

PROPOSED

RESOLUTION NO. 2018-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO COUNTY PROCUREMENT AND CONTRACTING OPPORTUNITIES FOR COUNTY BUSINESS ENTERPRISES ("CBEs") AND SMALL BUSINESS ENTERPRISES ("SBEs"); AMENDING SECTIONS 19.40.1, 19.40.2, 19.40.6, AND 19.40.9, AND REPEALING SECTIONS 19.40.4, 19.40.5, AND 19.40.7 OF THE BROWARD COUNTY ADMINISTRATIVE CODE ("ADMINISTRATIVE CODE"), TO ELIMINATE PROVISIONS RENDERED UNNECESSARY BY RECENT AMENDMENTS TO THE BROWARD COUNTY BUSINESS OPPORTUNITY ACT OF 2012; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE ADMINISTRATIVE CODE, AND AN EFFECTIVE DATE.

WHEREAS, the County has determined that amending Sections 19.40.1, 19.40.2, 19.40.6, and 19.40.9, and repealing Sections 19.40.4, 19.40.5, and 19.40.7 of the Broward County Administrative Code, relating to County procurement and contracting opportunities for business entities certified as either a County Business Enterprise ("CBE") or a Small Business Enterprise ("SBE"), is appropriate at this time, NOW, THEREFORE,

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

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscoring type are additions.

1 Section 1. Section 19.40.1 of the Broward County Administrative Code is
2 hereby amended to read as follows:

3 **19.40.1. General Provisions, Purposes, Construction, and Application.**

4 (a) These administrative procedures shall be known as the "Broward County
5 Business Opportunity Act Administrative Procedures."

6 (b) The Program Director shall be responsible for:

7 (1) Administration and enforcement of the Business Opportunity Act of 2012
8 (the "Act");

9 . . .

10 (4) Certification of business entities as CBE and SBE firms pursuant to the
11 requirements of the Act, and review of such certifications;

12 . . .

13
14 Section 2. Section 19.40.2 of the Broward County Administrative Code is
15 hereby amended to read as follows:

16 **19.40.2. Objectives and Definitions.**

17 The following objectives and definitions apply to administration of the CBE and
18 SBE programs:

19 (a) *Affiliation.*

20 (1) A firm may not be certified as a CBE or SBE if the firm, including all
21 affiliated firms, exceeds the size standards of the Act for CBEs or SBEs,
22 as applicable.

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1 (b) ~~Commercially Useful Function.~~ A firm does not perform a commercially-
2 useful function (or commercially-acceptable function) unless it does all of the following:

3 (1) ~~Provides a distinct element of the work under a contract;~~

4 (2) ~~Provides management of the work and supervision of staff assigned to~~
5 ~~complete the element(s) of work assigned;~~

6 (3) ~~Performs work under the contract that is consistent with the services and~~
7 ~~functions generally provided by the firm to other entities in the normal~~
8 ~~course of its business (e.g., an engineering firm providing engineering~~
9 ~~design provides a commercially useful function; a firm offering consulting~~
10 ~~services that are vague or not sufficiently detailed, which deviate from the~~
11 ~~firm's normally offered services, would be suspect under this part); and~~

12 (4) ~~Performs at least fifty percent (50%) of the work assigned with its own~~
13 ~~employees under its direct management and supervisory control.~~
14 ~~Conversely stated, the firm may not subcontract more than fifty percent~~
15 ~~(50%) of the work to be performed. The percentage of self-performed~~
16 ~~work may vary for certain specialties, including general contractors based~~
17 ~~on normal industry practices. However, credit (toward meeting assigned~~
18 ~~contract goals) for certified firm participation is only granted for that portion~~
19 ~~actually performed by certified firms. Note that in projects involving a CBE~~
20 ~~reserve, all work associated with the reserve must be performed by CBE~~
21 ~~firms in order to be considered responsible under the reserve requirement.~~

22 (e) ~~Continuous Operating Presence.~~ In determining whether a firm has
23 sufficient employees in Broward County to perform all required work, as required under
24 the Act, the applicant firm must have been in operation and employing at least one (1)

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1 ~~full-time employee or equivalent (staffing at forty (40) hours per week) engaged in the~~
2 ~~primary specialty of the firm, at its Broward County location, for a period of not less than~~
3 ~~one (1) year. As part of evaluating whether a firm is continuously operating in Broward~~
4 ~~County, applicant firms that would be reasonably expected to have equipment in their~~
5 ~~trade(s) must locate said equipment at their Broward County location to be eligible for~~
6 ~~certification.~~

7 ~~(d)~~ (b) *Certification Notice of Change.*

8 (1) All certified firms shall notify the OESBD certification unit of any changes
9 in ownership or management within thirty (30) calendar days ~~of~~ after the
10 change. Failure to notify OESBD of such changes constitutes grounds for
11 decertification. Notification shall be by mail, to the Office of Economic &
12 Small Business Development, Certification Services, 115 S. South
13 Andrews Avenue, Suite A680, Fort Lauderdale, ~~FL~~ Florida 33301, or by
14 email to sbcert@broward.org.

