

ORDINANCE NO. 2025- 030

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE ENTITLED "THE SMALL BUSINESS DEVELOPMENT ORDINANCE," ENACTING SECTIONS 2-80.20 THROUGH 2-80.30 AND 2-80.32 THROUGH 2-80.40 OF THE PALM BEACH COUNTY CODE AS FOLLOWS: SECTION 2-80.20. TITLE; SECTION 2-80.21. DEFINITIONS; SECTION 2-80.22. SCOPE AND EXCLUSIONS; SECTION 2-80.23. COMMERCIAL NONDISCRIMINATION POLICY; SECTION 2-80.24. AFFIRMATIVE PROCUREMENT INITIATIVES; SECTION 2-80.25. PROGRAM ADMINISTRATION; SECTION 2-80.26. CERTIFICATION AND COMPLIANCE; SECTION 2-80.27. SMALL BUSINESS DEVELOPMENT ADVISORY COMMITTEE; SECTION 2-80.28. EFFECTIVENESS OF THE SMALL BUSINESS DEVELOPMENT ORDINANCE TO EXISTING CONTRACTS AND SOLICITATIONS; SECTIONS 2-80.29-2-80.30. RESERVED; SECTIONS 2-80.32-2-80.40. RESERVED; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 16, 2018, the Board of County Commissioners (BCC) adopted the Equal Business Opportunity (EBO) Ordinance (No. 2018-021, as amended by Ordinance Nos. 2023-038, 2024-006, 2025-002, and 2025-014) providing for race- and gender-neutral and race- and gender-conscious provisions to increase the participation of small, minority, and women-owned businesses in Palm Beach County; and

WHEREAS, on June 3, 2025, the BCC, prompted by presidential executive orders opposing diversity, equity, and inclusion (DEI) and diversity, equity, inclusion, and accessibility (DEIA) policies and "gender identity," adopted Emergency Ordinance 2025-014 suspending race- and gender-conscious portions of EBO Ordinance until June 5, 2027; and

WHEREAS, on November 21, 2023, the BCC extended the original sunset date of the EBO Ordinance from December 31, 2023, to December 31, 2025, to solicit, conduct, and consider an updated Disparity Study; and

WHEREAS, the suspension of the race- and gender-conscious portions of the EBO Ordinance and the sunset date must be addressed by the BCC; and

WHEREAS, by enacting the Small Business Development Ordinance, the BCC maintains its support and commitment to small business in Palm Beach County by preserving the race- and

43 gender-neutral provisions of the Equal Business Opportunity Ordinance while providing for a more
44 efficient application of County funds.

45 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF**
46 **COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

47 **ARTICLE 1. SMALL BUSINESS DEVELOPMENT ORDINANCE.**

48 Palm Beach County Ordinance No. 2018-021, as amended by Ordinance Nos. 2023-038,
49 2024-006, 2025-002, and 2025-014 (collectively sections 2-80.20 through 2-80.30 and 2-80.32
50 through 2-80.40 of the Palm Beach County Code) is enacted as follows:

51 **Sec. 2-80.20. - Title.**

52 This Part shall be titled the Small Business Development (SBD) Ordinance. References to the
53 Small Business Development Ordinance and PPM shall be referred to as the Small Business
54 Development Program.

55 **Sec. 2-80.21. - Definitions.**

56 *Acting as a conduit* means not acting as a regular dealer by making sales of material, goods or
57 supplies from items bought, kept in stock and regularly sold to the public, as opposed to only
58 government agencies, in the usual course of business. Brokers, manufacturers' representatives,
59 sales representatives and non-stocking distributors are conduits not performing a Commercially
60 Useful Function.

61 *Affiliation* means that the entity applying for SBE Certification controls, has the power to
62 control, or is controlled by another entity or entities, or an identity of interests exists between the
63 entity applying for SBE Certification and another entity or entities. In determining whether an
64 Affiliation exists, it is necessary to consider factors including, but not limited to, common
65 ownership, common management, common use of facilities, equipment, and employees,
66 contractual obligations and family interest in the business. Affiliated entities must be considered
67 together in terms of gross receipts in determining whether a business entity meets SBE eligibility
68 criteria.

69 *Affirmative Procurement Initiatives (API)* are various program tools and solicitation
70 incentives that are used to encourage greater prime and subcontract participation by SBEs,
71 including, but not limited to, bonding assistance, evaluation preferences, and subcontracting goals.

72 *Best Value Contracting, Request for Proposal (RFP), Invitation to Negotiate (ITN)* means a
73 solicitation used in the formal competitive proposal process to solicit sealed proposals for goods or

74 services that is equal to or greater than the Mandatory Bid or Proposal Amount and where the
75 evaluation is based on established criteria which may include, but is not limited to, price.

76 **BCC** means the Board of County Commissioners of Palm Beach County, Florida.

77 **Business Category** means Construction; Professional Services procured pursuant to the
78 Consultants' Competitive Negotiations Act (CCNA Services); Professional Services other than
79 CCNA, Goods, and Other Services. For purposes of SBE eligibility criteria, a business entity shall
80 be considered for Certification in the business categories in which it successfully has performed
81 and demonstrated capability.

82 **CCNA** refers to the Consultants Competitive Negotiation Act.

83 **Certification** means the process by which the Office of SBD determines a firm to be a bona-
84 fide small business enterprise as provided in section 2-80.26.

85 **Code** means the Palm Beach County Code.

86 **Commercially Useful Function** means an SBE is responsible for execution of the work of the
87 County's contract and is carrying out its responsibilities by actually performing, staffing, managing
88 and supervising the work involved. To determine whether an SBE is performing a Commercially
89 Useful Function, the following is evaluated:

- 90 (1) Amount of work subcontracted;
91 (2) Normal industry practices;
92 (3) Whether the amount the SBE paid under the contract is commensurate with the work it
93 is actually performing and the SBE credit claimed for its performance; and
94 (4) Any other relevant factors.

95 An SBE-supplier must be responsible for materials and supplies used on the contract and that
96 are a subset of the broader scope of work of the goods and services purchased by the County. The
97 SBE-supplier must also be responsible for negotiating price, determining quantity and quality,
98 ordering the material, installing (when applicable) and paying for the material itself.

99 An SBE does not perform a Commercially Useful Function if its role is limited to being extra
100 participant or pass-through in a transaction, contract, or project to create the appearance of
101 meaningful and useful SBE participation.

102 **Construction Manager at Risk (CM@R)** refers to a project delivery method in which a
103 construction manager, acting as a general contractor, is contracted to advise the designer and
104 builder and deliver a project within a guaranteed maximum price (GMP).

105 **Control** means the authority of a person or business owner to sign responses to solicitations
106 and contracts, make price negotiation decisions, sell or liquidate the business, and have the primary
107 authority to direct the day-to-day management and operation of a business enterprise without
108 interference from others.

109 **County** means Palm Beach County.

110 **County Administrator** means the Administrator for Palm Beach County.

111 **County Department** means any department under the direction of the BCC.

112 **Days** means business days, unless specified otherwise.

113 **Design-Build** refers to a project delivery method where design and construction services are
114 contracted from a single entity known as a Design-Build Firm.

115 **Domiciled in the County** means the following:

- 116 (1) The business holds a valid County business tax receipt;
- 117 (2) Business is being conducted at the County location where sufficient full-time employees
118 are maintained to perform the contracted Commercially Useful Function;
- 119 (3) The County business tax receipt bears the County address, and the County location is in
120 an area zoned for such a business;
- 121 (4) The County location must be verifiable through documentation which may include, but
122 is not limited to, a property tax bill or lease agreement. Lease agreements for the County
123 location must be for at least one (1) year and identify a dedicated space or location
124 within the County; and
- 125 (5) The County location should be identifiable through signage, telephone listing, and/or
126 website or social media, when permissible. A County telephone number or post office
127 box in the County shall not be sufficient to establish Domicile.

128 On-site visits may be conducted at any time to determine continued adherence to Domicile
129 requirements and additional documentation may be requested on a case-by-case basis.

130 **Emerging Small Business Enterprise (Emerging SBE)** means a certified Small Business
131 Enterprise whose average gross receipts are fifty percent (50%) or less of the size standards
132 established for SBEs under the SBD Program.

133 **Enterprise Contract Management System (eCMS)** refers to the system used to track contracts
134 issued and payments received from the County. The system will track utilization of SBEs and non-
135 SBEs at the prime and subcontract levels by industry and contract-by-contract subcontracting
136 goals. The details regarding fields of information captured and the functionalities of eCMS shall be
137 reflected in the PPM.

138 **Expired** means a vendor's Certification term has ended and has not been renewed.

139 **Front** means a business which purports to be an SBE, but is actually owned and/or controlled
140 in a manner not complying with the County's requirements for certification, or a business that
141 purports to be performing a portion of work under a contract as an SBE but is not performing a
142 Commercially Useful Function.

143 **Goals** means the level of SBE participation projected to be obtained either annually within a
144 business category or in the performance of a specific solicitation or contract and is expressed as a
145 percentage of the total dollar volume of participation of all businesses in the County's procurement
146 of goods, services, and construction either annually within a given business category or within a
147 specific solicitation or contract.

148 **Good Faith Efforts (GFE)** means efforts and supporting documentation of the contractor,
149 respondent, or bidder's intent to comply with an SBD subcontracting goal when seeking a waiver
150 pursuant to section 2-80.26(6) , including, but not limited to, the following:

- 151 (1) Documentation reflecting the contractor, respondent, or bidder's commitment to comply
152 with SBE subcontracting goals for a particular solicitation or contract;
- 153 (2) Documentation of efforts made toward achieving the SBE subcontracting goals, such as:
- 154 a. Solicitations of bids/proposals/qualification statements from SBEs;
- 155 b. Correspondence from SBEs documenting their unavailability to perform;
- 156 c. Documentation of efforts to subdivide work into smaller quantities for
157 subcontracting purposes to enhance opportunities for SBEs;

- d. Documentation of a contractor's posting of a bond covering the work of SBE subcontractors;
- e. Documentation of efforts to assist SBEs with obtaining financing, bonding or insurance; and
- f. Documentation of communications with trade associations and consultants that represents the interests of SBEs.

The Office of SBD will review Good Faith Efforts documentation and make determinations regarding adequacy.

Graduation means when an SBE has exceeded the gross revenue size standards of the SBD Program.

Gross Receipts means the total annual sales or revenues for the firm or certification applicant as stated on its federal income tax return or, for a new business that has not yet filed a federal income tax return, 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 SBE Certification provided they meet all other Certification criteria and local zoning requirements. Home offices of an employee working for a company located in another County does not establish Domicile in the County.

Interlocal Agreement means an agreement between government entities.

Independent Business means a business that operates free of control or reliance on another business. Recognition of a 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 small business is an independent business, the County shall consider all relevant factors, including but not limited to:

- (1) The date the business was established;
- (2) The adequacy of its resources for the type of work performed;

187 (3) Relationships with affiliates and subsidiaries, and

188 (4) The degree to which financial, equipment leasing, and other relationships with other
189 businesses vary from established industry practices.

190 If there has been a recent change in ownership of the business, a review of the transaction to
191 ensure an arms-length deal will also be considered in determining independence.

192 ***Independent Contractor*** means an individual who is self-employed and operates her or his
193 own business. The individual is classified as an independent contractor if the hiring party has the
194 right to control or direct only the outcome of the work but does not have control over the methods
195 or means by which the work is performed.

196 ***Individual*** means an adult person that is of legal majority age.

197 ***Leased Employee*** means the employee of a leasing company that leases professional
198 employees to work for another business on a contractual basis. The business organization maintains
199 management of the work performed by the leased employee. The leasing company handles
200 administrative responsibilities such as, but not limited to, payroll, compliance with state and federal
201 regulations, and unemployment insurance.

202 ***Mandatory Bid or Proposal Amount*** means the threshold dollar amount established by the
203 BCC whereby the formal competitive bid or proposal process must be used, except as otherwise
204 provided herein. The Mandatory Bid or Proposal Amount is one hundred fifty thousand dollars
205 (\$150,000.00) as may be amended.

206 ***Manufacturer*** means a business that produces an item from raw materials or that substantially
207 alters the form of a product to make it suitable for a particular use.

208 ***Other Services*** means services that are not CCNA or non-CCNA Professional Services or
209 Construction-related services.

210 ***Points*** means the quantitative assignment of value for specific evaluation criteria in the vendor
211 selection process used in some solicitations (e.g., fifteen (15) points out of a total of one hundred
212 (100) points assigned for SBE participation as stated in response to a Request for Proposals).

213 ***Policies and Procedures Manual (PPM)*** means the administrative policies and procedures
214 manual for the SBD Ordinance.

215 **Prime Contractor/Consultant** means a vendor to whom a purchase order or contract is issued
216 by the County for providing goods or services and performing the majority of the services.

217 **Procurement Code** means sections 2-51 through 2-63 of the Palm Beach County Code, as may
218 be amended.

219 **Professional Services** means Professional Services, including but not limited to, any narrow
220 discipline wherein a practitioner is required to have attained an advanced educational degree and/or
221 credentials certifying a certain level of competency in the field issued by an independent body or
222 board on behalf of the profession. A practitioner of a Professional Service has, through education
223 and practical experience related to a particular field, developed expert advisory and programming
224 skills as a vocation where the high level of skills, technical expertise in the field, and/or the
225 advanced complexity and quality of advice warrants a competitive proposal or submittal process
226 wherein the strength of professional credentials are weighed in the selection process (e.g.,
227 accounting, legal services, mapping, laboratory testing services, physician services, nursing
228 services, pharmacists, scientists, dentistry, financial advisory services, realtors, surveying services,
229 landscape design services, appraisers, engineers, and architects).

230 **Small Business Enterprise (SBE)** means a corporation, partnership, sole proprietorship, or
231 other legal business entity for the purpose of making a profit that: (a) is independently owned and
232 operated by individuals legally residing in, or that are citizens of, the United States or its territories;
233 and (b) is currently certified as having annual revenues that satisfy SBE size standards on an
234 industry-specific basis (Construction, CCNA Professional Services, Non-CCNA Professional
235 Services, Goods, and Other Services); and (c) is Domiciled in Palm Beach County. Determination
236 of SBE-status is the sole responsibility of the Office of SBD pursuant to section 2-80.26. The size
237 standards for SBEs are as follows, and may be periodically revised by the SBD Director as
238 necessary to satisfy and serve the purposes and objectives of this SBD Ordinance, and shall
239 thereafter be reflected in the PPM:

240 (1) For a provider of Construction Services, the annual gross revenue shall not exceed
241 thirteen million dollars (\$13,000,000.00) (averaged over the previous three (3) most
242 recent years, or if in business less than three (3) years, averaged over the duration of the
243 provider's existence).

(2) For a provider of Professional Services procured pursuant to the CCNA statute, the average annual gross revenues shall not exceed seven million dollars (\$7,000,000.00) (averaged over the previous three (3) most recent years, or if in business less than three (3) years, averaged over the duration of provider's existence).

(3) For a provider of other Non-CCNA Professional Services, the average annual gross revenue shall not exceed five million, seven hundred thousand dollars (\$5,700,000.00) (averaged over the previous three (3) most recent years, or if in business less than three (3) years, averaged over the duration of the provider's existence).

(4) For a provider of Goods, the annual gross revenue shall not exceed seven million dollars (\$7,000,000.00) (averaged over the previous three (3) most recent years, or if in business less than three (3) years, averaged over the duration of the provider's existence).

(5) For a provider of Other Services, the average annual gross revenue shall not exceed five million, seven hundred thousand dollars (\$5,700,000.00) (averaged over the previous three (3) most recent years, or if in business less than three (3) years, averaged over the duration of the provider's existence).

Solicitation means Invitation for Bids, Request for Proposals, Invitations to Negotiate or any document used to obtain bids or proposals for the purpose of entering into a contract.

Subcontractor/Subconsultant means a subcontractor or a subconsultant that is providing goods or services to a prime contractor in direct furtherance of the prime contractor's performance of a defined scope of work or deliverables under a contract or purchase order with the County. Contracts between prime contractors and subcontractors/subconsultants must be submitted prior to the County's issuance of a Notice to Proceed or Notice of Intent to Award to the prime contractor.

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

Supplier means a business supplying goods or materials. A supplier may be distinguished from a contractor or subcontractor who commonly adds specialized services or input to deliverable commodities.

272 *Vendor Self Service System (VSS)* means the electronic system of hardware and software
273 programs by which the County requires all vendors, including subcontractors, that are ready,
274 willing, and able to sell goods or services to the County to register. Prior to award, all vendors shall
275 be required to register in VSS.

276 All terms not specifically defined herein, but defined in the Procurement Code, as may be
277 amended, shall carry the definition therein described.

278 **Sec. 2-80.22. – Scope and Exclusions.**

279 This Part shall apply to the solicitation of all goods, services and construction by the County
280 which are governed by the County Procurement Code, including when the County engages with
281 another entity to conduct procurements on the County's behalf. As such, the County shall require the
282 agency, corporation, vendor, or contractor to comply with the SBD Program in the solicitation, the
283 award, and administration of that contract or agreement, subject to the provisions of this Part. County
284 Departments shall include SBE participation in exempt purchases to the extent feasible, taking into
285 consideration the nature of the procurement; however, the following categories of contracts shall be
286 excluded from the scope and application of this SBD Program:

- 287 (1) Contracts for the purchase of goods or services of a unique nature for which the County's
288 Procurement Department determines and confirms there is only a sole source of supply;
- 289 (2) Contracts for electricity or water and sewage services from a municipal utility district or
290 governmental agency;
- 291 (3) Emergency Purchases;
- 292 (4) Contracts for the County's lease or purchase of real property where the County is lessee
293 or purchaser;
- 294 (5) Contracts for personal services involving the unique abilities or style of a particular
295 individual;
- 296 (6) Contracts or grants where conditions established by law or by external sources of funding
297 prohibit application of the SBD Program; and
- 298 (7) Any additional exclusions from the scope of this SBD Ordinance shall be set forth in the
299 PPM.

Sec. 2-80.23. – Commercial Nondiscrimination Policy.

(1) *Statement of Policy.* It is the policy of the County not to enter into a contract or to be engaged in a business relationship with any business entity that has discriminated in the solicitation, selection, hiring or commercial treatment of vendors, suppliers, subcontractors or commercial customers on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, or genetic information, or on the basis of any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners, provided that nothing in this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination.

(2) *Policy Implementation.* The Office of SBD shall implement this policy by periodically conducting outreach and by distributing educational materials to the County's contracting and vendor community and related trade associations to advise such contractors, vendors and prospective respondents or bidders of this policy and the procedures to be followed in submitting complaints alleging violations of this policy. In addition, the County Administrator, the Director of Procurement, and the Office of the County Attorney shall ensure that the following commercial nondiscrimination clause language is set forth in, and incorporated into, all County contracts exceeding the Mandatory Bid or Proposal Amount:

Every contract and subcontract issued shall reflect the Commercial Nondiscrimination Policy and contain words that are similar in meaning to the following:

As a condition of entering into this agreement, the company represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy as described in Resolution R2025-0748, as amended. As part of such compliance, the company shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy

the effects of discrimination. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification or debarment of the company from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

All solicitations exceeding the Mandatory Bid or Proposal amount shall reflect the Commercial Nondiscrimination Policy and contain words that are similar in meaning to the following:

The undersigned Respondent or Bidder hereby certifies and agrees that the following information is correct:

In preparing its response on this Solicitation, the Respondent or Bidder has considered all proposals submitted from qualified, potential Subcontractors and suppliers, and has not engaged in "discrimination" as defined in the County's Commercial Nondiscrimination Policy as set forth in Resolution R2025-0748 as amended, to wit: discrimination in the solicitation, selection or commercial treatment of any Subcontractor, vendor, supplier or commercial customer on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, or genetic information, or on the basis of any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners; provided that nothing in this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination." Without limiting any other provision of the Solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the County to reject the response submitted by the Respondent or Bidder for this Solicitation, and to terminate any contract awarded based on the response. As part of its response, the Respondent or Bidder shall provide to the County a list of all instances within the immediate past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Florida that the respondent or bidder discriminated against its Subcontractors, vendors, suppliers or commercial customers,

and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a response to the County, the respondent or bidder agrees to comply with the County's Commercial Nondiscrimination Policy as described in Resolution R2025-0748 as amended.

Sec. 2-80.24. – Affirmative Procurement Initiatives.

The Affirmative Procurement Initiatives may be considered by the Goal Setting Committee (GSC) as follows:

(1) *Construction Industry.*

- a. *SBE Subcontracting Program.* The County establishes a mandatory minimum goal of twenty percent (20%) SBE participation for County contracts. The Office of SBD and the Goal Setting Committee may approve a reasonable reduction or waiver of this goal if it is factually demonstrated that there is inadequate availability of SBE prime and/or subcontractor firms.

A. *Solicitations with Defined Price and Scope*

A prospective respondent or bidder shall submit with its proposal or bid the following documentation required by the Office of SBD:

1. The name(s) of the SBE subcontractor(s) it intends to use on the project;
2. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;
3. A description of the work that each SBE subcontractor shall perform; and
4. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

B. *Solicitations without a Predefined Scope*

A prospective respondent or bidder shall commit in its proposal or bid to meeting the SBE subcontracting goal stated in the solicitation. Failure to make such commitment shall render the proposal or bid non-responsive. During the price

proposal negotiation phase, the respondent or bidder shall provide the documentation set forth in items 1–4 above.

A SBE prime contractor is allowed to self-perform the entire SBE subcontracting goal amount with its own forces for contracts valued under ten million dollars (\$10,000,000.00). To the extent that the SBE prime contractor does not self-perform a portion of the SBE subcontracting goal, it shall be responsible for complying with this API for non-self-performed work. The SBD Director may suspend SBE prime contractor self-performance if it is determined that the adverse effect of prime self-performance on SBE subcontractor opportunities is too great.

Failure of a prime contractor to meet the SBE subcontracting goal or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination for cause and/or subject the prime contractor to any penalties and sanctions available under this Part, the Procurement Code, contract terms, and/or by law.

Contracts with prime contractors shall include a clause requiring prime contractors to pay subcontractors according to Florida prompt payment laws and that non-compliance shall subject the prime contractor to any penalties and sanctions available under this Part, the Procurement Code, contract terms, and/or by law.

b. *SBE Mentor-Protégé Program.*

The GSC may apply the following evaluation preferences for construction-related RFPs, such as Construction Manager at Risk (CM@R), Design-Build (D-B) or property development (Developer):

A. *Evaluation Preference for Mentoring.* The Selection Committee will assign up to five percent (5%) of the total evaluation points for construction-related proposals where the respondent agrees to mentor an SBE to provide management guidance and training. The Mentor-Protégé Program will be administered according to the County’s CM/SBE Partnering Guidelines which set out the program objectives, qualifications and the mentor and protégé responsibilities. A copy of the CM/SBE

Partnering Guidelines may be obtained by contacting the Department of Facilities Development & Operations.

B. *Evaluation Preference for SBE Participation.* Points shall be awarded on a sliding scale from zero (0) to ten percent (10%) of the total evaluation points. The sliding scale shall be based upon the following factors:

1. Firm's history of SBE participation on prior government or private sector projects;
2. Firm's SBE participation plan, i.e. how the firm will achieve applicable APIs when subcontracts are solicited; and
3. Firm's commitment to achieving APIs applicable to subcontracts.

C. *Construction-related RFPs, such as CM@R, D-B or Developer.* The APIs applicable to the construction phase of the contract (i.e. the subcontracts) will be applied by the GSC prior to the advertisement and bidding of subcontracts by the Construction Manager (CM), Design Build (D-B) or Developer firm. If the GSC applies an SBE subcontracting goal to the project, the GSC may also allow the CM firm, D-B firm or Developer firm to apply an SBE price preference, for subcontracts less than \$1,000,000, where the subcontract will be awarded to the lowest responsive, responsible bidder unless a certified SBE's bid is within ten (10) percent of the lowest non-SBE bid. In such case the award shall be made to the certified SBE submitting the lowest responsive, responsible bid. For subcontracts \$1,000,000 or more, the GSC may allow the CM, D-B or Developer firm to apply an SBE price preference where the subcontract will be awarded to the low bidder responsive to the SBE requirements provided that such bid does not exceed the lowest responsive bid by more than one hundred thousand (\$100,000.00) plus three percent (3%) of the total bid over one million (\$1,000,000.00).

c. *SBE Price Preference.* For Construction contracts where there are no opportunities for subcontracting (e.g., single trade), the Goal Setting Committee may include a provision requiring awards being recommended to the lowest responsive, responsible SBE bidder

within ten (10) percent of the lowest non-SBE bidder. If so, the award shall be made to the SBE bidder at its bid price. Prime SBE bidders must perform the majority of the associated work under this API.

(2) *Professional Services.*

- a. *Evaluation Preference for New SBE Prime Respondents.* Under this API, the GSC shall establish point preferences in the evaluation of proposals for those first-time SBE entrants that are competing for County Professional Services contracts for up to one (1) year after submission of an SBE prime respondent's or bidder's first successful proposal with the County, or until the firm has received a cumulative total of one million dollars (\$1,000,000.00) or more in payments for services performed on behalf of the County, whichever period of time is longer. Up to fifteen percent (15%) of the total evaluation points allocated for selection of a Professional Services firm by the County shall be reserved for new SBE prime respondents.

New SBE prime respondents may be awarded up to fifteen percent (15%) of total evaluation preference points based on the percentage of work performed within Palm Beach County. To qualify for evaluation preference points, the new SBE prime respondent must perform the majority of the associated work under the contract, and the majority of such work must be performed by personnel from the new SBE prime respondent's Palm Beach County office. Failure to meet either requirement shall result in zero (0) evaluation preference points. Points shall be allocated at a rate of 0.15 points for each one percent (1%) of the contract work committed and performed locally by the new SBE prime respondent. The calculation shall be based on the percentage of the total contract amount or, when no specific dollar value is established, the percentage of work identified in the new SBE prime respondent's commitment. For example, a new SBE prime respondent performing ten percent (10%) of the work within the County shall receive 1.5 points, fifty percent (50%) shall receive 7.5 points, and one hundred percent (100%) shall receive the maximum of fifteen (15) points.

b. *SBE Reserve for Contracts Up to ten thousand dollars (\$10,000) and Required SBE Quotations on Solicitations less than the Mandatory Bid or Proposal Amount for non-CCNA Professional Services.* Under this API, the GSC may reserve certain categories of small Professional Services contracts valued at less than ten thousand dollars (\$10,000.00) exclusively for competition among SBE Professional Services firms. For larger non-CCNA professional services contracts valued at less than the Mandatory Bid or Proposal Amount, the GSC shall require at least two-to-three quotations or proposals be affirmatively solicited directly from SBE Professional Services firms before the County may make an award. In selecting the use of this API, the GSC shall consider whether the County has had difficulty in obtaining prime contract bids or proposals from available SBEs for the type of Professional Services contract.

c. *SBE Evaluation Preference for Prime Respondents.* Under this API, there are two (2) options available for the GSC to apply to Best Value Professional Services solicitations:

Option 1

An SBE evaluation preference of up to fifteen percent (15%) of the total evaluation points for proposals shall be reserved for all SBE prime respondents on Professional Services contracts. SBE prime respondents may be awarded up to fifteen percent (15%) of the total evaluation preference points based on the percentage of work performed within Palm Beach County. To qualify for evaluation preference points, the SBE prime respondent must perform the majority of the associated work under the contract, and the majority of such work must be performed by personnel from the SBE prime respondent's County location. Failure to meet either requirement shall result in zero (0) evaluation preference points. Points shall be allocated at a rate of 0.15 points for each one percent (1%) of the contract work committed and performed locally by the SBE prime respondent. The calculation shall be based on the percentage of the total contract amount, or, where no specific dollar value is established, the percentage of work identified in the respondent's commitment. For example, a respondent performing ten percent (10%) of the work within

the County shall receive 1.5 points, fifty percent (50%) shall receive 7.5 points, and one hundred percent (100%) shall receive the maximum of fifteen (15) points.

Option 2

For Professional Services solicitations, the total evaluation preference points may be awarded as part of the scoring of proposals as follows:

Non-SBE Primes (Sliding Scale). Points shall be allocated based upon the relative level of SBE dollar participation committed by the Prime Respondent's team (e.g., 0% = 0 points; 50% of highest SBE participation = 7.5 points; highest SBE participation = 15 points).

SBE Primes (Local Performance with Subcontractors). When the prime respondent is an SBE, the sliding scale shall not apply. Eligibility for evaluation preference points requires that the majority of the work performed by the SBE prime respondent be completed by personnel from the SBE prime respondent's County location. Points shall be calculated by multiplying 0.15 points by the sum of:

1. the percentage of contract work performed by personnel from the SBE prime respondent's County location, and
2. the percentage of contract work performed by SBEs.

- d. *SBE Subcontracting Goals for Professional Services.* The County establishes a mandatory minimum goal of twenty percent (20%) SBE participation for County contracts. The Office of SBD and the Goal Setting Committee may approve a reasonable reduction or waiver of this goal if it is factually demonstrated that there is inadequate availability of SBE prime and/or subcontractor firms.

A. *Solicitations with Defined Price and Scope*

A prospective respondent or bidder shall submit with its response the following documentation as required by the Office of SBD:

1. The name(s) of the SBE subcontractor(s) it intends to use on the project;

2. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;
3. A description of the work that each SBE subcontractor shall perform; and
4. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

B. Solicitations without a Predefined Scope

A prospective respondent or bidder shall commit in its proposal or bid to meeting the SBE subcontracting goal stated in the solicitation. Failure to make such commitment shall render the proposal or bid non-responsive. During the price proposal negotiation phase, the respondent or bidder shall provide the documentation set forth in items 1–4 above.

A SBE prime contractor is allowed to self-perform up to the entire SBE subcontracting goal amount with its own forces for contracts valued under ten million dollars (\$10,000,000.00). To the extent that the SBE prime contractor does not self-perform a portion of the SBE subcontracting goal, it shall be responsible for complying with this API for non-self-performed work. The SBD Director may suspend SBE prime contractor self-performance if it is determined that the adverse effect of the SBE self-performance on SBE subcontractor opportunities is too great.

Failure of a prime contractor to meet the SBE subcontracting goal or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination for cause, and/or subject the prime contractor to any penalties and sanctions available under this Part, the Procurement Code, contract terms, and/or by law.

Contracts with prime contractors shall include a clause requiring prime contractors to pay subcontractors according to Florida prompt payment laws and that non-compliance shall subject the prime contractor to any penalties and sanctions available under this Part, the Procurement Code, contract terms, and/or by law.

(3) Goods and Other Services.

- a. *SBE Evaluation Preference for Prime Respondents*. Under this API, there are two (2) options available for the GSC to apply to Goods and Other Services solicitations:

Option 1

An SBE evaluation preference of up to fifteen percent (15%) of the total evaluation points for scoring proposals shall be reserved for all SBE prime respondents on Goods and Other Services contracts. SBE prime respondents may be awarded up to fifteen percent (15%) of the total evaluation preference points based on the percentage of work performed within the County. To qualify for evaluation preference points, the SBE prime respondent must perform the majority of the associated work under the contract, and the majority of such work must be performed by personnel from the SBE prime respondent's County location. Failure to meet either requirement shall result in zero (0) evaluation preference points. Points shall be allocated at a rate of 0.15 points for each one percent (1%) of the contract work committed and performed locally by the SBE prime respondent. The calculation shall be based on the percentage of the total contract amount, or, where no specific dollar value is established, the percentage of work identified in the respondent's commitment.

Option 2

For Goods and Other Services solicitations, up to fifteen percent (15%) of the total evaluation preference points may be awarded as part of the scoring of proposals.

Non-SBE Primes (Sliding Scale). Points shall be allocated based upon the relative level of SBE dollar participation committed by the prime respondent's team (e.g., 0% = 0 points; 50% of highest SBE participation = 7.5 points; highest SBE participation = 15 points).

SBE Primes (Local Performance with Subcontractors). When the prime respondent is an SBE, the sliding scale shall not apply. Eligibility for evaluation preference points requires that the majority of the work performed by the SBE prime respondent be completed by personnel from the SBE prime respondent's County location. Points shall be calculated by multiplying 0.15 points by the sum of:

1. the percentage of contract work performed by personnel from the SBE prime respondent's County location, and
2. the percentage of contract work performed by SBEs.

b. *SBE Subcontracting Goals for Goods and Other Services Contracts Valued at Greater Than the Mandatory Bid or Proposal Amount.* For larger Goods and Other Services solicitations valued at or greater than Mandatory Bid or Proposal Amount, the GSC may apply a mandatory SBE subcontracting goal when there are an adequate number of Commercially Useful Functions available for subcontracting,

The County establishes a mandatory minimum goal of twenty percent (20%) SBE participation for County contracts. The Office of SBD and the GSC may approve a reasonable reduction or waiver of this goal if it is factually demonstrated that there is inadequate availability of SBE prime and/or subcontractor firms.

A. *Solicitations with Defined Price and Scope*

A prospective respondent or bidder shall submit with its proposal or bid the following documentation required by the Office of SBD:

1. The name(s) of the SBE subcontractor(s) it intends to use on the project;
2. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;
3. A description of the work that each SBE subcontractor shall perform; and
4. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

B. *Solicitations without a Predefined Scope*

A prospective respondent or bidder shall commit in its proposal or bid to meeting the SBE subcontracting goal stated in the solicitation. Failure to make such commitment shall render the proposal or bid non-responsive. During the price proposal negotiation

599 phase, the respondent or bidder shall provide the documentation set forth in items 1–
600 4 above.

601 A SBE prime contractor is allowed to self-perform up to the entire SBE subcontracting
602 goal amount with its own forces for contracts valued under ten million dollars
603 (\$10,000,000.00). To the extent that the SBE prime contractor does not self-perform a
604 portion of the SBE subcontracting goal, it shall be responsible for complying with this API
605 for non-self-performed work. The SBD Director may suspend SBE prime contractor self-
606 performance if it is determined that the adverse effect of the prime self-performance on
607 SBE subcontractor opportunities is too great.

608 Failure of a prime contractor to meet the SBE subcontracting goal or otherwise comply
609 with the provisions of this API shall be considered a material breach of contract, grounds
610 for termination for cause, and/or subject the prime contractor to any penalties and sanctions
611 available under this Part, the Procurement Code, contract terms, and/or by law.

612 Contracts with prime contractors shall include a clause requiring prime contractors to
613 pay subcontractors according to Florida prompt payment laws and that non-compliance
614 shall subject the prime contractor to any penalties and sanctions available under this Part,
615 the Procurement Code, contract terms, and/or by law.

616 c. *SBE Price Preference.* Under this API, the GSC may apply certain purchasing procedures
617 to increase SBE participation, including, but not limited to, purchases valued below the
618 Mandatory Bid Amount threshold set forth in the Procurement Code and purchases made
619 by Decentralized Purchase Orders (DPOs) for Goods and Other Services solicitations,
620 procurements, or contracts valued under ten thousand dollars (\$10,000.00). The purchasing
621 procedures shall include the following:

- 622 1 A provision that every effort will be made by buyers to contact all registered
623 certified SBEs available within a particular commodity area for such purchases;
- 624 2 A process allowing as many SBEs as possible to compete in providing Goods
625 and Other Services to County; and

3 A provision requiring awards of purchases to be made to the lowest responsive, responsible SBE respondent or bidder if it is within ten (10) percent of the lowest non-SBE bid. If so, the award shall be made to the SBE respondent or bidder at its proposal or bid price.

This section shall not apply to procurement of Construction services. SBE prime respondents or bidders must perform the majority of the associated work under this API.

Sec. 2-80.25. – Program Administration.

(1) *County Departments—Duties and Responsibilities.* It shall be the responsibility of the Procurement Department to ensure that solicitations it issues adhere to the procedures and provisions set forth in the SBD Program. The Office of SBD, County Department and Procurement Department shall have responsibility for assuring vendor and contractor compliance with the SBD Program. The County Department shall review and make adjustments to its efforts, as necessary, to assure compliance with the SBD Program. The County Department, in collaboration with the Procurement Department and the Office of SBD, shall ensure the following actions are taken:

- a. Post all solicitations above the Mandatory Bid or Proposal Amount on the County's website for the solicitation period required by state law for the type of procurement and direct targeted e-mail alerts. Such email alerts shall contain links to the webpage where solicitations are posted at least thirty (30) calendar days in advance of the solicitation's due date, when practicable, and be directed to all vendors registered with the appropriate commodity/industry codes on VSS.
- b. Encourage all prospective prime respondents or bidders to post their subcontract opportunities on the County webpage where the solicitation specifications have been posted.
- c. Ensure that the Commercial Nondiscrimination Policy statement, compliance language, and any other material requirements specified by the SBD Ordinance are included in all solicitations and contracts;

- d. Preview and evaluate all solicitations, above the Mandatory Bid or Proposal Amount, to seek de-bundling into smaller units to promote maximum and reasonable opportunities for SBE participation. De-bundling efforts shall not make separate, sequential or component purchases in violation of state purchasing laws;
- e. Establish procedures to ensure prime contractors submitting correct and undisputed invoices are paid in accordance with Florida's Prompt Payment Act, as amended. Include a clause in all contracts requiring prime contractors to notify subcontractors when the County has issued the prime contractor a written notice of disputed invoice(s) within five (5) days of receipt of the County's written notice. The prime contractor's notice to its subcontractor(s) shall state the reason(s) for the disputed invoice;
- f. Ensure that binding agreements between the prime contractors and subcontractors have been executed and submitted to the County Department before the County's contract with the prime contractor is executed and a Notice to Proceed or Notice of Intent to Award is issued;
- g. Ensure that all required statistics and documentation regarding bid, contract, invoice, and payment information are submitted to the Office of SBD, as requested;
- h. If circumstances prevent the County Department from meeting the solicitation notification requirements contained within this section, the County Department may engage in direct and extensive outreach to SBE associations and/or other relevant organizations to inform them of the contracting opportunity. Such outreach is not required in an emergency requiring immediate action to protect the public health, safety or welfare; and
- i. Notify the SBD Director of all change orders and amendments to contracts that are subject to this SBD Ordinance and take necessary steps to ensure that APIs applied to the contract by the Goal Setting Committee are also extended and enforced, to the maximum practical extent, with regard to any modified scope of work under the terms of such change orders and contract amendments.

(2) *Office of SBD—Duties and Responsibilities.* The following are the duties and responsibilities of the Office of SBD:

- a. *General Duties.* The SBD Ordinance will be administered and managed by the SBD Director. The SBD Director or designee shall attend all BCC agenda meetings to address any SBE or SBD Program issues. The Office of SBD shall be responsible for the overall administration of the County's SBD Program. At a minimum, the Office of SBD shall:
- A. Report to the County and the public, based on available data, on at least an annual basis as to the County's progress toward satisfying the SBD Ordinance's purposes and objectives;
 - B. Formulate, establish, distribute and implement additional forms, rules and procedures for SBD Program waivers, improvements and adjustments to the goal-setting methodologies, and other SBD Program features;
 - C. Have input in a contract specification review process consistent with this SBD Ordinance to ensure that contract solicitation specifications are not unnecessarily restrictive and unduly burdensome to SBEs;
 - D. Receive and analyze external and internal information, including statistical data and anecdotal testimony regarding the barriers encountered by SBEs attempting to obtain contract opportunities with the County, and the effectiveness of various APIs in addressing those barriers;
 - E. Monitor and support the program policies and procedures and propose modifications to appropriate County officials as necessary to fully achieve the purpose and objectives of the SBD Program;
 - F. Provide public education and advocacy internally and externally regarding the purposes and objectives of the SBD Ordinance;
 - G. Maintain a directory of Certified SBEs;
 - H. Provide seminars and technical assistance referrals to SBEs;
 - I. Investigate alleged violations of the SBD Ordinance and provide written recommendations to the County Department and/or County Administrator, as

707 applicable, for remedial action and imposition of sanctions and penalties, when
708 necessary;

709 J. Determine prime contractor compliance with SBD Ordinance requirements prior to
710 award and release of final retainage;

711 K. Oversee the maintenance of an accurate contract performance and compliance
712 reporting system;

713 L. Provide staff support for the Goal Setting Committee and the SBD Advisory
714 Committee;

715 M. Collaborate with County Departments to streamline the invoice and payment
716 procedures to accelerate payments for prime contractors.

717 N. Provide a representative to serve as a voting member on all selection committees
718 for all County Best Value solicitations. The Office of SBD representative on such
719 selection panels shall promote fairness in scoring so that large incumbent firms are
720 not improperly favored over the comparably qualified of SBEs.

721 O. Review all prospective solicitations, above the Mandatory Bid or Proposal Amount,
722 in advance to recommend eliminating unnecessarily restrictive contract terms,
723 conditions, contract bundling features, or selection criteria that may be barriers to
724 SBE participation.

725 **Sec. 2-80.26. – Certification and Compliance.**

726 (1) *Certification*

727 a. Certification of all SBE firms shall be the responsibility of the Office of SBD. The Office
728 of SBD shall also maintain an automated and up-to-date web-based registry of all SBEs
729 that is available to the general public and County personnel.

730 b. The Office of SBD may contract with a regional governmental or certification
731 agency/organization (certifying agent) for the purpose of issuing Certifications in a
732 manner consistent with the eligibility standards established by the SBD Program. The
733 Office of SBD shall be responsible for reviewing all SBE Certification and recertification

forms used by the certifying agent to ensure they are consistent with the requirements of the SBD Program.

- c. A firm eligible for Certification must be an Independently Owned and Operated business. In determining whether a potential firm is an Independently Owned and Operated business, the following may be considered:

1. The date the business was established;
2. The adequacy of its resources to perform the contracted work; and
3. The degree to which financial, equipment leasing, supplier and other relationships with non-small businesses vary from industry practice.

- d. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an SBE.

- e. A firm seeking Certification or recertification must cooperate fully with the County or certifying agent in supplying information and facilitating a site visit of the business, as needed. Failure or refusal to cooperate may result in denial or revocation of Certification.

- f. Proof of Certification by another governmental entity certifying small businesses may be accepted by the County if the certifying entity adheres to the same or similar policies and standards as those established by the SBD Program. Before accepting another entity's certification, the Office of SBD shall examine the definitions, standards and certification practices of the certifying entity. Acceptance of another governmental entity's small business certification is fully within the discretion of the Office of SBD.

- g. Special consideration of the following additional circumstances in determining eligibility:

1. Newly formed businesses and businesses whose ownership or control has changed since the date of advertisement of a solicitation shall be closely scrutinized to determine the reasons for the timing of the formation of, or change in, the businesses;
2. A previous or continuing employer-employee relationship between or among present owners shall be carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this SBD Ordinance;

3. Once certified, an SBE shall update its status triennially by submitting a Certification affidavit. If ownership or control of the firm has changed, the SBE shall submit a new Certification affidavit to the Office of SBD or certifying agent within thirty (30) days of the change. Failure to submit a new Certification affidavit may result in revocation or suspension of Certification.

4. The Office of SBD will notify applicants in writing of staff's determinations on Certification and recertification status.

h. Once denied Certification, a firm may not reapply for Certification until one (1) year has elapsed from the date of the final determination to deny. A change in ownership, control, or business structure of a firm denied Certification shall not constitute a new or different business entity for purposes of this section and may not reapply within the one-year period.

i. A firm shall be decertified when it no longer meets the eligibility requirements for Certification, and such decertified firms shall not be eligible to reapply for one (1) year from the date of the final determination to decertify.

j. Certification, once granted, is effective for three (3) years, unless the SBE graduates, is decertified, or suspended.

(2) *Request for Reconsideration of Certification Denial.* An applicant may seek reconsideration within twenty (20) days of the issuance of the notice to deny Certification by submitting a request for reconsideration in writing to the SBD Director. The applicant shall state the basis for its request for reconsideration and may also seek a conference with the SBD Director to be heard on the matter. If a conference is held, the SBD Director shall issue a final written determination within thirty (30) days of the conclusion of the conference. The SBD Director shall take one (1) of the following actions on a request for reconsideration:

1. *Reverse the decision.* The SBD Director may reverse the decision to deny Certification if it is determined that the denial is contrary to the provisions of the SBD Ordinance and a Certification certificate shall be issued to the applicant.

2. *Uphold the decision.* The SBD Director may uphold the decision to deny Certification if it is determined denial is consistent with the provisions of the SBD Ordinance.

- 790 a. If denial is upheld, the applicant has the right to request an appeal before the SBD
791 Advisory Committee as follows:
- 792 A. The request for an SBD Advisory Committee hearing shall be in writing to the SBD
793 Director and shall be made within five (5) business days of issuance of the Director's
794 determination. The request for a hearing shall be accompanied by an appeal bond for
795 five hundred dollars (\$500), which shall be remitted in the form of a money order,
796 certified check, cashier's check, or bank check payable to Palm Beach County.
- 797 B. At no time shall the applicant or any other person contact any member of the SBD
798 Advisory Committee regarding any issue pertaining to, or involving, the appeal.
799 Contact between the County and the SBD Advisory Committee shall be limited to
800 scheduling and other hearing administration, including the provision and copying of
801 public records pertinent to the appeal.
- 802 C. The SBD Advisory Committee may not consider any documentary evidence not
803 available at the time of the application or original recommendation for decertification
804 or denial of Certification or recertification. However, the applicant will be given an
805 opportunity to testify and present witnesses, and the SBD Advisory Committee may
806 take testimony from county staff, the applicant, and any other relevant party. Formal
807 rules of evidence shall not apply, but fundamental due process shall be observed and
808 govern the proceedings. Upon determination of the SBD Advisory Committee,
809 irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other
810 evidence of a type commonly relied upon by reasonably prudent persons in the
811 conduct of their affairs shall be admissible, including hearsay evidence, whether or
812 not such evidence would be admissible in a trial in the courts of Florida.
- 813 D. If the appellant wishes to have a court reporter present at the hearing, such court
814 reporter shall be provided at the appellant's sole expense. The appellant shall be
815 responsible for obtaining, compensating, and coordinating the services of the court
816 reporter, including any requests for transcripts or records of the proceeding.
- 817 E. The SBD Advisory Committee shall have the jurisdiction and authority to hear and
818 decide appeals and render one of the following decisions:

1. *Uphold the decision.* If the SBD Advisory Committee upholds the decision of the SBD Director, the SBD Advisory Committee shall recommend that Certification be withheld, and the applicant's bond shall be forfeited.

2. *Reverse the decision.* If the SBD Advisory Committee reverses the decision of the SBD Director, the SBD Advisory Committee shall recommend that the SBD Director issue a Certification certificate and the Office of SBD shall return the appeal bond to the applicant.

The SBD Advisory Committee's written recommendation shall be issued within ten (10) days from the conclusion of the hearing.

(3) *Compliance Responsibilities.*

Contractor Noncompliance. The Office of SBD, along with contracting staff of each County Department, shall monitor compliance with SBD Program requirements during the term of the contract. If there is cause to believe that a prime contractor or subcontractor has failed, or will likely fail, to comply with any of the requirements of the SBD Ordinance, or with the contract provisions pertaining to SBE subcontracting goals, the Office of SBD shall notify the County Department and prime contractor. The Office of SBD may require such reports, information, and/or documentation from the prime contractor; subcontractor; and any County department, division, or office as are reasonably necessary to determine compliance with the SBD Ordinance. Such reports, information, and/or documentation from the noncompliant prime contractor or subcontractor must be sent to the Office of SBD within fifteen (15) calendar days after the notice of noncompliance is issued. If the requested materials are not received within fifteen (15) calendar days, then a finding of noncompliance is determined and appropriate penalties and sanctions may be imposed.

Joint responsibility is shared by the Office of SBD and the County Department to resolve a prime contractor or subcontractor's noncompliance with the requirements the SBD Ordinance, including any noncompliance with contract provisions pertaining to SBE utilization. If noncompliance cannot be resolved within thirty (30) calendar days after notice is sent, the SBD Director and the Director or Manager of the County Department shall submit written

recommendations to the County Administrator regarding penalties and sanctions. If the County Administrator concurs with the findings, such sanctions shall be imposed.

(4) *Reporting Requirements—Office of SBD.* The SBD Director or designee shall monitor the implementation of the SBD Program and issue semi-annual and annual performance reports on the level of SBE participation achieved on completed contracts. Semiannual written reports on the progress of the program and the various program elements shall be presented to the BCC and County Administrator. Such reports shall include the following:

- a. Achievement of contract participation goals for SBEs by industry segment, location, and API.
- b. Summary of contract payments to contractors and all subcontractors for each of these categories.
- c. Address stated program objectives including, but not limited to:
 1. Enhancement of competition as reflected in solicitation response activity by prime contractors;
 2. Growth in availability for SBEs;
 3. Removal of barriers to SBE contract participation; and
 4. Contract payments to SBE firms in County contracts.
- d. Other specific performance measures by which the success of the SBD Ordinance might be evaluated (depending upon the availability of data) include:
 1. Growth in SBEs winning their first contract awards from the County; and
 2. Growth in the County's overall SBE prime contracting dollar volume.

The written report should also contain any recommendations for additions, modifications, suspension, or termination of any portion of the SBD Program, with justifications for each such recommendation.

(5) *Contractor/Vendor Responsibilities.* To facilitate the Office of SBD completing its responsibilities in administering the SBD Program, a contractor/vendor shall:

- a. Ensure that ALL proposed subcontractors/subconsultants register in VSS before contract award. It is the vendor's responsibility to ensure VSS registration includes ALL commodity

codes for goods and/or services the vendor provides. If a vendor fails to register commodity codes for the goods and/or services in which vendor provides, the vendor WILL NOT receive solicitation email alerts.

b. Permit the Office of SBD to inspect any relevant matter, including records, the jobsite, and to interview subcontractors and workers (i.e. field compliance).

c. Ensure that all proposed SBE and non-SBE subcontractors and suppliers must be included on properly executed Schedules 1, 2 and 2A, as detailed in the PPM. When an SBE subcontracting and/or evaluation API applies, only SBE participation listed on properly executed Schedules 1, 2 and 2A will be considered for purposes of evaluating SBE goals and calculating API credit. Improperly executed schedules will not be credited toward SBE participation under the solicitation. Properly executed Schedules 2 and 2A include, at minimum, the following:

1. Schedule 1 (Prime Contractor Information).

2. Section A must be fully completed by the Prime Contractor.

3. If subcontractors or subconsultants are utilized, Section B must also be completed and must include (1) the legal name of each subcontractor or subconsultant; (2) identity of each as an SBE and/or non-SBE; and (3) the total dollar amount or percentage of work to be paid or performed by each subcontractor or subconsultant.

4. Schedule 2 or 2A (Subcontractor/Subconsultant Information).

d. For each subcontractor or subconsultant listed on Schedule 1, a completed Schedule 2 or 2A must be submitted containing the following:

1. *Completion of Required Fields.* All required fields must be completed, including but not limited to:

i. Legal name;

ii. Line-item number (when applicable);

iii. Complete item description/scope of work;

iv. unit price;

v. Quantity (when applicable), and;

- 903 vi. Total price for each line item.
- 904 2. *Identification of Tiered Subcontractors.* The name and percentage or dollar value of
- 905 work allocated to any second- or third-tier subcontractor.
- 906 3. *Authorized Signatures.* The schedules shall bear the signature and date of an
- 907 authorized representative of the prime contractor and, when applicable, the signature
- 908 of the subcontractor, subconsultant, or supplier.
- 909 4. *Timely Submission.* The schedules must be submitted within the timeframe
- 910 prescribed by the solicitation documents.
- 911 5. *Accuracy and Legibility.* All information must be current, accurate, and legible to
- 912 permit proper review and verification by the Office of SBD.
- 913 6. *Compliance.* Failure to submit properly executed Schedules 1, 2 or 2A as defined
- 914 herein will not render the bid or proposal non-responsive; however, any SBE
- 915 participation reflected on an improperly executed Schedule 1, 2 or 2A will not be
- 916 credited toward meeting SBE subcontracting goals or API criteria.
- 917 e. If performing a County Construction contract, ensure that all subcontractors are paid any
- 918 undisputed amount which the subcontractor is entitled within ten (10) calendar days of
- 919 receiving a progress or final payment from the County.
- 920 f. Notify the County in writing of any changes to its SBE utilization and/or subcontracting
- 921 plan. All changes (substitutions and/or terminations) must be approved in advance and in
- 922 writing by the Office of SBD.
- 923 g. *Amendment for Unforeseen Circumstances.* If at any time after submission of a
- 924 solicitation response and before execution of a contract, the recommended awardee
- 925 determines that a certified SBE listed on the participation schedules has or will become
- 926 unavailable, then the recommended awardee shall immediately notify the Office of SBD.
- 927 Any desired change in the SBE participation schedules shall be approved in advance by
- 928 the Office of SBD and shall indicate the prime contractor's Good Faith Efforts to
- 929 substitute in another SBE subcontractor (as appropriate) to perform the work. Any

changes (including substitutions or termination and self-performance) must be approved in writing in advance by the Office of SBD.

h. Notify the County Department and Office of SBD regarding any transfer or assignment of a County contract.

i. Retain records of all subcontractor payments for a minimum of four (4) years following project end date.

(6) *Exceptions and Waivers.*

a. *Bid/proposal Waiver.* If a prospective respondent or bidder is unable to comply with the API(s) in a solicitation, such respondent or bidder shall submit a request for a full or partial waiver. Each waiver request shall include documentation demonstrating satisfactory Good Faith Efforts were undertaken by the respondent or bidder to comply with the API requirements. Waiver requests must be submitted as part of the respondent's bid or proposal package. Waiver requests not submitted at the time of bid or proposal submission shall not be considered. The Office of SBD shall review, evaluate, and render a written determination on the waiver request within seven (7) days of submittal. If the Office of SBD determines that adequate Good Faith Efforts have been demonstrated to warrant a partial or total waiver, the waiver shall be granted accordingly. If the Office of SBD determines that the respondent or bidder failed to submit documentation sufficient to demonstrate Good Faith Efforts, the request for waiver or partial waiver shall be denied and the prospective respondent and bidder shall be deemed non-responsive. The granting of a waiver shall apply solely to the respondent or bidders to whom it is issued and shall not, by itself, amend, reduce, or otherwise alter the API requirements applicable to other respondents under the solicitation. However, the Office of SBD may, at its discretion, apply a waiver to all respondents or bidders under a solicitation when such waiver would be equitable and serves the County's best interests. Any respondent or bidder that fails to comply with the API requirements of a solicitation and is not granted a waiver in accordance with this section shall be deemed non-responsive.

957 In the event of an adverse full waiver or partial waiver request decision, the
958 respondent or bidder shall have the right to request reconsideration by the SBD Director.
959 If the decision to deny the waiver is upheld, the requester may appeal to a Special Master
960 according to section 2-55 of the Procurement Code, as amended, by sending a written
961 notice of protest to the SBD Director, including the appropriate protest bond, and received
962 within five (5) days of the issuance of the SBD Director's decision. The solicitation shall
963 be stayed until the SBD Director reconsideration review and Special Master appeal process
964 have concluded, as applicable.

965 b. *Post-bid/proposal Waiver.* If after bid or proposal contract award, a contractor is unable,
966 through no fault of its own, to meet a solicitation's SBE subcontracting goal, the contractor
967 must immediately seek a substitute SBE to meet the goal. The substitution must be
968 approved by the SBD Director and the County Department Director or designees. If, after
969 Good Faith Efforts, the contractor is unable to find a substitute SBE, a post-bid/proposal
970 opening waiver may be requested. The request shall document the reasons for the
971 contractor's inability to meet the SBE subcontracting goal. If the contractor is found not to
972 have performed Good Faith Efforts when seeking a substitute SBE, one or more of the
973 penalties and sanctions of the SBD Ordinance may be imposed. No waiver is required
974 when an SBE counting toward meeting an SBE goal, exceeds the SBE size standards and
975 graduates during the performance of the contract awarded prior to the SBE's graduation.
976 In such cases, an SBE counting toward an SBE participation goal will count toward the
977 goal for the life of the contract.

978 c. *County Department Waiver.* Upon submission of a prospective draft solicitation to the
979 Office of SBD and prior to the public release of solicitations, a County Department or the
980 Procurement Department may request the SBD Director to waive or modify the application
981 of an SBE subcontracting goal by submitting its reasons in writing. In the event consensus
982 cannot be reached regarding the request, the waiver request shall be resolved by the County
983 Administrator, or designee. The County Administrator, or designee, may grant such an
984 exception or modification of application of an API upon a determination that:

1. The extraordinary and necessary requirements of the contract render application of the API(s) infeasible or impractical;
2. The nature of the goods or services being procured are exempt from the scope of this SBD Ordinance; or
3. Sufficient qualified SBEs providing the goods or services required by the solicitations or Statement of Work are unavailable despite reasonable attempts to locate them.

Otherwise, such solicitations shall be forwarded to the Office of SBD for review and to the Goal Setting Committee for application of APIs.

- d. *Office of SBD Waiver.* The SBD Director may waive the application of APIs to enhance SBE utilization for a specific solicitation according to section 2-80.22. The County Department or Procurement Department must certify to the SBD Director and County Administrator, or designee, that the solicitation is exempt with this Part according to section 2-80.22, and the prospective contractor is an SBE or will make a Good Faith Effort to utilize SBEs. Final approval of such waivers shall be made by the County Administrator, or designee.

- e. *Penalties and Sanctions.* The SBD Director, in consultation with the County Department regarding the failure of a contractor, vendor, respondent or bidder, or other business representative to comply with any portion of this SBD Ordinance, may recommend any of the following penalties be imposed upon the non-complying party by the Procurement Director:

A. Suspension of contract.

B. Withholding of funds.

C. Termination of contract based upon a material breach of contract pertaining to the SBD Program.

D. Suspension or debarment of a respondent or bidder, contractor, or other business entity from providing goods or services to the County for a period not to exceed three (3) years.

- 1012 E. Liquidated damages equal to the difference in dollar value of the SBE subcontracting
1013 commitment of the contract and the dollar value of SBE participation actually
1014 achieved.
- 1015 f. It is a violation of this SBD Ordinance to:
- 1016 A. Fraudulently obtain, retain or attempt to obtain, retain or aid another in fraudulently
1017 obtaining, retaining or attempting to obtain or retain Certification as an SBE.
- 1018 B. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or
1019 make any false, fictitious or fraudulent statements or representations, or make use of
1020 any false writing or document, knowing the same to contain any false, fictitious or
1021 fraudulent statement or entry pursuant to the terms of the SBD Ordinance.
- 1022 C. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or
1023 employee who is investigating the qualifications of a business entity applying for
1024 Certification as an SBE.
- 1025 D. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or
1026 attempting to obtain public monies to which the person is not entitled under the terms
1027 of this SBD Ordinance.
- 1028 E. Make false statements to any entity that any other entity is or is not Certified as an
1029 SBE.
- 1030 g. Any person who violates the foregoing provisions may be subject to penalties and
1031 sanctions established by the SBD Program and to the maximum penalty provided by law.

1032 **Sec. 2-80.27. Small Business Development Advisory Committee and Goal Setting**
1033 **Committee.**

1034 (1) The Board of County Commissioners shall nominate an eleven-member citizens committee
1035 made up of representatives of trade groups and members of the general business community (as
1036 specified below). This committee shall serve as the Small Business Development Advisory
1037 Committee and have the following duties:

- 1038 1. Assist the SBD Director, County Administrator, and the BCC in reviewing and
1039 administering of various programs and policies promoting SBE participation in County
1040 prime contract and subcontract opportunities;
- 1041 2. Make recommendations to the SBD Director, County Administrator, and the BCC
1042 concerning modifications of programs, policies, or procedures of the SBD Program;
- 1043 3. Monitor and evaluate the effectiveness of the county's small business policies and
1044 procedures, resolutions and ordinances, including their implementation by the various
1045 County Departments;
- 1046 4. Receive and, when necessary, analyze information concerning the presence of
1047 discrimination in the bidding and contracting process and recommend to the BCC steps
1048 to alleviate such discrimination;
- 1049 5. Prepare, adopt and present an annual report to the BCC;
- 1050 6. Research and review other jurisdictions' small business programs;
- 1051 7. Act as a conduit between the County and the community, industry, organizations, trade
1052 associations, chambers of commerce, and small businesses;
- 1053 8. Plan and participate in education and training for small businesses;
- 1054 9. Research and recommend to the BCC race- and gender-neutral mechanisms which will
1055 assist small businesses;
- 1056 10. Monitor the level of SBE participation;
- 1057 11. Monitor legislative initiatives and other issues and activities which impact small
1058 businesses and advise the BCC concerning same.
- 1059 12. Hear appeals of Certification denials pursuant to Section 2-80.26(2).
- 1060 a. *Membership*: The SBDAC shall consist of the following members:
- 1061 Seven (7) small business owners represented by each Commission District;
- 1062 One (1) representative of the Associated General Contractors Association (AGC);
- 1063 One (1) representative of a business incubator program;

1064 One (1) representative of the Small Business Development Center (SBDC);

1065 One (1) representative of a financial institution that assists small businesses.

1066 As vacancies become available, they shall be filled as soon as practicable through the

1067 appointment process.

1068 b. *Appointment Process/Terms/Vacancies/Reimbursements.* Seven business owners shall be

1069 District appointments, and the balance shall be appointed at large by the BCC. Terms for

1070 committee members are as defined by the Uniform Policies and Procedures for Palm Beach

1071 County Advisory Boards, Committees, Commissions, Task Forces, and Authorities (R2025-

1072 0508), as it may be amended.

1073 c. *Meetings and organizations.* The committee shall meet on a regular basis, but no less than

1074 four (4) times per year. Meetings and organization of the SBD Advisory Committee are

1075 subject to R2025-0508, as it may be amended.

1076 d. *Assistance to the committee.* The committee may request information from any department

1077 or agency of the County and any local, regional, state, or federal government entity for

1078 information or advice for the performance of its work. The Office of SBD shall be

1079 responsible for providing staffing and informational needs to the SBD Advisory

1080 Committee.

1081 e. *Chair and Vice-Chair.* A chair and vice-chair shall be elected by a majority of the

1082 committee and shall serve for a term of one (1) year. The duties of the chair shall

1083 1. Call committee meetings and set the agenda for the same;

1084 2. Preside at committee meetings;

1085 3. Establish subcommittees, appoint subcommittee chairs, and charge subcommittees

1086 with specific tasks;

1087 4. Perform other functions as the committee may assign by rule or order.

1088 The vice-chair shall perform the duties of the chair in the chair's absence and such other

1089 duties as the chair may assign.

1090 If a vacancy occurs in the office of the chair, the vice-chair shall become the chair for the
1091 unexpired term. If a vacancy occurs in the office of the vice-chair, the committee will elect
1092 another member to fill the unexpired term of the vice-chair.

1093 (2) *Goal Setting Committee.* The Goal Setting Committee (GSC) shall include the SBD Director,
1094 the Director of the Procurement Department, the Director of Contract Development and Control,
1095 the Director of FDO, the Director of Ombudsman and Strategic Services, the Director of the
1096 County Department whose solicitation is under consideration by the GSC (if the County
1097 Department is neither FDO or Procurement) all without duplication. The member Directors may
1098 designate an employee under their supervision to vote and participate in their stead. The SBD
1099 Director will chair the GSC meetings. The GSC establishes APIs to solicitations and goals for
1100 the SBD Program (i.e. Annual Goals and contract-by-contract subcontracting goals) based upon
1101 Industry Categories, SBE availability, project-specific characteristics, and any other relevant
1102 criteria. Rather than review each solicitation, the GSC may determine that a particular API is
1103 appropriate for a category or group of contracts.

1104 At a minimum, the GSC shall:

- 1105 1. Meet as often as it deems necessary to accomplish its duties as outlined in this Part, but
1106 not less than monthly;
- 1107 2. Formulate and recommend to the County Administrator additional rules and procedures
1108 for goal-setting and other aspects of selecting and applying APIs to solicitations and
1109 contracts in an efficient and effective manner, as needed; and
- 1110 3. Monitor and support the implementation of the SBD Program.

1111 The GSC shall evaluate solicitation documents at least fourteen (14) calendar days in advance
1112 of the solicitation's scheduled advertisement to the public, when practicable, to determine which
1113 API(s) will be applied.

1114 The Office of SBD shall provide staff support and logistical support for the GSC. Such
1115 support shall include, but not be limited to, scheduling, facilitating data requests, analysis,
1116 communications, and meeting logistics.

1117 **Sec. 2-80.28 – Effectiveness of the Small Business Development Ordinance to existing**
1118 **solicitations and contracts.**

1119 The Small Business Development Ordinance replaces the Equal Business Opportunity
1120 Ordinance (Palm Beach County Ordinance No. 2018-021, as amended by Ordinance Nos. 2023-
1121 038, 2024-006, 2025-002, and 2025-014). All solicitations and contracts containing race-neutral
1122 obligations pursuant to the Equal Business Opportunity Ordinance, including, but not limited to,
1123 SBE subcontracting goals, SBE evaluation and price preferences, SBE mentor protégé program
1124 obligations, and any waivers or substitutions thereof, remain in full force and effect and are
1125 enforceable pursuant to the provisions of the Small Business Development Ordinance. As such,
1126 violations of contract provisions under the former Equal Business Opportunity Ordinance are PPM
1127 are enforceable under this Part and PPM.

1128 **Secs. 2-80.29 – 2-80.30. – Reserved.**

1129 **Secs. 2-80.32 – 2-80.40. – Reserved.**

1130 **ARTICLE 2. REPEAL OF LAWS IN CONFLICT.**

1131 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
1132 repealed to the extent of such conflict.

1133 **ARTICLE 3. SAVINGS CLAUSE.**

1134 Notwithstanding Article 2, Repeal of Laws in Conflict, all administrative and county orders,
1135 fines, and pending enforcement issued pursuant to the authority and procedures established by
1136 Ordinance 2018-021, as amended, shall remain in full force and effect.

1137 **ARTICLE 4. SEVERABILITY CLAUSE.**

1138 If any section, paragraph, sentence, clause, phrase or word of this Small Business
1139 Development Ordinance, Policies, Procedures, or the application thereof, to any person or
1140 circumstance is for any reason held by a Court of competent jurisdiction to be unconstitutional,
1141 inoperative, invalid or void, such holding shall not affect the remainder of this Small Business
1142 Development Ordinance or the application of any other provisions of this Ordinance which can be
1143 given effect without the invalid provision or application, and to this end, all the provisions of this
1144 Ordinance are hereby declared to be severable.

1145 **ARTICLE 5. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

1146 The provisions of this Ordinance shall become and be made a part of the Code of Laws and
1147 Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or
1148 re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or
1149 other appropriate word.

1150 **ARTICLE 6. CAPTIONS.**


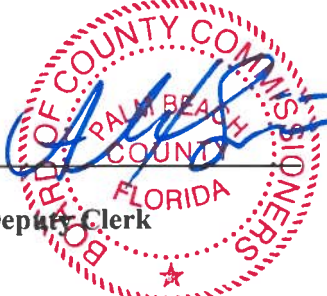
1151 The captions, section headings, and section designations used in this Ordinance are for
1152 convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

1153 **ARTICLE 7. EFFECTIVE DATE.**

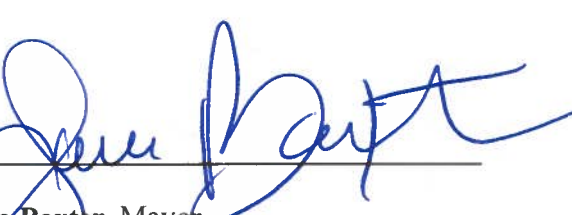
1154 The provisions of this Ordinance shall become effective January 1, 2026.

1155 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida,
1156 on this the 2nd day of December, 2025.

1157 **MIKE CARUSO,**
1158 **CLERK OF THE CIRCUIT**
1159 **COURT & COMPTROLLER**
1160

1161
1162 By: 
1163 Deputy Clerk
1164 

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

1165
1166 By: 
1167 Sara Baxter, Mayor

1165 **APPROVED AS TO FORM AND**
1166 **LEGAL SUFFICIENCY**

1167
1168 By: 
1169 County Attorney

1170
1171 **EFFECTIVE DATE: Filed with the Department of State of the 4th day of December,**
1172 **2025.**



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

December 4, 2025

Michael A. Carusso
Clerk of Circuit Court
Palm Beach County
301 North Olive Avenue
West Palm Beach, Florida 33401

Dear Michael A. Carusso,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2025-030, which was filed in this office on December 4, 2025.

Sincerely,

Alexandra Leijon
Administrative Code and Register Director

AL/dp

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6270