$1,000,000; and for firms in construction, annual gross sales averaged over the previous three-year period shall not exceed \$3,000,000. Each business must be an independently owned and operated business which employs twenty-five (25) or fewer permanent full-time employees. The business must be established for a period of one year prior to submitting its application, and must serve a commercially useful function.

(hh) *Supplier* means a business enterprise which either directly contracts with a contractor or consultant or directly contracts with subcontractors or subconsultants under such contractor or consultant, and which business enterprise will provide materials, supplies, or equipment under an agreement with the contractor or consultant, or with other subcontractors or subconsultants under such contractor or consultant.

(ii) *Subcontractor* means a firm, partnership, corporation, or combination thereof having a direct contract with a contractor for all or any portion of the advertised work or who furnishes material worked into a special design according to the plans and specifications for such work, but not those who merely furnish equipment or materials required by the plans and specifications.

(jj) *Owned* means having all the customary incidents of ownership, including the right of disposition, and the right or obligation to share in all risks and profits commensurate with the degree of ownership interest.

(kk) *Program* means those programs established by this act and such other programs implemented by the County Administrator pursuant to and in accord with the policies set forth in this act.

(ll) *Small Business Enterprise Sheltered Market Program* means those projects under \$250,000 which are identified as reserved contracts for certified small business enterprises, unless there is no small business enterprise available to perform the work or provide the required products and services.

(mm) *Vendor* means any person who sells goods or services to Broward County under a purchase order or contract or any instrument which permits an exchange of goods or services for payment.

(nn) *Women-owned Business Enterprise* or *WBE* means a certified business which is an independent and continuing operation for profit performing a commercially useful function that is:

(1) At least fifty-one percent (51%) owned by one or more women or, in the case of a publicly-held corporation, fifty-one percent (51%) of the stock of which is owned by one or more women;

(2) Whose management and daily business operations are controlled by one or more women; and

(3) Which is an established business.

(oo) *WBE Percentage* means the goal established by the Director of the Small Business Development Division, or the using agencies, in accord with the standards set forth in the Broward County Administrative Code, as amended.

(Ord. No. 2004-07, § 4, 4-13-04)

**Sec. 20-278. Responsibility of the small business development division; director.**

The County Administrator shall, under his or her supervision or designee, charge the Director of the Small Business Development Division with the following responsibility and duties:

(a) The administration and enforcement of this act;

(b) The establishment of written procedures, with the concurrence of the County Administrator, to effectuate this act;

(c) The monitoring of applicable using agencies' compliance with the provisions of this act;

(d) The review of all procurement activities of all County departments, divisions, offices, and agencies to ensure reasonable efforts are being made to eliminate and remedy discrimination in the procurement of construction services, architectural and engineering services, professional services, business services, and the purchase of commodities;

(e) The direction of goal-setting, reporting, and analysis activities on the part of County departments and divisions and the Small Business Development Division, in accord with the overall goals approved by the Board, of applicable

MBE, WBE, SBE, and DBE goals on a project-by-project basis, through the employment of racial, ethnic, or gender conscious or neutral measures in the central procurement activities;

(f) The investigation of alleged violations of this act, and the issuance of written determinations after such investigations, stating the findings and conclusions for each determination;

(g) The direction of case review where contractors fail to implement previously-made MBE, WBE, SBE, and DBE commitments and determine an appropriate course of action in each such instance;

(h) The determination of whether any penalties, as established by resolution of the Board, for failure to meet MBE, WBE, and DBE participation goals should be imposed and the extent of such imposition;

(i) The certification of contractors, subcontractors, or bidders as bona fide MBEs, WBEs, DBEs, and SBEs, in accordance with the standards set forth in this act, the administrative procedures implemented by the County Administrator pursuant to this act, and the applicable federal laws, regulations, and standards for DBE certification;

(j) The notification to an affected party that it has the right to appeal a determination of noncompliance with this act pursuant to the administrative procedures implemented by the County Administrator in accord with this act;

(k) The compilation and maintenance of annual statistical reports, databases, and directories authorized by the Board, the County Administrator, or otherwise required for the proper administration of the programs established pursuant to this act; and

(l) The encouragement and fostering of participation by small and disadvantaged business enterprises in the central procurement activities of Broward County, through the implementation of various business, retention, and expansion programs as may be promulgated by the County in pursuance of this act.

