

ORDINANCE 2025-__

AN ORDINANCE PERTAINING TO PROCUREMENT OF BUSINESS ENTERPRISE GOODS, SERVICES AND SUPPLIES IN ORANGE COUNTY, FLORIDA; SUSPENDING CHAPTER 17, ARTICLE III, DIVISION 4 "MINORITY/WOMEN BUSINESS ENTERPRISE ORDINANCE" AND ANY REGULATIONS OR COMMITTEES ASSOCIATED THEREWITH; CREATING CHAPTER 17, ARTICLE III, DIVISION 6 "SMALL BUSINESS ENTERPRISE"; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 21, 2025, the President of the United States signed Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" ("EO 14173"), which expresses opposition to programs that promote diversity, equity and inclusion ("DEI") or diversity, equity, inclusion and accessibility ("DEIA"); and

WHEREAS, EO 14173 includes a requirement that recipients of grant funding from federal agencies be required to certify that they do not operate any programs promoting DEI that violate federal anti-discrimination laws; and

WHEREAS, the County receives in excess of \$100 million in federal grants each year; and

WHEREAS, in order to avoid the loss of this federal funding used by the County to provide essential services to its citizens and potential civil and criminal penalties and prosecution under the False Claims Act, the County is hereby suspending certain programs, ordinances, policies and practices until further action by the Orange County Board of County Commissioners (Board); and

WHEREAS, the Board desires to create a program to provide opportunities for small businesses to participate in the procurement of goods and services by the County; and

WHEREAS, in order to provide such additional opportunities, the Board wishes to create a Small Business Enterprise program.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Amendments; In General. For the purposes of this section, additions are shown by underlines, deletions are shown by ~~strikethroughs~~, and asterisks (***) indicate portions of text which have not changed.

Section 2. Chapter 17, Article III, Division 4, “Minority/Women Business Enterprise” is hereby amended as follows:

Chapter 17, Article III, Division 4, “Minority/Women Business Enterprise” is hereby suspended and the entirety of the Division is hereby reserved. Administrative Regulation No.9.02 and any other administrative regulations, policies or procedures, or portions thereof, to the extent related to the Minority/Women Business Enterprise Program, the Minority/Women Business Enterprise Advisory Committee, and any other ordinance, administrative regulation, program, policy, and/or practice, or portion thereof, considered to promote Diversity Equity and Inclusion or Diversity Equity Inclusion and Accessibility, that violate federal anti-discrimination laws are also suspended.

Section 3. Chapter 17, Article III, Division 6, “Small Business Enterprise”, is hereby created to read as follows:

Sec. 17-340 – Title.

This division shall be entitled the "Small Business Enterprise Ordinance."

Sec. 17-341 – Policy, purpose and objectives.

It is the policy of the board of county commissioners that the county use its best efforts to ensure that all segments of its business population are encouraged to do business with the county. To that end, the board of county commissioners hereby establishes a program to encourage the use of small businesses in county projects. The small business enterprise program is intended to be a race and gender neutral program.

Sec. 17-342 - Definitions.

When used in this division, the following terms are to be defined and construed as follows:

Compliance officer means the business development division manager or designee.

Orlando Metropolitan Statistical Area means Lake, Orange, Osceola and Seminole Counties.

Policies and Procedures refers to that certain Orange County Business Development Division Small Business Enterprise Certification Policies and Procedures Manual as approved by the board of county commissioners.

Small Business Enterprise is a corporation, partnership, sole proprietorship or other legal entity certified by the county:

(a) For which the owner is a lawful permanent resident of the State of Florida;

(b) The business is domiciled in the Orlando Metropolitan Statistical Area;

(c) That operates separately from another firm in such areas as personnel, facilities, equipment, financial and/or bonding support and other resources;

(d) That provides a commercially useful business function according to customs and practice of the industry;

(e) That has no more than the number of employees set forth in the Policies and Procedures in effect at the time of certification; and

(f) That has business annual gross receipts, averaged over the past three (3) years no greater than the threshold provided in the Policies and Procedures in effect at the time of certification:

Joint ventures are not eligible for certification

Small Business Enterprise Advisory Committee refers to a seven member committee made up of representatives of trade groups and members of the general business community and appointed by the board of county commissioners as an advisory group.

Small Business Enterprise Directory means a compilation of certified SBEs which is retained and published by the County provided compliance monitoring system and the business development division and made available to contractor(s), vendor(s) and the public for use in identifying contractors, service providers, material suppliers, etc.

Other terms not defined in this section will have the meanings defined in other sections of the Code.