15 (2) OESBD shall update the certification directory with certifications,
16 renewals, changes of business addresses, changes of phone numbers,
17 and other information. It is the responsibility of the certified firm to assure
18 that OESBD has current/correct information, and to ensure that these
19 changes do not make the firm ineligible for certification.

20 ~~(e)~~ (c) *Operational and Management Control.* Both operational and management
21 control by the firm must be established for a firm to be eligible for certification.

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1 Section 3. Section 19.40.4 of the Broward County Administrative Code is
2 hereby repealed in its entirety.

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4 Section 4. Section 19.40.5 of the Broward County Administrative Code is
5 hereby repealed in its entirety.

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7 Section 5. Section 19.40.6 of the Broward County Administrative Code is
8 hereby amended to read as follows:

9 **19.40.6. Satisfaction of CBE Goals; Good Faith Effort Post-Award Review.**

10 (a) ~~*Evaluation of Solicitation Responses.*~~

11 (1) ~~A solicitation for a project with assigned CBE goals requires that firms
12 include, as a matter of responsibility, a utilization plan consisting of
13 completed letters of intent between the responding prime vendor and
14 intended subcontractors and/or sub-consultants, to show that the prime
15 vendor will meet the goal for the project, or to demonstrate through
16 accompanying documentation that the prime vendor made a good faith
17 effort to meet the goal.~~

18 (2) ~~Pre-Award Compliance Evaluation. OESBD shall review a response to a
19 solicitation to determine if it meets the CBE goal set for that solicitation.~~

20 (3) ~~Corrections to required forms under responsibility. As compliance with the
21 Act is a matter of responsibility, those firms that do not fully respond to the
22 requirements for compliance during the allowed period, including
23 providing fully executed LOI forms sufficient to meet the goal established,
24 or alternatively show good faith effort consistent with the requirements of~~

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1 the Act, shall be deemed not responsible to the Act's requirements and to
2 any the solicitation that includes the goal under the Act.

3 a. In OESBD's evaluation under responsibility, firms are grouped into
4 three categories: a) those meeting the goal; b) those showing good
5 faith effort in order to be responsible or reviewed for responsibility;
6 and c) others. Firms failing to meet the goal or show good faith
7 effort are not responsible. Firms providing no documentation of
8 intent to meet the goal or good faith effort are not entitled to a
9 three day period to repair their submittal on matters related to the
10 Act.

11 b. Should OESBD discern an attempt to meet the goal through the
12 LOI forms provided, the firm may be provided the three day period
13 to correct those forms if there are any errors. Otherwise, a firm will
14 be evaluated for the good faith effort they are able to document
15 (either documentation provided with the initial response or
16 documentation requested and received within the three day period,
17 if applicable).

18 c. With regard to the good faith effort review, when good faith effort
19 documentation is not in evidence, OESBD may request that a firm
20 provide documentation of those activities that it made prior to the
21 submittal date.

22 d. Good faith efforts are determined on a case by case basis.
23 Responses may be compared to one another to establish whether
24 a good faith has been demonstrated.

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1 (b) ~~Post-Award Review.~~

2 (1) (a) OESBD will monitor contract compliance post-award throughout the life of
3 a project, to and including a close-out evaluation.

4 (2) (b) OESBD will periodically produce reports on each contract with goals
5 throughout the project, highlighting achievement of certified firm participation.

6 (3) (c) Completion of this requirement necessitates utilization reporting for
7 subcontracting firms on each goal project. Utilization reporting is the responsibility of
8 the pPrime eContractor/pPrime eConsultant on the project. Failing to provide utilization
9 reporting consistent with the Act's requirement for monitoring shall constitute a violation
10 of the Act.

11 (4) (d) To the extent changes in a subcontracting team are necessary and
12 permissible, pPrime eContractors are responsible for showing good faith effort in
13 seeking to meet the level of participation originally agreed upon.

14
15 Section 6. Section 19.40.7 of the Broward County Administrative Code is
16 hereby repealed in its entirety.