(m) The enforcement of this act and the programs operated in pursuance thereof, including the authority to recommend the suspension or debarment of any contractor found to have violated the provisions of this act or the rules and regulations made pursuant thereto.

(Ord. No. 2004-07, § 5, 4-13-04)

**Sec. 20-279. Annual and contract goals; threshold amounts; and small business sheltered market and development programs.**

Except where federal or state laws or regulations mandate to the contrary, the provisions of this act shall be applicable to all contracts funded in whole or in part by County funds. The County Administrator shall adopt administrative orders and procedures which are necessary to implement the provisions of this act.

(a) *Annual Goals.* The director shall propose to the Board of County Commissioners annual aspirational goals for DBE, SBE, MBE, and WBE utilization based on the dollars to be spent for construction, reconstruction, and remodeling contracts and professional design and construction services contracts. The portions of work undertaken by DBEs, SBEs, MBEs, and WBEs

as contractors, consultants, subcontractors, subconsultants, suppliers, manufacturers, brokers, or joint venturers, including appropriate portions of work undertaken by subcontractors, subconsultants, suppliers, and manufacturers on subsidiary tiers under DBEs, SBEs, MBEs, and WBEs, whether or not such subsidiary tier business enterprises are DBEs, SBEs, MBEs, and WBEs shall count toward the goal, except as otherwise provided by Section 20-281, Broward County Code.

(b) The director, as a basis for the proposing the annual goal percentage, shall annually determine the present availability of all DBEs, SBEs, MBEs, and WBEs doing business in the County by profession and trade groupings. The director shall conduct such inquiries, studies, and hearings, and utilize information and assistance from such persons, consultants, entities, or organizations including, but not limited to, the department heads, which the director may deem necessary to make such annual goal recommendation.

(c) The Board shall review the annual goals recommended by the director, may undertake such additional inquiries as it deems appropriate, and may approve, disapprove, or modify the recommended annual goals in each succeeding year. Until the Board approves, disapproves, or modifies the annual goals in a succeeding year, the annual goals established pursuant to this section for the prior year shall continue in effect. The Board's annual goals shall be established by resolution and will be effective from October 1 through September 30 of each year, except as otherwise provided in this act.

(d) *Contract Goals.* The director or, in such cases where responsibility has been assumed by using departments or divisions, the division or department liaison shall add a requirement to the bid or proposal instructions for each professional design and construction services contract and each construction contract assigning a project goal for DBE, SBE, MBE, and WBE utilization based upon a percentage of the dollar value of all work on such contract; provided that, if the director or liaison determines it to be in the best interests of the County, the director or liaison may in his or her discretion waive the application of project goals for a given contract. The goal percentage assigned by the director to each such contract may vary from contract to contract consistent with meeting the appropriate overall annual goal, if and when established. The Small Business Development Division shall establish a methodology for the setting of project goals, including the methodology to be followed by the liaisons, in accordance with the administrative rules and regulations, and will communicate this methodology to using agencies through goal-setting conferences. Such methodology shall consider the following factors:

(1) To the extent applicable, the effect on achieving the annual goal of the varying levels of availability of DBEs, SBEs, MBEs, and WBEs among industry groupings associated with individual projects and the effect on achieving the annual goal when project goal compliance through good-faith efforts has resulted in non-utilization of DBEs, SBEs, MBEs, and WBEs.

(2) The reasonably-known availability of DBEs, SBEs, MBEs, and WBEs in specific industry groupings which are associated with individual projects.

(3) The portions of work undertaken by DBEs, SBEs, MBEs, and WBEs as contractors, consultants, subcontractors, subconsultants, suppliers, manufacturers, or joint venturers.

(4) In the establishment of project goals, the calculation will be based on the data that is available:

- a. The total number of contracts awarded to DBEs, SBEs, MBEs, and WBEs;
- b. The dollar value of any and all contracts awarded to DBEs, SBEs, MBEs, and WBEs; and
- c. The actual dollars expended by Broward County and received by certified DBEs, SBEs, MBEs, and WBEs, as contractors, subcontractors, and joint venturers.

The Director of the Small Business Development Division shall receive reports from the using agencies regarding participation by MBE, WBE, SBE, and DBE firms, and shall compile the information in paragraphs (1)-(3) on a quarterly basis and present it to the County Administrator and County Commission. The Director shall provide a copy of such report to the County Attorney, County Auditor, and such other county departments as the County Administrator may designate.

