

# **Item # 73**

**Substitute Proposed Ordinance**

**ADDITIONAL MATERIAL**

**Public Hearing**

**OCTOBER 20, 2020**

**SUBMITTED AT THE REQUEST OF**

**OFFICE of the COUNTY**

**ATTORNEY**

**MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Michael J. Kerr, Deputy County Attorney /s/ *Michael J. Kerr*

**DATE:** October 12, 2020

**RE:** **Agenda Item No. 73 on the October 20, 2020, County Commission Agenda Relating to CBE and SBE Eligibility Requirements**  
**CAO File: 535530**

Item No. 73 on the Board's October 20, 2020, agenda is a public hearing to consider an amendment that would exclude certain amounts paid by a CBE or SBE to their subcontractors from the calculation of the CBE's or SBE's average annual gross revenue. Entities retain eligibility as a CBE or SBE in part by not exceeding established caps on average annual gross revenue.

The version of the proposed amendment that printed with the agenda was the version before the Board on October 6. However, based on the Board's discussion on October 6, and concerns expressed by the County Administrator, we have prepared a substitute version of the ordinance, which is attached hereto and will be distributed as additional material for the Board's consideration on October 20.

The previously published version would exclude from the calculation of average annual gross revenue any amounts paid directly by a CBE or SBE to a nonaffiliated subcontractor or subconsultant pursuant to a subcontract resulting from an agreement between the CBE or SBE and the County.

The attached revised version limits this exclusion to amounts paid for work under an architectural or engineering services agreement with the County that a CBE or SBE architectural or engineering firm subcontracts to a nonaffiliated architectural or engineering firm and where no fee or other compensation for such subcontracted work is retained by the CBE or SBE.

Board of County Commissioners  
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Item No. 88 on the October 20 agenda is a motion to direct the County Attorney's Office to work with the Office of Economic and Small Business Development to create a local business preference program for graduates of the CBE program. It is expected that this new program would address some of the reduced impact resulting from the narrowed scope of the substitute ordinance.

The County Administrator and County Attorney will discuss this matter with you during agenda briefings. In the interim, please contact the County Attorney or me (ext. 7566) if you have any questions or need additional information regarding this matter.

MJK/SS/gf  
Attachment

c: Bertha Henry, County Administrator  
Robert Melton, County Auditor  
Andrew J. Meyers, County Attorney

ORDINANCE NO. 2020-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE BUSINESS OPPORTUNITY ACT AND COUNTY BUSINESS ENTERPRISE (“CBE”) AND SMALL BUSINESS ENTERPRISE (“SBE”) ELIGIBILITY REQUIREMENTS; AMENDING SECTION 1-81.2 OF THE BROWARD COUNTY CODE OF ORDINANCES (“CODE”) ADDRESSING ELIGIBILITY REQUIREMENTS FOR CERTIFICATION AS A CBE OR SBE; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Mayor Dale V.C. Holness)

WHEREAS, the Broward County Business Opportunity Act of 2012 establishes certain requirements that entities must meet to be eligible for and maintain County Business Enterprise (“CBE”) or Small Business Enterprise (“SBE”) certification;

WHEREAS, continued certification as a CBE or SBE is subject to limitations on the gross revenues of the CBE or SBE;

WHEREAS, with regard to certain architectural or engineering services, there may be instances where a CBE prime contractor subcontracts to another nonaffiliated provider of architectural or engineering services certain work required to be performed under the agreement between the CBE prime contractor and the County; and

WHEREAS, the Broward County Board of County Commissioners finds that, under certain circumstances, as further reflected below, the eligibility requirements for continued CBE or SBE certification should not be affected by the above-referenced subcontracted work,

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

1 Section 1. Section 1-81.2 of the Broward County Code of Ordinances is hereby  
2 amended to read as follows:

3 **Sec. 1-81.2. Certification standards.**

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

6 (b) *CBE Eligibility Requirements.* An entity is eligible for certification as a CBE  
7 if it meets the following criteria:

- 8 (1) The entity shall, when combined with any and all Affiliates, have ~~annual an~~ an  
9 average annual gross receipts revenue no greater than Five Million Dollars  
10 (\$5,000,000), calculated over the previous three (3) calendar years, unless  
11 that entity is an architectural or engineering firm, a construction firm, or an  
12 entity offering to sell commodities to the County; For architectural or  
13 engineering firms, the entity shall, when combined with any and all Affiliates,  
14 have an average annual gross revenue no greater than Five Million Dollars  
15 (\$5,000,000), calculated over the previous three (3) calendar years;  
16 however, the gross revenue calculation shall exclude amounts paid for work  
17 under an architectural or engineering services agreement with the County  
18 that the CBE Prime Contractor subcontracts to a nonaffiliated architectural  
19 or engineering firm and where no fee or other compensation for such  
20 subcontracted work is retained by the CBE Prime Contractor. a A  
21 construction firm (when combined with any and all Affiliates) shall have  
22 ~~annual an~~ an average annual gross receipts revenue no greater than Nine  
23 Million Dollars (\$9,000,000), calculated over the previous three (3) calendar  
24 years; ~~†~~ To be eligible for certification, an entity offering to sell commodities

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

1 to the County (when combined with any and all Affiliates) must employ  
2 twenty-five (25) or fewer permanent full-time employees but is not subject  
3 to any limitation with regard to gross revenue for certification as a  
4 commodities firm;

5 . . .

6 (c) *SBE Eligibility Requirements.* An entity is eligible for certification as an SBE  
7 if it meets the following criteria:

8 (1) The entity shall employ fifteen (15) or fewer permanent full-time employees.

9 In addition, eligibility is subject to the following gross revenue limitations:  
10 Professional consultants, when combined with any and all Affiliates, shall  
11 have less than Five Hundred Thousand Dollars (\$500,000) in average  
12 annual gross revenue, calculated over the previous three (3) calendar  
13 years, unless that entity is a professional consultant providing architectural  
14 or engineering services. For professional consultants providing architectural  
15 or engineering services, the entity shall, when combined with any and all  
16 Affiliates, have an average annual gross revenue less than Five Hundred  
17 Thousand Dollars (\$500,000), calculated over the previous three (3)  
18 calendar years; however, the gross revenue calculation shall exclude  
19 amounts paid for work under an architectural or engineering services  
20 agreement with the County that the SBE professional consultant  
21 subcontracts to a nonaffiliated architectural or engineering firm and where  
22 no fee or other compensation for such subcontracted work is retained by  
23 the SBE professional consultant. Entities providing construction services  
24 shall, when combined with any and all Affiliates, have less than Three

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1 Million Dollars (\$3,000,000) in average annual gross revenue calculated  
2 over the previous three (3) calendar years. Entities providing services other  
3 than professional consulting or construction shall, when combined with any  
4 and all Affiliates, have less than One Million Dollars (\$1,000,000) in average  
5 annual gross revenue calculated over the previous three (3) calendar years.  
6 Entities offering to sell commodities to the County shall be subject to the  
7 employee limitation above but are not subject to any gross revenue  
8 limitation with regard to certification as a commodities firm;

9 . . .

10  
11 Section 2. Severability.

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

18  
19 Section 3. Inclusion in the Broward County Code of Ordinances.

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

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underscored type are additions.

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Section 4. Effective Date.

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

ENACTED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

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

By /s/ Sandy Steed 10/09/2020  
Sandy Steed (date)  
Assistant County Attorney

By /s/ Annika E. Ashton 10/09/2020  
Annika E. Ashton (date)  
Deputy County Attorney

SS/jc  
Substitute - CBE Eligibility Ord.doc  
10/09/2020  
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