

**TO: ALL COUNTY PERSONNEL**  
**FROM: VERDENIA C. BAKER, COUNTY ADMINISTRATOR**  
**PREPARED BY: OFFICE OF EQUAL BUSINESS OPPORTUNITY**  
**SUBJECT: SMALL/MINORITY/WOMEN BUSINESS ENTERPRISE (S/M/WBE)  
UTILIZATION FOR THE PROCUREMENT OF GOODS AND  
SERVICES, INCLUDING CONSTRUCTION RELATED GOODS  
AND PROFESSIONAL SERVICES**  
**PPM: CW-O-043**

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<b>ISSUE DATE:</b>	<b>EFFECTIVE DATE:</b>
<b>FEBRUARY 22, 2019</b>	<b>APRIL 22, 2019</b>

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**PURPOSE:**

The Equal Business Opportunity (EBO) Ordinance and this Policy and Procedure Manual (PPM) established pursuant to the EBO Ordinance, shall serve as the County's compelling interest to remedy the various ongoing effects of marketplace discrimination against small, local, minority and women-owned businesses that are ready, willing, and able to sell goods and services, including construction related goods and services and professional services (collectively "goods and services") to the County.

The Office of EBO shall have primary oversight responsibility with the full support and cooperation of all other County offices and departments in the administration of the EBO Program, as well as in the administration of other economic inclusion policies contained in this PPM.

**UPDATES:**

Future updates to this PPM will be the responsibility of the Director of the Office of EBO.

Internal User Department PPMs utilized in addition to this PPM are the responsibility of the User Department.

**AUTHORITY:**

Section 2-80.20 – Section 2-80.40, Palm Beach County ("County") Code ("Equal Business Opportunity Code"), as may be amended.

**POLICY:**

It is the policy of the Board of County Commissioners of Palm Beach County, Florida (The Board) that the County shall use its best efforts to ensure that all segments of its business population, including, but not limited to, small, local, minority, and women-owned businesses, have an equitable opportunity to participate in the County's procurement process, prime contract, and subcontract opportunities, and that no business shall be excluded from participation, denied benefits of, or otherwise discriminated against, in connection with the award and performance of any contracts with the County on the grounds of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability or genetic information.

**COUNTY ADMINISTRATOR'S COMMITMENT AND DEPARTMENTAL DIRECTIVE:**

In support of its policy to ensure the full and equitable participation of local S/M/WBEs in the provision of goods and services to Palm Beach County, the Palm Beach County Board of County Commissioners adopted an Ordinance codified in 2-80.20 through 2-80.40 of the Palm Beach County Code.

The Board of County Commissioners desires to ensure that all businesses be afforded the opportunity for full participation in our free enterprise system while providing assistance and encouragement to Palm Beach County S/M/WBEs, which represent a significant portion of our local business community.

It is the County Administrator's intent to administer and enforce these pertinent provisions of the Palm Beach County Code to the fullest extent provided by law, and it is therefore directed that each County department and employee has the responsibility for administering and implementing this important S/M/WBE Program to commit all necessary resources, talent and cooperation to make this EBO Program a success.

In order to obtain full compliance with this EBO PPM, all County Departments are further directed to amend all applicable internal Departmental PPMs to ensure consistency with the provisions and requirements herein.

  
VERDENIA C. BAKER  
COUNTY ADMINISTRATOR

**Supersession History:**

1. PPM# CW-O-043, effective 10/1/91
2. PPM# CW-O-043, effective 07/17/97
3. PPM# CW-O-043, effective 07/06/98
4. PPM# CW-O-043, effective 8/27/01
5. PPM# CW-O-043, effective 3/11/03
6. PPM# CW-O-043, effective 12/15/03
7. PPM# CW-O-043, effective 07/02/04
8. PPM# CW-O-043, effective 08/05/09
9. PPM# CW-O-043, effective 01/1/11
10. PPM# CW-O-043, effective 03/01/14
11. PPM# CW-O-043, effective 02/22/19

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THE FOLLOWING FORMS ARE AVAILABLE ON THE COUNTY'S INTERNET PAGE UNDER DOCUMENTS FOR THE OFFICE OF EQUAL BUSINESS OPPORTUNITY .APPLICATIONS

- Certification Application
- Modification of Certification Application
- Recertification Application

OTHER DOCUMENTS

- Prime Contractor Good Faith Effort Form
- Prime Contractor Good Faith Effort Table
- Qualification Questionnaire – Prime Consultant
- Qualification Questionnaire – Subconsultant
- Request for S/M/WBE Substitution/Modification/Removal
- Instructions on Completing Schedules 1-4
- Schedule 1 – List of Proposed Subcontractors/subconsultants
- Schedule 2 – Letter of Intent to Perform as an S/M/WBE
- Schedule 3 – S/M/WBE Activity Form
- Schedule 3(A) – Professional Services Activity Report
- Schedule 4 – Payment Certification Form
- S/M/WBE Vendor Performance Report
- Subcontracting Waiver Request

THE FOLLOWING FORMS ARE AVAILABLE ON THE COUNTY'S INTRANET PAGE UNDER DOCUMENTS FOR THE OFFICE OF EQUAL BUSINESS OPPORTUNITY.

APPLICATIONS

- Certification Application
- Modification of Certification Application
- Recertification Application

OTHER DOCUMENTS

- Availability Template
- EBO Training Forms
- EBO Training Presentation
- Goal Setting Committee Project Summary Worksheet
- Prime Contractor Good Faith Effort Form
- Prime Contractor Good Faith Effort Table
- Qualification Questionnaire – Prime Consultant
- Qualification Questionnaire – Subconsultant
- Request for S/M/WBE Substitution/Modification/Removal
- Instructions on Completing Schedules 1-4
- Schedule 1 – List of Proposed Subcontractors/subconsultants
- Schedule 2 – Letter of Intent to Perform as an S/M/WBE
- Schedule 3 – S/M/WBE Activity Form
- Schedule 3(A) – Professional Services Activity Report
- Schedule 4 – Payment Certification Form
- S/M/WBE Vendor Performance Report
- Solicitation Review and API Recommendation
- Solicitation Review and API Signature Page
- Subcontracting Waiver Request

## 1. GENERAL

### 1.1 Definitions

*Affirmative Procurement Initiatives (API)* refers to various EBO Program tools and Solicitation incentives that are used to encourage greater prime and subcontract participation by Small Business Enterprise (SBE) firms or Minority/Women Business Enterprise (M/WBE) firms, including, but not limited to, bonding assistance, evaluation preferences, subcontracting goals, vendor rotations, and joint venture incentives. Complete details on the implementation or operation of each API may be found in the EBO Ordinance and this PPM as well as other PPMs adopted by the County Administrator.