(5) Contract goals established for DBE, SBE, MBE, or WBE participation may be met:

- a. By the contractor's status as DBE, SBE, MBE, or WBE;
- b. By a joint venture with one (1) or more DBEs, SBEs, MBEs, or WBEs as prime contractor limited to the extent of the DBE, SBE, MBE, or WBE participation in such joint venture;
- c. By subcontracting a portion of the work to one (1) or more DBEs, SBEs, MBEs, or WBEs; or
- d. By the purchase of materials or services necessary for the contract work from one (1) or more DBEs, SBE, MBEs, or WBEs.

(e) *Thresholds.* All contracts having a dollar value of \$250,000 or less shall be subject to the Small Business Enterprise Sheltered Market Program. Contracts having a dollar value in excess of \$250,000 must be considered for the application of goals for MBE and WBE participation, SBE initiatives, potential mentorship opportunities, and DBE participation where the project is funded in whole or in part with federal funds.

(f) *Small Business Sheltered Market Program.*

(1) The County's most recent disparity study outlined a need for increased usage of small businesses in the procurement of construction, professional and business services, and commodities. To meet this need, the Board finds that the institution of a locally-focused sheltered market program for small businesses would benefit the County's procurement program by providing a more level playing field for, and greater participation by, all of Broward County's small business enterprises.

(2) Projects within these categories having a contract value of \$250,000 or less will be identified as sheltered market contracts and will be governed by the provisions of this subsection and the regulations adopted in pursuance of this program. Participation shall be limited to certified small business enterprises. A participating certified SBE must have a valid occupational license issued by

Broward County, and the SBE must have possessed such license for at least one (1) year prior to any bid or proposal opening for which the SBE is an applicant. The certified SBE must also have a physical address located within Broward County from where the SBE operates or performs business that is a substantial component of the goods and services being offered to Broward County. A Post Office Box address shall not be used to establish a physical address.

(3) In the event there are no certified small business enterprises available to perform the work or provide the required products and services, this subsection shall not apply to such project.

(4) To the greatest extent feasible, the Purchasing Director will, in consultation with the Director of the Small Business Development Division and the using agency, make reasonable efforts to waive or reduce any bonding requirements applicable to any work identified for small businesses under this subsection.

(5) The County may develop and implement regulations and procedures necessary to carry out the provisions of this subsection.

(6) The Small Business Development Division shall prepare an annual report of the number and values of goods and services provided under this program. The report will be provided to the Board of County Commissioners, County Administrator, County Attorney, County Auditor, and other county agencies as determined by the Division.

(g) *Business Development Program.* This program may be applied to the business development activity of Broward County. The role of Broward County with respect to business development may be further defined by the County Administrator who shall charge the Director of the Small Business Development Division with the development of support and monitoring activities designed to enhance efforts to assist in the production, growth, and management of the material health of business enterprises within Broward County. The Small Business Development Division, in cooperation with department heads of the County, is authorized to develop programs and activities to provide outreach to developing DBE, SBE, MBE, and WBE business enterprises, and to assist the business development of such enterprises. These activities may include, but are not limited to:

(1) Workshops and other group training activities, conducted by the County or by other public or private entities in collaboration with the County;

(2) Development of a resource directory containing information on obtaining assistance in bonding, financial management, or accounting to be provided to small businesses within the Broward County metropolitan area design and construction industries;

(3) Development of a mentoring program in which small business enterprises are paired with established businesses within the Broward County metropolitan area design and construction industries, focusing on the development of industry skills by small business enterprises; and

(4) Such other programs or activities as the director may from time to time recommend.

(Ord. No. 2004-07, § 6, 4-13-04)

**Sec. 20-280. Construction services; architectural and engineering services; professional services; business services; commodities; and concession contracts.**

(a) *Construction Services.* To facilitate the achievement of the annual goals established by the Board for DBE, SBE, MBE, and WBE participation with respect to the procurement of construction services and the award of contracts relating thereto, the County may utilize the several measures as described in Sections 20-279(d) through 20-279(g), Broward County Code, and any other measures adopted by resolution of the Board.

(b) *Architectural and Engineering, and other Professional Services Contracts.* Except as limited by the provisions of the Consultant's Competitive Negotiations Act, section 287.055, Florida Statutes, the County may utilize the several measures as described in Sections 20-279(d) through 20-279(g), Broward County Code, and any other measures adopted by resolution of the Board to facilitate the achievement of the annual goals for DBE, SBE, MBE, and WBE participation in the procurement of architectural and engineering services and the award of contracts relating thereto. Minority-majority joint ventures may be encouraged where goal-setting may not yield desired results.

