

PROPOSED

ORDINANCE NO. 2021-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE BROWARD COUNTY BUSINESS OPPORTUNITY ACT AND RELATING TO PROCUREMENT AND CONTRACTING OPPORTUNITIES FOR COUNTY BUSINESS ENTERPRISES; AMENDING VARIOUS SECTIONS OF CHAPTER 1 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") ADDRESSING THE ESTABLISHMENT OF COUNTY BUSINESS ENTERPRISE ("CBE") GOALS FOR COUNTY CONTRACTS, INCLUDING LONG-TERM GROUND LEASES; 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 ensures that small Broward County-based businesses are provided sufficient opportunities to meaningfully participate in the award of County-funded contracts;

WHEREAS, the County enters into lease agreements with entities for the improvement and development of County-owned property, which lease agreements generally include construction and improvement projects that present an opportunity to establish County Business Enterprise ("CBE") goals and provide certified small businesses the ability to participate in the development and construction process;

WHEREAS, the Broward County Board of County Commissioners ("Board") finds that attaching CBE goals to certain leases of County-owned property will increase the ability of CBEs to participate in the economic development of Broward County; and

WHEREAS, the Board finds that amending Chapter 1 of the Broward County Code of Ordinances, pertaining to the establishment of CBE goals, is appropriate at this time,

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

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4 Section 1. Chapter 1, Division 6 of Article IV of the Broward County Code of
5 Ordinances is hereby amended to read as follows:

6 **DIVISION 6. COUNTY BUSINESS OPPORTUNITY ACT ~~OF 2012~~**

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8 Section 2. Section 1-81 of the Broward County Code of Ordinances is hereby
9 amended to read as follows:

10 **Sec. 1-81. Short title.**

11 This section shall be known and may be cited as the "Broward County Business
12 Opportunity Act ~~of 2012~~" (the "Act").

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14 Section 3. Section 1-81.1 of the Broward County Code of Ordinances is hereby
15 amended to read as follows:

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

17 (a) *Program objectives.*

18 (1) To ensure that small Broward County-based businesses are provided
19 sufficient opportunities to meaningfully participate in the award of
20 County-funded contracts, when permitted by applicable law; and

21 (2) To ensure that only the entities that meet the eligibility criteria stated herein
22 are permitted to participate in the programs established by this Act.

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1 (c) *Program definitions.*

2 (4) *Affiliate* means any corporation, firm, limited liability company, partnership, or other
3 entity that directly or indirectly controls, is controlled by, or is under common control
4 with, the entity applying for or certified as a CBE or SBE (as applicable). Control
5 means (i) ownership, directly or through one (1) or more affiliates, of fifty percent
6 (50%) or more of the shares of stock entitled to vote for the election of directors, in
7 the case of a corporation, or fifty percent (50%) or more of the equity interests in
8 the case of any other type of legal entity; (ii) status as a general partner in the case
9 of a partnership; (iii) any other arrangement whereby a party controls or has the
10 right to control the Board of Directors or equivalent governing body of the entity; or
11 (iv) in the case of a corporation or a partnership, if the above-mentioned applicable
12 level of ownership or control is prohibited in any country where the entity is
13 organized or maintains its headquarters or principal place of business, the
14 maximum ownership or control level for the entity permitted in that country.

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

16 (3) *Bidder* means an entity that submits a response to any County procurement
17 solicitation, including, but not limited to, an invitation to bid ("ITB"), request for
18 letters of interest ("RLI"), request for proposals ("RFP"), and request for
19 qualifications ("RFQ").

20 (4) ~~*Bidder Assurance* means a written pledge, on the Bidder's company letterhead,~~
21 ~~signed by an authorized representative, in which the Bidder (i) agrees to fully~~
22 ~~comply with the requirements of the Act; (ii) acknowledges the CBE goal~~
23 ~~established in the solicitation for the project; and (iii) agrees to engage in Good~~

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1 ~~Faith Efforts, as defined below, to achieve the CBE goal and related requirements~~
2 ~~as stated in the solicitation documents.~~

3 (5) *Board* means the Broward County Board of County Commissioners.

4 (6) *Broker* means an individual or entity that acts merely as an intermediary between
5 the County and prospective suppliers, retailers, or wholesalers of goods, materials,
6 or services. For purposes of the Act, a Broker does not include an individual or
7 entity that owns, operates, or maintains a store, warehouse, or other establishment
8 in which the goods, materials, or services are regularly sold in the ordinary course
9 of business by such individual or entity.

10 (7) *Broward County Small Business Development Program or Program* means the
11 County's initiatives, through OESBD and its procurement process, to aid and assist
12 the interests of small businesses in Broward County, ensure that small businesses
13 have a fair opportunity to participate in County eContracts, preserve free
14 competitive enterprise, and maintain and strengthen the overall economy of
15 Broward County. The Program includes the rules, regulations, and policies
16 delineated in the Act, Chapter 19, Part V of the Broward County Administrative
17 Code, and related administrative procedures.

18 (8) *Commercially Useful Function* means that a CBE or SBE performs the following
19 functions as part of its direct responsibility under a contract with the Prime
20 Contractor and/or the County, as applicable:

- 21 a. Provides a distinct element of the work under the contract;
- 22 b. Provides management of the work assigned by the Prime Contractor and/or
23 the County, as applicable, and supervision of staff designated to complete
24 the elements of the assigned work;

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1 c. Performs work under the contract that is consistent with the services and
2 functions it generally provides to other entities in the normal course of its
3 business (e.g., an engineering firm providing engineering design provides a
4 €Commercially μUseful fFunction; a CBE or SBE offering consulting
5 services that are vague or not sufficiently detailed ~~which~~ and that deviate
6 from its normally offered services; would not satisfy this requirement); and

7 d. Performs at least fifty percent (50%) of the assigned work with its own
8 employees under its direct management and supervisory control.
9 Conversely stated, the CBE or SBE may not subcontract more than fifty
10 percent (50%) of the work to be performed. Subject to the fifty percent (50%)
11 self-performance requirement, the percentage of self-performed work may
12 vary for certain specialties, including general contractors, based on normal
13 industry practices. However, credit (toward meeting assigned CBE goals)
14 for certified entity participation is only granted for that portion actually
15 performed by certified CBEs. Note that in projects involving a CBE or SBE
16 reserve, all work associated with the reserve must be performed by CBEs
17 or SBEs, as applicable, in order to be considered responsible under the
18 reserve requirement or the applicable procurement solicitation.

19 (9) *Continuous Operating Presence* means an entity with a current business tax
20 receipt issued by Broward County; that has a physical address located within the
21 geographical limits of Broward County (not a P.O. Box or address provided by a
22 business service center); that has continuously maintained such address for at
23 least one (1) year prior to the time of application for certification; that, if reasonably
24 expected to have equipment in its trade, has located such equipment in its Broward

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1 County location; that has been in operation and employs at least one (1) full-time
2 employee or equivalent engaged in its primary specialty at its Broward County
3 location for a period of at least one (1) year; and that, as determined by the
4 Program Director, employs sufficient employees in Broward County to perform the
5 work required under a contract covered by this Act. A CBE or SBE may not use a
6 government-owned facility as a business address for purposes of establishing a
7 €Continuous €Operating pPresence unless the CBE or SBE has a lease to occupy
8 such facility.

9 Contract Value means: (a) for Ground Leases, the total cost of the construction
10 and improvements at the leasehold property provided for in the Ground Lease at
11 the time of execution of the lease (and, if applicable, any amendment to the lease),
12 including, but not limited to, engineering, design, and consulting services related
13 to construction, fixtures, furniture, and equipment in buildings or other structures,
14 but excluding any costs or other reimbursable amounts that the Ground Lease
15 provides that the County will pay; and (b) for all other County Contracts, the total
16 amount payable by the County to the Bidder or Prime Contractor, excluding any
17 costs or other reimbursable amounts that the County is required to pay pursuant
18 to the contract.

19 Contractor Assurance means a written pledge, on the Bidder's or Prime
20 Contractor's company letterhead, completed and signed by an authorized
21 representative, in which the Bidder or Prime Contractor (i) agrees to fully comply
22 with the requirements of the Act; (ii) acknowledges the CBE goal established in the
23 solicitation or in the Ground Lease; and (iii) agrees to engage in Good Faith Efforts,
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1 as defined below, to achieve the CBE goal and to comply with the related
2 requirements as stated in the solicitation documents or in the Ground Lease.

3 ~~(10)~~ *County* means Broward County, Florida.

4 ~~(11)~~ *County Business Enterprise* or *CBE* means an entity certified as a CBE by the
5 County as provided herein.

6 *County Contract* means any contract entered into by the County (a) as a result of
7 a competitive solicitation, or (b) that constitutes a Ground Lease for a duration of
8 more than one (1) year.

9 ~~(12)~~ *Good Faith Efforts* means that the Bidder or Prime Contractor, without an intent to
10 defraud or to seek an unfair advantage, took all necessary steps to secure and
11 maximize CBE participation to meet or exceed the established CBE goal for the
12 project. The determination of Good Faith Efforts shall be made by the Program
13 Director upon evaluation of the ~~Bidder's response to the solicitation~~ factors listed
14 in Section 1-81.5(c).

15 *Ground Lease* means a lease agreement between the County and a lessee for
16 County-owned property wherein the lessee is permitted or required to develop,
17 construct upon, or improve the leased property or premises during the lease term.

18 *Letter of Intent* means a document signed by the Bidder or Prime Contractor and
19 a CBE stating that the Bidder or Prime Contractor intends to use the identified CBE
20 to perform a specified scope of work on a project for a certain payment amount or
21 percentage of the work.

22 ~~(13)~~ *OESBD* means the Broward County Office of Economic and Small Business
23 Development.

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1 (~~14~~) *Personal Net Worth* means the value of the assets of an individual after total
2 liabilities (not including contingent liabilities) are deducted. For purposes of CBE
3 or SBE certification, an individual's ~~p~~Personal ~~n~~Net ~~w~~Worth shall not include either
4 the individual's ownership interest in any CBE or SBE applying for certification or
5 certified by the County, or the individual's equity in ~~his or her~~ their primary place of
6 residence.

7 (~~15~~) *Prime Contractor* means an entity awarded a County eContract.

8 (~~16~~) *Program Director* means the Director of OESBD or designee.

9 (~~17~~) *Small Business Enterprise* or *SBE* means an entity certified as an SBE by the
10 County as provided herein.

11 (~~18~~) *Subcontractor* means an entity that enters into a contract with a Prime Contractor
12 to perform work required by a County eContract.

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14 Section 4. Section 1-81.3 of the Broward County Code of Ordinances is hereby
15 amended to read as follows:

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

17 (a) *Establishment of CBE Goal.* A CBE goal of at least twenty-five percent
18 (25%) participation by CBEs is hereby established for each County eContract, except
19 those contracts that are subject to other participation goals other than CBE reserves (e.g.,
20 federal DBE program or SBE reserves), those contracts that are exempt from the
21 County's Procurement Code, those contracts that are otherwise ineligible by state or
22 federal law, and those contracts to which goals are not assigned (e.g., sole source, sole
23 brand, and emergency contracts). However, a CBE goal of at least twenty-five (25%) shall
24 not be required if, at any time, the Board approves a different goal or approves that no

1 CBE goal shall be set, based upon a written ~~OESBD~~ determination by OESBD provided
2 to the Board that establishes at least one (1) of the following:

3 (1) With regard to no CBE goal being set:

4 a. There are fewer than two (2) certified CBEs available to participate
5 in a specific project; or

6 b. There is no work related to the contract that can be performed by a
7 CBE; or

8 (2) There are other documented compelling reasons to assign a lower CBE
9 goal to a particular County eContract; or

10 (3) There is no competitive solicitation associated with the contract.

11 (b) CBE goals shall be set as a percentage of the total ~~value of each eContract,~~
12 ~~excluding any costs or other reimburseables that the County is required to pay to Prime~~
13 ~~Contractors pursuant to each contract~~ Value.

14 (c) *Board waiver of CBE goal.* The Board may waive the application of, or may
15 modify, any CBE goal at any time.

16 (d) A Bidder or Prime Contractor may satisfy the requirements of the Act by
17 meeting the established CBE goal through bona fide, commercially useful participation of
18 CBEs or by showing that the Bidder or Prime Contractor made Good Faith Efforts to
19 achieve the established CBE goal for the project.

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22 Section 5. Section 1-81.5 of the Broward County Code of Ordinances is hereby
23 amended to read as follows:

24 **Sec. 1-81.5. Satisfaction of CBE goals; Good Faith Efforts.**

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(b) *Letters of Intent.*

(1) A Except for Ground Leases, a Bidder's response to the solicitation satisfies the responsibility criteria for the established CBE goal if the Bidder submits completed Letter(s) of Intent, stating all of the following information: that satisfy the established CBE goal with the Bidder's response to the solicitation or within three (3) business days after the County's request.

(2) For Ground Leases, the Prime Contractor must submit Letter(s) of Intent at the same time as the request for the County's approval or notice to proceed for the applicable construction or improvements (if County approval or notice to proceed is not required under the Ground Lease, then at least ten (10) business days prior to commencement of the applicable construction or improvements).

(3) The Bidder's or Prime Contractor's Letter(s) of Intent must include all of the following information:

~~(1)~~ a. The names and addresses of each CBE that ~~would~~ will participate in the contract if awarded to the Bidder;

~~(2)~~ b. A description of the work that each CBE ~~would~~ will perform and the North American Industry Classification System (NAICS) code assigned to each CBE;

~~(3)~~ c. The percentage of the total ~~€Contract~~ Value that the Bidder or Prime Contractor intends to subcontract to each CBE ("CBE Work Percentages"), and whether those percentages cumulatively meet or exceed the established CBE goal;

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1 (4) d. The Bidder's or Prime Contractor's commitment to subcontract the
2 CBE Work Percentages to the identified CBEs, as affirmed in writing
3 by authorized representatives of the Bidder or Prime Contractor and
4 each CBE; and

5 (5) e. A written certification from the Bidder or Prime Contractor that the
6 scope of work proposed to be performed by each CBE is within the
7 field of each CBE's current certification, and that each CBE has
8 stated that it is ready, willing, and able to perform at least the
9 percentage of work allocated to it as listed on the schedule.

10 (c) ~~Bidder~~ Contractor Assurances. Notwithstanding the requirement of a Bidder
11 and Prime Contractor to provide completed Letter(s) of Intent as required in paragraph (b)
12 above, a solicitation may allow a Bidder to submit completed ~~Bidder~~ Contractor
13 Assurances with its response to the solicitation and thereafter submit completed Letter(s)
14 of Intent no later than ~~the timeframe required in the applicable solicitation documents~~
15 three (3) business days after the County's request. However, in order for the Program
16 Director to recommend that the Bidder is responsible regarding the established CBE goal
17 of the solicitation, the Bidder must submit completed Letter(s) of Intent that satisfy the
18 established CBE goal no later than ~~the time frame required in the applicable solicitation~~
19 ~~documents~~ three (3) business days after the County's request.

20 (d) *Determination of Good Faith Efforts.*
21 (1) A Bidder whose response to a solicitation fails to satisfy the requirements
22 of paragraphs (b) and (c) above, as applicable, shall not be denied award
23 of a contract if the Bidder otherwise timely (within ~~the applicable timeframes~~
24 ~~provided in the solicitation~~ three (3) business days after the County's

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1 request) provides documentation demonstrating, as determined by the
2 Program Director, the Bidder's Good Faith Efforts to satisfy the
3 requirements.

4 (2) If a Bidder or Prime Contractor is unable to provide Letter(s) of Intent as
5 required in paragraph (b) above or is unable to meet the CBE goal, the
6 Bidder or Prime Contractor shall provide documentation demonstrating its
7 Good Faith Efforts to meet the CBE goal requirements. In determining
8 whether a Bidder or Prime Contractor has demonstrated Good Faith Efforts
9 under this Act, the Program Director shall consider the quality, quantity, and
10 extent of the various Bidder's or Prime Contractor's efforts ~~that the Bidder~~
11 ~~has made~~ to satisfy the established CBE goal. The Program Director may
12 also consider any representations made by the Bidder or Prime Contractor
13 during the preaward phases of the County Contract regarding its
14 commitment to attain the CBE goal. ~~These~~ Good Faith eEfforts may include,
15 but are not limited to, any or all of the following:

- 16 a. Soliciting, through activities such as attendance at prebid meetings,
17 advertising, or written notices, the interest of certified CBEs that have
18 the ability and capacity to perform the ~~contract~~ work. The Bidder or
19 Prime Contractor must solicit this interest in a timely manner to allow
20 the CBEs an opportunity to respond to the solicitation. The Bidder or
21 Prime Contractor must take appropriate steps to follow up on initial
22 solicitations of CBEs.
- 23 b. Identifying the portions of the ~~contract~~ work that could reasonably be
24 performed by a CBE in order to increase the likelihood that the CBE

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1 goal will be achieved. This may include, where appropriate and
2 commercially practicable, separating ~~contract~~ work items into
3 segments more appropriate for participation by CBEs.

4 c. Providing each interested CBE with adequate information about the
5 plans, specifications, and requirements of the contract in a timely
6 manner.

7 d. Negotiating in good faith with each interested CBE. Evidence of such
8 negotiation includes the names, addresses, and telephone numbers
9 of CBEs that were considered; a description of the information
10 provided regarding the plans and specifications for the work selected
11 for subcontracting; and explaining why an agreement could not be
12 reached with any of the interested CBEs. The fact that there may be
13 some additional costs involved in subcontracting with CBEs is not in
14 itself sufficient reason for a ~~Bidder's~~ failure to meet the ~~contract~~ CBE
15 goal, as long as such additional costs are reasonable, as determined
16 by the Program Director in ~~his or her~~ their sole discretion.

17 e. Rejecting an interested CBE as being unqualified for participation
18 only after diligently investigating the CBE's capabilities and
19 documenting the sound reasons justifying such rejection (with such
20 documentation to be provided to the Program Director).

21 f. Contacting OESBD for assistance, including with regard to recruiting
22 CBEs or, when the scope of services changes or a change in CBE is
23 warranted, to request the substitution or addition of a CBE to
24 increase CBE participation.

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- 1 g. Actively pursuing outreach opportunities, advertising, meet and
2 greet, and written notices to CBEs that may have the capacity and
3 ability to perform the work.
- 4 h. Utilizing one or more CBEs as per the submitted Letter(s) of Intent.
- 5 i. Timely submission of the monthly utilization reports to document and
6 report any unforeseen circumstances affecting the utilization of
7 CBEs.
- 8 j. Other activities that the Program Director determines demonstrate
9 compliance with the spirit and intent of the Program and the goals
10 and objectives of OESBD.

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13 Section 6. Section 1-81.6 of the Broward County Code of Ordinances is hereby
14 amended to read as follows:

15 **Sec. 1-81.6. Participation requirements and enforcement.**

16 (a) *Participation Requirements.* Entities may not participate in a County
17 eContract as CBEs or SBEs unless they are certified as CBEs or SBEs, as applicable,
18 prior to Bid submittal to perform the type of work required by the contract or at the time of
19 submission of the Letter(s) of Intent to the County for the CBE or SBE. However, if it
20 becomes necessary to substitute a CBE or SBE in order to meet the County eContract's
21 participation requirements, a CBE or SBE may be substituted, upon the approval of the
22 Program Director, provided that such CBE or SBE is certified at the time of the
23 substitution.

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1 (1) Only the work actually performed by a CBE or SBE (whether as a Prime
2 Contractor or Subcontractor) shall be counted toward satisfaction of the
3 applicable goal.

4 (2) Prime Contractors that use CBEs or SBEs as Subcontractors on a County
5 eContract must pay those ~~Subcontractors~~ CBEs or SBEs directly for all
6 goods or services provided ~~by the Subcontractors~~ within fifteen (15) days
7 after receipt of payment from the County.

8 (b) *Fair Dealing*. It is the County's policy that all business activities related to
9 this Act shall be conducted in a fair and reasonable manner, free of fraud, coercion,
10 collusion, intimidation, or bad faith. Violation of this policy by any Prime Contractor,
11 Subcontractor, Bidder, or other individual or entity that seeks to engage in business with
12 the County may result in a written determination by the Director of Purchasing, after
13 consulting with the Program Director and the Office of the County Attorney, that the
14 County should consider termination of any or all business relationships between the
15 violating individual(s) or entity(ies) and the County, including cancellation of solicitations,
16 cessation of negotiations, revocation of CBE or SBE certification, and suspension or
17 debarment for cause from consideration for award of future contracts. Such written
18 determination shall state the reasons for the action taken and inform the individual(s) and
19 entity(ies) involved of their right to administrative review in accordance with
20 ~~Section 21.119~~ Part XII of the Procurement Code. Any determination made by the
21 Director of Purchasing pursuant to this paragraph may be appealed in accordance with
22 ~~Section 21.120~~ Part XII of the Procurement Code.

1 (c) Commercially Useful Function. CBEs and SBEs may participate in a County
2 eContract only if they are performing a Commercially Useful Function in the contract and
3 are not acting as Brokers.

4 (d) *Enforcement*. The provisions of this Act, unless noted otherwise, are
5 primarily enforced through the issuance of Notices to Cure and Notices of Violation by
6 OESBD. OESBD may issue such notices for any infraction of the CBE or SBE programs.
7 Failure to respond timely and completely to such notices will place the alleged violator in
8 a state of noncompliance.

9 (1) *Notice to Cure*. A Notice to Cure is formal notification to a ~~CBE or SBE~~
10 Prime Contractor or Subcontractor of an alleged violation of the Act. A
11 Notice to Cure may be issued if the entity fails to timely provide requested
12 information or documentation, or if the entity:

- 13 a. Engages in a practice that contravenes the CBE or SBE programs;
- 14 b. Fails to meet certified Subcontractor participation;
- 15 c. Fails to meet prompt payment requirements;
- 16 d. Fails to supply required utilization reports;
- 17 e. Fails to utilize certified Subcontractors as agreed or, without approval
18 from the Program Director, substitutes, deletes, or otherwise adjusts
19 the certified subcontracting team; or
- 20 f. Fails to comply with any other Program requirement, as determined
21 by the Program Director.

22 (2) *Notice of Violation*. A Notice of Violation results from a substantiated
23 violation of the Act. OESBD may issue a Notice of Violation if a ~~CBE or SBE~~
24 Prime Contractor or Subcontractor fails to comply with a Notice to Cure after

1 being given opportunity to do so through the Notice to Cure process.
2 However, for willful or egregious violations of the Act, as determined by
3 OESBD, a Notice of Violation may issue without the prior issuance of a
4 Notice to Cure.

5 (e) *Penalties for Violations of the Act.* The Program Director may determine,
6 upon reasonable notice to the person or entity involved and reasonable opportunity for
7 that person or entity to be heard, that a person or entity has violated the Act. Upon such
8 a determination, the Program Director may recommend, ~~pursuant to Section 21.119 of~~
9 ~~the Procurement Code,~~ that the Purchasing Director suspend or debar such entity for
10 cause from consideration for award of future contracts ~~for a period of up to three (3) years~~
11 pursuant to Section 21.73 of the Broward County Procurement Code.

12 (1) The County will maintain a public list of entities suspended or debarred from
13 contracting with the County. The list will detail actions taken in response to
14 the Program Director's recommendations. Entities that have their
15 certification revoked through enforcement action of OESBD will be listed on
16 the OESBD website.

17 (2) For all recommendations from the Program Director for suspension or
18 debarment due to violations of the Act, the Purchasing Director will review
19 the allegations and determine what action(s), if any, shall be taken against
20 the alleged violator.

21 (3) Any person or entity having a substantial interest in the alleged violation of
22 the Act who is dissatisfied or aggrieved with the Purchasing Director's
23 determination regarding such the entity's debarment due to violations of the
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1 Act may appeal said determination in accordance with the procedures
2 contained in ~~Section 21.120~~ Part XII of the Procurement Code.