*Best Value Contracting or Request for Proposal* means any competitive method of procurement where price is only one factor of several selection criteria factors, and where price is not the determining factor in the award of a contract.

*Certified Small/Minority/Women Business Enterprise (S/M/WBE)* means a business which has been certified by the Office of EBO as having satisfied all of the eligibility requirements for participation in the EBO Program as either a small, minority, and/or woman business enterprise.

*Construction Department(s)* means the County Departments of Airports (DOA), Engineering and Public Works (EPW), Environmental Resources Management (ERM), Facilities Development & Operations (FDO), and Water Utilities (WUD) each of which has been delegated construction authority under Section 2-53(f) of the Purchasing Code.

*Contract* means Contract as defined in the Purchasing Code, including but not limited to all types of agreements, regardless of what they may be called (purchase orders, decentralized purchase orders ("DPOs"), agreements, etc.), for the procurement of goods and services.

*Contract Request* means a requisition for the procurement of goods or services.

*County's Purchasing Code* means Sections 2-51 through 2-58 of the Palm Beach County Code, as may be amended.

*Days* means business days, unless specified otherwise.

*Evaluation Preference* means an API that may be applied by the Goal Setting Committee (GSC) to Requests for Proposals for goods or services where responses submitted by S/M/WBE firms or firms that have teamed with S/M/WBE firms may be awarded additional points in the scoring and ranking of their proposals against those proposals submitted by Respondents that are not S/M/WBE firms or firms that have not teamed with S/M/WBE firms.

*Formal Solicitation* means any solicitation valued equal to or in excess of the Mandatory Bid or Proposal Amount of \$100,000, as set forth in Section 2-54(a) of the County's Purchasing Code and as may be amended.

*Goals* refers to the level of S/M/WBE participation projected to be obtained either annually within a business category, or in the performance of a specific contract, and is expressed as a percentage of the total dollar volume of participation of all businesses in the County's procurement of goods and services either annually within a given business category, or within a specific

contract. In the absence of a waiver or exclusion to a goal, the standard SBE contract-specific subcontracting goals are twenty percent (20%) regardless of industry segment. M/WBE contract-specific subcontracting goals are set on a case-by-case basis by the GSC, and are subject to waiver requests from Originating Departments and prospective Respondents and/or bidders. Such contract-specific S/M/WBE subcontracting goals are set based upon various criteria, including the relative availability of qualified S/M/WBE Subcontractors/subconsultants to perform the scope of work required for performance of a particular contract.

*Goal Setting Committee (GSC)* means a committee, or series of committees, appointed and chaired by the County Administrator or designee that includes, at a minimum, the Director of the Office of EBO or designee, the Director of Contract Development and Control or designee, the Director of Purchasing, and Director of Facilities Development and Operations (FDO) or their designees, the County Attorney or designee and the Director or designee of the Originating Department (if the Originating Department is neither the Purchasing Department nor FDO) all without duplication of designees. The GSC establishes S/M/WBE Program Goals for Palm Beach County (e.g., Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes determinations about which APIs are to be applied to specific contracts based upon various criteria.

*Good Faith Efforts (GFE)* means documentation of the Respondent's intent to comply with EBO Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent's commitment to comply with SBE or M/WBE Goals as established by the Office of EBO for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE firms or M/WBE firms listed in the Office of EBO's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's/consultant's posting of a bond covering the work of SBE or M/WBE Subcontractors/subconsultants documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors/subconsultants). Scoring of GFE documentation and administrative determinations regarding the adequacy of such GFE is the responsibility of the Office of EBO. The Office of EBO's scoring, determinations, and any appeals of such GFE determinations by the Office of EBO shall be in accordance with the procedures established in this PPM.

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

*Informal Solicitation* means any Solicitation where the value of the goods or services being solicited is equal to or greater than \$5,000 and less than \$100,000 as stated in the Purchasing Code, as may be amended, commonly referred to as a Request for Quote or a Request for Submittal.

*Originating Department or User Department* means the requestor, person or Department or Division requesting the good or service to be purchased. When a Construction Department is managing the procurement either for itself or for a User Department, the EBO Program responsibilities assigned under this PPM to an Originating Department will be performed by the Construction Department.

*Prime Contractor/consultant* means the vendor or contractor to whom a purchase order or contract is issued by the County for purposes of providing goods or services to the County.

*Professional Services* means any narrow discipline wherein a practitioner is required to have attained an advanced educational degree and/or credentials certifying a certain level of competency in the field that have been issued by an independent private body or board on behalf of the profession, prior to representing themselves to the public as a practicing member of that narrow discipline; a practitioner of a Professional Service has, through education and practical experience related to a particular field, developed expert advisory and programming skills as a vocation; as one where the high level of skills, technical expertise in the field, and/or the advanced complexity and quality of advice provided by the potential or known practitioner(s) warrants a competitive proposal or submittal process wherein the strength of professional credentials are weighed heavily in the selection process (e.g., accounting, legal services, mapping, laboratory testing services, physician services, nursing services, pharmacists, scientists, dentistry, financial advisory services, realtors, surveying services, landscape design services, appraisers, engineers, architects, etc.).

*Race-Conscious (R/C)* means any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of "Race-Conscious").

*Race-Neutral (R/N)* means any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of "Race-Neutral").

*Respondent* means a vendor responding to a RFP.

*S/M/WBE Directory* means a compilation of certified, S/M/WBEs which is maintained electronically and posted on the County website by the Office of EBO and made available to contractor(s) or vendor(s) for use in identifying subcontractors/subconsultants, material suppliers, etc.

*Solicitation* is a generic term for an invitation that is issued by the County to prospective bidders, vendors, or contractors asking them to compete for County commercial contract awards for specified goods or services.

*Subcontractor/subconsultant* means any vendor or contractor that is providing goods or services to a Prime Contractor/consultant in direct furtherance of the Prime Contractor's/consultant's performance of a defined scope of work or deliverables under a contract or purchase order with the County as evidenced by an executed binding agreement between the Prime Contractor/consultant and the Subcontractor/subconsultant which agreement shall be submitted prior to the County's issuance of a notice to proceed to the Prime Contractor/consultant.

*Vendor Self Service System (VSS)* means the electronic system of hardware and software programs by which the County requires all vendors, including Subcontractors/subconsultants that

are ready, willing, and able to sell goods or services to the County to register. Prior to award, all vendors shall be required to register in VSS. The details regarding fields of information captured and the functionalities of the VSS System shall be reflected herein.

