

PROPOSED

ORDINANCE NO. 2020-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE BROWARD COUNTY BUSINESS OPPORTUNITY ACT AND 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 competitive in both rate and quality with open market pricing 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:

1 Section 1. Section 1-81.1 of the Broward County Code of Ordinances is hereby
2 amended to read as follows:

3 **Sec. 1-81.1. Objectives and definitions.**

4 . . .

5 (c) *Program definitions.*

6 . . .

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

8 . . .

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

12 **Sec. 1-81.3. CBE goals and reserves.**

13 . . .

14 (f) *Solicitations Involving Reserves.* When a CBE reserve is established in
15 connection with a County solicitation, CBEs and nonCBEs may respond to the solicitation.
16 If a CBE with capacity to perform the work submits a responsive and responsible Bid or
17 ~~p~~Proposal, the work will be awarded to the CBE that submits the lowest responsive and
18 responsible Bid, or the highest-ranked responsive and responsible ~~p~~Proposal, subject to
19 the conditions stated below (and consistent with all applicable terms and conditions of the
20 County's Procurement Code and subject to entering into an agreement acceptable to the
21 County). The CBE with the lowest responsive and responsible Bid, or with the
22 highest-ranked responsive and responsible Proposal, as compared to all other CBEs (the
23 "CBE Presumptive Awardee"), shall be awarded the contract if the CBE Presumptive
24 Awardee meets the following requirements, as applicable:

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

1 (1) Monetary Differential: The total Bid or Proposal amount of the CBE
2 Presumptive Awardee: (a)(i) does not exceed Three Million Dollars
3 (\$3,000,000) and (ii) does not exceed the total amount of the lowest
4 responsive and responsible Bid, or the total amount of the highest-ranked
5 responsive and responsible Proposal, as applicable, from a nonCBE by
6 more than ten percent (10%); or (b)(i) exceeds Three Million Dollars
7 (\$3,000,000) and (ii) does not exceed the total amount of the lowest
8 responsive and responsible Bid, or the total amount of the highest-ranked
9 responsive and responsible Proposal, as applicable, from a nonCBE by
10 more than five percent (5%); and

11 (2) Points Differential: For competitive solicitations in which the Proposals are
12 assigned point totals, the total points assigned to the CBE Presumptive
13 Awardee is not more than twenty percent (20%) less than the total points
14 assigned to the highest-ranked responsive and responsible nonCBE.

15 If the CBE Presumptive Awardee does not meet the above requirements, as applicable,
16 then the CBE with the next lowest responsive and responsible Bid, or the next
17 highest-ranked responsive and responsible Proposal, as compared to all other CBEs, will
18 be deemed the CBE Presumptive Awardee and awarded the contract if the CBE
19 Presumptive Awardee meets the above requirements, as applicable. If no CBE
20 Presumptive Awardee meets the above requirements, as applicable, the award may be
21 made to the nonCBE that submits the lowest responsive and responsible Bid, or the
22 highest-ranked responsive and responsible Proposal, provided the Director of Purchasing
23 determines the total amount of the Bid or Proposal is fair and reasonable.

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 underscored type are additions.

1 If a nonCBE is awarded the contract because no CBE with capacity to perform the work
2 submits a responsive and responsible Bid or Proposal, ~~a nonCBE with the lowest~~
3 ~~responsive and responsible Bid or the highest-ranked responsive and responsible~~
4 ~~proposal, as applicable, may be awarded the contract with~~ or because no CBE meets the
5 applicable requirements stated above, any contract awarded to a nonCBE must include
6 at least a twenty-five percent (25%) CBE goal (unless the CBE goal is waived or otherwise
7 modified by Board action), or the County may reject all ~~b~~Bids and responses or Proposals
8 submitted.

9 . . .

10
11 Section 3. 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 4. 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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Section 5. Effective Date.

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

ENACTED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

PROPOSED

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

By /s/ Sandy Steed 10/16/2020
Sandy Steed (date)
Assistant County Attorney

By /s/ Nathaniel A. Klitsberg 10/16/2020
Nathaniel A. Klitsberg (date)
Senior Assistant County Attorney

SS/jc
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