(c) *Business Services.* To facilitate the achievement of the annual goals established by the Board for DBE, SBE, MBE, and WBE participation with respect to the procurement of general business services and the award of contracts relating thereto, the County may utilize the several measures as described in Sections 20-279(d) through 20-279(g), Broward County Code, and any other measures adopted by resolution of the Board.

(d) *Professional Services.* To facilitate the achievement of the annual goals established by the Board for DBE, SBE, MBE, and WBE participation with respect to the procurement of professional services and the award of contracts relating thereto, the County may utilize the several measures as described in Sections 20-279(d) through 20-279(g), Broward County Code, and any other measures adopted by resolution of the Board. Minority-majority joint ventures and mentorship arrangements shall be encouraged.

(e) *Commodities.* To meet the annual goals for the general purchasing activity of the County, the County will focus on departmental goal achievements. The County may utilize the several measures as described in Sections 20-279(d) through 20-279(g), Broward County Code, and any other measures adopted by resolution of the Board. The County Administrator may take other measures he or she deems appropriate in order to encourage the use of DBEs, SBEs, MBEs, and WBEs by the County's departments, divisions, offices, and other agencies which engage in general purchasing activities.

(f) *Concession Contracts.* The County shall include among those entities solicited for concession bids and proposals available DBE, SBE, MBE, and WBE firms. Participation of DBE, SBE, MBE, and WBE business enterprises shall be included in the concession operations of county-owned or managed facilities to the extent practicable, including participation in concessions at County parks, the convention center, and the County's airports and seaport. In the instance of the

County's airport, the Aviation Department, in consultation with the Director of the Small Business Development Division, shall prepare an airport concession plan which will establish procedures for the inclusion of DBE and SBE participation at the County's airports. The concession plan may include utilization of one (1) or more of the measures provided in Sections 20-279(d) through 20-279(g), Broward County Code, to meet the DBE, SBE, MBE, and WBE annual concession goals established by the Board. The concession plan shall be amended from time to time, as may be necessary.  
(Ord. No. 2004-07, § 7, 4-13-04)

**Sec. 20-281. Contractual provisions; remedies; certification, and regulations.**

(a) *Contractual Provisions.*

(1) Each contract of the County shall include the following clause:

"The contractor agrees not to discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, disability, or sexual orientation in the performance of this contract, the solicitation for or purchase of goods or services relating to this contract, or the subcontracting of work in the performance of this contract. Failure to comply with this requirement is a material breach of the contract, which may result in the termination of this contract or such other remedy as the County deems appropriate."

The County shall also require that any contractor selected to perform work on a County project include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended.

(2) Each contract containing a commitment to DBE, SBE, MBE, or WBE participation shall include:

a. A requirement of periodic reporting, not less than monthly, by the contractor to the County of all expenditures made to achieve compliance with its assigned goals or other contractual conditions agreed to by the contractor pursuant to this act. All reports shall include the name and business address of each DBE, SBE, MBE, and WBE solicited by the contractor to work as a subcontractor or supplier on the contract and the responses received by the contractor to such solicitation; the name and business address of each DBE, SBE, MBE, and WBE actually involved in the contract, a description of the work performed and/or product or service supplied by each DBE, SBE, MBE, or WBE; the date and amount of each expenditure; the DBE, SBE, MBE, or WBE status of any contractor performing any portion of the contract; and any other information requested by the County which may assist the County in determining the contractor's compliance with its contractual obligations, or may assist in the implementation and enforcement of this act. The submission of the report required by this subparagraph shall be a condition for payment of the contractor.

b. Remedies for the contractor's noncompliance with the commitment to DBE, SBE, MBE, or WBE participation, including an agreement to pay damages to the

DBE, SBE, MBE, or WBE which did not participate pursuant to the contractor's commitment due to no fault of the DBE, SBE, MBE, or WBE, and by the willful actions of the contractor. The unexcused reduction of DBE, SBE, MBE, or WBE participation, in connection with a contract including any modification thereof, shall entitle the affected DBE, SBE, MBE, or WBE to damages pursuant to such agreement. If a subcontractor, material supplier, or other similarly-situated person institutes an arbitration proceeding claiming noncompliance with this law by the contractor, then only in such event shall the remedies include an undertaking by the contractor to submit any dispute concerning such damages to binding arbitration by an independent arbitrator. However, binding arbitration shall not be available as to any dispute between the contractor and any department or agency of the Broward County Board of County Commissioners; nor shall Broward County incur any cost, fee, or liability relative to any arbitration proceedings. An arbitrator may award reasonable attorney's fees and costs against a nonprevailing party. Nothing herein shall be construed to limit the rights of and remedies available to the Broward County Board of County Commissioners, including the right to seek its own damages pursuant to the contract.

c. Uniform provisions permitting the termination of the contract by the County upon the disqualification of the contractor if:

1. The contractor's status as DBE, SBE, MBE, or WBE was a factor in the award of the contract, and such status was misrepresented by the contractor;
2. The contractor obtained the contract award or attempted to meet its contractual obligations through fraud, misrepresentation, or material misstatement.

Any contractor who is determined to have engaged in actions or conduct described in subparagraphs c.1 and c.2 shall be subject to debarment for a period of time set by the Director of Purchasing in accordance with the Broward County Procurement Code. The Director of the Small Business Development Division, in consultation with the Director of Purchasing, shall be responsible for conducting any investigation necessary under this subparagraph.

d. Uniform provisions permitting termination of the contract by the County upon the disqualification of any DBE, SBE, MBE, or WBE subcontractor or supplier of goods or services if:

1. The subcontractor's, subconsultant's, or supplier's status as DBE, SBE, MBE, or WBE was a factor in the award of the contract, and the status of the subcontractor, subconsultant, or supplier was misrepresented by the contractor, subcontractor, subconsultant, or supplier; or
2. The subcontractor, subconsultant, or supplier attempted to meet its contractual obligations through fraud, misrepresentation, or material misstatement.
3. In the event the contractor is determined to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the status of the disqualified subcontractor, subconsultant or supplier, the contractor shall not be awarded DBE, SBE, MBE, or WBE participation credit.

Any contractor, subcontractor, subconsultant, or supplier who is determined to have engaged in actions or conduct described in subparagraphs d.1, d.2, and d.3 shall be subject to debarment for a period of time set by the Director of Purchasing in accordance with the Broward County Procurement Code. The Director of the Small Business Development Division, in consultation with the Director of Purchasing, shall be responsible for conducting any investigation necessary under this subparagraph.

e. Uniform provisions allowing the County access to the contractor's books and records including, without limitation, payroll records, tax returns and records, and books of account, on five (5) business days' notice, to allow the County to determine the contractor's compliance with its commitment to DBE, SBE, MBE, and WBE participation and the status of any DBE, SBE, MBE, or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the Broward County Board of County Commissioners for any purpose.

(b) *Remedies.* The remedies available against a noncompliant contractor shall include the remedies set forth in paragraph (a)(2), and such other remedies as the Board may adopt by resolution.

(c) *Certification.*

(1) The County shall establish uniform procedures for certification and recertification of DBE, SBE, MBE, or WBE consistent with the provisions of this act. The County may participate in certification reciprocity with other federal, state, and local jurisdictions provided that the County's standard requirements for certification are maintained in reciprocity. However, DBE firms certified in other jurisdictions shall be recognized if certification was obtained from a jurisdiction that is a recipient of FAA, FTA, or FHWA funds from the United States Department of Transportation and such certification was obtained in accordance with the standards set forth in Title 49 C.F.R. Parts 23 and 26, as amended.

(2) The County shall maintain a directory of certified DBEs, SBEs, MBEs, and WBEs, describing them by name, business address, classification, and type of business. A business which meets all the requirements to be certified as a DBE, SBE, MBE, or WBE under this act will be listed in the directory.

(d) *Regulations.*

(1) The County shall review each proposed contract modification request that, by itself or aggregated with previous modification requests, increases the contract value by ten percent (10%) of the initial contract value, or Fifty Thousand Dollars (\$50,000), whichever is less, for opportunities to include or increase the participation of DBEs, SBEs, MBEs, or WBEs, already involved in the contract. The contractor shall demonstrate that it makes good faith efforts to include DBE, SBE, MBE, or WBE participation in change order work and shall report such efforts to the Small Business Development Division.

(2) A contractor may not deviate from the DBE, SBE, MBE, or WBE schedule of participation approved by the departmental or division liaison or the Small Business Development Division without first obtaining the approval of the liaison or Division, as may be applicable. If a contractor fails to obtain the necessary

prior approval to delete from or add to the DBE, SBE, MBE or WBE schedule of participation, the contractor may not receive credit for the participation of that DBE, SBE, MBE, or WBE. A contractor's deviation from its schedule of participation shall be reported to the applicable Selection and Negotiation Committee and the County Commission.

(3) The County shall consider the extent of each bidder's commitment to DBE, SBE, MBE, and WBE participation, as further evidence of the responsibility of the bidder.

(4) The Small Business Development Division shall provide notice to any DBE, SBE, MBE, and WBE firm, which has been identified as a subcontractor or subconsultant on a County-procured project, of the provisions of the act, including the right of arbitration provided in subsection (a)(2)b. of this section.

(5) The County shall include DBEs, SBEs, MBEs, and WBEs on its solicitation mailing lists, and encourage that said firms be solicited for suitable contracts. The County shall make available to bidders, upon request, a list of certified DBEs, SBEs, MBEs, and WBEs that are available to perform the work required by the bid specifications.

(6) In contracts involving DBEs, SBEs, MBEs, or WBEs, the County may expedite payments, and reduce the retainage where appropriate, in accordance with the Broward County Procurement Code.

(7) The County may also take reasonable steps to ensure that the project-based bonding requirements required by prime contractors or consultants are in keeping with the amount of work to actually be performed by participating DBEs, SBEs, MBEs, and WBEs in any contracted project. This compliance activity will be the responsibility of the department or division liaison of the using agency.

(8) The County shall develop and issue procedures necessary to implement the provisions of this act. The County shall also prepare appropriate bid documents consistent with this act and any adopted regulations. The Director of the Small Business Development Division shall be responsible specifically for enforcing the provisions of this act and regulations and procedures adopted to accomplish the purposes of this act.

(9) The Director of the Small Business Development Division may, in consultation with the County Administrator, implement regulations and procedures relating to the development and submission of equal opportunity plans, affirmative action plans, or any DBE, SBE, MBE, or WBE plans by a vendor seeking or doing business with Broward County.

(10) The Director of Purchasing shall be responsible specifically for ensuring that the Procurement Code and bid documents are consistent with this act.

(11) The County shall publicize the program through appropriate means in order to attract and maintain a pool of certified DBEs, SBEs, MBEs, and WBEs. If, in connection with a particular contract, either during the bid or award process before or during negotiation of the contract, or during the performance of the contract, the departmental or division liaison or the Director of the Small Business Development Division determines that it is impracticable or excessively costly to obtain qualified DBEs, SBEs, MBEs, or WBEs to perform sufficient work to fulfill the contractual commitment, the departmental or division liaison or the

Director of the Small Business Development Division may reduce the commitment to DBE, SBE, MBE, and WBE participation in the contract as may be appropriate. The Director of the Small Business Development Division shall, in consultation with the County Administrator, establish and implement procedures to determine whether or not such a reduction or elimination is appropriate, setting forth the standards to be used and procedures for appeal.

(12) For purposes of determining compliance with any of the requirements of DBE, SBE, MBE, or WBE participation in contracts under the several programs authorized by this act, contracts with DBEs, SBEs, MBEs, or WBEs that involve performing the duties of a broker shall not be counted towards the MBE percentage or the WBE percentage.

(13) Concession contracts shall be eligible for inclusion in the Small Business Enterprise Sheltered Market Program.

(14) If the Small Business Development Division determines, after notice and a hearing, that a contractor, DBE, SBE, MBE, or WBE has made misrepresentations regarding the utilization of a DBE, SBE, MBE, or WBE, or has colluded with another in making such misrepresentations or material omissions, the contractor or the DBE, SBE, MBE, or WBE, as the case may be, shall be recommended to be disqualified from contracting or subcontracting on future contracts for a period of up to three (3) years. The persons or firms determined to have violated any section of this act shall also be subject to suspension or debarment under the Broward County Procurement Code. The County shall maintain a list of such disqualified entities which shall be available for public inspection. In the event that a contractor submitting a bid is determined not to have been involved in any misrepresentation of status of a disqualified subcontractor included in the bid, the County may allow the contractor to discharge the disqualified subcontractor, and identify and engage a qualified subcontractor as its replacement for inclusion in the bid. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.

(15) Notwithstanding any other provision to the contrary, the Board may, by resolution, adopt administrative rules and regulations necessary to implement this act.

(Ord. No. 2004-07, § 8, 4-13-04)

Secs. 20-282--20-290. Reserved.