Capitalized terms not defined herein shall have the same meaning as set forth in the EBO Ordinance or the Purchasing Code, as applicable.

## **2. SCOPE AND EXCLUSIONS**

This part shall apply to the procurements/solicitations of all goods and services by the County which are governed by the Purchasing Code, including, but not limited to, every contract or other agreement between the County and any governmental agency and quasi-governmental agency, as applicable, and any business entity, vendor, or contractor, under which the agency, business entity, vendor, or contractor directly or indirectly receives any financial assistance or remuneration from the County for the purpose of contracting with businesses for goods or services, or for the purpose of directly or indirectly purchasing goods or services for use by the County. As such, the County shall require the governmental or quasi-governmental agency, as applicable, and any business entity, vendor, or contractor to comply with the EBO Ordinance in the solicitation, the award, and administration of that contract or agreement. Notwithstanding the preceding, the categories of procurements set forth in **ATTACHMENT 2** of this PPM are excluded from the scope and application of the EBO Program unless otherwise noted.

## **3. OFFICE OF EBO**

The EBO Program is administered and managed by the Director of the Office of EBO. The Director of the Office of EBO is managed by, and reports directly to, the County Administrator or designee. The Director of the Office of EBO or designee shall attend all County Board meetings to address any EBO Program issues that are on the Board's meeting agenda. The Office of EBO shall also be primarily responsible for the application of APIs under the EBO Program preferences, recommendations to the Purchasing Department and the County Attorney's Office (CAO) regarding imposition of corrective actions and sanctions for non-compliance with EBO Policies, Programs, and Procedures, and other administrative reforms that serve the objectives of this EBO PPM.

A representative of the Office of EBO shall serve as a voting member on all selection committees established for all RFP solicitations. The role of the Office of EBO representative on such committees is to promote the fairness in scoring of S/M/WBE firms and Prime Contractors/consultants utilizing S/M/WBE Subcontractors/subconsultants.

In addition, all prospective solicitations with value equal to or in excess of the \$100,000 Mandatory Bid or Proposal Amount as set forth in Section 2-54 of the County's Purchasing Code, as may be amended, shall be reviewed in advance by the Office of EBO for the purpose of recommending elimination of unnecessarily restrictive contract terms, conditions, contract bundling features or selection criteria that may serve as barriers or impediments to S/M/WBE participation. The Office of EBO shall, when appropriate, recommend de-bundling of large contracts to the Purchasing Department and the Originating Department when such de-bundling may substantially increase S/M/WBE contract opportunities and participation without imposing an undue burden on the County in terms of contract management or cost.

#### **4. GOAL SETTING COMMITTEE**

The GSC shall be appointed and chaired as set forth in the EBO Ordinance. The GSC establishes S/M/WBE goals for the EBO Program (e.g., Annual Aspirational Goals and contract-by-contract subcontracting goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which APIs are to be applied to specific contracts based upon various criteria. Rather than review each solicitation, the GSC may determine that a particular API is appropriate for a category of contracts or a group of contracts.

The GSC shall determine which, if any, API shall be applied to each County solicitation and contracts in an efficient and effective manner (a general description of APIs are **ATTACHMENT 1** hereto; for more details see Section 2-80.27 of the EBO Ordinance). The County Administrator or designee shall make the final determination whenever consensus cannot be reached between the Office of EBO, the Purchasing Department, and the Originating Department regarding proposed contract specifications and modifications to same.

At a minimum, the GSC shall:

- a. Meet as often as it deems necessary to accomplish its duties as outlined in the EBO Ordinance, but not less than once monthly;
- b. Formulate and recommend to the County Administrator or designee any additional rules and procedures for EBO Program goal-setting; and,
- c. Monitor and support the implementation of the EBO Program.

The Office of EBO shall provide staff support and logistical support for the GSC and the Equal Business Opportunity Advisory Committee (EBOAC) as necessary. Such support shall include, but not be limited to scheduling, facilitating data requests, analysis, communications, and meeting logistics.

#### **4.1 WORK GROUP PILOT PROGRAM**

The EBO Ordinance established a variety of methods to ensure cycles of continuous feedback and improvement to program policies, procedures and APIs based on on-going evaluation of program effectiveness, work group recommendations, advisory committee recommendations, and input of implementing County departments responsible for ensuring program effectiveness. Additionally the Office of EBO and the County Administrator are given broad authority to implement policy and procedure adjustments and API modifications. Accordingly, attached hereto as **ATTACHMENT 3** are Pilot Program initiatives implementing recommendations based on implementing department recommendations, Office of EBO recommendations and work group recommendation. Pilot programs are intended to test and verify program improvements and adjustments over a limited period of time in furtherance of EBO Program objectives.

#### **5. ADMINISTRATIVE/PROGRAM REFORMS APPLICABLE TO ALL SOLICITATIONS**

Administrative/Program reforms applicable to all solicitations include:

a. Vendor Self Service System (VSS) Registration  
Registration in VSS is mandatory for every vendor or contractor that wants to do business with the County by participating on County contracts as a Prime Contractor/consultant or Subcontractor/subconsultant and/or that wants to have an invoice processed and paid by the County for goods and services it has provided to or on behalf of the County.

b. Subcontract Remedies (Mobilization/to Capital/Direct Payments)

[Reserve for Recommendations of the Work Group]

c. Debriefings for Unsuccessful Respondents or Bidders

For any contract in which the S/M/WBE has submitted a proposal or bid in response to a solicitation and subsequent evaluation of responses in accordance with a Request for Proposal method of procurement, the Office of EBO and/or Originating Department shall provide a de-briefing to any non-recommended Respondent or bidder, upon request. At a minimum, debriefings shall include disclosures of scoring criteria and scores from the evaluation panel responsible for making the selection for each response that was evaluated. To the extent possible, the de-briefing should also identify for each non-recommended Respondent or bidder those areas where its submittal was not as competitive as others, with an explanation as to why. Bid solicitation language and the Office of EBO shall encourage unsuccessful Respondents or bidders to avail themselves of such debriefing opportunities.

Upon request, the Originating Department or the Purchasing Department, as applicable, shall provide copies of scoring criteria and scores from the evaluation panel to the Office of EBO within three (3) days.

d. Expedited Payment Program Reserved

[Reserve for Recommendations of the Work Group]

e. Disputed Invoices – Ten (10) Day Notice Requirement

Within ten (10) days of the County's receipt of any payment request or invoice from a contractor or vendor, the Originating Department shall notify such contractor or vendor in writing regarding any and all deficiencies in its payment request or invoice that will prevent prompt processing and issuance of payment. To the extent there is an undisputed portion of the invoice that can be paid, the County shall proceed with prompt payment of that portion of the invoice.