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18 Section 7. Section 19.40.9 of the Broward County Administrative Code is
19 hereby amended to read as follows:

20 **19.40.9. Denials of Certification, ~~Decertification, and Appeals.~~**

21 (a) ~~Denial of Certification.~~

22 (1) (a) OESBD will deny certification, subject to appeal, to any business entity
23 that fails to meet the requirements of the applicable program. Denial of certification may
24 result from any such failure, including the following:

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- 1 a. (1) Failure to qualify as a certified firm under the eligibility provisions of the
2 Act;
- 3 ~~b.~~ (2) Failure to provide sufficient information to OESBD on which a
4 determination of eligibility ~~can~~ may be based;
- 5 ~~c.~~ (3) Refusal to permit on-site inspections;
- 6 ~~d.~~ (4) Refusal to comply with a request for information or access to records
7 pertinent to the application for certification;
- 8 ~~e.~~ (5) Missing deadlines for responses as required by OESBD; or
- 9 ~~f.~~ (6) The applicant owners are determined by OESBD to not own, control, and
10 manage the business.

11 ~~(2)~~ (b) A business owner denied certification is ineligible to reapply for
12 certification for a period of six (6) months ~~from~~ after the date of the denial.

13 ~~(b) Decertification. OESBD may, at any time after it has certified a firm,
14 decertify a firm if the firm no longer meets the eligibility criteria. Firms may be
15 decertified for reasons including the following:~~

- 16 ~~(1) A certified firm has changed to the extent the business is no longer owned
17 and controlled by the applicant owners, as defined by the Act and these
18 procedures;~~
- 19 ~~(2) An investigation, initiated by a third party complaint, reveals evidence of
20 the firm's failure to satisfy the requirements set forth in the Act and these
21 procedures;~~
- 22 ~~(3) It is determined at any time that the firm has misrepresented itself in
23 meeting the requirements for certification; or~~
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1 ~~(4) The firm has been suspended or debarred as a vendor by Broward~~
2 ~~County. In this instance, such decertification will be in effect for the period~~
3 ~~of the suspension/debarment.~~

4 ~~(c) Appeals. This process governs appeals of decisions not to certify a firm~~
5 ~~as a CBE or SBE, and decisions to decertify a firm as a CBE or SBE.~~

6 ~~(1) A written decision not to certify or to decertify (collectively, "Decision") is~~
7 ~~final unless appealed consistent with the following provisions. An affected~~
8 ~~firm may administratively appeal a Decision by filing a written notice of~~
9 ~~administrative appeal within ten (10) calendar days of the date of such~~
10 ~~Decision. The notice of administrative appeal shall be sent to the Program~~
11 ~~Director at the address identified in the Decision notice.~~

12 ~~(2) An administrative appeal must clearly articulate the reason(s) why the~~
13 ~~Decision was erroneous and provide any and all documentation that the~~
14 ~~affected firm believes demonstrates that the firm meets all requirements~~
15 ~~for certification or continuing certification, as applicable.~~

16 ~~(3) The Program Director will determine whether the grounds for an~~
17 ~~administrative appeal are sufficient, and, if the Director so determines,~~
18 ~~shall set a date for a hearing. If the Program Director determines that the~~
19 ~~grounds asserted do not justify a hearing, the Program Director shall issue~~
20 ~~a written final notice of certification/decertification (as applicable). The~~
21 ~~written final notice shall be mailed to the affected firm within five (5) days~~
22 ~~after the determination is made.~~

23 ~~(4) If a hearing is held, the Program Director or designee shall determine~~
24 ~~whether to uphold or reverse the Decision. That determination shall be~~

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1 ~~stated in a written final notice of certification/decertification (as applicable).~~
2 ~~The written final notice shall be mailed to the affected firm within five (5)~~
3 ~~days after the determination is made.~~

4 (5) ~~An affected firm may seek judicial review of a written final notice by filing a~~
5 ~~petition for writ of certiorari in the Seventeenth Judicial Circuit Court in and~~
6 ~~for Broward County, Florida.~~

7 (6) ~~A firm that does not timely appeal a Decision, or whose appeal and~~
8 ~~subsequent judicial review (if applicable) are unsuccessful, may not~~
9 ~~reapply for certification for a period of twelve (12) months after the date of~~
10 ~~the Decision.~~

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12 Section 8. REPEAL.

13 All resolutions or parts of resolutions that are inconsistent or in conflict with this
14 Resolution are hereby repealed as to said inconsistencies and conflicts.

15
16 Section 9. SEVERABILITY.

17 If any portion of this Resolution is determined by any Court to be invalid, the
18 invalid portion shall be stricken, and such striking shall not affect the validity of the
19 remainder of this Resolution. If any Court determines that this Resolution, or any
20 portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies),
21 property(ies), or circumstance(s), such determination shall not affect the applicability
22 hereof to any other individual, group, entity, property, or circumstance.

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