Sec. 17-343 Certification

(a) All applications for certification must meet the following requirements:

112 (1) Company must be located and managed in the Orlando
113 Metropolitan Statistical Area (MSA), which consists of Orange,
114 Osceola, Seminole and Lake Counties and have gross receipts which
115 are less than the amounts listed in the SBE definition in Section 17-
116 342 at the time of application to become certified.

117 (2). All application forms must contain all requested
118 information.

119 (3) The application must be signed by the applicant on the
120 form supplied by Orange County.

121 (b) Applications will be reviewed by the business
122 development division to ensure they meet all requirements for
123 certification.

124 (c) If the application is incomplete it will be returned for
125 required information.

126 (d) Applicants that submit applications submitted with
127 omissions will be notified and encouraged to submit requested
128 documentation within five (5) business days of the initial request. If
129 the applicant fails to provide requested documentation, the
130 application will be closed.

131 (e) Upon final acceptance of an application, the compliance
132 officer will conduct a full review and analysis of the application.
133 This review process may include interviews and discussions with
134 the applicant or applicant's representative, requests for the
135 submission of additional documentation/information.

136 (f) The business development division will be authorized to
137 review all applications and render a decision to either grant or deny
138 SBE certification.

139 (g) If the applicant fails to meet the criteria for SBE
140 Certification and the compliance officer has recommended denying
141 certification status, the applicant will be notified of the following:
142 the specific reasons why they were denied, right to a hearing, and
143 other available courses of action.

144 (h) Initial certifications shall be valid for a period of two (2)
145 years.

Sec. 17-344 Denial of Certification.

146 (a). The business development division shall deny
147 certification as a small business enterprise to any business entity that
148 fails to meet the requirements set forth in the Small Business
149 Enterprise Ordinance.

150 (b). The business development division may base the denial
151 of certification on any of the following grounds:

152 (1). Failure to qualify as a small business enterprise under
153 the eligibility requirements of this ordinance.

154 (2). The business is not located in the Orlando MSA.

155 (c). Firms denied certification will not be able to apply for
156 Orange County SBE Certification for a period of one (1) year from
157 the date of their final appeal hearing date. If the firm was denied and
158 reapplies for certification after the one (1) year period, they must
159 submit with their application, detailed explanations of how they now
160 meet the criteria for the areas in which they were previously denied.

161 **Sec. 17-345 Compliance review.**

162 The compliance officer or designee will periodically review
163 the practices and status of a certified SBE to determine whether they
164 continue to meet the eligibility requirements for certification and are
165 conducting their business in accordance with those requirements. If
166 the review reveals deficiencies in performance, the compliance
167 officer will determine if corrective action should be taken, up to and
168 including revocation of certification. Revocation of certification
169 may be appealed as provided in section 17-353.

170 **Sec. 17-346 Recertification**

171 (a) Application for recertification should be completed and
172 submitted to the compliance officer at least thirty (30) calendar days
173 prior to the date of expiration of the existing certification. SBE will
174 receive one notice via the County provided compliance monitoring
175 system sixty (60) days prior to the expiration of certification. SBE
176 may receive additional notifications, but no such additional
177 notifications are required and will be considered a courtesy.

178 (b) Failure to apply for recertification prior to expiration of
179 current certification will result in expiration of certification.

180 (c) Applications for recertification will be required to meet
181 the same standards as set forth in Section 17-343.

182 (d) Recertifications will be valid for a period of two (2)
183 years.

184 **Sec. 17-347 Revocation of certification**

185 (a) Certification can be revoked by the compliance officer
186 for the following circumstances:

187 (1) Failure to maintain an office in the MSA for a period of
188 sixty (60) days or more.

189 (2) Fraud, deceit and/or misinformation in obtaining or
190 maintaining certification.

192 (3) Failure to report subsequent changes in the status or
activities in the business entity, licensures, etc, that affect the SBE's
eligibility for continued certification.

194 (b) Firms whose certification has been revoked shall not be
able to resubmit an application for certification for a minimum
196 period of two (2) years from the date of revocation. Detailed
explanations will be provided as to how the reason for revocation
198 has been remedied.

Sec. 17-348 – SBE Participation Goals.

200 (a) Aspirational Goals: For each fiscal year, the business
development division manager shall establish non-mandatory
202 annual aspirational goals for overall SBE prime and subcontract
participation on county contracts based upon the SBE availability
204 by industry segment, along with relative SBE availability data to be
collected by the County through its compliance monitoring system,
206 and the actual utilization of the SBEs reflected therein. The initial
overall Annual Aspirational Goal for SBE contract participation in
208 county contracts will be fifteen (15%).