[Reserve for recommendations of the Work Group]

f. Prior Approval of S/M/WBE Subcontractor/Subconsultant Substitutions

Upon submittal of any subcontracting plan or any subcontract agreements from a Prime Contractor/consultant to the County that state the name(s) of a proposed S/M/WBE Subcontractors/subconsultants along with the respective scope of work, as well as the

Prime Contractor's/consultant's commitment for dollar payments to (and/or percentage utilization of) the S/M/WBE Subcontractors/subconsultants for performance on a specific contract, the Prime Contractor/consultant may not substitute any other Subcontractor/subconsultants (S/M/WBE or otherwise) for performance of such scope of work without obtaining prior written approval for cause for such substitution from the Office of EBO.

g. Staff Training re: EBO Program Policies and Procedures

The Office of EBO shall coordinate and provide annual staff training of key County personnel regarding the EBO Ordinance and the EBO PPM, including, but not limited to, instruction on the purpose and objectives of the program, and staff responsibilities in implementing the EBO Program.

## **6. PROGRAM ADMINISTRATION**

### **6.1 ORIGINATING DEPARTMENT RESPONSIBILITIES**

It shall be the responsibility of the Purchasing Department to ensure that Formal Solicitations processed by the department adhere to the procedures and provisions set forth in this EBO Program. Once the contract is awarded, the Originating Department, as contract administrator is responsible for assuring contractor compliance with the EBO Program, as stated in this PPM, the EBO Ordinance, and the pertinent solicitation and contract documents.

For Formal Solicitations that are processed by the Originating Department, it is the responsibility of the Originating Department to ensure that its Formal Solicitations adhere to the procedures and provisions set forth in this EBO PPM.

The Originating Department shall review, on a continuing basis, all aspects of the Program's operations and make adjustments to its efforts, as necessary, to assure that the EBO Ordinance's purpose is being achieved. The Originating Department, in collaboration with Purchasing if applicable, and the Office of EBO, shall follow the actions below to ensure that S/M/WBEs have the maximum practicable opportunity to participate on County contracts:

- a. Originating Department Preparation of Solicitation.** When preparing a Formal Solicitation the Originating Department is responsible for the following:
  - i. Ensure that key department personnel receive training from the Office of EBO on the EBO Program;
  - ii. Research the relative availability of S/M/WBEs in the S/M/WBE Directory for the particular good or service;
  - iii. Review and evaluate all Formal Solicitations in an effort to de-bundle the total requirements of a contract into smaller units to promote maximum and reasonable opportunities for S/M/WBE participation; the Originating Department may also consider repackaging in a way that promotes opportunities for S/M/WBEs to bid on larger projects where the available S/M/WBEs have the capacity; evaluate all Formal Solicitations for restrictive specification or unreasonable experience requirements that might adversely impact S/M/WBE participation;

- iv. Discuss with department management which APIs will create maximum opportunity for S/M/WBEs for the specific solicitation or, if necessary, discuss with management whether the department should request a waiver from the Office of EBO for the specific solicitation, (see Section 10 "Exceptions, Waivers, Good Faith Efforts");
  - v. Ensure that the bid/proposal response page includes a commercial non-discrimination certification;
  - vi. Ensure that the IFB/RFP clearly notifies the bidder/proposer that its S/M/WBE commitment is part of responsiveness when an S/M/WBE goal applies. Include on Schedule 2, the S/M/WBE commitment as part of bid/proposal response page.
  - vii. For RFPs, include language regarding an unsuccessful proposer's right to request a debriefing.
- b. Office of EBO Review of Formal Solicitations.** Each Formal Solicitation issued by the County shall be referred to the Office of EBO and the Director of Purchasing thirty (30) days in advance of submitting a request in the Advantage Financial System (Advantage) or otherwise initiating a procurement request in order to determine whether it contains any terms, conditions, contract bundling features, or selection criteria that may unnecessarily restrict competition or adversely impact the ability of S/M/WBE firms to respond or to participate as Subcontractors/subconsultants. Such review shall also consider whether it is feasible to de-bundle the contract by reducing the size of the procurement or contract to maximize participation opportunities for S/M/WBE Prime Contractors/consultants and Subcontractors/subconsultants without imposing undue cost or administrative burdens upon the County. Similarly, such review shall also consider whether smaller contracts should be aggregated into somewhat larger contract opportunities that will render such contracts more feasible and profitable for available S/M/WBE firms to undertake. If such objectionable terms, conditions, contract bundling features, or selection criteria (including but, not limited to, brand name specifications, onerous and lengthy experience requirements, etc.) are identified through this review process, the Director of Purchasing or designee, the Director of the Office of EBO or designee, and the Project Manager for the Originating Department shall seek consensus in developing an acceptable modification to the solicitation. In the event consensus cannot be reached, the County Administrator or designee shall make a final determination regarding the proposed modifications to the solicitation. The technical specifications are the responsibility of the Originating Department.

The Office of EBO recommends the use of a two-step review process where the Office of EBO is consulted by the Originating Department early in the solicitation development process as soon as requirements and schedule are known. The first step, the early review, is voluntary. The second step, the mandatory review, is required for all Formal Solicitations (unless the GSC has previously determined that a particular API applies to that category of contracts or group of contracts, in such a case no Office of EBO review is required).

- i. For Formal Solicitations processed by the Purchasing Department:

Step 1 Early Review –

Prior to entering a procurement request (CRQM) in Advantage, the Originating Department shall send to the Office of EBO the special conditions, requirements, schedule and specifications, along with suggested APIs and relative availability of S/M/WBEs on the forms provided by the Office of EBO. If the Office of EBO recommends revisions, the Originating Department will revise its requirements before entering the procurement request in Advantage within five (5) days.

#### Step 2 Mandatory Review –

After the solicitation documents are finalized by the Purchasing Department, the Purchasing Department will send each Formal Solicitation to the Office of EBO for review at least 30 days in advance of the proposed advertisement date. In its submission, the Purchasing Department will include a copy of the draft solicitation documents, recommended APIs and the relative availability of S/M/WBEs for the type of solicitation, on the forms provided by the Office of EBO for this purpose. If the Office of EBO recommends revisions to the solicitation, the Originating Department shall work with the Office of EBO and the Purchasing Department to revise the solicitation requirements prior to GSC review.

#### ii. For Formal Solicitations Processed by the Originating Department:

##### Step 1 Early Review –

As soon as requirements and schedule are known, the Originating Department shall send to the Office of EBO the requirements, schedule and specifications, along with suggested APIs and relative availability of S/M/WBEs on the forms provided by the Office of EBO. If the Office of EBO recommends revisions, the Originating Department will revise its requirements within five (5) days.

