ORDINANCE NO. 2020-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE BROWARD COUNTY BUSINESS OPPORTUNITY ACT RELATING TO COUNTY BUSINESS ENTERPRISE ("CBE") RESERVE PROCUREMENTS; AMENDING SECTIONS 1-81.1 AND 1-81.3 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") ADDRESSING SOLICITATIONS INVOLVING CBE RESERVE PROCUREMENTS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, the Broward County Business Opportunity Act of 2012 allows certain contracts to be reserved for County Business Enterprise ("CBE") certified firms to allow CBEs to gain practical experience as prime contractors;

WHEREAS, the County recognizes the need for and importance of CBE reserve procurements as a mechanism for CBEs to gain experience, but the County also recognizes the obligation to account for public funds and therefore seeks to establish certain limits to ensure that CBE reserve awards are generally similar in both rate and quality with the open market for such goods or services; and

WHEREAS, the Broward County Board of County Commissioners has determined that amending Sections 1-81.1 and 1-81.3 of the Broward County Code of Ordinances, pertaining to CBE reserve procurements, is appropriate at this time,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Coding: Words in {strikethrough} type are deletions from existing text. Words in {underline} type are additions.
Section 1. Section 1-81.1 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 1-81.1. Objectives and definitions.

... 

(c) Program definitions.

... 

(2) Bid or Proposal means a response to any County procurement solicitation.

... 

Section 2. Section 1-81.3 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 1-81.3. CBE goals and reserves.

... 

(f) Solicitations Involving Reserves. When a CBE reserve is established in connection with a County solicitation, CBEs and nonCBEs may respond to the solicitation. If a CBE with capacity to perform the work submits a responsive and responsible Bid or Proposal, the work will be awarded to the CBE that submits the lowest responsive and responsible Bid, or the highest-ranked responsive and responsible Proposal, subject to the language stated below (and consistent with all applicable terms and conditions of the County's Procurement Code and subject to entering into an agreement acceptable to the County). The CBE with the lowest responsive and responsible Bid, or the highest-ranked responsive and responsible Proposal, as compared to all other CBEs (the "CBE Presumptive Awardee") shall be awarded the contract if the CBE Presumptive Awardee meets the following requirements, as applicable:
A. Monetary Differential: The total Bid or Proposal amount of the CBE Presumptive Awardee: (a)(i) does not exceed Three Million Dollars ($3,000,000) and (ii) does not exceed the total amount of the lowest responsive and responsible Bid, or the total amount of the highest-ranked responsive and responsible Proposal, as applicable, from a nonCBE by more than ten percent (10%); or (b)(i) exceeds Three Million Dollars ($3,000,000) and (ii) does not exceed the total amount of the lowest responsive and responsible Bid, or the total amount of the highest-ranked responsive and responsible Proposal, as applicable, from a nonCBE by more than five percent (5%).

B. Points Differential: For competitive solicitations in which the Proposals are assigned point totals, the total points assigned to the CBE Presumptive Awardee is not more than ___ percent (___%) less than the total points assigned to the highest-ranked responsive and responsible nonCBE. If the CBE Presumptive Awardee does not meet the above requirements, as applicable, then the award shall be made to the nonCBE that submits the lowest responsive and responsible Bid, or the highest-ranked responsive and responsible Proposal, provided the Director of Purchasing determines the total amount of the Bid or Proposal is fair and reasonable. If a nonCBE is awarded the contract because no CBE with capacity to perform the work submits a responsive and responsible Bid or Proposal, a nonCBE with the lowest responsive and responsible Bid or the highest-ranked responsive and responsible proposal, as applicable, may be awarded or because the CBE Presumptive Awardee does not meet the applicable requirements stated above, the contract with the nonCBE must include at least a twenty-five percent (25%) CBE goal.

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(unless the CBE goal is waived or otherwise modified by Board action), or the County may reject all \underline{bBids and responses or Proposals} submitted.


Section 3. Severability.

If any portion of this Ordinance is determined by any court to be invalid, the invalid portion will be stricken, and such striking will not affect the validity of the remainder of this Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be legally applied to any individual, group, entity, property, or circumstance, such determination will not affect the applicability of this Ordinance to any other individual, group, entity, property, or circumstance.

Section 4. Inclusion in the Broward County Code of Ordinances.

It is the intention of the Board of County Commissioners that the provisions of this Ordinance become part of the Broward County Code of Ordinances as of the effective date. The sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase to the extent necessary in order to accomplish such intention.

Section 5. Effective Date.

This Ordinance is effective as of the date provided by law.

ENACTED

FILED WITH THE DEPARTMENT OF STATE

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EFFECTIVE

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By /s/ __________________________ 00/00/2020
Sandy Steed (date)
Assistant County Attorney

By /s/ __________________________ 00/00/2020
Nathaniel A. Klitsberg (date)
Senior Assistant County Attorney