

PROPOSED

ORDINANCE NO.

1 AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD
2 COUNTY, FLORIDA, PERTAINING TO COUNTY BUSINESS ENTERPRISE (“CBE”)
3 AND SMALL BUSINESS ENTERPRISE (“SBE”) GOALS AND RESERVES UNDER THE
4 BROWARD COUNTY BUSINESS OPPORTUNITY ACT; AMENDING VARIOUS
5 SECTIONS OF CHAPTER 1 OF THE BROWARD COUNTY CODE OF ORDINANCES
6 (“CODE”); AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND
7 AN EFFECTIVE DATE.

8 (Sponsored by the Board of County Commissioners)
9

10 WHEREAS, the Broward County Business Opportunity Act (the “Act”) provides for
11 certain minimum County Business Enterprise (“CBE”) goals for Broward County
12 contracts, unless a lower or no goal is approved by the Broward County Board of County
13 Commissioners (“Board”);

14 WHEREAS, the Act also allows certain contracts to be reserved for CBE or Small
15 Business Enterprise (“SBE”) certified firms to allow these entities to gain practical
16 experience as prime contractors;

17 WHEREAS, the Broward County Office of Economic and Small Business
18 Development (“OESBD”) recommends certain modifications to the Act to help expedite
19 the solicitation process and to better facilitate the administration of the CBE and SBE
20 reserve programs; and

21 WHEREAS, the Board finds that amending the Act as recommended by OESBD
22 is appropriate at this time,

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

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

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

28 . . .

29 (c) *Program definitions.*

30 . . .

31 *Commercially Useful Function* means that a CBE or SBE performs the following
32 functions as part of its direct responsibility under a contract with the Prime Contractor
33 and/or the County, as applicable:

34 . . .

35 (4) Performs at least fifty percent (50%) of the assigned work with its own
36 employees under its direct management and supervisory control.
37 Conversely stated, the CBE or SBE may not subcontract more than fifty
38 percent (50%) of the work to be performed. Subject to the fifty percent (50%)
39 self-performance requirement, the percentage of self-performed work may
40 vary for certain specialties, including general contractors, based on normal
41 industry practices. However, credit (toward meeting assigned CBE goals)
42 for certified entity participation is only granted for that portion actually
43 performed by certified CBEs. ~~Note that in projects involving a CBE or SBE~~

44 ~~reserve, all work associated with the reserve must be performed by CBEs~~
45 ~~or SBEs, as applicable, in order to be considered responsible under the~~
46 ~~reserve requirement or the applicable procurement solicitation.~~

47 . . .

48 *Program Director* means the Director of OESBD or their written designee.

49 . . .

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

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

53 (a) *Establishment of CBE Goal.* A Unless waived or modified pursuant to
54 Section 1-81.3(c), a CBE goal of at least twenty-five percent (25%) participation by CBEs
55 is hereby established for each County Contract, except those contracts that are subject
56 to other participation goals other than CBE reserves (e.g., federal DBE program ~~or SBE~~
57 ~~reserves~~), those contracts that are exempt from the County's Procurement Code, those
58 contracts that are otherwise ineligible by state or federal law, and those contracts to which
59 goals are not assigned (e.g., sole source, sole brand, and emergency contracts).
60 ~~However, a CBE goal of at least twenty five (25%) shall not be required if, at any time,~~
61 ~~the Board or the County Administrator (under the limited circumstances stated below)~~
62 ~~approves a different goal or approves that no CBE goal shall be set, based upon a written~~
63 ~~determination by OESBD provided to the Board or the County Administrator that~~
64 ~~establishes at least one (1) of the following:~~

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

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

68 b. ~~There is no work related to the contract that can be performed by a~~
69 ~~CBE; or~~

70 (2) ~~There are other documented compelling reasons to assign a lower CBE~~
71 ~~goal to a particular County Contract; or~~

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

73 (b) CBE goals shall be set as a percentage of the total Contract Value.

74 (c) *Waiver or Modification of CBE Goal.* The Board may waive the application
75 of, or may modify, any CBE goal at any time. ~~The County Administrator may waive the~~
76 ~~application of, or may modify, the CBE goal only for competitive solicitations with an~~
77 ~~anticipated total value of Five Hundred Thousand Dollars (\$500,000.00) or less, and only~~
78 In addition, any CBE goal, including for CBE reserve and SBE reserve contracts, may be
79 waived or modified upon written recommendation by OESBD pursuant to this section if
80 no County Commissioner objects within five (5) business days after receiving written
81 notice from the Purchasing Division OESBD of the proposed waiver or modification. If a
82 County Commissioner timely objects to the proposed waiver or modification of a CBE
83 goal by the County Administrator, the proposed waiver or modification of the CBE goal
84 for that contract or competitive solicitation will require Board approval. The written
85 recommendation by OESBD must include a determination of at least one (1) of the
86 following:

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

- 88 a. There are fewer than two (2) certified CBEs available to participate
89 in a specific project; or
- 90 b. There is no material work related to the contract that can be
91 performed by a CBE; or
- 92 (2) There are other documented compelling reasons to assign a lower CBE
93 goal to the particular County Contract, which reasons are stated in the
94 written recommendation; or
- 95 (3) There is no competitive solicitation associated with the contract.
- 96 ...
- 97 (f) *Solicitations Involving CBE Reserves.* When a CBE reserve is established
98 in connection with a County solicitation, CBEs and nonCBEs may respond to the
99 solicitation. If a CBE ~~with capacity to perform the work~~ submits a responsive and
100 responsible Bid or Proposal, the work will be awarded to the CBE that submits the lowest
101 responsive and responsible Bid, or the highest-ranked responsive and responsible
102 Proposal, subject to the conditions stated below (and consistent with all applicable terms
103 and conditions of the County’s Procurement Code and subject to entering into an
104 agreement acceptable to the County). The CBE with the lowest responsive and
105 responsible Bid, or with the highest-ranked responsive and responsible Proposal, as
106 compared to all other CBEs (the “CBE Presumptive Awardee”), shall be awarded the
107 contract if the CBE Presumptive Awardee meets the following requirements, as
108 applicable:
109 ...