##### Step 2 Mandatory Review –

After the solicitation documents are finalized by the Originating Department, the Originating Department will send each Formal Solicitation to the Office of EBO for review at least 30 days in advance of the proposed advertisement date. In its submission, the Originating Department shall include a copy of the draft solicitation documents, suggested APIs and the relative availability of S/M/WBEs for the type of solicitation, on the forms provided by the Office of EBO for this purpose. If the Office of EBO recommends revisions to the solicitation, the Originating Department will work with the Office of EBO to revise the solicitation documents prior to GSC review.

- c. **GSC Review of Solicitations.** After review by the Office of EBO, the Originating Department shall send each Solicitation to the GSC at least fifteen (15) days prior to the proposed advertisement date for a determination of the APIs to be applied to the solicitation (unless the GSC has previously determined that a particular API applies to that category of contracts or group of contracts, in such case, no GSC review is required.) The submission shall include the Originating Department's suggested APIs, the Office of EBO's recommended APIs and the relative availability of S/M/WBEs for the type of

solicitation, on the forms provided by the GSC for this purpose. After review by the GSC, the Originating Department, in coordination with the Office of EBO, the County Attorney's Office (CAO) (and the Purchasing Department, if applicable) shall ensure that all required solicitation/contract language reflects that the APIs applied by the GSC is included in the solicitation.

- d. **Office of EBO Sheltering Recommendations for Informal Solicitations.** For Informal small prime construction contracts (single or multi-trade) Solicitations valued at or below \$100,000, it is the Originating Department's responsibility, when appropriate, to make recommendations to the Office of EBO for sheltering. The Office of EBO may also suggest or require that certain Informal small prime construction contracts Solicitations be sheltered.
- e. **Contract Preparation.** The Originating Department (or Purchasing Department, as **applicable**) in coordination with the CAO is responsible for including contract language addressing the EBO requirements including:
  - i. APIs applicable to the contract and waiver request process (contract language for race conscious APIs must include an explanation of why the GSC is applying a race conscious API to the contract);
  - ii. If an SBE or M/WBE goal applies, the contract must include the specific committed participation percentages;
  - iii. All required EBO forms must be part of the contract documents;
  - iv. Clause requiring Prime Contractors/consultants to ensure that all Subcontractors/subconsultants are registered in VSS and the requirement that the Prime Contractor/consultant include a VSS registration requirement in all subcontracts;
  - v. Clause requiring Prime Contractors/consultants to report all Subcontractor/subconsultant payment information on EBO forms and, when the EBO portal is available, input Subcontractor/subconsultant payment information directly into the County's contract management system.
  - vi. Commercial non-discrimination clause and the requirement that the contractor/consultant include the County's commercial non-discrimination language in all subcontracts;
  - vii. Clause requiring Prime Contractors/consultants to pay Subcontractors/subconsultants undisputed amounts within 10 days after County pays the Prime Contractor/consultant and requiring the Prime Contractor/consultant to send Subcontractors/subconsultants and the Originating Department a written notice of disputed invoice within five (5) days of receipt of invoice which clearly states the reasons for the disputed invoice;
  - viii. Clause covering EBO compliance – contractor must comply with EBO requirements; non-compliance must be corrected within fifteen (15) days of notice of non-compliance; contractor must notify Office of EBO of changes in S/M/WBE utilization and get prior approval for substitutions; Office of EBO has the right to review contractor

records and interview Subcontractors/subconsultants; contractor/vendor must retain books and records for four (4) years and the County has the right to inspect such records; and,

ix. Clause covering enforcement of EBO requirements and penalties for non-compliance.

f. **Advertisement.** After the Office of EBO and GSC review the Solicitations, the Purchasing Department, or Originating Department, as applicable must:

- i. Post all Solicitations on the County's VSS website at least thirty (30) days in advance of bid or proposal due date where practical or for a longer time if required by state law or if advisable due to the complexity of the procurement. VSS will automatically send e-mail alerts to all vendors that have registered with the appropriate commodity codes. When practical and reasonable informal solicitations between \$5,000 and \$99,999, shall also be advertised on VSS and shall have an advertisement period of fourteen (14) days or longer to maximize participation by S/M/WBEs;
- ii. Encourage all prospective Prime Contractor/consultant Respondents or bidders to post their subcontract opportunities on the County webpage developed for such purposes once the Enterprise Contract Management System (ECMS) is fully activated;
- iii. If circumstances prevent the Purchasing Department or the Originating Department, as applicable from meeting notification requirements contained in (i) above, the Originating Department shall engage in direct and extensive outreach to S/M/WBE associations or other relevant organizations to inform them of the contracting opportunity, unless the circumstances are exigent and an emergency exists that requires immediate action to protect the public health, safety or welfare;
- iv. If a Respondent or bidder requests a waiver from an S/M/WBE goal from the Office of EBO at least seven (7) days prior to the bid or proposal due date (see Section 10 "Exceptions, Waivers, and Good Faith Efforts"), then the Purchasing Department or the Originating Department, as applicable shall extend the bid or proposal due date pending the outcome of the waiver request. If the Office of EBO grants the request, then the Purchasing Department or Originating Department, as applicable shall modify the solicitation and extend the bid or proposal due date if necessary.

g. **Award.** Before award, the Purchasing Department or Originating Department, as applicable is responsible for the following:

- i. **Responsiveness Review.** When an S/M/WBE goal applies, if a submitted bid or proposal does not contain properly executed Schedules 1 and 2 that meet the goals set forth in the solicitation, then such bid/proposal must be rejected as non-responsive to the solicitation.
- ii. **EBO Forms.** The applicable EBO forms (Schedules 1 and 2), as referenced in Section 6.4 **herein**, shall **be** submitted in accordance with the solicitation documents. All Subcontractors/subconsultants must be identified including all S/M/WBE Subcontractors/subconsultants:
  - a) Prime Contractors/consultants shall include properly executed Schedules 1 and 2 with each bid submitted in response to a solicitation;