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5 Section 7. Section 1-81.7 of the Broward County Code of Ordinances is hereby
6 amended to read as follows:

7 **Sec. 1-81.7. Administrative requirements and other remedies.**

8 (a) *Required Contract Language.* The County shall require that each applicable
9 solicitation and County eContract that contains CBE or SBE requirements, and each
10 subcontract a Prime Contractor executes with a CBE or SBE in connection with that
11 County eContract, shall include the following requirements:

12 (1) ~~The contractor (Prime, CBE, or SBE, as applicable) shall~~ A requirement to
13 comply with all applicable requirements of the Broward County Small
14 Business Development Program in the award and administration of ~~this~~ the
15 contract. Failure by the Prime Contractor to carry out any of these
16 requirements shall constitute a material breach of contract, which shall
17 permit the County to terminate its contract with the Prime Contractor or to
18 exercise any other remedy provided under the County eContract, under the
19 Broward County Code of Ordinances or Administrative Code, or under
20 applicable law, with all of such remedies being cumulative.

21 (2) For solicitations and County eContracts where the Prime Contractor is
22 required to satisfy a CBE goal or a CBE or SBE reserve, as applicable,
23 substantially the following language shall be included in the contract:

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1 "The parties stipulate that if the Prime Contractor fails to meet the CBE or
2 SBE commitment, as applicable (the "Commitment"), the damages to the
3 County arising from such failure are not readily ascertainable at the time of
4 contracting. Therefore, if the Prime Contractor fails to meet the Commitment
5 and the County determines, in the sole discretion of the Program Director,
6 that the Prime Contractor failed to make Good Faith Efforts to meet the
7 Commitment, the Prime Contractor shall pay the County liquidated
8 damages in an amount equal to fifty percent (50%) of the actual dollar
9 amount by which the Prime Contractor failed to achieve the Commitment,
10 up to a maximum amount of ten percent (10%) of the total eContract amount
11 ~~(excluding costs and reimbursables)~~ Value as defined in Section 1-81.1,
12 Broward County Code of Ordinances. For example, if the eContract amount
13 ~~(excluding costs and reimbursables)~~ Value is One Million Dollars
14 (\$1,000,000), there is a twenty-five percent (25%) CBE goal, and CBEs
15 receive only twenty percent (20%) of the amounts paid by the County
16 (excluding costs and reimbursables), then the Prime Contractor would have
17 fallen short of the Commitment by Fifty Thousand Dollars (\$50,000), and
18 the liquidated damages due to the County would equal ~~Twenty-Five~~
19 Twenty-Five Thousand Dollars (\$25,000). Such liquidated damages amount shall be
20 either credited against any amounts due from the County or paid to the
21 County within thirty (30) days after written demand, as elected by the
22 County. These liquidated damages shall be the County's sole contractual
23 remedy for the Prime Contractor's breach of the Commitment, but shall not
24 affect the availability of administrative remedies under this Act. The Prime

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underscored type are additions.

1 Contractor acknowledges and agrees that the liquidated damages provided
2 in this section are proportionate to an amount that might reasonably be
3 expected to flow from a breach of the Commitment and are not a penalty.
4 Any failure to meet the Commitment attributable solely due to force majeure,
5 changes to the scope of work by the County, or inability to substitute a
6 Subcontractor under the Act where the Program Director has determined
7 that such inability is due to no fault of the Prime Contractor, shall not be
8 deemed a failure by the Prime Contractor to meet the Commitment."

9 ...

10
11 Section 8. 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 9. 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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 underscoring type are additions.

1 Section 10. Effective Date.

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

3
4 ENACTED

PROPOSED

5 FILED WITH THE DEPARTMENT OF STATE

6 EFFECTIVE

7
8 Approved as to form and legal sufficiency:
9 Andrew J. Meyers, County Attorney

10 By /s/ *Sandy Steed* 08/17/2021
11 Sandy Steed (date)
12 Assistant County Attorney

13 By /s/ *René D. Harrod* 08/17/2021
14 René D. Harrod (date)
15 Chief Deputy County Attorney

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