210 (1) Annual Aspirational Goals are intended to serve
as a benchmark against which to measure the overall
effectiveness of the program and determine the need for
212 future adjustments to the remedies and are not to be applied
to individual solicitations.

214 (2) Annual Aspirational Goals may be stated only in
those solicitations that do not contain contract specific goals
216 and, if stated, are advisory only.

218 (b) Goals: For each formal solicitation where SBE use is
available, the business development division shall establish SBE
220 participation percentage requirements. The required participation
percentage must not exceed thirty (30) percent for each solicitation.
222 The required participation percentage must be based on the
availability of SBEs to perform services or provide supplies on a
224 project-by-project, contract-by-contract, or task authorization basis.
Goals will not be established for requests for quotes, sole source or
226 emergency purchases and any other contracts for which goals have
been waived.

228 (c) Goals may be met in the following manner:

228 (1) Use of SBE certified entities as subcontractors by the
bidder or proposer;

230 (2) A bidder or proposer who is certified as an Orange
County SBE may perform a percentage of the work equal to the goal
232 for the project;

234 (3) A bidder or proposer who has historically self-performed
the work may self perform the work; or

236 (4) A bidder or proposer may demonstrate good faith effort
in accordance with the requirements in this chapter.

238 (d) The county may negotiate a reasonable price directly
with a certified SBE provided the procurement is less than the
formal solicitation threshold.

240 **Sec. 17-349 Responses to solicitations.**

242 If a bidder or proposer is unable to meet the goal set in any
particular solicitation and the bidder or proposer is not an SBE
themselves or has not historically performed the work, prospective
respondents or bidders shall be provided an adequate opportunity to
formally request a waiver at least ten (10) days prior to bid opening
based upon submission of adequate Good Faith Effort
documentation as specified in the Policies and Procedures Manual
and as stated in bid solicitation language.

250 Factors to be considered by the business development
division in making this determination shall include the relative
availability of SBE firms to perform on the specific contract.

252 A respondent or bidder may request a full or partial waiver
of this mandatory requirement for good cause by submitting the
appropriate form(s) and documentation at the time as required in the
solicitation. Under no circumstances shall a waiver of a mandatory
subcontracting requirement be granted without submission of
adequate documentation of Good Faith Effort by the respondent or
bidder and careful review by the business development division. The
business development division shall base its determination of a
waiver request on criteria such as, but not limited to:

262 1. Whether the requestor of the waiver has made Good Faith
Effort to subcontract with qualified and available SBEs;

264 2. Whether subcontracting would be inappropriate and/or not
provide a "Commercially Useful Function" under the scope of the
contract; and

266 3. Whether there are no certified SBE firms that are qualified
and available to provide the goods or services required.

268 In the absence of a waiver granted by the business
development division, failure of a prime contractor to commit as
required in the Solicitation to satisfying the SBE subcontracting goal
shall render its response non-responsive. Provided, however, that on
any prime contract, if the Prime Contractor is a certified SBE firm,
then the Prime Contractor is allowed to self-perform up to the entire
SBE subcontracting goal amount with its own forces. To the extent

that the certified SBE Prime Contractor does not self-perform a portion of the SBE subcontracting goal, it shall be responsible for complying with all other requirements for that portion of work that is subcontracted.

Prime contractors submitting responses to solicitations for solicitations that include an SBE participation percentage requirement must subcontract the designated percentage of the work, including the cost of supplies, to SBE subcontractors (or to self-perform if the prime contractor is an SBE), or demonstrate and document good faith efforts to satisfy the participation percentage. Prime contractors submitting responses to solicitations for construction contracts that include an SBE participation percentage requirement must submit, in the form specified by the business development division, the following with their response: a list of the names of the intended SBEs to be utilized as subcontractors in the performance of the contract, including for each: (i) relevant contact persons and information; (ii) a description of the work to be performed by each intended SBE, and (iii) the agreed-upon dollar value for such work. If the response is noncompliant with this section, the compliance officer will notify the Procurement Division.

Sec. 17-350 Subcontracts

(a) Proposed changes to any designated SBE subcontractor after the prime contractor has submitted a response to the solicitation must be approved by the business development division. The prime contractor must work diligently to replace any SBE subcontractor that can no longer perform under the contract with another SBE subcontractor, to the extent practicable.

(b) Each contract between the County and a prime contractor that includes an SBE participation percentage requirement must (i) include a provision requiring the prime contractor to comply with the requirements of this division, (ii) identify the required participation percentage, and (iii) provide that failure of the prime contractor to comply with such requirements will result in consequences for noncompliance.