- b) Prime Contractors/consultants shall include properly executed Schedules 1 and 2 with each proposal submitted in response to a solicitation; however, for Construction Management (CM) contracts, Schedules 1 and 2 shall be provided prior to the Guaranteed Maximum Price (GMP) Amendment; or
  - c) **For CCNA RFP's, the submission of an executed Prime Consultant and Subconsultant Questionnaire form will be accepted in lieu of Schedules 1 and 2.**
- iii. **VSS Registration.** Before award, the Purchasing Department or Originating Department, as applicable, must confirm that the Prime Contractors/consultants and all Subcontractors/subconsultants are registered in VSS.
  - iv. **Subcontractor/Subconsultant Contracts.** The Originating Department may not allow a Subcontractor/subconsultant to begin work until it has received from the Prime Contractor/consultant all properly executed Schedules 1 and 2 for all Subcontractors/subconsultants, including S/M/WBEs. (For CM contracts, properly executed Schedules 1 and 2 must be provided prior to the GMP Amendment.)
- h. Contract Administration.** The Originating Department, as contract administrator, must monitor a contractor's compliance with the EBO requirements throughout the term of the contract, including:
- i. Establish procedures to ensure that contractors are paid promptly in accordance with the Local Government Prompt Payment Act, including prompt payment of undisputed amounts;
  - ii. Within ten (10) days of receipt of invoice/payment application, notify the vendor/contractor in writing of any deficiencies in the invoice/pay application that will prevent prompt payment.
  - iii. Ensure that the Prime Contractor/consultant provides payment information on all the Subcontractors/subconsultants including all S/M/WBE Subcontractors/subconsultants;
  - iv. Ensure that Prime Contractor/consultant requests prior approval for S/M/WBE Subcontractor/subconsultant substitutions from the Office of EBO.
  - v. Ensure that all required statistics and documentation regarding bid, proposal contract, invoice, and payment information are submitted to the Office of EBO as requested; and,
  - vi. Notify the Office of EBO of all change orders and amendments to contracts that are subject to the EBO Ordinance and take necessary steps to ensure that APIs applied to the contract by the GSC are also extended and enforced, to the maximum practical extent, with regard to any modified scope of work under the terms of such change orders and contract amendments.

## **6.2 PROGRAM MONITORING, TRACKING, AND MEASUREMENT**

Until the Enterprise Contract Management System (ECMS) is fully activated, the Office of EBO shall continue to use the VOLT application database that will be populated from specific entries made by all users in the Advantage Financial System (Advantage) in order to accurately track utilization. These entries are required for all new and existing Central Purchasing Master Agreements (CMA), Contract Master Agreements (KMA), Central Purchase Orders (CPO), Contract Delivery Orders (KDO), Central Purchasing Delivery Orders (DO), Contract Notices (KPO), Direct Purchase Orders (DPO) and any other related document in Advantage.

The VOLT system will capture three levels of S/M/WBE participation that meet the following categories: 1) Direct payment to S/M/WBE Prime Contractors/consultants; 2) Proposed S/M/WBE Subcontractor/subconsultant utilization; 3) Exempt purchases/contracts that report subsequent utilization of S/M/WBEs.

- a. Each Originating Department shall enter the appropriate Procurement Type Code for new procurement documents in Advantage. For Procurements that are Grant and Federally Funded, the appropriate Federal Procurement Type codes must be used. It is critical that the Procurement Type Code is identified correctly at the time of entry as; 1) the Procurement Type Code will be the sole determining factor in tracking contracts that are subject to the EBO Ordinance and sorting the dollars spent into the correct reporting categories, and 2) the Procurement Type Code cannot be modified in the system after the first payment is made.

For procurements made pursuant to the Sales Tax Recovery Program, the Department must; 1) include the words "Sales Tax Recovery" in the project description after the Project Number and Project Name, and 2) use the Sales Tax Recovery Program Procurement Type Code.

- b. The Document Description field on the Header Section of CPO, KPO, CMA and KMA documents must include the contract name or description, and the contract and/or project number.
- c. On KDO and DO documents, the Document Description field will include the work order, job, task or project number and the name or description that would be meaningful to the vendor.
- d. All new and open CMA, KMA, CPO and KPO, documents shall include the contract and/or project number in the External Solicitation field located in the Award Detail Section of the document.
- e. For all new and open CMA, KMA, CPO and KPO documents, the original Resolution Number and date shall be entered in the Internal Award Number and Internal Award Date fields, except for those that are Grant or Federally Funded. These fields are located under the Reference Tab in the Header Section of the document. For encumbrances issued for work or task orders, the resolution number from the original Board approved agenda item shall be entered in the Reference Tab under the Header Section of the document. The encumbrance date shall be the date that each work or task order is issued. The resolution number shall follow the input format of (RXXXX-XXXX).

- f. The Contract Development & Control Division of the Office of Financial Management & Budget shall provide a summary of each contract Board agenda item to the Office of EBO. All statistics in relation to S/M/WBE participation at the time of award and contract close-out for all goods and services contracts shall be maintained and tracked by the Office of EBO.
- g. All required forms as mandated by this PPM, (CW-O-043), shall be made part of the contract document.
- h. The County's SBE goal is twenty percent (20%). Any party or entity entering into a contract covered by this policy shall have specific committed participation percentages incorporated into the body of the contract. If a Respondent or bidder for a County contract covered by this PPM exceeds the goal set by the County in its bid or proposal, the higher level of participation must be reflected in the body of the contract. It is understood that for annual, non-project specific contracts, the proposed goal is an estimate and actual participation may vary depending on several factors. Nevertheless, all Respondents or bidders shall attain the established goal unless approval to the contrary has been received from the County.
- i. From the term of the procurement, S/M/WBE participation shall be monitored through the recordation of actual payments made to S/M/WBEs. It is acknowledged that the percentage of S/M/WBE participation at any time throughout the term of the contract may not be equivalent to the percentage completed or paid to date. Originating Departments are required to submit a copy of the S/M/WBE Activity form (Schedule 3); or Professional Services Activity Report (Schedule 3A), and the payment certification form (Schedule 4) to the Office of EBO for tracking purposes. The Office of EBO will populate the VOLT application using the Schedule 4 provided by the Originating Department.
- j. The Office of EBO shall prepare semiannual performance reports on the level of S/M/WBE participation achieved on completed contracts as a means of reporting performance, and will present an annual utilization report to the Board of County Commissioners.
- k. The Office of EBO shall track the participation of S/M/WBEs to determine overall program effectiveness while taking into consideration businesses that maintain their certification.
- l. The Office of EBO shall also track other programmatic areas to determine overall program effectiveness. These programmatic areas include participation, technical assistance, training, financing, outreach and business development.
- m. The Purchasing Department and all Construction Departments shall submit a quarterly report to the Office of EBO identifying the S/M/WBE participation on all purchases or alternative source selections that are exempt from the Purchasing Code. The supplemental report must include a breakdown (by race and gender) of S/M/WBE participation within each category reported.

