

ORDINANCE No. 2007-13-119

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, PROVIDING FOR A COMMUNITY SMALL BUSINESS ENTERPRISE (CSBE) PREFERENCE IN BIDDING; PROVIDING FOR DEFINITIONS; PROVIDING FOR COMPETITIVE BIDDING; PROVIDING FOR INCENTIVES; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is expected to receive Building Better Communities General Obligation Bond Program Fund ("BBC Funds"), and Road Impact Fee Funds ("RIF Funds") from Miami-Dade County, and

WHEREAS, in order for the City to receive this funding, the City is required to comply with the County's Community Small Business Enterprise Program ("CSBE"), and

WHEREAS, the County has recently amended its procurement procedures to provide, that in the event a city did not want to utilize the County's regulations, a city can create its own procurement procedures in order to comply with the County's CSBE Program, and

WHEREAS, the City Manager is recommending that the City create its own CSBE Ordinance for this purpose,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

SECTION 1. CREATION OF COMMUNITY BUSINESS ENTERPRISE  
ORDINANCE: A Community Small Business Enterprise Ordinance is hereby created in the City of Miami Gardens as follows.

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Community Small Business Enterprise

SECTION 2. PURPOSE: The purpose of this Ordinance is to ensure that for all solicitations for architectural, engineering, surveying and mapping professional services and all solicitations for construction projects in the City of Miami Gardens in which the City of Miami Gardens acts as an Agent for Miami-Dade County, preference shall be awarded to licensed entities that have Miami-Dade County certifications for Community Small Business Enterprise ("CSBE") and/or Community Business Enterprise ("CBE").

SECTION 3. DEFINITIONS:

Terms not defined in this section shall have the meaning customarily assigned to them. Otherwise, the following words, terms and phrases, when used in this division, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- a. *Bid/Proposal* means a quotation, offer, letter of interest by any bidder/proposer in response to any kind of invitation, request or public announcement to submit such quotation, proposal, and letter of interest or offer to perform the contract.
- b. *Bidder/Proposer* means any person, partnership, corporation or other business entity that submits a bid/proposal.
- c. *Bid Preference* means an amount deducted (for bid evaluation purposes only) from the total bid price in order to calculate the bid price to be used to evaluate the bid on a competitively bid City construction contract, in which the City is acting as an agent for Miami-Dade County.
- d. *CSBE* means a construction related enterprise including a design-build firm, which has an actual place of business in Miami-Dade County and whose average annual gross revenues for the last three years do not exceed: \$5,000,000 for SIC 15/NAICS 233 Building Construction, General Contractors and Operative Builders; \$3,000,000 for SIC 16/NAICS 234-Heavy Construction, other than Building Construction; or \$2,500,000 for SIC 17/NAICS 235-Specialty

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Trade Contractors. A CSBE shall be categorized in accordance with Miami-Dade County regulations. A CSBE will graduate out of the program once it has exceeded these size limits based on its three-year average annual gross revenues. A CSBE must be certified by Miami-Dade County and provide proof with submittal of any bid.

e. *CBE* means a firm providing architectural, landscaping architectural, engineering, or surveying and mapping professional services, including design-build firms, which have an actual place of business in Miami-Dade and whose three year average annual gross revenue do not exceed two million dollars for first tier CBE-A/E's; four million for second tier CBE/A/E's in the case of architectural, engineering or surveying and mapping services; or six million dollars for second tier CBE-A/E's in the case of landscape architectural services. A CBE-A/E size limit is based on its three-year average annual gross revenues. As part of the certification process, CBE-A/E program shall be based on the cumulative adjusted gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A pursuant to the Miami-Dade County Ordinance number 01-103. Representations as to gross revenues shall be subject to audit. A CBE must be certified by Miami-Dade County and provide proof with submittal of any bid.

f. *The City* shall refer to the City of Miami Gardens.

SECTION 4. COMPETITIVE BIDDING: When a responsive, responsible non-CSBE Bidder submits;

- a) the lowest price bid; and
- b) the bid submitted by a Bidder with CSBE subcontractors receiving a guaranteed 10% of the total bid amount; and
- c) such bid is within 5% of the low bid submitted by the non-CSBE Bidder, then such Bidder with CSBE subcontractors shall have the opportunity to submit, within five business days of the bid opening, a best and final bid equal to or lower than the amount of the low bid previously submitted by the non-CSBE

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Bidder. The Contract award shall be made to the responsive, responsible Bidder submitting the lowest best and final bid. In the case of a tie in the best and final bid between the Bidder with CSBE subcontractors and the non-CSBE Bidder, contract award shall be made to the Bidder with CSBE subcontractors.

SECTION 5. INCENTIVE: When an awarded Bidder is either a CSBE qualified bidder or is a non-CSBE qualified bidder that submits the lowest bid with CSBE subcontractors receiving a guaranteed minimum 20% of the total bid amount, the non-CSBE Bidder will receive a bonus equal to 1% of the total contract award but not more than \$100,000.00 upon a timely completion and final acceptance of the project as an incentive for hiring CSBE qualified firms.

SECTION 6. POINTS SYSTEM: For contract awards based upon evaluation criteria pursuant to a points system, there shall be a CBE-A/E participation criterion of 5% of the total points awarded. The points shall be awarded as follows:

<u>CBE-A/E Participation</u>	<u>Points</u>
100%	5
50%-99%	3
20%-49%	2
5%-19%	1
>5%	0

a. Maximum points will be awarded to the proposer if 100% or more of the total project work is performed by a CSBE/CBE company. Percentages reflect the amount of total contract value proposed to be assigned to the CSBE/CBE company. The percentage of CSBE company participation will be calculated by dividing the proposer's expenditures to a CSBE subcontractor for providing direct labor or a bona fide service, by the total project dollars as identified in the proposal.

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b. The percentage of CSBE/CBE participation will be calculated by dividing the proposer's expenditures to a CSBE/CBE subcontractor for providing direct labor or a bona fide service, by the total project dollars as identified in the proposal.

c. A proposer may count toward its CSBE/CBE company participation, the fees or commission charged for providing direct labor or a bona fide service, such as professional, technical, consultant or managerial services.

d. The City will not count toward a proposer CSBE/CBE company's participation, any portion or portions of the CSBE/CBE company's subcontractor's work that is subcontracted back to:

- (1) The proposer, either directly, or through any other company or company owned or controlled by the proposer; and
- (2) Any non-CSBE/CBE company.

SECTION 7. SUBCONTRACTORS: A CSBE/CBE company shall not be permitted to subcontract all or a majority of the subcontractual portion of the work to another non-CSBE/CBE company. A CSBE/CBE company subcontractor shall be prohibited from engaging in a subcontractual agreement with the intent of collecting a broker's fee or commission. A CSBE/CBE subcontractor shall also be prohibited from entering into a subcontractual agreement with a company whose employees perform none of the direct labor or service activities specified in the contract.

SECTION 8. DISQUALIFICATION: Participation by a CSBE company shall not be considered and the CSBE company shall be disqualified if the owner of the CSBE company enters into an agreement with a non-CSBE company with the intent of securing employment with that non-CSBE company during the course of performing a City contract.

SECTION 9. IDENTIFICATION OF CSBE-CBE SUBCONTRACTORS: In order for a non-CSBE contractor that submits a bid or proposal that includes subcontractors that qualify as CSBE/CBE contractors receive preference consideration, the proposer shall identify all CSBE/CBE companies that will be utilized as subcontractors, and delineate for each the specific elements of work each CSBE/CBE company will be responsible for performing and the dollar value of the work as a percentage of the total contract value. All contractors with CSBE/CBE company participation shall contain documentation, signed by both the contractor and the CSBE/CBE subcontractors, that confirms their intent to establish a business relationship, and that confirms the CSBE/CBE company's percentage of the Contract.