(c) Contractors who are awarded contracts by the county shall submit a copy of their executed subcontract with the required language from the Business Development Division for each SBE listed in their bid/proposal prior to execution of a contract with the county. In the case of contractors who are awarded contracts by the county for a Construction Manager At Risk (CMAR) project where design has not been completed prior to contract, or a design build project shall submit a copy of their executed subcontract with each SBE prior to execution of a Guaranteed Maximum Price (in the case

of a CMAR) or at the time of completion and approval by county of design (in the case of a design build project).

Sec. 17-351 Monitoring of compliance

The prime contractor subject to contractual SBE participation percentage requirements pursuant to this division shall keep and maintain, for the duration of the contract, accurate records demonstrating compliance with the required SBE participation percentage. The prime contractor shall submit such records to the business development division at the frequency requested by the business development division for the duration of the contract or in accordance with an alternative submission schedule for such records identified in the contract, if any. The prime contractor is responsible for assuring that all documentation required by this division and the contract is submitted to the business development division in the form specified by the business development division.

Sec. 17-352 Penalties:

Firms/persons who violate the provisions of this division or who provide fraudulent information may be subject to suspension or debarment if determined by the Chief Procurement Official. The firm/person may also be subject to revocation of SBE certification as determined by the compliance officer.

Sec. 17-353 Appeals Process:

(a) An applicant may appeal a decision by the business development division to deny or revoke certification by delivering written notice of appeal to the compliance officer no later than 5:00 p.m. on the tenth full business day after the date the written decision has been rendered.

(h) The Director of Administrative Services will hear the appeal and render a decision.

(i) Proceedings. The business development division shall be responsible for scheduling the appeal and giving reasonable notice to all substantially affected persons. The vendor or its representative may submit relevant written materials and make an oral presentation at the appeal hearing. Neither direct nor cross examination of witnesses will be permitted, although the Director of Administrative Services may make whatever inquiries deemed pertinent to a determination of the appeal. Judicial rules of evidence shall not apply. The Director of Administrative Services shall promptly issue a written decision on behalf of the committee.

Sec. 17-354 SBE Advisory Committee:

(a) The SBE advisory committee will meet at least quarterly and perform the following functions:

362 (1) The SBE advisory committee may adopt the reports of
the business development division and make recommendations on
implementation of the goals established in this ordinance.

364 (2) The SBE advisory committee will advocate for
companies who meet the qualifications to apply for certification by
366 referring companies to the business development division.

368 (3) The SBE advisory committee will review and make
recommendations to improve communication between small
business enterprises and the county to foster better understandings
370 of the needs of such businesses and to effectively promote the
participation and use of small business enterprises in the
372 procurement activities of county government.

374 (4) The SBE advisory committee may study and make
recommendations to the board of county commissioners regarding
the development and implementation of policies and strategies for
376 the purpose of improving the availability, participation and use of
small business enterprises in county procurements.

378 (b) A quorum of the SBE advisory committee will be four
(4) members, and a vote of the majority of the members present, as
380 long as there is a quorum, will constitute binding action of the
committee. In the absence of a quorum, the committee may meet
382 but may not take action.

Sec 17-355 Reporting

384 The compliance officer shall annually provide information
to the board of county commissioners concerning the number of
386 firms certified as SBEs, the awarding of contracts for supplies,
services, and construction to SBEs and the participation of SBEs in
388 the County's solicitations. To the extent practicable, the information
provided should include the total dollar value awarded toward SBEs
390 during the preceding year. At the end of fiscal year 2026, and every
four years thereafter, the compliance officer shall make a
392 recommendation to the designated board of county commissioners
on what the County's annual SBE participation goal should be for
394 the next four years.

Sec. 17-356. - Rules, regulations and procedures.

396 The board of county commissioners is hereby authorized to
adopt by resolution such rules and regulations and procedures as are
398 necessary or proper to implement this division.

Sec. 17-357. - Conformity with applicable federal and 400 **state laws**

402 The provisions of this division shall be construed according
to and in conformity with state, federal, and local laws concerning

the solicitation and awarding of contracts. Where a project,
solicitation, or contract involves the expenditure of state or federal
assistance or contract funds, the compliance officer shall comply
with such state or federal law and authorized regulations which are
mandatorily applicable, including those which dictate that the
provisions of this division may not be required on a particular
project, solicitation, or contract.

Section 4. Codification. It is the intention of the Board that the amendments to the
Orange County Code set forth in Sections 2 and 3 shall be codified and that the sections of this
Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section,"
"article," or such other appropriate word or phrase in order to accomplish such intentions. No other
sections or parts of sections of this ordinance shall be codified.

Section 5. Effective Date. This Ordinance shall become effective pursuant to general
law.

APPROVED AND ENACTED ON THIS 15th DAY OF July, 2025.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk