

REVISED

6C-1

Agenda Item #:

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: May 6, 2008       Consent       Regular  
    Workshop       Public Hearing

Department:  
Submitted By:      The County Attorney's Office  
Submitted For:      Office of Small/Minority/Women Business Assistance

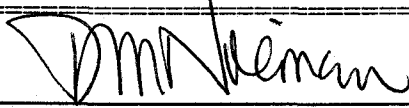
**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve on preliminary reading and advertise for public hearing on May 20, 2008, at 9:30 am: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending Sections 2-80.21 through 2-80.34 of the Palm Beach County Code, which codified Ordinance No. 2002-064, as amended by Ordinance No. 04-071 and Ordinance No. 05-048, and established the Small Business Enterprise Program; providing for definitions; providing for methods to achieve goals; providing for contract compliance requirements; providing for ranking of responsive bidders; providing for suspension debarment; providing for prompt payment; providing for procurement procedures; providing for SBE eligibility standards; providing for determination of a commercially useful business function; providing for application review procedures; providing for denial of certification; providing for resolution of appeals; providing for denial of recertification; providing for decertification; providing for hearing before a Special Master; providing for M/WBE Certification; providing for Small Business Advisory Committee; providing for repeal of laws in conflict; providing for deletion of referral for suspension or debarment; providing for severability; providing for inclusion in the code of laws and ordinances; and providing for an effective date.

**Summary:** Changes to the SBE Ordinance are recommended to create a certification appeal process, allow for suspension or disbarment of vendors who fail to comply with the ordinance, allow for a sheltered market program for SBEs on contracts under \$250,000, and provide further clarity in the ordinance. Countywide (TKF)

**Background and Policy Issues:** The Board of County Commissioners implemented a Small Business Enterprise Program (SBE) on October 1, 2002. During the nearly six years of implementation of the program, it has become apparent that certain changes are needed to provide clarity, reduce litigation and modify the certification appeal process. The proposed ordinance amendment was reviewed with the Small Business Advisory Board on April 9, 2008, and they unanimously approved the changes. The ordinance draft was sent to the Economic Council of Palm Beach County, the Business Development Board of Palm Beach County, and the League of Cities on March 18, 2008, and no comments have been received. (Continued on page 3)

**Attachments:**  
1. Proposed Ordinance Amendment

Approved By:       4/29/08  
County Attorney      Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-

**NET FISCAL IMPACT**

# ADDITIONAL FTE  
POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included In Current Budget? Yes \_\_\_\_\_ No   X  

Budget Account No.: Fund \_\_ Agency \_\_ Org. \_\_ Object \_\_ Reporting Category

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

Approval of this item will not have fiscal impact at this time. The fiscal impact will be determined on a project by project basis.

**C. Departmental Fiscal Review:**

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

*Fiscal impact indeterminable at this time.*

*De Strollhite* 4-17-08  
4/17/2008 OFMB v0 ul17

*Ann J. Jacob* 4/18/08  
4/18/08 Contract Dev. and Control

**B. Legal Sufficiency:**

*[Signature]*  
Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
Department Director

**This summary is not to be used as a basis for payment.**

**Background und and Policy Issues:** (continued from page 1)

The proposed changes are highlighted below:

- The definitions for commercially useful business function and sheltered market program were added (Section I).
- The option for use of a sheltered market program was added to the ordinance for instances where the annual goal is not met (Section II).
- Clarification has been added to the ordinance regarding sanctions for non-compliance with SBE Program requirements. Sanctions may include suspension or debarment as a vendor and breach of contract remedies (Section III and Section V).
- The prompt payment provisions were amended to be consistent with amendments to the Florida Statutes (Section VI).
- A requirement has been added that requires firms to demonstrate one (1) year of business activity or completion of a small business course (Section VIII).
- The “commercially useful business function” criteria has been amended to include consideration of whether a business maintains inventory or whether a supplier maintains a direct relationship with manufacturers (Section IX).
- A provision has been added to the application review procedure to ensure that firms will only be certified for the services or goods they can supply and in accordance with national classification systems (Section XI).
- Currently, certification appeal hearings are conducted by the Director of the Office of Small Business. Some firms have alleged that the Director cannot be impartial when considering recommendations by her staff. Implementation of an appeal system such as the one utilized by The Purchasing Department will address this concern by allowing a Special Master to make the determination. The Director will remain the first level of review so unnecessary appeals will not need to proceed to a Special Master (Section XIV and Section XVII).
- An additional representative has been added to the Small Business Advisory Board for a representative of a black chamber of commerce.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53

**ORDINANCE NO. 08 -**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING SECTIONS 2-80.21 THROUGH 2-80.34 OF THE PALM BEACH COUNTY CODE, WHICH CODIFIED ORDINANCE NO. 2002-064, AS AMENDED BY ORDINANCE NO. 04-071 AND ORDINANCE NO. 05-048, AND ESTABLISHED THE SMALL BUSINESS ENTERPRISE PROGRAM; PROVIDING FOR DEFINITIONS; PROVIDING FOR METHODS TO ACHIEVE GOALS; PROVIDING FOR CONTRACT COMPLIANCE REQUIREMENTS; PROVIDING FOR RANKING OF RESPONSIVE BIDDERS; PROVIDING FOR SUSPENSION DEBARMENT; PROVIDING FOR PROMPT PAYMENT; PROVIDING FOR PROCUREMENT PROCEDURES; PROVIDING FOR SBE ELIGIBILITY STANDARDS; PROVIDING FOR DETERMINATION OF A COMMERCIALY USEFUL BUSINESS FUNCTION; PROVIDING FOR APPLICATION REVIEW PROCEDURES; PROVIDING FOR DENIAL OF CERTIFICATION; PROVIDING FOR RESOLUTION OF APPEALS; PROVIDING FOR DENIAL OF RECERTIFICATION; PROVIDING FOR DECERTIFICATION; PROVIDING FOR HEARING BEFORE A SPECIAL MASTER; PROVIDING FOR M/WBE CERTIFICATION; PROVIDING FOR SMALL BUSINESS ADVISORY COMMITTEE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR DELETION OF REFERRAL FOR SUSPENSION OR DEBARMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, it is the policy of Palm Beach County that all businesses be afforded an opportunity for full participation in our free enterprise system; and

**WHEREAS**, in order to implement this policy, Palm Beach County is committed to ensuring full and equitable participation by small business enterprises in the provision of goods and services to Palm Beach County; and

**WHEREAS**, on October 1, 2002, Palm Beach County implemented a Small Business Enterprise Program; and

**WHEREAS**, modifications to the Program are appropriate.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Sections 2-80.21**

1 through 2-80.34 of the Palm Beach County Code are hereby amended as follows:

2 **SECTION I. DEFINITIONS:**

3 Section 2-80.21 of the Palm Beach County Code is amended to read as follows:

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

10 *Adjusted gross margin* means total revenue less cost of materials, product and  
11 subcontractors, excluding cost of any leased employees.