### **6.3 CONTRACTOR/VENDOR RESPONSIBILITIES**

To facilitate the Office of EBO completing its responsibilities in administering EBO Program elements, a contractor/vendor shall:

- a. Ensure that all proposed Subcontractors/subconsultants register in VSS before contract award. It is the vendor's responsibility to insure VSS registration includes **ALL** commodity codes for goods and/or services vendor provides. If vendor fails to register commodity codes for the goods and/or services in which vendor provides, vendor **WILL NOT** receive solicitation email alerts;
- b. Permit the Office of EBO to inspect any relevant matter, including records and the jobsite, and to conduct compliance field interviews of Subcontractors/subconsultants and workers;
- c. Report all Subcontractor/subconsultant payment information on EBO forms and, when the EBO portal is available, input Subcontractor/subconsultant payment information directly into same;
- d. If performing a County Construction contract, ensure that all Subcontractors/subconsultants are paid any undisputed amount to which the Subcontractor/subconsultant is entitled within ten (10) days of receiving a progress or final payment from the County and otherwise comply with the County's contract terms and conditions which set forth the obligations of the Prime Contractor/consultant and Subcontractors/subconsultants and the remedies for delinquency or nonpayment of undisputed amounts;
- e. Submit a request for substitution for any changes to the Prime Contractor's/consultant's S/M/WBE utilization and/or subcontracting plan. All changes (substitutions and/or terminations) must be approved in advance and in writing by the Office of EBO;
- f. Amendment for unforeseen circumstances: If at any time after submission of a solicitation response and before execution of a contract, the apparent successful Respondent or bidder determines that a certified S/M/WBE listed on the participation schedule has become or will become unavailable, then the apparent successful Respondent or bidder shall immediately notify the Office of EBO. Any desired change in the S/M/WBE participation schedule shall be approved in advance by the Office of EBO and shall indicate the Prime Contractor's GFE to substitute another certified S/M/WBE Subcontractor/subconsultant (as appropriate) to perform the work. Any desired changes (including substitutions or termination and self-performance) must be approved in writing in advance by the Office of EBO;
- g. Notify the Originating Department and Office of EBO regarding any transfer or assignment of a contract with the County; and,
- h. Retain records of all Subcontractor/subconsultant payments for a minimum of four (4) years following project termination date.

#### **6.4 REQUIRED SCHEDULES**

##### **Schedule 1 - List of Proposed Subcontractors/Subconsultants**

A completed Schedule 1 submitted by the prime shall list the names of **all Subcontractors/subconsultants** intended to be used in performance of the contract, if awarded. The total proposed percentage of S/M/WBE participation shall also be included on this form. This schedule shall also be used if an S/M/WBE Prime Contractor/consultant is performing all or any portion of this contract with their work force.

### **Schedule 2 - Letter of Intent**

**A completed Schedule 2 is a binding document between the Prime Contractor/consultant and a Subcontractor/subconsultant (or any tier) and should be treated as such. The Schedule 2 shall contain bolded language indicating that by signing the Schedule 2, both parties recognize this Schedule as a binding document.** Each Schedule 2 shall be properly executed by the Prime Contractor/consultant and by the proposed Subcontractor/subconsultant. If the Prime Contractor/consultant is an S/M/WBE, a Schedule 2 shall be submitted to document work to be performed by its workforce. All S/M/WBE(s) shall specify, in detail, the type of work they will perform along with the dollar amount they will be compensated and/or percentage of work they will perform. If any Subcontractor/subconsultant intends to subcontract any portion of their work, they are required to list the dollar amount and the name of the Subcontractor/subconsultant on this form. All named Subcontractors/subconsultants on this form must also complete and submit a separate Schedule 2. The Prime may count toward its SBE or M/WBE goal second and third tiered certified S/M/WBE(s); provided that the Prime Contractor/consultant submits a completed Schedule 2 form for each S/M/WBE.

A detailed quote or proposal may be attached with a signed Schedule 2.

**(For Consultant's Competitive Negotiation Act (CCNA) RFP's, the submission of an executed Prime Consultant and Subconsultant Questionnaire form will be accepted in lieu of Schedules 1 and 2 and shall be recognized as a binding document.)**

Failure to **submit** a properly executed Schedule 2 may result in no S/M/WBE participation being counted.

In the event of a **conflict** between Schedules 1 and 2 when calculating S/M/WBE participation, the information provided on Schedule 2 shall have precedence.

In the event of **mathematical** error(s), the unit price, if available, shall prevail and the vendor's **total** offer shall be **corrected** accordingly.

### **Schedule 3 – SBE Activity Form**

The Prime Contractor **shall** submit a completed Activity Report form (Schedule 3) with each invoice, or payment application when any subcontractor has provided services during the period in which the Prime is requesting payment. This form shall contain the names of all subcontractors, and specify the contracted dollar amount, approved change orders; revised contract amount; amount drawn this period; amount drawn to date; and payments to date issued to all subcontractors with their starting date.

### **Schedule 3(A) – Professional Services Activity Report**

The Prime Consultant shall submit a completed Professional Services Activity Report form (Schedule 3A) with each invoice or payment application when a subconsultant has provided services during the period in which the Prime is requesting payment. This form shall contain the names of the Prime and subconsultant(s) on the project specifying the contract amount; start date; amount paid to date and percentage of work completed by the Prime and subconsultant(s). This form is intended to be utilized on all professional services contracts.

**Schedule 4 – Payment Certification Form**

A fully executed Schedule 4 shall be submitted for each Subcontractor/subconsultant after receipt of payment from the Prime Contractor/consultant. The Prime Contractor/consultant shall submit this form with each payment application or invoice submitted to the County when the County has paid the Prime Contractor/consultant on the previous payment application for services provided by a Subcontractor/subconsultant. If any Subcontractor/subconsultant intends to disburse funds associated with this payment to another Subcontractor/subconsultant for labor provided on this contract, the amount and name of the Subcontractor/subconsultant shall be listed on this form. All named Subcontractors/subconsultants on this form must also complete and submit a separate Schedule 4 after receipt of payment. If the Prime Contractor/consultant is a certified S/M/WBE, a Schedule 4 shall be submitted to reflect the amount of payment retained by the Prime Contractor/consultant for services performed by its own workforce.

A completed release of lien form can be submitted in lieu of a Schedule 4.

