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Sec. 2-80.20. Policy and purpose.

It is the policy of the board of county commissioners of Palm Beach County, Florida that all business be afforded an opportunity for full participation in the free enterprise system. In order to implement the policy, the board of county commissioners is committed to ensuring full and equitable participation by small business enterprises in the provision of goods and services to Palm Beach County.

(Ord. No. 2013-004, § I, 3-12-13)

Sec. 2-80.21. Definitions.

Acting as a conduit means, in part, not acting as a regular dealer by making sales of material, goods or supplies from items bought, kept in stock and regularly sold to the public, as opposed to only government agencies, in the usual course of business. Brokers, manufacturer's representatives, sales representatives and non-stocking distributors are considered as conduits that do not perform a commercially useful business function.

Affiliation means that the entity applying for SBE certification controls, has the power to control, or is controlled by another entity or entities, or an identity of interest exists between the entity applying for SBE

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certification and another entity or entities. In determining whether an affiliation exists, it is necessary to consider factors including, but not limited to, common ownership, common management, common use of facilities, equipment, and employees, contractual obligations and family interest in the business. Affiliated entities must be considered together in terms of gross receipts in determining whether a business entity meets SBE eligibility criteria.

Board means the board of county commissioners of Palm Beach County, Florida.

Business category means construction; professional services procured pursuant to the Competitive Consultant Negotiations Act (CCNA); other professional services, and commodities. For purposes of SBE eligibility criteria, a business entity shall be considered for eligibility in the business category in which it performs the largest portion of its work.

Certification means the process by which the office of small business assistance determines a business meets the criteria for a small, minority or woman business enterprise.

Certified small business enterprise (SBE) means a business which has been certified by the office of small business assistance (SBA).

Code means the Palm Beach County Code.

Commercially useful business function means adding value to the goods and services supplied under a contract. A small business is considered to perform a commercially useful business function when it is responsible for execution of a distinct element of work of a contract or transaction and carrying out its responsibilities by actually performing, managing and supervising the work performed. Businesses who merely act as a conduit do not perform a commercially useful business function and will not be eligible for certification as a SBE. In determining whether a business performs a commercially useful business function, consideration will include, but not be limited to, whether the business adds a value to the product or service provided; whether the business has a distributorship agreement with the manufacturer of goods supplied; whether the business takes possession of the product or service provided; whether the business warrants the product or service provided; whether the business maintains sufficient storage space to keep the product in inventory; whether the business maintains sufficient inventory to meet the requirements of its contracts; whether the business provides the product or service to the public or other business other than a governmental agency.

Committee means the small business advisory committee.

County means Palm Beach County.

Days means business days, unless specified otherwise.

Domiciled in the county means the business holds a valid Palm Beach County business tax receipt and has a permanent place of business in the county. In order to establish a permanent place of business in the county, the business must:

- (1) Demonstrate that business has been conducted at the county location, and sufficient full-time employees are maintained in the county to perform the contracted work;
- (2) The county business tax receipt bears the county address, and the county location is in an area zoned for the conduct of such business;
- (3) The county location must be verifiable through documentation such as property tax bill or lease agreement; and
- (4) The county location should be identifiable through signage, telephone listing, and/or website or social media. On-site visits may be conducted at any time to determine continued adherence to the domicile requirements and other requirements of the code. Additional backup

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documentation may be requested on a case-by-case basis. A county telephone number or post office box in the county shall not be sufficient without further documentation, to establish domicile in Palm Beach County.

Front shall mean a business which purports to be a small business but which is actually owned and/or controlled in a manner which does not comply with the county's requirements of certification.

Goals means annual small business goals expressed as percentages of total dollar volume for participation of small businesses in the county's procurement of goods, services and construction.

Gross receipts means the total annual sales for the applicant as stated on its federal income tax return, or for a new business that has not yet filed a federal income tax return, on its audited financial statements before deductions for returned items, allowances and discounts.

Home business means a small business that operates from the business owner's home. Home businesses usually have a very small number of employees that are often members of the business owner's family. A home business is not affiliated with, nor a subsidiary of another company located outside of the home. Home businesses meeting this definition are eligible for certification as a small business, provided they meet all other certification criteria. Home offices of an employee working for a company located in another county do not establish domicile in Palm Beach County.

Independent business is a business that operates free of control or reliance on another business. Recognition of the business as a separate legal entity for tax or corporate purposes is not necessarily sufficient for recognition as an independent business. In determining whether a potential small business is an independent business, the county shall consider all relevant factors, including but not limited to, the date the business was established, the adequacy of its resources for the type of work specified, relationships with affiliates and subsidiaries, and the degree to which financial, equipment leasing and other relationships with other businesses vary from established industry practices. If there has been a recent change in ownership of the business, a review of whether the acquisition of the business was done pursuant to an arm's length transaction will also be considered in determining independence of the business.

Independent contractor means a person who contracts to do work for another person according to his or her own processes and methods and is not subject to the control of the other person except for what is specified in the agreement for a specific job.

Joint venture means an association of two (2) or more persons or businesses registered with the State of Florida to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

Leased employee means the employee of a leasing company of professional employee organization who works for a business organization. The business organization maintains management of the worked performed by the employee. The leasing company handles administrative responsibilities such as, but not limited to payroll, compliance with state and federal regulations and unemployment insurance.

Minority person means an individual who is a citizen or lawful permanent resident of the United States who is:

- (1) A "Black American," a person having origins in any of the black racial groups of Africa.
- (2) A "Hispanic American," a person of Spanish or Portuguese culture with origins in Mexico, Central or South America, or the Caribbean, regardless of race.
- (3) An "Asian American," a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.

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- (4) A "Native American," a person who is a member of, or is eligible to be a member of, a federally recognized Indian tribe. A "federally recognized Indian tribe" means an Indian tribe, band, nation, rancheria, pueblo, colony or other organized group or community, including any Alaska native village, which was recognized by the secretary of the interior on October 1, 1985, as having special rights and is recognized as eligible for the services provided by the United States to Indians because of their status as Indians, and any tribe that has a pending application for federal recognition on October 1, 1985, as having special rights and is recognized as eligible for the services provided by the United States to Indians because of their status as Indians, and any tribe that has a pending application for federal recognition on October 1, 1985.

M/WBE means a minority-owned business enterprise or a women-owned business enterprise or a combination minority and women-owned business enterprise. A M/WBE is any small business concern which is organized to engage in commercial transactions, which is domiciled in Palm Beach County, and which is at least fifty-one (51) percent owned by minority persons and/or women who are members of an insular group that is of a particular racial, ethnic or national origin makeup or gender, which has been subjected historically to disparate treatment due to identification in and with that group resulting in an under-representation of commercial enterprises under the group's control, and whose management and daily operations are controlled by such persons.

Manufacturer means a firm or business entity that produces an item from raw materials or who substantially alters the form of a product in order to make it suitable for a particular use.

Owned, for the purpose of determining whether a business is a minority or women business enterprise, shall mean that the minorities or women, as the context requires, shall possess an ownership interest of at least fifty-one (51) percent.

Prime contractor means any person who has a contract with the county to provide specific construction services, sales, supplies, materials, professional services, labor and/or equipment.

Professional services means any narrow discipline wherein a known practitioner has through education and experience developed expert advisory and programming skills as a vocation; any service performed primarily by vocational personnel which requires the analysis or certification of a professional before the services are acceptable to the user of the service; or any other advisory study, or programming activity where the director of purchasing determines that the level of skills and/or creativity of the potential or known practitioner(s) warrants a competitive proposal or submittal process.

Project goal means SBE goals expressed as percentages of total dollar volume for participation of small businesses, on individual county contracts.

SBE means small business enterprise certified by Palm Beach County.

Sheltered market program means a program under which certain contracting opportunities are made available only to certified SBEs.

Small business means a business domiciled in Palm Beach County and certified by the county which is an independently owned and operated, for profit, business concern organized to engage in commercial transactions and whose gross income, together with its affiliates do not exceed the following:

- (1) For a provider of construction the annual gross income does not exceed nine million dollars (\$9,000,000.00) (averaged over the previous three (3) years, or if in business, less than three (3) years, averaged during duration of business).
- (2) For a provider of commodities the annual gross income does not exceed five million dollars (\$5,000,000.00) (averaged over the previous three (3) years, or if in business, less than three (3) years, averaged during duration of business).

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- (3) For a provider of professional services procured pursuant to the CCNA statute the annual gross income does not exceed five million dollars (\$5,000,000.00) (averaged over the previous three (3) years or if in business less than three (3) years, averaged during duration of business).
- (4) For a provider of other professional services, the annual gross income does not exceed four million dollars (\$4,000,000.00) (averaged over the previous three (3) years, or if in business less than three (3) years, averaged during the duration of the business).

A small business must be majority owned and controlled by an individual who is a citizen or a lawful permanent resident of the United States.

Small and minority/women business directory means a compilation of certified small businesses and M/WBEs which is maintained electronically by the office of small business assistance and made available to contractor(s) or vendor(s) for use in identifying subcontractors, material suppliers, etc.

Subsidiary means a company whose controlling interest is owned by another company. A subsidiary cannot be considered an independent business.

Supplier means a business that supplies goods or materials. A supplier may be distinguished from a contractor or subcontractor who commonly adds specialized input to deliverables.

All terms not specifically defined herein, but defined in the county's purchasing ordinance, chapter 2, article III, division 2, part A of the County Code, as may be amended, shall carry the definition therein described.

(Ord. No. 02-064, § 1, 9-10-02; Ord. No. 04-071, § 1, 12-21-04; Ord. No. 05-048, §§ 1, 2, 11-15-05; Ord. No. 08-014, § I, 5-20-08; Ord. No. 2009-024, § I, 8-18-09; Ord. No. 2013-004, § II, 3-12-13)

Sec. 2-80.22. Scope.

This part shall apply to the solicitation of all goods, services and construction by the county which are governed by the county purchasing ordinance (sections [2-51](#)—2-57 of the County Code, as may be amended). Whenever possible, the county shall utilize a solicitation process which encourages SBE participation even on those items which are exempted from the requirements of the purchasing ordinance.

(Ord. No. 02-064, § 2, 9-10-02)

Sec. 2-80.23. Goals.

- (a) *Annual goals:* The annual SBE goal for county procurement of construction, professional services and commodities shall be a minimum of fifteen (15) percent. The annual goal shall be applied to each individual county procurement of goods, services or construction unless otherwise approved by the county administrator.
- (b) *Evaluation of goal attainment:* The goal shall be applied to the full monetary value of the contract and be reflected in the full monetary portion spent on subcontracts for supplies, consulting or construction services to be awarded to those SBEs meeting contract specifications.

In case of a certified SBE submitting a bid as a prime contractor, the SBE will be credited with meeting the percentage of the goal that the SBE will be performing with its own forces plus the percentage of subcontracts awarded to certified SBEs.

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A joint venture consisting of a small business and non-small business functioning together as a prime contractor will be credited with small business participation on the basis of the percentage of participation in the work, risk and profit by the small business.

Bidders will receive credit for goal attainment only for subcontractors who are certified and licensed, if required, in the specific area of expertise for which credit is sought at the time of bid opening.

Bidders utilizing SBE suppliers will receive credit for goal attainment at sixty (60) percent of the contract for supplies.

- (c) In the event annual goals are not achieved, the county may implement programs, including, but not limited to a sheltered market program for contracts under two hundred fifty thousand dollars (\$250,000.00), to achieve goal attainment. Any programs, other than sheltered markets, must be approved by the board prior to implementation.

(Ord. No. 02-064, § 3, 9-10-02; Ord. No. 08-014, § II, 5-20-08)

Sec. 2-80.24. Contract compliance requirements.

The office of small business assistance will establish procedures for monitoring and evaluating program performance and compliance, subject to the county administrator's approval. In addition to the remedies of suspension or debarment as provided in [section 2-80.26](#) of the Code, any contractor or firm that falsely represents to the county, pursuant to a county contract, that it is an SBE, or that it will utilize the services or commodities of an SBE and subsequently does not do so without the prior written approval of the county, may be in breach of contract. Upon determination that a breach of contract has occurred, the county shall have all available remedies for breach of contract. In addition, all amounts paid to the contractor or firm under the contract intended for expenditure with SBEs will be forfeited and recoverable by the county. The county, at its sole discretion, may waive the breach and available remedies; however any such waiver shall not constitute a waiver of rights for breach of any provision of the contract.

(Ord. No. 02-064, § 4, 9-10-02; Ord. No. 08-014, § III, 5-20-08)

Sec. 2-80.25. Ranking of responsive bidders.

When evaluating competitive bids/quotes of up to one million dollars (\$1,000,000.00) in which the apparent low bidder is determined to be nonresponsive to SBE requirements, the contract shall be awarded to the low bidder responsive to SBE requirements, or in the event there are no bidders responsive to the SBE requirements, to the bidder with the greatest SBE participation in excess of seven (7) percent participation, as long as the bid does not exceed the low bid amount by ten (10) percent.

In cases where the low bid exceeds one million dollars (\$1,000,000.00), the contract shall be awarded to the low bidder responsive to the SBE requirements, or in the event there are no bidders responsive to the SBE requirements, to the bidder with the greatest SBE participation in excess of seven (7) percent participation, provided that such bid does not exceed the low bid otherwise responsive to the bid requirements by more than one hundred thousand dollars (\$100,000.00) plus three (3) percent of the total bid in excess of one million dollars (\$1,000,000.00).

This section applies only when price is the determining factor.

(Ord. No. 02-064, § 5, 9-10-02; Ord. No. 08-014, § IV, 5-20-08)

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Sec. 2-80.26. Suspension/debarment.

The county reserves the right to suspend or debar any vendor who has previously failed to perform properly and who has done so by commission or omission of an act of such serious and compelling nature that the act indicates a serious lack of business integrity or honesty. Such acts include, but are not limited to:

- (1) The violation of any applicable law, regulation or contract provision relating to the performance of obligations incurred pursuant to an agreement with a recipient under a county contract.
- (2) Making or procuring to make any false statement or use of deceit.
- (3) Making false representations as a small business for purposes of qualifying for certification as such a business under a program that is designed to assist SBEs in the receipt of contracts with the county for the provision of goods or services.
- (4) Representing a SBE as performing a commercially useful function when such business is merely acting as a conduit in order to participate in the county's SBE program or receive a preference or benefit under the SBE program.
- (5) Repeatedly failing to meet SBE goals when submitting bids when there is documented availability of SBEs as shown by other bidders on the same projects meeting the stated goals.
- (6) Failing to comply with the SBE requirements of an awarded contract. The director of the office of small business assistance may refer a business or firm to the director of purchasing for consideration of suspension or debarment. The procedures for suspension or debarment are provided for in the purchasing ordinance.

(Ord. No. 02-064, § 6, 9-10-02; Ord. No. 05-048, § 3, 11-15-05; Ord. No. 08-014, § V, 5-20-08)

Sec. 2-80.27. Prompt payment.

Pursuant to the provisions of F.S. § 218.735(6), as may be amended, when a prime contractor receives payment from the county for labor, services or materials furnished by subcontractors or suppliers hired by the prime contractor, the prime contractor shall remit payment due to those subcontractors and suppliers within ten (10) days after the prime contractor's receipt of payment. When a subcontractor receives payment from a prime contractor for labor, services or materials furnished by sub-subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those sub-subcontractors and suppliers within seven (7) days after the subcontractor's receipt of payment from the prime contractor.

Every contract let by the county for the performance of work shall contain a provision requiring the prime contractor to certify in writing that all subcontractors, subconsultants and suppliers have been paid for work and materials from previous progress payments received, less any retainage, by the prime contractor prior to receipt of any further progress payments. During the contract and upon completion of the contract, the County may request documentation to certify payment to subcontractors, subconsultants or suppliers. Nothing herein shall prohibit a prime contractor or subcontractor from disputing, pursuant to the terms of a relevant contract, all or any portion of a payment alleged to be due to another party. In the event of such dispute, the prime contractor or subcontractor may withhold the disputed portion of any such payment if the prime contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The prime contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section. All

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payments not made within the time periods herein specified shall bear interest at the rate of one (1) percent per month, or the rate specified by the contract, whichever is greater.

This provision in no way creates any contractual relationship between any subcontractor, subconsultant or supplier and the county or any liability on the county for the prime contractor's failure to make timely payment to the subcontractor, subconsultant or supplier.

(Ord. No. 02-064, § 7, 9-10-02; Ord. No. 08-014, § VI, 5-20-08)

Sec. 2-80.28. Procurement procedures.

The purchasing department shall establish specific purchasing procedures to increase SBE participation, including, but not limited to, purchases under the mandatory bid or proposal amount set forth in the purchasing code and purchases made by decentralized purchase orders (DPOs) under one thousand dollars (\$1,000.00). The purchasing procedures shall include a provision that every effort will be made by buyers to contact all registered certified SBE within a particular commodity area for purchases under the mandatory bid or proposal amount set forth in the purchasing code. The purchasing procedures shall also include a process so as to allow as many vendors as possible to compete in providing goods and services to Palm Beach County. The purchasing procedures shall also include a provision requiring awards of purchases under the mandatory bid or proposal amount set forth in the purchasing code to be made to the lowest responsive, responsible bidder unless a certified small business is within ten (10) percent of the lowest non-small business bid, in which case the award shall be made to the certified small business bidder submitting the lowest responsive, responsible bid. For purchases of goods and services over the mandatory bid or proposal amount set forth in the purchasing code goals will be established pursuant to the provisions of [section 2-80.23](#). This section shall not apply to procurement of construction.

(Ord. No. 02-064, § 8, 9-10-02; Ord. No. 05-048, § 4, 11-15-05; Ord. No. 08-014, § VII, 5-20-08)

Sec. 2-80.29. Professional services.

The county will provide contracting opportunities for SBEs and M/WBEs in the area of professional services pursuant to F.S. § 287.055, as amended, known as the "Consultant's Competitive Negotiation Act." The county will impose small business requirements on the solicitation of all other professional services not covered by the Consultant's Competitive Negotiation Act.

A summary of small business program procedures will be included in each solicitation. A point system will be utilized to determine the recipient of the contract award.

Businesses submitting proposals to provide professional services to the county will be eligible to receive points, not to exceed ten (10) percent of the total number of possible points awarded, for SBE participation. The distribution of points shall be stated in the request for proposal or otherwise made available to proposers or potential proposers upon request. Maximum points shall be awarded when the proposer is a certified SBE.

The provisions within this section pertaining to professional services are not intended to be used to the exclusion of other provisions of this part in the procurement of professional services.

(Ord. No. 02-064, § 9, 9-10-02)

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Sec. 2-80.30. Small business certification.

- (a) *Eligibility standards.* An eligible small business is an independent, for-profit business concern that performs a commercially useful business function, whose gross income is within the standards as defined in [section 2-80.21](#) above and who has been in business for at least one (1) year or whose owner has a certificate of small business competency issued by the Small Business Development Center, Palm Beach State College or other office of small business assistance approved courses. A small business must be domiciled in Palm Beach County in order to be eligible to participate.
- (b) *Application procedures.* All applicants wishing to be considered as certified businesses for the benefits of this program must apply for small business certification by completing the application and affidavit which can be obtained through the office of small business assistance and pay the applicable fee for certification, modification of certification or recertification. Applicants must submit the documentation listed below as appropriate to their business and all of its affiliates. The office of small business assistance may request any other documentation necessary to determine eligibility. Documents not in English must be accompanied by a certified translation. In instances where the applicant business has not been in existence three (3) years, it shall provide the documentation for the years the business has been in existence.
- (1) *Corporations:*
- a. List of the corporation's current full-time and part-time employees, including leased employees and/or independent contractors by length of service;
 - b. Proof of business location and operation in Palm Beach County;
 - c. Articles of incorporation, including date approved by the state, and any subsequent amendments;
 - d. By-laws;
 - e. Prior three (3) years' financial statement prepared by an independent CPA or accountant;
 - f. Prior three (3) years' federal corporate tax returns, including all schedules, as signed and filed;
 - g. Copies of last three (3) months' corporate payroll and/or payments to independent contractors;
 - h. Any necessary licenses to perform the work for which certification is sought;
 - i. Palm Beach County business tax receipt;
 - j. A list of all affiliates;
 - k. Resume of principals and management personnel showing education, training and employment dates;
 - l. Stock transfer agreements;
 - m. Copies of the corporation's distribution of profits for the previous year;
 - n. Copies of third party agreements, such as rental and lease agreements, management agreements, and purchase agreements;
 - o. Proof of stock purchase and capital investments.

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(2) *Partnerships:*

- a. List of the partnership's current full-time and part-time employees, including leased employees and/or independent contractors by length of service;
- b. Proof of business location and operation in Palm Beach County;
- c. Partnership agreement;
- d. Prior three (3) years' financial statements prepared by an independent CPA or accountant;
- e. Prior three (3) years' federal tax returns, including all schedules, as signed and filed;
- f. Any necessary licenses to perform the work for which certification is sought;
- g. Copies of last three (3) months' corporate payroll and/or payments to independent contractors;
- h. Palm Beach County business tax receipt;
- i. A list of all affiliates;
- j. Resumes of all partners and management personnel showing education, training and employment dates;
- k. Buy-out rights agreements;
- l. Profit sharing agreement;
- m. Proof of capital investment;
- n. Copies of the partnership distribution of profits for the previous year;
- o. Copies of third party agreements, such as rental and lease agreements, management agreements, or purchase agreements.

(3) *Sole proprietors:*

- a. Any necessary licenses to perform the work for which certification is sought;
- b. Verification of fictitious name registration;
- c. Prior three (3) years' federal tax returns, including all schedules, as signed and filed;
- d. List of current full-time and part-time employees including leased employees and/or independent contractors by length of service;
- e. Proof of business location and operation in Palm Beach County;
- f. Palm Beach County business tax receipt;
- g. A list of all affiliates;
- h. Resumes of owner and management personnel showing education, training, and employment dates;
- i. Copies of third party agreements such as rental and lease agreements, management agreements or purchase agreements.
- j. Copies of last three (3) months' payroll and/or payments to independent contractors.

- (c) *Application review procedures.* Once an applicant has submitted the application and all supporting documentation, certification review will commence and the following procedures will apply:

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- (1) The small business certification application and all supporting documents will be logged in as appropriate. The application will be reviewed for completeness and accuracy. The office of small business assistance will inform the applicant of any missing documentation. Any applicant failing to submit the requested documentation within thirty (30) days of the notice shall be deemed to have abandoned its application.
- (2) References will be called and information verified by third parties, when appropriate. The office of small business assistance will review the goods or services provided by the applicant to determine the appropriate National Institute of Government Procurement (NIGP) classification codes. Businesses will only be certified in the areas where they provide a commercially useful business function. In those instances when the NIGP codes are broader than the goods or services provided by the applicant, the office of small business assistance will appropriately limit the certification to those goods or services for which the application performs a commercially useful business function.
- (3) When deemed appropriate by the office of small business assistance, a personal interview or site visit will be scheduled with the principal(s) to discuss the documentation submitted and determine if the applicant meets the established criteria.
- (4) Applicants approved for certification will be notified immediately by mail.
- (d) *Denial of certification.* Applicants denied certification shall be notified by certified mail and informed of their right to appeal the denial. An applicant denied certification may not reapply for certification for one (1) year from the date of denial of the certification.
- (e) *Appeal of certification denial.* Any firm that believes it has been wrongly denied certification as a small business may file an appeal in writing, signed and dated, with the office of small business assistance. The appeal shall be filed no later than twenty (20) days from the date of the notice of denial of certification. The request for appeal shall state the specific reasons why the firm believes the denial of certification is erroneous.
- (f) *Hearing on appeal of certification denial.* If an appeal is filed, an administrative review will be conducted by the director of the office of small business assistance. The review will be conducted within forty-five (45) days of the filing of the request for appeal. The director of the office of small business assistance shall take one (1) of the following actions on the request for appeal:
 - (1) Uphold the appeal. If a determination is made that certification was denied, contrary to the provisions of the code, the director may uphold the appeal. If the appeal is upheld, a certification certificate shall be issued.
 - (2) Deny the appeal. If the appeal is denied, the applicant has the right to request the appeal be referred to a special master in accordance with subsection [2-80.30\(j\)](#) below.
 - (3) Refer the appeal directly to a special master with no determination made by the director of the office of small business, in accordance with subsection [2-80.30\(j\)](#) below.
- (g) *Continued certification.* A business must remain continuously eligible for certification throughout its certification period. Certification under a previous code does not guarantee that the small business continues to be eligible for the entire certification period if there is a modification of eligibility criteria. The office of small business assistance may conduct site visits or review documents to ensure continued compliance at any time during the certification period. Certified businesses are also required to notify the office of small business within thirty (30) days of any change in ownership, operation, control, activities or domicile.

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- (h) *Recertification.* Certified SBEs are required to submit an affidavit of their continued eligibility as a SBE every three (3) years along with an application for recertification. The office of small business assistance may conduct site visits or review documents to ensure continued compliance as a small business. If there has been a change in operation, ownership, control, activities, domicile or gross receipts, the SBE must identify such change on their application for recertification. Supporting documentation may be required for continued certification. A company that fails to submit its application for recertification and affidavit of continued eligibility or fails to submit documentation requested by the office of small business assistance or allow a site visit, will no longer be deemed certified for purposes of participation in the small business program.

The criteria for recertification shall be the same as for certification. An applicant may request an appeal of denial of recertification within twenty (20) days of the notice of denial. The hearing shall be conducted in the manner described in [section 2-80.30\(j\)](#). An applicant denied recertification may not reapply for certification for one (1) year from the denial of recertification.

- (i) *Decertification.* If during the period of certification, the county has reason to believe that the SBE received certification improperly, or that there has been a substantial change in circumstances in the operation, ownership, control, activities, domicile, or gross receipts that continued certification would be contrary to the county's small business policy, then the office of small business assistance may conduct an investigation of the allegations.

The office of small business assistance may decertify the SBE if the investigation indicates that:

- (1) The small business cannot be contacted at the last known address in Palm Beach County;
- (2) The small business is no longer in business;
- (3) The small business is no longer licensed to do the type of business for which it was certified;
- (4) The small business obtained its original certification and/or recertification through false representation or deceit;
- (5) The small business has been disbarred or suspended as a vendor by the county purchasing department. At the expiration of any suspension, the firm may reapply for certification;
- (6) Site visits have revealed no business being conducted at the county location; or
- (7) The small business does not meet the current eligibility standards for certification as a small business. Certification under a previous code does not guarantee that the small business continues to be eligible for their entire certification period.
- (8) The small business does not perform a commercially useful business function.
- (9) The small business refuses to allow an on-site inspection.
- (10) The small business has failed to notify the office of small business of any change in the ownership, location, structure or any other aspect of the small business which would affect its small business certification.

The office of small business assistance shall notify the small business by certified mail that it has been decertified. The small business may request an appeal hearing of the decertification within twenty (20) days of receipt of the notice. The resolution of the appeal shall be conducted in the manner described in subsection [2-80.30\(i\)](#). Nothing in this section shall prevent the office of small business assistance from commencing an investigation regarding the legitimacy of a small business certification. A business decertified pursuant to this section may not re-apply for certification for one (1) year from the date of decertification.

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(j) *Hearing before a special master.*

- (1) Upon receipt of a denial of appeal for certification, recertification, or decertification, an applicant may request a hearing before a special master. The request for a hearing shall be in writing to the director of the office of small business assistance, and shall be made within five (5) business days of issuance of the director of the office of small business' determination. The request for a hearing shall be accompanied by an appeal bond of one thousand dollars (\$1,000.00) which shall be remitted in the form of a money order, a certified check, a cashier's check or a bank check payable to the county.
- (2) At no time shall the applicant or any other person contact a special master regarding any issue pertaining to, or involving the appeal. Contact between the county and the special master shall be limited to scheduling and other administrative issues; including the provision and copying of public records pertinent to the appeal.
- (3) The office of small business assistance shall establish rules and regulations by separate policy and procedure detailing the selection of special masters, the appeals process, and the conduct governing appeal hearings. Such rules shall provide that the special master may not consider any evidence which was not available at the time of the application or recommendation for decertification or recommendation for denial of certification or recertification. Such rules shall also provide that the special master shall render a written decision within ten (10) working days of the hearing.
- (4) Special masters shall have the jurisdiction and authority to hear and decide appeals. The special master shall make a recommendation as to whether the appeal should be upheld as denied.
 - a. If the special master upholds the appeal, the special master shall recommend the director of the office of small business assistance issue a certification certificate. In these instances, the office of small business assistance shall return the appeal bond to the applicant.
 - b. If the special master denies the appeal, the special master shall recommend that certification be withheld. In these instances, the applicant's bond shall be forfeited.
 - c. The director of the office of small business assistance may accept the special master's recommendation or, if the director of the office of small business assistance determines the special master's recommendation is not in the county's best interest, the original recommendation of the office may be referred to the board for approval. At that time, the board may accept or reject the recommendation of the special master.
 - d. If a special master is unable to provide a fair hearing for any reason, the special master shall not accept the appeal and shall immediately notify the director of the office of small business assistance. The director of the office of small business assistance shall reassign the appeal to a special master who does not have a conflict.

(Ord. No. 02-064, § 10, 9-10-02; Ord. No. 04-071, §§ 2, 3, 12-21-04; Ord. No. 05-048, § 5, 11-15-05; Ord. No. 08-014, §§ VIII—XVII, 5-20-08; Ord. No. 2009-024, §§ II—VII, 8-18-09; Ord. No. 2013-004, § II, 3-12-13)

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Sec. 2-80.31. M/WBE certification.

- (a) *Purpose of M/WBE certification.* No preferences will be extended to certified M/WBEs, unless otherwise provided by law. However, businesses eligible for certification as a M/WBE are encouraged to become certified and maintain their certification in order to assist in the tracking of M/WBE availability and awards of contracts to M/WBEs. This information is vital to determining whether race and gender neutral programs assist M/WBE firms or whether race and gender preferences are necessary in order to address any discrimination in the market.
- (b) *Eligibility standards.* An eligible MBE or WBE is a small for profit business concern domiciled in the county which is both owned and controlled by minorities or by women and whose gross receipts are within the standards as defined in [section 2-80.21](#) above. Further, the business must meet all other criteria of a small business as provided above. Minorities and/or women must own at least fifty-one (51) percent of the business and the management and daily business operations are controlled by the minorities and/or women who own it. The ownership and control by minorities and/or women shall be real, substantial and continuing, and shall continue beyond the pro forma ownership of the firm as reflected in its ownership documents. The minority and/or women owners shall enjoy the customary incident of ownership and shall share in the risks and profits commensurate with their ownership interest, as demonstrated by an examination of the substance rather than form or arrangements.
- (1) *Ownership.* In determining ownership of the business, the contribution of capital or expertise by the minority and/or women owners to acquire their interest in the firm shall be real and substantial. Examples of insufficient contributions include, but are not limited to, a promise to contribute capital, a note payable to the firm or its owners who are not minorities or women, or the mere participation as an employee, rather than as a manager/owner.
- (2) *Control.* The minority and/or woman owner(s) must have operational and managerial control of the business.
- a. The primary consideration determining operational control and the extent to which the minority person and/or woman actually operates the business will rest upon the peculiarities of the industry of which the business is a part. Accordingly, in order to clarify the level of operational involvement of the minority person or woman in the business to be deemed as an M/WBE, the following examples are put forth and are not to be all-inclusive.
1. The minority person and/or woman should have experience in the industry for which certification is sought.
 2. The minority person and/or woman should be able to demonstrate that basic decisions pertaining to the daily operation of the business are independently made.
 3. The minority person and/or woman should have some technical competence in the industry for which certification is sought. The minority person and/or woman should have a working knowledge of the technical requirements of the business needed to operate in the industry.
- b. Managerial control means that the minority and/or woman has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and destiny of the business. For a minority and/or woman to demonstrate the extent of his/her control, the following examples are put forth and are not intended to be all-inclusive:

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1. Corporate bylaws or partnership agreements or other agreements should be free of restrictive language which dilutes the minority's or women's control, thus preventing him/her from making those decisions which affect the destiny of the business.
2. The minority person and/or woman should be able to clearly show, through production of documents, the areas of control such as, but not limited to:
 - i. Authority and responsibility to sign payroll checks and letters of credit.
 - ii. Authority for negotiations and signature responsibility for insurance and/or bonds.
 - iii. Authority for negotiations and/or signature services.

If the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not to be considered an M/WBE within the meaning of this program. Where the actual management of the firm is contracted out to individuals other than the owner, those persons will be considered as controlling the business.

- (c) *Application procedures.* All applicants wishing to be considered as certified businesses must apply for M/WBE certification by completing an M/WBE disclosure affidavit which can be obtained through the office of small business assistance. Applicants must submit the documentation listed in [section 2-80.30\(b\)](#), as appropriate to their business and all of its affiliates. The office of small business assistance may request any other documentation necessary to determine eligibility. Documents not in English must be accompanied by a certified translation. In addition, applicants must submit documentation of the minority or woman status.
- (d) *Application review and appeal procedures:* The procedures for application review, recertification, decertification and appeals provided in [section 2-80.30\(d\)–\(j\)](#) shall apply equally for M/WBE certification.

(Ord. No. 02-064, § 11, 9-10-02; Ord. No. 05-048, § 6, 11-15-05; Ord. No. 08-014, § XVIII, 5-20-08; Ord. No. 2009-024, § VIII, 8-18-09; Ord. No. 2013-004, § III, 3-12-13)

Sec. 2-80.32. Small business assistance advisory committee.

There is hereby created and established an advisory committee to be known as the small business assistance (SBA) advisory committee.

- (1) *Membership:* The SBA advisory committee shall consist of the following members:
- a. One (1) black business owner certified as a small business by the county;
 - b. One (1) Hispanic business owner certified as a small business by the county;
 - c. One (1) women business owner certified as a small business by the county;
 - d. One (1) white male business owner certified as a small business by the county;
 - e. One (1) business owner domiciled in the county;
 - f. One (1) representative of a business incubator program;
 - g. One (1) representative of a Hispanic business organization;
 - h. One (1) representative of the National Association of Women in Construction;
 - i. One (1) representative of a women's business organization;

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- j. One (1) certified minority contractor;
- k. One (1) representative of the Associated General Contractors Association;
- l. One (1) representative of the Small Business Development Center;
- m. One (1) representative of a financial institution that assists small businesses;
- n. One (1) representative of a Black Chamber of Commerce of Palm Beach County;
- o. One (1) representative of a professional services organization.

Members shall be appointed at large by the board of county commissioners and shall serve for staggered terms of three (3) years. Members may only serve for (3) three consecutive three-year terms. Vacancies shall be filled in the same manner as the original appointments for the remainder of the vacant term. Each member shall serve without compensation and may be removed without cause by the board of county commissioners at any time. Travel reimbursement is limited to expenses incurred only for travel outside the county necessary to fulfill board member responsibilities when sufficient funds are budgeted and available, and upon approval of the county administrator or deputy county administrator.

- (2) *Duties and functions.* The committee shall have the following duties and functions:
- a. Review and evaluate the effectiveness of small business programs within county government;
 - b. Monitor and evaluate the effectiveness of the county's small business policies and procedures, resolutions and ordinances, including their implementation by the various county departments;
 - c. Study and evaluate the necessity for further county regulations and procedures regarding small business participation;
 - d. Receive and, where necessary, analyze information concerning the presence of discrimination in the bidding and contracting process and recommend to the board of county commissioners further steps to alleviate such discrimination;
 - e. Prepare, adopt and present an annual report to the board of county commissioners;
 - f. Research and review other jurisdictions' small business programs;
 - g. Act as a conduit between the county and the community, industry; organizations, trade associations, chambers of commerce and small and minority/women businesses;
 - h. Plan and participate in education and training for small businesses; and
 - i. Research and recommend to the board of county commissioners race- and gender-neutral mechanisms which will assist small businesses.
 - j. Monitor and report on level of minority/women business enterprise participation.
 - k. Monitor legislative initiatives and other issues and activities which impact small and M/WBE businesses and advise the board of county commissioners concerning same.
- (3) *Meetings and organizations.* The committee shall meet on a regular basis. A majority of members appointed shall constitute a quorum. In the presence of a quorum, committee business shall be conducted by a vote of a majority present. The meetings shall be governed by the Robert's Rules of Order. Reasonable public notice of all committee meetings shall be provided, and all such meetings shall be open to the public at all times.

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- (4) *Assistance to the committee.* The committee may request information from any department or agency of the county, local, regional, state, or federal government for information or advice in the performance of its work.
- (5) *Chair and vice-chair.* A chair and vice-chair shall be elected by a majority of the committee and shall serve for a term of one (1) year. The duties of the chair shall be to:
- a. Call committee meetings and set the agenda for the same;
 - b. Preside at committee meetings;
 - c. Establish subcommittees, appoint subcommittee chairs, and charge subcommittees with specific tasks;
 - d. Perform other functions as the committee may assign by rule or order.

The vice-chair shall perform the duties of the chair in the chair's absence, and such other duties as the chair may assign.

If a vacancy occurs in the office of the chair, the vice-chair shall become the chair for the unexpired term. If a vacancy occurs in the office of the vice-chair, the committee will elect another member to fill the unexpired term of the vice-chair.

- (6) *Advisory only.* The actions, decisions and recommendations of the committee shall not be final or binding on the board of county commissioners but shall be advisory only.
- (7) *Attendance.* Members shall be automatically removed for lack of attendance. Lack of attendance is defined as failure to attend three (3) consecutive meetings or failure to attend more than two-thirds (2/3) of the meetings scheduled during a calendar year. Participation for less than three-fourths ($\frac{3}{4}$) of a meeting shall constitute lack of attendance. Members removed under this section shall not continue to serve until a new appointment is made and removal shall create a vacancy.
- (8) *Conflict of interest.* Committee members shall be governed by the applicable provisions of the Palm Beach County Ethics Resolution R-94-693, as may be amended.

(Ord. No. 02-064, § 12, 9-10-02; Ord. No. 04-071, § 4, 12-21-04; Ord. No. 08-014, § XIX, 5-20-08; Ord. No. 2013-004, § IV, 3-12-13)

Sec. 2-80.33. Monitoring of minority/women business enterprise participation.

The small business program is hereby created after the successful operation of a M/WBE program for over a decade. To ensure that the county does not become a passive participant in discrimination against businesses owned by minorities and women, the office of small business assistance will prepare an annual report on the level of M/WBE participation in county contracting and procurement. The board of county commissioners shall consider the reports on M/WBE participation and determine what measures, if any, are necessary to address any change in M/WBE participation, if any. Tracking of participation by M/WBEs will take into consideration businesses who maintain certification, firms certified at the time of the sunset of the M/WBE Program and other reliable means of identification of M/WBEs.

(Ord. No. 02-064, § 14, 9-10-02)

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Sec. 2-80.34. Phase in of small business program and phase out of m/wbe program.

From October 1, 2002 through March 31, 2003, the small business program and M/WBE program, as described in sections 2-71 through 2-80.13, of the County Code, will operate concurrently. The intent of this concurrent operation is to allow for a smooth transition from one program to the other. During this transition period, the board of county commissioners specifically delegates to the county administrator the ability to determine which aspect(s) of each program will apply to each individual procurement of goods, services and construction and further delegates to the county administrator the authority to determine the schedule for phase in and phase out of the various program components. In determining such schedule, the county administrator shall consider the readiness of program documents, the number of certified firms and such other factors as may be appropriate.

(Ord. No. 02-064, § 15, 9-10-02)

Secs. 2-80.35—2-80.40. Reserved.

Editor's note—

Ord. No. 08-009, § XX, adopted May 20, 2008, amended the Code by repealing former § 2-80.35 in its entirety. Former § 2-80.35 pertained to referral for suspension or debarment, and derived from Ord. No. 05-048, adopted November 15, 2005.