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

14 *Certification* means the process by which the office of small business assistance  
15 determines a business meets the criteria for a small, minority or woman business  
16 enterprise.  
17

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

20 *Code* means the Palm Beach County Code.

21 *Commercially useful business function* means adding value to the goods and  
22 services supplied under a contract.

23 *Committee* means the small business advisory committee.

24 *County* means Palm Beach County.

25 *Days* means calendar days, unless specified otherwise  
26  
27  
28

29 ~~*Debarment* means the exclusion for cause of a vendor or contractor from bidding~~  
30 ~~and/or doing business with the county pursuant to the provisions of the county~~  
31 ~~purchasing ordinance.~~

32 *Domiciled in the county* means the business holds a valid Palm Beach County  
33 ~~county occupational license business tax receipt~~ and has a permanent place of  
34 business in the county Palm Beach County. In order to establish a permanent place of

1 business in the ~~county~~ Palm Beach County, the business must:

2 (1) Demonstrate business activity in the ~~county~~ and/or document that at least  
3 ten (10) of the business' gross receipts during the preceding twelve (12) months were  
4 generated from the ~~county~~ at the Palm Beach County location;

5 (2) The ~~county~~ occupational license Palm Beach County business tax receipt  
6 bears the ~~county~~ Palm Beach County address;

7 (3) The ~~county~~ Palm Beach County location must be verifiable through  
8 documentation such as lease agreement, utility bills, client invoices, payroll records or  
9 other appropriate documentation; and

10 (4) The ~~county~~ Palm Beach County location must be identifiable through  
11 signage, telephone book listing, or other appropriate means. On-site visits may be  
12 conducted prior to and during the certification term to determine continued adherence to  
13 the domicile requirements and other requirements of the code. Additional backup  
14 documentation may be requested on a case-by-case basis. A ~~county~~ Palm Beach  
15 County telephone number or post office box in ~~county~~ Palm Beach County shall not be  
16 sufficient to establish domicile in the ~~county~~ Palm Beach County.

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

20 ~~*Full-time employees* means permanent employees who normally work at least~~  
21 ~~thirty (30) hours per week under the control and management of the employer.~~  
22

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

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

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

31 (1) A "black American," a person having origins in any of the black racial groups  
32 of Africa.

1 (2) A "Hispanic American," a person of Spanish or Portuguese culture with  
2 origins in Mexico, Central or South America, or the Caribbean, regardless of race.

3 (3) An "Asian American," a person having origins in any of the original peoples  
4 of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.

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

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

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

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

30 *Prime contractor* means any person who has a contract with the county to

1 provide specific construction services, sales, supplies, materials, professional services,  
2 labor and/or equipment.

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

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

12 ~~*Responsive bidder, offerer, quoter or respondent* means an individual or~~  
13 ~~business which has submitted a bid, offer, proposal, quotation or response, which~~  
14 ~~conforms in all material respects to the solicitation, including, but not limited to,~~  
15 ~~compliance with all SBE requirements contained within the solicitation.~~

16 *SBE* means small business enterprise certified by the county Palm Beach  
17 County.

18  
19 *Sheltered Market Program* means a program under which certain contracting  
20 opportunities are made available only to certified SBEs.

21 *Small business* means a business domiciled in the county Palm Beach County  
22 and certified by the county Palm Beach County which is an independently owned and  
23 operated for profit business concern organized to engage in commercial transactions  
24 and whose adjusted gross margin does not exceed the following:

25 (1) For a provider of construction the annual adjusted gross margin may not  
26 exceed three million two hundred thousand dollars (\$3,200,000.00) (averaged over the  
27 previous three (3) years, or if in business, less than three (3) years, averaged during  
28 duration of business).

29 (2) For a A-supplier of commodities the annual adjusted gross margin may not  
30 exceed one million six hundred thousand dollars (\$1,600,000.00) (averaged over the  
31 previous three (3) years, or if in business, less than three (3) years, averaged during  
32 duration of business).



1 (3) For a supplier of professional services the annual adjusted gross margin  
2 may not exceed two million seven hundred thousand dollars (\$2,700,000.00) (averaged  
3 over the previous three (3) years or if in business, less than three (3) years, averaged  
4 during duration of business).

5 On October 1 of each year, starting October 1, 2005, the maximum adjusted  
6 gross margin utilized to determine eligibility as a small business will be adjusted by  
7 multiplying the current adjusted gross margin by the annual consumer price index and  
8 adding that amount to the adjusted gross margin maximum. The office of small business  
9 assistance will publish the revised adjusted gross margin maximum annually on the  
10 office of small business assistance website their web page.

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

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

17 All terms not specifically defined herein, but defined in the county's purchasing  
18 ordinance (~~section 2-52~~ Chapter 2, Article III, Division 2, Part A of the County Code, as  
19 may be amended), shall carry the definition therein described.

20 **SECTION II. PROGRAMS TO ACHIEVE GOALS:**

21 Section 2-80.23(c) shall be added to the Palm Beach County Code and shall read as  
22 follows:

23 In the event annual goals are not achieved, the County may implement  
24 programs, including, but not limited to a sheltered market program for contracts under  
25 \$250,000.00, to achieve goal attainment. Any programs, other than sheltered markets,  
26 must be approved by the Board prior to implementation.

27 **SECTION III. CONTRACT COMPLIANCE REQUIREMENTS.**

28 Section 2-80.24 of the Palm Beach County Code is amended to read as follows:

29 The Office of Small Business Assistance will establish procedures for monitoring  
30 and evaluating program performance and compliance subject to the County

1 Administrator's approval. In addition to the remedies of suspension or debarment as  
2 provided in Section 2-80.26 of the Code, any contractor or firm that falsely represents to  
3 the County, pursuant to a County contract, that it is a SBE, or that it will utilize the  
4 services or commodities of a SBE and subsequently does not do so without the prior  
5 written approval of the County, may be in breach of contract. Upon determination that a  
6 breach of contract has occurred, the County shall have all available remedies for breach  
7 of contract. In addition, all amounts paid to the contractor or firm under the contract  
8 intended for expenditure with SBEs will be forfeited and recoverable by the County.  
9 The County, at its sole discretion, may waive the breach and available remedies;  
10 however any such waiver shall not constitute a waiver of rights for breach of any other  
11 provision of the contract. ~~Failure to comply with the SBE requirements of an awarded~~  
12 ~~contract may result in suspension or debarment of the firms or individuals involved.~~  
13 ~~Debarment of bidders by the county for activity contrary to this program will be carried~~  
14 ~~out according to the debarment procedures contained in the purchasing ordinance~~  
15 ~~(County Code section 2-54(e)), as may be amended. Appeal procedures for the~~  
16 ~~suspension or debarment are established in the county purchasing ordinance (County~~  
17 ~~Code Section 2-54(d) and (e)), as may be amended.~~

#### 18 **SECTION IV. RANKING OF RESPONSIVE BIDDERS:**

19 Section 2-80.25 of the Palm Beach County Code is amended to read as follows:

20 When evaluating competitive bids/quotes of up to one million dollars  
21 (\$1,000,000.00) in which the apparent low bidder is determined to be non-responsive to  
22 SBE requirements, the contract shall be awarded to the low bidder responsive to SBE  
23 requirements, or in the event there are no bidders responsive to the SBE requirements,  
24 to the bidder with the greatest SBE participation in excess of seven (7) percent  
25 participation, as long as the bid does not exceed the low bid amount by ten (10)  
26 percent.

27 In cases where the low bid exceeds one million dollars (\$1,000,000.00), the  
28 contract shall be awarded to the low bidder responsive to the SBE requirements, or in  
29 the event there are no bidders responsive to the SBE requirements, to the bidder with  
30 the greatest SBE participation in excess of seven (7) percent participation, provided that

1 such bid does not exceed the low bid otherwise responsive to the bid requirements by  
2 more than one hundred thousand dollars (\$100,000.00) plus three (3) percent of the  
3 total bid in excess of one million dollars (\$1,000,000.00).

4 This section applies only when price is the determining factor.

5 **SECTION V. SUSPENSION/DEBARMENT:**

6 Section 2-80.26(5) shall be retitled as SUSPENSION/DEBARMENT, and is amended to  
7 read as follows:

8 The ~~board of cCounty commissioners~~ reserves the right to suspend or debar any  
9 vendor ~~reject any proposers or bidders who have~~ previously failed to perform properly  
10 and who ~~has~~ done so by commission or omission of an act of such serious and  
11 compelling nature ~~that~~ ~~than~~ the act indicates a serious lack of business integrity or  
12 honesty. Such acts include, but are not limited to:

13 (1) The violation of any applicable law, regulation or contract provision relating  
14 to the performance of obligations incurred pursuant to an agreement with a recipient  
15 under a county contract.

16 (2) Making or procuring to make any false statement or use of using ~~deceit,~~ ~~for~~  
17 ~~the purpose of influencing in any way any action of the county.~~

18 (3) Making false representations as a small business for purposes of qualifying  
19 for certification as such a business under a program that is designed to assist SBEs in  
20 the receipt of contracts with the county for the provision of goods or services.

21 (4) Representing a SBE as performing a commercially useful function when  
22 such business is merely acting as a conduit in order to participate in the county's SBE  
23 program or receive a preference or benefit under the SBE program.

24 (5) Repeatedly failing to meet SBE goals when submitting bids when there is  
25 documented availability of SBEs as shown by other bidders on the same projects  
26 meeting the stated goals.

27 (6) Failing to comply with the SBE requirements of an awarded contract.

28 The Director of the Office of Small Business Assistance may refer a business or firm to  
29 the Director of Purchasing for consideration of suspension or debarment. The  
30 procedures for suspension or debarment are provided for in the purchasing ordinance.

1 ~~Any contractor or firm which falsely represents to the county, pursuant to a county~~  
2 ~~contract, that it is a SBE, or which represents that it will use the services or commodities~~  
3 ~~of a SBE and subsequently does not do so, without prior county approval, may be in~~  
4 ~~breach of contract. Upon determination that a breach of contract has occurred, the~~  
5 ~~county shall have all available remedies for breach of contract.~~

6 **SECTION VI. PROMPT PAYMENT:**

7 Section 2-80.27 of the Palm Beach County Code is hereby amended to read as follows:

8 Pursuant to the provisions of F.S. § 218.735(6), as may be amended, when a  
9 prime contractor receives payment from the county for labor, services or materials  
10 furnished by subcontractors or suppliers hired by the prime contractor, the prime  
11 contractor shall remit payment due to those subcontractors and suppliers within ~~fifteen~~  
12 ~~(15)~~ ten (10) days after the prime contractor's receipt of payment. When a  
13 subcontractor receives payment from a prime contractor for labor, services or materials  
14 furnished by sub-subcontractors and suppliers hired by the subcontractor, the  
15 subcontractor shall remit payment due to those sub-subcontractors and suppliers within  
16 ~~fifteen (15)~~ seven (7) days after the subcontractor's receipt of payment from the prime  
17 contractor.