SECTION 10. THE CONSULTANT'S COMPETITIVE NEGOTIATION ACT: The Consultant's Competitive Negotiation Act shall apply to all bids awarded in accordance with this Ordinance.

SECTION 11. SUBSTITUTION OF CSBE-CBE SUBCONTRACTORS: In the event, during the performance of a contract, a contractor that submitted a guarantee that CSBE/CBE subcontractors would receive a minimum of 10% of the total award amount, falls below the minimum 10%, the contractor must locate a CSBE/CBE subcontractor to substitute to maintain the 10% minimum of total award. All substitute CSBE/CBE subcontractors must be pre-approved by the City. If, at the end of the project, the 10% participation is not met, the contractor will be assessed a penalty of 1% of the total contract amount. This penalty will be deducted from the contract retainage prior to final payout.

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SECTION 12. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 13. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 14. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 15. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 16. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 9<sup>TH</sup> DAY OF MAY, 2007.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 23<sup>RD</sup> DAY OF May, 2007.

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SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Vice Mayor Braynon  
SECONDED BY: Councilwoman Watson

**VOTE: 7-0**

Mayor Shirley Gibson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Vice Mayor Oscar Braynon, II	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman Melvin L. Bratton	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman Aaron Campbell	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman André Williams	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Sharon Pritchett	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Barbara Watson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)

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# City of Miami Gardens

1515-200 NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Oscar Braynon II  
Councilman Melvin L. Bratton  
Councilman Aaron Campbell Jr.  
Councilwoman Sharon Pritchett  
Councilwoman Barbara Watson  
Councilman André Williams

## Agenda Cover Page

Date: 05/23/07

Fiscal Impact: No  Yes

(If yes, explain in Staff Summary)

Funding Source:

Contract/P.O. Requirement: Yes  No

Sponsor Name/Department:

**Dr. Danny Crew, City Manager**

Public hearing

Ordinance

1st Reading

Advertising requirement:

RFP/RFQ/Bid # \_\_\_\_\_

Quasi-Judicial

Resolution

2nd Reading

Yes  No

### Title

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, PROVIDING FOR A COMMUNITY SMALL BUSINESS ENTERPRISE (CSBE) PREFERENCE IN BIDDING; PROVIDING FOR DEFINITIONS; PROVIDING FOR COMPETITIVE BIDDING; PROVIDING FOR INCENTIVE**

### Staff Summary

The City has or is scheduled to receive Building Better Communities (BBC) General Obligation Bond Program funds and Road Impact Fee (RIF) funds. The agreements for these funds require the City to adhere to the County's CSBE Program procedures or establish a Community Small Business Enterprise (CSBE) Program.

Miami Dade County Board of County Commissioners amended Section 2-8-2.10 of the Code of Miami-Dade County Related to Procurement Procedures on March 20, 2007. This amendment permits municipalities to use their own procurement procedures in soliciting architectural, engineering, surveying and mapping professional services and in soliciting for construction projects if the municipality has their own small business program approved by their board which would then be used in lieu of the County's program.

This ordinance will establish the City's own Community Small Business Enterprise Preference in Bidding when the City acts as an agent for Miami-Dade County with projects funded with GOB funds or RIF funds.

**I-1) 2ND READING  
ORDINANCE  
COMMUNITY SMALL  
BUSINESS ENTERPRISE (CSBE)**

Highlights include a point system for preference when a certified small business is bidding or a part of a larger proposal. It also sets a goal of a minimum of 10% participation in proposals. Finally, it offers a financial incentive to bidders using at least 20% certified small business participation (1% of contract amount up to \$100,000 as a bonus upon completion).

It is proposed that this process be used only for projects where the county required a small business program as while our current program only provides incentives for Miami Gardens-based businesses, and this program is open to small business countywide.

### **RECOMMENDATION**

That City Council approve the proposed small business program for use when County funding procedures require its use.