110 If the CBE Presumptive Awardee does not meet the above requirements, as
111 applicable, then the CBE with the next lowest responsive and responsible Bid, or the next
112 highest-ranked responsive and responsible Proposal, as compared to all other CBEs, will
113 be deemed the CBE Presumptive Awardee and awarded the contract if the CBE
114 Presumptive Awardee meets the above requirements, as applicable. If a CBE is awarded
115 the contract, the contract must require that at least eighty-five percent (85%) of the work
116 required under the contract be performed by CBEs. If no CBE Presumptive Awardee
117 meets the above requirements, as applicable, the award shall be made to the nonCBE
118 that submits the lowest responsive and responsible Bid, or the highest-ranked responsive
119 and responsible Proposal, provided the Director of Purchasing determines the total
120 amount of the Bid or Proposal is fair and reasonable, unless (a) the Director of OESBD
121 issues a written determination that resolicitation with modified specifications is likely to
122 result in one or more Bids or Proposals from CBEs that would be eligible to receive the
123 contract award; and (b) the Director of Purchasing issues a written determination that the
124 delay occasioned by resolicitation would not materially harm the County's interests.

125 If a nonCBE is awarded the contract because no CBE ~~with capacity to perform the~~
126 ~~work~~ submits a responsive and responsible Bid or Proposal, or because no CBE meets
127 the applicable requirements stated above, ~~any~~ the contract awarded to a nonCBE must
128 include at least a twenty-five percent (25%) CBE goal ~~(unless the CBE goal is waived or~~
129 ~~otherwise modified by Board action).~~

130 . . .

131 Section 3. Section 1-81.4 of the Broward County Code of Ordinances is hereby
132 amended to read as follows:

133 **Sec. 1-81.4. SBE reserves.**

134 (a) When the County issues a solicitation that is anticipated to result in a
135 contract with a value of ~~less than~~ Two Hundred Fifty Thousand Dollars (\$250,000) or less,
136 the contract shall be reserved for SBEs, except those contracts that are exempt from the
137 County's Procurement Code, those contracts that are otherwise ineligible pursuant to
138 state or federal law, and those contracts to which goals are not assigned (e.g., sole
139 source, sole brand, and emergency contracts). However, no contract shall be reserved
140 for SBEs if the Program Director determines that there are fewer than two (2) certified
141 SBEs available to perform the work required under the contract.

142 (b) If an SBE reserve is established, ~~only SBEs will be eligible to bid on and~~
143 ~~nonSBEs may respond to the solicitation. In the event that~~ The SBE that submits the
144 lowest responsive and responsible Bid, or the highest-ranked responsive and responsible
145 Proposal, as compared to all other SBEs, if any, shall be awarded the contract. If no SBE
146 ~~responds or no SBE is responsive and responsible, the Purchasing Director shall cancel~~
147 ~~the solicitation, and the using agency shall submit it to OESBD to determine whether a~~
148 ~~CBE reserve should be established for any new solicitation~~ CBE that submits the lowest
149 responsive and responsible Bid, or the highest-ranked responsive and responsible
150 Proposal, as compared to all other CBEs, if any, shall be awarded the contract. If no SBE
151 or CBE responds or is responsive and responsible, then the entity that submits the lowest
152 responsive and responsible Bid, or the highest-ranked responsive and responsible
153 Proposal, may be awarded the contract.

154 (c) Notwithstanding anything to the contrary in paragraphs (a) and (b) above,
155 in the event that none of the responses to an SBE reserve solicitation would result in a

156 contract with a value of ~~less than~~ Two Hundred Fifty Thousand Dollars (\$250,000) or less,
157 the Purchasing Director may elect to either accept the response(s) and proceed to the
158 award stage, or reject the response(s) and request that OESBD determine whether a
159 CBE reserve should be established for any new solicitation.

160 . . .

161 (e) If an SBE or CBE is awarded an SBE reserve contract, the contract must
162 require that at least eighty-five percent (85%) of the work required to be performed under
163 the contract be performed by SBEs or CBEs, respectively. If an entity that is not certified
164 under this Act is awarded an SBE reserve contract, the contract must include at least a
165 twenty-five percent (25%) CBE goal.

166 Section 4. Severability.

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

173 Section 5. Inclusion in the Broward County Code of Ordinances.

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

179 Section 6. Effective Date.

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

ENACTED

PROPOSED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

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

By: /s/ Sandy Steed 10/15/2024
Sandy Steed (date)
Assistant County Attorney

By: /s/ René D. Harrod 10/15/2024
René D. Harrod (date)
Chief Deputy County Attorney

SS/cv
CBE SBE Reserves Ord
10/15/2024
#1123786.8

Coding: Words ~~stricken~~ are deletions from existing text. Words underlined are additions to existing text.