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

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

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

8 **SECTION VII. PROCUREMENT PROCEDURES:**

9 Section 2-80.28 of the Palm Beach County Code is hereby amended to read as follows:

10 The purchasing department shall establish specific purchasing procedures to  
11 increase SBE participation, including, but not limited to, purchases under, the  
12 mandatory bid or proposal amount set forth in the purchasing code and purchases  
13 made by decentralized purchase orders (DPOs) under one thousand dollars  
14 (\$1,000.00). The purchasing procedures shall include a provision that every effort will  
15 be made by buyers to contact all registered certified SBE within a particular commodity  
16 area for purchases under the mandatory bid or proposal amount set forth in the  
17 purchasing code. The purchasing procedures shall also include a process so as to allow  
18 as many vendors as possible to compete in providing goods and services to Palm  
19 Beach County. The purchasing procedures shall also include a provision requiring  
20 awards of purchases under the mandatory bid or proposal amount set forth in the  
21 purchasing code to be made to the lowest responsive, responsible bidder unless a  
22 certified small business is within ten (10) percent of the lowest non-small business bid,  
23 in which case the award shall be made to the certified small business bidder submitting  
24 the lowest responsive, responsible bid. For purchases of goods and services over the  
25 mandatory bid or proposal amount set forth in the purchasing code goals will be  
26 established pursuant to the provisions of section 2-80.23. This section shall not apply to  
27 procurement of construction.

28 **SECTION VIII. SBE ELIGIBILITY STANDARDS:**

29 Section 2-80.30(a) of the Palm Beach County Code is hereby amended to read as  
30 follows:

1 (a) *Eligibility Standards:* An eligible small business is a for profit business  
2 ~~concern which whose~~ gross adjusted margin is within the standards as defined in  
3 Section 2-80.21 above and who has been in business for at least one (1) year or whose  
4 owner has a certificate of small business competency issued by the Small Business  
5 Development Center, Palm Beach Resource Center, Palm Beach Community College  
6 or other Office of Small Business Assistance approved course. An eligible small  
7 business for this program shall be an independent business. Recognition of the  
8 business as a separate legal entity for tax or corporate purposes is not necessarily  
9 sufficient for recognition as a small business. In determining whether a potential small  
10 business is an independent business, the County shall consider all relevant factors,  
11 including but not limited to: the date the business was established, the adequacy of its  
12 resources for the type of work specified, and the degree to which financial equipment  
13 leasing and other relationships with other businesses vary from established industry  
14 practices. An eligible small business for this program must perform a commercially  
15 useful business function ~~as opposed to only acting as a conduit.~~

16 **SECTION IX. COMMERCIALY USEFUL BUSINESS FUNCTION:**

17 Section 2-80.30(b) of the Palm Beach County Code is hereby amended to read as  
18 follows:

19 A small business is considered to perform a commercially useful business  
20 function when it is responsible for execution of a distinct element of work of a contract  
21 and carrying out its responsibilities by actually performing, managing and supervising  
22 the work performed. Businesses who merely act as a conduit do not perform a  
23 commercially useful business function and will not be eligible for certification as a SBE.  
24 In determining whether a business performs a commercially useful business function,  
25 consideration will ~~be included,~~ but not be limited to: whether the business adds a value  
26 to the product or service provided; whether the business has a distributorship  
27 arrangement with the manufacturer of goods supplied; whether the business takes  
28 possession of the product or service provided; whether the business warrants the  
29 product or service provided; whether the business maintains sufficient storage space to  
30 keep the product in inventory; whether the business maintains sufficient inventory to

1 meet the requirements of its contracts; whether the business provides the product or  
2 service to the public or other business other than a governmental agency, ~~and whether~~  
3 ~~the business is operated in accordance with normal industry practice.~~

4 **SECTION X. APPLICATION PROCEDURES:**

5 Section 2-80.30(c) of the Palm Beach County Code is amended to read as follows:

6 All applicants wishing to be considered as certified businesses for the benefits of  
7 this program must apply for small business certification by completing the application  
8 and affidavit which can be obtained through the office of small business assistance and  
9 pay the applicable fee for certification, modification of certification or recertification.

10 Applicants must submit the documentation listed below as appropriate to their business.

11 The office of small business assistance may request any other documentation  
12 necessary to determine eligibility. Documents not in English must be accompanied by a  
13 certified translation. In instances where the applicant business has not been in  
14 existence three (3) years, it shall provide the documentation for the years the business  
15 has been in existence.

16 (1) Corporations:

17 a. List of the corporation's current full-time and part-time employees by  
18 length of service;

19 b. Proof of business location and operation in the ~~county~~ Palm Beach  
20 County;

21 c. Articles of incorporation, including date approved by the state, and any  
22 subsequent amendments;

23 d. By-laws;

24 e. Prior three (3) years' financial statement prepared by an independent  
25 CPA or accountant;

26 f. Prior three (3) years' federal corporate tax returns, including all  
27 schedules, as signed and filed;

28 g. Copies of last three (3) months' corporate payroll;

29 h. ~~License to do business in the county, and a~~ Any other necessary  
30 licenses to perform the work for which certification is sought;

1                    i. Palm Beach County business tax receipt.

2                    (2) Partnerships:

3                    a. List of the partnership's current full-time and part-time employees by  
4                    length of service;

5                    b. Proof of business location and operation in ~~the county~~ Palm Beach  
6                    County;

7                    c. Partnership agreement;

8                    d. Prior three (3) years' financial statements prepared by an independent  
9                    CPA or accountant;

10                   e. Prior three (3) years' federal tax returns, including all schedules, as  
11                   signed and filed;

12                   f. ~~License to do business in the county, and a~~Any other necessary  
13                   license to perform the work for which certification is sought;

14                   g. Copies of last three (3) months' partnership payroll.

15                   h. Palm Beach County business tax receipt.

16                   (3) Sole proprietors:

17                   a. ~~License to do business in the county, and a~~Any other necessary  
18                   license to perform the work for which certification is sought;

19                   b. Verification of fictitious name registration; ~~to do business under an~~  
20                   ~~assumed name~~;

21                   c. Prior three (3) years' federal tax returns, including all schedules, as  
22                   signed and filed;

23                   d. List of current full-time and part-time employees by length of service;

24                   e. Proof of business location and operation in ~~the county~~ Palm Beach  
25                   County.

26                   f. Palm Beach County business tax receipt.

27                   **SECTION XI. APPLICATION REVIEW PROCEDURE:**

28                   Section 2-80.30(d)(1) of the Palm Beach County Code is amended to read as follows:

29                   Once an applicant has submitted the application and all supporting  
30                   documentation, certification review will be completed within sixty (60) days and the



1 following procedures will apply:

2 (1) The small business certification application and all supporting documents  
3 will be logged in as appropriate. ~~Applications will not be processed until all documents~~  
4 ~~are received.~~ The application will be reviewed for completeness and accuracy. The  
5 office of small business assistance will inform the applicant of any missing  
6 documentation. Any applicant failing to submit the requested documentation within thirty  
7 (30) days of the notice shall be deemed to have abandoned its application.

8 (2) ~~The application will be reviewed for completeness and accuracy.~~ References  
9 will be called and information verified by third parties, when appropriate. The Office of  
10 Small Business Assistance will review the goods or services provided by the applicant  
11 to determine the appropriate North American Industrial Classification System (NAICS)  
12 and/or National Institute of Government Procurement (NIGP) classification codes.  
13 Businesses will only be certified in the areas where they provide a commercially useful  
14 business function. In those instances when the NAICS and/or NIGP codes are broader  
15 than the goods or services provided by the applicant, the Office of Small Business  
16 Assistance will appropriately limit the certification to those goods or services for which  
17 the application performs a commercially useful business function.

18 (3) When deemed appropriate by the office of small business assistance, a  
19 personal interview or site visit will be scheduled with the principal(s) to discuss the  
20 documentation submitted and determine if the applicant meets the established criteria.

21 (4) Applicants approved for certification will be notified immediately by mail.

## 22 **SECTION XII. DENIAL OF CERTIFICATION:**

23 Section 2-80.30(e) of the Palm Beach County Code is amended to read as follows:

24 Applicants denied certification shall be notified by certified mail and informed of  
25 their right to appeal the denial. An applicant denied certification may not reapply for  
26 certification for one (1)) year ~~hundred twenty (120) days~~ from the denial of the  
27 certification.

## 28 **SECTION XIII. APPEAL OF CERTIFICATION DENIAL:**

29 Section 2-80.30(f) of the Palm Beach County Code is amended to read as follows:

30 Any firm that believes it has been wrongly denied certification as a small

1 business may file an appeal in writing, signed and dated, with the Office of Small  
2 Business Assistance. The appeal shall be filed no later than fifteen (15) days from the  
3 date of receipt of notice of denial of certification. The request for appeal shall state the  
4 specific reasons why the firm believes the denial of certification is erroneous. The  
5 ~~Office of Small Business Assistance may extend the time for filing or waive the time limit~~  
6 ~~for filing in the interest of justice, specifying in writing the reason for doing so.~~

7 **SECTION XIV. RESOLUTION OF APPEALS:**

8 Section 2-80.30(g) of the Palm Beach County Code is amended to read as follows:

9 If an appeal is filed, an administrative hearing ~~review~~ will be conducted with ~~by~~  
10 the director of the Office of Small Business Assistance. ~~Acting as the hearing officer.~~  
11 The hearing ~~review~~ will be scheduled ~~conducted~~ within ~~thirty (30)~~ forty-five (45) days of  
12 the filing of the request for appeal. The director of the Office of Small Business  
13 Assistance ~~shall~~ may grant a written request for extension of this hearing by an  
14 ~~applicant if in the interest of justice.~~ take one of the following actions on the request for  
15 appeal:

16 1. Uphold the appeal. If a determination is made that certification was denied,  
17 contrary to the provisions of the code, the director may uphold the appeal. If the appeal  
18 is upheld, a certification certificate shall be issued.

19 2. Deny the appeal. If the appeal is denied, the applicant has the right to  
20 request the appeal be referred to a special master in accordance with Subsection 2-  
21 80.30(j) below.

22 3. Refer the appeal directly to a Special Master with no determination made by  
23 the director of the Office of Small Business, in accordance with Subsection 2-80.30(j)  
24 below.

25 ~~At the hearing, the director may not consider any new information which was not~~  
26 ~~available at the time of the application. This hearing is the final step available in the~~  
27 ~~county administrative process for the denial of a certification application.~~

28 ~~The director of the Office of Small Business Assistance will provide written notice~~  
29 ~~as to the outcome of the hearing within ten (10) working days of the date of the hearing.~~

1 **SECTION XV. APPEAL OF DENIAL OF RECERTIFICATION:**

2 Section 2-80.30(h) of the Palm Beach County Code is amended to read as follows:

3 Certified SBEs are required to submit an affidavit of their continued eligibility as a  
4 SBE every three (3) years along with an application for recertification. The office of  
5 small business assistance may conduct site visits or review documents to ensure  
6 continued compliance as a small business. If there has been a change in operation,  
7 ownership, control, activities, domicile or adjusted gross margin the SBE must notify the  
8 office of small business assistance within thirty (30) days of the change. Supporting  
9 documentation may be required for continued certification. A company that fails to  
10 submit its application for recertification and affidavit of continued eligibility or fails to  
11 submit documentation requested by the office of small business assistance or allow a  
12 site visit will no longer be deemed certified for purposes of participation in the small  
13 business program.

14 The criteria for recertification shall be the same as for certification. An applicant  
15 may request an appeal of denial of recertification within fifteen (15) days of receipt of  
16 notice of denial. The resolution of the appeal ~~hearing~~ shall be conducted in the manner  
17 described in section 2-80.30(g).

18 An applicant denied recertification may not reapply for certification for one  
19 ~~hundred twenty days (120)-year~~ from the denial of recertification.

20 **SECTION XVI. DECERTIFICATION:**

21 Section 2-80.30(i) of the Palm Beach County Code is hereby amended to read as  
22 follows:

23 If during the period of certification, the county has reason to believe ~~or receives~~  
24 ~~written information~~ that the SBE received certification improperly, or that there has been  
25 a substantial change in circumstances in the operation, ownership, control, activities,  
26 domicile, or adjusted gross margin that continued certification would be contrary to the  
27 county's small business policy, then the Office of Small Business Assistance ~~shall~~ may  
28 conduct an investigation of the allegations.

29 The Office of Small Business Assistance ~~shall~~ may decertify the SBE if the  
30 investigation indicates that:

1           1. The small business cannot be contacted at the last known ~~county~~ address in  
2 Palm Beach County;

3           2. The small business is no longer in business;

4           3. The small business is no longer licensed to do the type of business for which  
5 it was certified;

6           4. The small business obtained its original certification and/or recertification  
7 through false representation or deceit;

8           5. The small business has been disbarred or suspended as a vendor by the  
9 county purchasing department. At the expiration of any suspension, the firm may  
10 reapply for certification;

11           6. Site visits have revealed no business being conducted at the county location;  
12 or

13           7. The small business does not meet the eligibility standards for certification as a  
14 small business.

15           8. The small business does not perform a commercially useful business function.

16           9. The small business refuses to allow an on-site inspection.

17           10. The small business has failed to notify the Office of Small Business of any  
18 change in the ownership, location, structure or any other aspect of the small business  
19 which would affect its small business certification.

20           The Office of Small Business Assistance shall notify the small business by  
21 certified mail that it has been decertified. ~~decertification is recommended.~~ The small  
22 business may request an appeal hearing of the decertification within fifteen (15) days of  
23 receipt of the notice. The resolution of the appeal ~~hearing~~ shall be conducted in the  
24 manner described in Subsection 2-80.30(g). Nothing in this section shall prevent the  
25 Office of Small Business Assistance from commencing an investigation regarding the  
26 legitimacy of a small business certification. ~~based upon information received~~  
27 ~~independent of a third party written request.~~ A business decertified pursuant to this  
28 section may not re-apply for certification for ~~one hundred twenty (120) days~~ one (1) year  
29 from the date of decertification.  
30

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**SECTION XVII. HEARING BEFORE A SPECIAL MASTER:**

Section 2-80.30(j) is hereby added to the Palm Beach County Code and shall read as follows:

1. Upon receipt of a denial of appeal for certification, recertification, or decertification, an applicant may request a hearing before a Special Master. The request for a hearing shall be in writing to the director of the Office of Small Business Assistance, and shall be made within five (5) business days of issuance of the director of the Office of Small Business' determination. The request for a hearing shall be accompanied by an appeal bond of one thousand dollars (\$1,000.00) which shall be remitted in the form of a money order, a certified check, a cashier's check or a bank check payable to the county.

2. At no time shall the applicant or any other person contact a Special Master regarding any issue pertaining to, or involving the appeal. Contact between the county and the Special Master shall be limited to scheduling and other administrative issues; including the provision and copying of public records pertinent to the appeal.

3. The Office of Small Business Assistance shall establish rules and regulations by separate policy and procedure detailing the selection of Special Masters, the appeals process, and the conduct governing appeal hearings. Such rules shall provide that the Special Master may not consider any evidence which was not available at the time of the application or recommendation for decertification or recommendation for denial of certification or recertification. Such rules shall also provide that the Special Master shall render a written decision within ten (10) working days of the hearing.

4. Special Masters shall have the jurisdiction and authority to hear and decide appeals. The Special Master shall make a recommendation as to whether the appeal should be upheld as denied.

a. If the Special Master upholds the appeal, the Special Master shall recommend the director of the Office of Small Business Assistance issue a certification certificate. In these instances, the Office of Small Business Assistance shall return the appeal bond to the applicant.

1                   b. If the Special Master denies the appeal, the Special Master shall  
2 recommend that certification be withheld. In these instances, the applicant's bond shall  
3 be forfeited.

4                   c. The director of the Office of Small Business Assistance may accept the  
5 Special Master's recommendation or, if the director of the Office of Small Business  
6 Assistance determines the Special Master's recommendation is not in the county's best  
7 interest, the original recommendation of the office may be referred to the Board for  
8 approval. At that time, the Board may accept or reject the recommendation of the  
9 Special Master.

10                  d. If a Special Master is unable to provide a fair hearing for any reason,  
11 the Special Master shall not accept the appeal and shall immediately notify the director  
12 of the Office of Small Business Assistance. The director of the Office of Small Business  
13 Assistance shall reassign the appeal to a Special Master who does not have a conflict.

14                  **SECTION XVIII. M/WBE CERTIFICATION:**

15                  Section 2-80.31 of the Palm Beach County code is amended as follows:

16                  (a) Eligibility standards: Although preferences to certified M/WBEs will not be  
17 extended under this part, unless otherwise provided by law, businesses eligible for  
18 certification as a M/WBE are encouraged to maintain their certification in order to assist  
19 in the tracking of M/WBE availability and awards of contracts to M/WBEs. This  
20 information is vital to determining whether race and gender neutral programs assist  
21 M/WBE firms or whether race and gender preferences are necessary in order to  
22 address any continued discrimination in the market.

23                  An eligible MBE or WBE is a small business concern domiciled in the county which is  
24 both owned and controlled by minorities or by women. This means that minorities and/  
25 or women ~~who~~ must own at least fifty-one (51) percent of the business and that the  
26 management and daily business operations are controlled by the minorities and/or  
27 women who own it. An eligible M/WBE for this program shall be an independent  
28 business. The ownership and control by minorities and/or women shall be real,  
29 substantial and continuing, and shall continue beyond the pro forma ownership of the  
30 firm as reflected in its ownership documents. The minority and/or women owners shall

1 enjoy the customary incident of ownership and shall share in the risks and profits  
2 commensurate with their ownership interest, as demonstrated by an examination of the  
3 substance rather than form or arrangements. Recognition of the business as a separate  
4 legal entity for tax or corporate purposes is not necessarily sufficient for recognition as  
5 an M/WBE. In determining whether a potential M/WBE is an independent business, the  
6 county shall consider all relevant factors, including but not limited to the date the  
7 business was established, the adequacy of its resources for the type of work specified,  
8 and the degree to which financial, equipment leasing and other relationships with  
9 nonminority firms vary from established industry practices.

10 An eligible M/WBE must perform a commercially useful business function as opposed to  
11 only acting as a conduit.

12 (1) Ownership: In determining ownership of the business, the contribution of  
13 capital or expertise by the minority and/or women owners to acquire their interest in the  
14 firm shall be real and substantial. Examples of insufficient contributions include, but are  
15 not limited to, a promise to contribute capital, a note payable to the firm or its owners  
16 who are not minorities or women, or the mere participation as an employee, rather than  
17 as a manager/owner.

18 (2) Control: The minority and/or woman owner(s) must have operational and  
19 managerial control of the business.

20 a. The primary consideration determining operational control and the  
21 extent to which the minority person and/or woman actually operates the business  
22 will rest upon the peculiarities of the industry of which the business is a part.  
23 Accordingly, in order to clarify the level of operational involvement of the minority  
24 person or woman in the business to be deemed as an M/WBE, the following  
25 examples are put forth and are not to be all-inclusive.

26 1. The minority person and/or woman should have some  
27 experience in the industry for which certification is sought.

28 2. The minority person and/or woman should be able to  
29 demonstrate that basic decisions pertaining to the daily operation of the  
30 business are independently made.

1                   3. The minority person and/or woman should have some technical  
2 competence in the industry for which certification is sought. The minority  
3 person and/or woman should have a working knowledge of the technical  
4 requirements of the business needed to operate in the industry.

5                   b. Managerial control means that the minority and/or woman has the  
6 demonstrable ability to make independent and unilateral business decisions  
7 needed to guide the future and destiny of the business. For a minority and/or  
8 woman to demonstrate the extent of his/her control, the following examples are  
9 put forth and are not intended to be all-inclusive:

10                   1. Corporate bylaws or partnership agreements or other  
11 agreements should be free of restrictive language which dilutes the  
12 minority's or women's control, thus preventing him/her from making those  
13 decisions which affect the destiny of the business.

14                   2. The minority person and/or woman should be able to clearly  
15 show, through production of documents, the areas of control such as, but  
16 not limited to:

17                   i. Authority and responsibility to sign payroll checks and  
18 letters of credit.

19                   ii. Authority for negotiations and signature responsibility  
20 for insurance and/or bonds.

21                   iii. Authority for negotiations and/or signature services.

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

27                   (3) *Commercially useful business function.* A MWBE is considered to perform  
28 a commercially useful business function when it is responsible for execution of a distinct  
29 element of work of a contract and carrying out its responsibilities by actually performing,  
30 managing and supervising the work performed. Businesses who merely act as a conduit



1 do not perform a commercially useful business function and will not be eligible for  
2 certification as a M/WBE. In determining whether a business performs a commercially  
3 useful business function, consideration will be included, but not be limited to, whether  
4 the business adds a value to the product or service provided; whether the business  
5 takes possession of the product or service provided; whether the business has a  
6 distributorship arrangement with the manufacturer of goods supplied; whether the  
7 business warrants the product or service provided; whether the business maintains  
8 sufficient storage space to keep the product in inventory; whether the business  
9 maintains sufficient inventory to meet the requirements of its contracts; whether the  
10 business provides the product or service to the public or other business other than a  
11 governmental agency, ~~and whether the business is operated in accordance with normal~~  
12 ~~industry practice.~~

13 (b) Application procedures: All applicants wishing to be considered as certified  
14 businesses must apply for M/WBE certification by completing an M/WBE disclosure  
15 affidavit which can be obtained through the office of small business assistance.  
16 Applicants must submit the documentation listed below, as appropriate to their  
17 business. The office of small business assistance may request any other documentation  
18 necessary to determine eligibility. Documents not in English must be accompanied by a  
19 certified translation. In instances where the applicant business has not been in  
20 existence three (3) years, it shall provide the documentation for the years the business  
21 has been in existence.

22 (1) Corporations.

23 a. List of the corporation's current full-time and part-time employees  
24 by length of service;

25 ~~b. Reserved;~~

26 be. Articles of incorporation, including date approved by the state, and  
27 any subsequent amendments;

28 cd. By-laws;

29 de. Prior three (3) years' financial statement prepared by an  
30 independent CPA or accountant;

1            ef.    Prior three (3) years' federal corporate tax returns, including all  
2 schedules, as signed and filed;

3            fg.    Resumes of principals and management personnel of business  
4 showing education, training and employment with dates;

5            gh.    Stock transfer agreement(s);

6            hi.    ~~License to do business in the county, and a~~Any other necessary  
7 licenses to perform the work for which certification is sought;

8            ij.    Copies of last three (3) months' corporate payroll;

9            jk.    Stock ledger;

10          kl.    Copies of the corporation's distribution of profits for the previous  
11 year;

12          lm.    Copies of third party agreements such as rental and lease  
13 agreements, management agreements, or purchase agreements;

14          mn.    Copies of stock certificates issued;

15          no.    Proof of stock purchase;

16          o.     Palm Beach County business tax receipt.

17          (2) Partnerships.

18          a.     List of the partnership's current full-time and part-time employees  
19 by length of service;

20          ~~b.     Reserved.~~

21          b.e.    Partnership agreements;

22          cd.    Prior three (3) years' financial statements prepared by an  
23 independent CPA or accountant;

24          de.    Prior three (3) years' federal tax returns, including all schedules, as  
25 signed and filed;

26          ef.    Resumes of all partners and management personnel showing  
27 education, training and employment with dates;

28          fg.    ~~License to do business in the county, and a~~Any other necessary  
29 licenses to perform the work for which certification is sought;

30          gh.    Buy-out rights agreement;

- 1            hi.    Profit-sharing agreement;
- 2            ij.    Copies of last three (3) months' partnership payroll;
- 3            jk.    Proof of capital invested;
- 4            kl.    Copies of the partnership's distribution of profits for the previous
- 5            year;
- 6            lm.    Copies of third party agreements such as rental and lease
- 7            agreements, management agreements or purchase agreements;
- 8            m.    Palm Beach County business tax receipt.

9            (3) Sole proprietors:

- 10           a.    ~~License to do business in the county, and a~~Any other necessary
- 11           licenses to perform the work for which certification is sought;
- 12           b.    ~~Reserved.~~
- 13           eb.    Verification to do business under an assumed name;
- 14           cd.    Owner and management personnel resumes;
- 15           de.    Prior two (2) years' federal tax returns, including all schedules as
- 16           signed and filed;
- 17           ef.    List of current full-time and part-time employees by length of
- 18           service;
- 19           f.    Palm Beach County business tax receipt.

20           (bc) Application review and appeal procedures: The procedures for application

21           review, recertification, decertification and appeals provided in section 2-80.30(d)--(~~h~~)(i)

22           shall apply equally for MWBE certification.

23           **SECTION XIX . SMALL BUSINESS ADVISORY COMMITTEE:**

24           Section 2-80.32 of the Palm Beach County Code is amended to read as follows:

25           There is hereby created and established an advisory committee to be known as

26           the small business assistance (SBA) advisory committee.

27           (1) Membership: The SBA advisory committee shall consist of the following

28           members:

- 29           a.    One (1) black business owner certified as a small business by the
- 30           county;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

- b. One (1) Hispanic business owner certified as a small business by the county;
- c. One (1) women business owner certified as a small business by the county;
- d. One (1) white male business owner certified as a small business by the county;
- e. One (1) business owner domiciled in the county;
- f. One (1) representative of the ~~county resource center~~ Palm Beach County Resource Center;
- g. One (1) representative of the Hispanic Chamber of Commerce of Palm Beach County;
- h. One (1) representative of the National Association of Women in Construction;
- i. One (1) representative of a women's business organization;
- j. One (1) minority contractor; ~~representative of a black contractors or black business organization~~;
- k. One (1) representative of the Associated General Contractors Association;
- l. One (1) representative of the Small Business Development Center;
- m. One (1) representative of the ~~business loan fund~~ Business Loan Fund of the Palm Beaches;
- n. One (1) representative of a black Chamber of Commerce.

Members shall be appointed at large by the board of county commissioners and shall serve for staggered terms of three (3) years. Initially five (5) members shall be appointed for a term of three (3) years, four (4) members shall be appointed for a term of two (2) years, and four (4) members shall be appointed for a term of one (1) year. Vacancies shall be filled in the same manner as the original appointments for the remainder of the vacant term. Each member shall serve without compensation and may be removed without cause by the board of county commissioners at any time. Travel

1 reimbursement is limited to expenses incurred only for travel outside the county  
2 necessary to fulfill board member responsibilities when sufficient funds are budgeted  
3 and available, and upon prior approval of the board of county commissioners.

4 (2) Duties and functions. The committee shall have the following duties and  
5 functions:

6 a. Review and evaluate the effectiveness of small business programs  
7 within county government;

8 b. Monitor and evaluate the effectiveness of the county's small  
9 business policies and procedures, resolutions and ordinances, including their  
10 implementation by the various county departments;

11 c. Study and evaluate the necessity for further county regulations and  
12 procedures regarding small business participation;

13 d. Receive and, where necessary, analyze information concerning the  
14 presence of discrimination in the bidding and contracting process and  
15 recommend to the board of county commissioners further steps to alleviate such  
16 discrimination;

17 e. Prepare, adopt and present an annual report to the board of county  
18 commissioners;

19 f. Research and review other jurisdictions', small business programs;

20 g. Act Acts—~~as~~ as a conduit between the county and the community,  
21 industry; organizations, trade associations, chambers of commerce and small  
22 and minority/women businesses;

23 h. Plan and participate in education and training for small businesses;  
24 and

25 i. Research and recommend to the board of county commissioners  
26 race- and gender-neutral mechanisms which will assist small businesses.

27 j. Monitor and report on level of minority/women business enterprise  
28 participation.

29  
30

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

k. Monitor legislative initiatives and other issues and activities which impact small and M/WBE businesses and advise the board of county commissioners concerning same.

(3) Meetings and organization. The committee shall meet on a regular basis. A majority of members appointed shall constitute a quorum. In the presence of a quorum, committee business shall be conducted by a vote of a majority present. The meetings shall be governed by the Robert's Rules of Order. Reasonable public notice of all committee meetings shall be provided, and all such meetings shall be open to the public at all times.

(4) Assistance to the committee. The committee may ~~call upon~~ request information from any department or agency of the county, local, regional, state, or federal government for information or advice in the performance of its work.

(5) Chair and vice-chair. A chair and vice-chair shall be elected by a majority of the committee and shall serve for a term of one (1) year. The duties of the chair shall be to:

- a. Call committee meetings and set the agenda for the same;
- b. Preside at committee meetings;
- c. Establish subcommittees, appoint subcommittee chairs, and charge subcommittees with specific tasks;
- d. Perform other functions as the committee may assign by rule or order.

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

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

(6) Advisory only. The actions, decisions and recommendations of the committee shall not be final or binding on the board of county commissioners but shall

1 be advisory only.

2 (7) Attendance. Members shall be automatically removed for lack of  
3 attendance. Lack of attendance is defined as failure to attend three (3) consecutive  
4 meetings or failure to attend more than two-thirds (2/3) of the meetings scheduled  
5 during a calendar year. Participation for less than three-fourths (3/4) of a meeting shall  
6 constitute lack of attendance. Members removed under this section shall not continue to  
7 serve until a new appointment is made and removal shall create a vacancy.

8 (8) Conflict of interest. Committee members shall be governed by the  
9 applicable provisions of the Palm Beach County Ethics Resolution R-94-693, as may be  
10 amended.

11 **SECTION XX. DELETION OF REFERRAL FOR SUSPENSION OR DEBARMENT:**

12 Section 2-80-35 of the Palm Beach County Code is hereby deleted as this information is  
13 contained elsewhere in the Code revisions.

14 **SECTION XXI. REPEAL OF LAWS IN CONFLICT:**

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

17 **SECTION XXII. SEVERABILITY:**

18 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is  
19 for any reason held by the Court to be unconstitutional, inoperative, or void, such  
20 holding shall not affect the remainder of this Ordinance.

21 **SECTION XXIII. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

22 The provisions of this Ordinance shall become and be made a part of the Code  
23 of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance  
24 may be renumbered or relettered to accomplish such, and the word "ordinance" may be  
25 changed to "section", "article", or other appropriate word.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

**SECTION XXIV. EFFECTIVE DATE:**

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

SHARON R. BOCK,  
CLERK & COMPTROLLER  
PALM BEACH COUNTY

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

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:   
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 2008.