**7. COMPLIANCE RESPONSIBILITIES**

The Office of EBO, along with contracting staff of each Originating Department, shall monitor compliance with these EBO Program requirements during the term of the contract. If it is determined that there is cause to believe that a Prime Contractor/consultant or Subcontractor/subconsultant has failed (or will likely fail) to comply with any of the requirements of the EBO Ordinance, or with the contract provisions pertaining to S/M/WBE utilization, the Director of the Office of EBO or designee shall notify the Originating Department and the contractor. The Director of the Office of EBO or designee may require such reports, information, and documentation from contractors, Respondents or bidders and the head of any County department, division, or office as are reasonably necessary to determine compliance with the EBO Ordinance requirements, within fifteen (15) days after the notice of noncompliance is issued. If the requested materials are not received within fifteen (15) days, then a finding of noncompliance is determined and appropriate penalties and sanctions will apply as stated in the EBO Ordinance and this PPM. Joint responsibility is shared by the Director of the Office of EBO or designee and the Originating Department or designee to attempt to resolve a contractor's/consultant's, or subcontractor's/subconsultant's, noncompliance with the requirements of the EBO Ordinance, including any noncompliance with contract provisions pertaining to S/M/WBE utilization, within fifteen (15) days after the apparent noncompliance is discovered. A written notice of the noncompliance should immediately be sent by the Office of EBO or designee to those Contractors/consultants or Subcontractors/subconsultants that are in noncompliance, and to the Director or Manager of the Originating Department or designee. If noncompliance cannot be resolved within fifteen (15) days after notice is sent, the Director of the Office of EBO or designee and the Director or Manager of the Originating Department or designee shall submit written recommendations to the County Administrator or designee, and if the County Administrator or designee concurs with the finding, such sanctions as stated in the EBO Ordinance and this PPM shall be imposed.

Whenever the Director of the Office of EBO or designee finds, after investigation, that an Originating Department has failed to comply with the provisions of the EBO Ordinance or the contract provisions pertaining to S/M/WBE utilization, a written finding specifying the nature of the noncompliance shall be transmitted to the Originating Department, and the Director of the Office of EBO or designee shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the Director of the Office of EBO or designee shall transmit a copy of the finding of noncompliance, with a statement that

conciliation was attempted and failed, to the County Administrator or designee who shall take appropriate action under the EBO Ordinance to secure compliance.

## **8. COUNTING S/M/WBE PARTICIPATION**

- a. Certified S/M/WBE participation will only count toward the established goal in a business category in which it does not exceed the size standard.
- b. Once a business is determined to be an eligible S/M/WBE according to the Palm Beach County certification procedures, the Prime Contractor/consultant may count toward its goals only that portion of the total dollar value of a contract performed by the S/M/WBE. Prior to issue, total dollar value of a contract will be determined by the Originating Department by defining factors to be considered as value. Total dollar value of retail contracts shall be determined by Gross Receipts.
- c. Only those firms certified by Palm Beach County at the time of bid opening shall be counted toward the established S/M/WBE goals. Upon receipt of a completed application, **IT TAKES UP TO NINETY (90) BUSINESS DAYS TO BECOME CERTIFIED AS A S/M/WBE WITH PALM BEACH COUNTY.** It is the responsibility of the bidder to confirm the certification of any proposed S/M/WBE; therefore, it is recommended that bidders visit the online Vendor Directory at [www.pbcgov.org/oebo](http://www.pbcgov.org/oebo) to verify S/M/WBE certification status. Firms must continue to recertify during the life of the contract as the County may only count toward the established goal, work performed by an S/M/WBE during the time their certification dates are valid.
- d. The Prime Contractor/consultant may count toward the established goal a portion of the total dollar value of a contract with a joint venture, based on the clearly defined portion of the work to be performed by the certified S/M/WBE of the joint venture.
- e. The Prime Contractor/consultant may count toward the established goal the entire expenditures for materials and equipment purchased by an S/M/WBE Subcontractor/subconsultant, provided that the S/M/WBE Subcontractor/subconsultant has the responsibility for the installation of the purchased materials and equipment.
- f. The Prime Contractor/consultant may count the entire expenditure to an S/M/WBE manufacturer toward the established goal (i.e., a supplier/distributor that produces goods from raw materials or substantially alters the goods before resale).
- g. The Prime Contractor/consultant may count sixty percent (60%) of its expenditure to S/M/WBE suppliers/distributors that are not manufacturers toward the established goal.
- h. The Prime Contractor/consultant may count toward the established goal, second and third tiered certified S/M/WBEs, provided that the Prime submits a completed Schedule 2 form for each S/M/WBE.
- i. The Prime Contractor/consultant may only count towards the established goal the goods and services in which the S/M/WBE subcontractor/subconsultant is certified and performs with their work force.

- j. A certified S/M/WBE Prime Contractor/consultant may count toward the established goal the goods and services in which they perform with their own work force. The Prime Contractor/consultant shall submit completed Schedules 1 and 2.

## 9. CERTIFICATION

### 9.1 Small Business Certification

**9.1.A. Eligibility Standards:** An eligible Small Business Enterprise (SBE) is a business that satisfies the criteria set forth in the definition of Small Business Enterprise in Section 2-80.21 of the EBO Ordinance and that satisfies the following gross revenue standards:

- (1) For a provider of Construction Services, the annual gross revenue shall not exceed nine million dollars (\$9,000,000.00) (averaged over the previous three (3) most recent years, or if in business less than three (3) years, averaged over the duration of the provider's existence).
- (2) For a provider of Goods, the annual gross revenue shall not exceed five million dollars (\$5,000,000.00) (averaged over the previous three (3) most recent years, or if in business less than three (3) years, averaged over the duration of the provider's existence).
- (3) For a provider of Professional Services procured pursuant to the CCNA statute, the average annual gross revenues shall not exceed five million dollars (\$5,000,000.00) (averaged over the previous three (3) most recent years, or if in business less than three (3) years, averaged over the duration of provider's existence).
- (4) For a provider of other Non-CCNA Professional Services, the average annual gross revenue shall not exceed four million dollars (\$4,000,000.00) (averaged over the previous three (3) most recent years, or if in business less than three (3) years, averaged over the duration of the provider's existence).
- (5) For a provider of Other Services, the average annual gross revenue shall not exceed four million dollars (\$4,000,000.00) (averaged over the previous three (3) most recent years, or if in business less than three years, averaged over the duration of the provider's existence).

**9.1.B. Application Procedures.** All applicants wishing to be certified as a SBE shall apply for certification by completing the appropriate application and affidavit which can be obtained through the Office of EBO. At a minimum, applicants shall submit the documentation listed below as appropriate to their business and all of its affiliates. The Office of EBO may request any other documentation as it deems necessary to determine eligibility. Documents not in English must be accompanied by a certified translation. There is no fee for standard (90 day processing) certification, recertification or modification however, there is a fee for an expedited review. The cost for an expedited review is \$300.00 and must be in the form of a cashier's check or money order payable to the PBC Board of County Commissioners and must be submitted with the application. The payment is non-refundable and the request will not be processed without payment. Failure to timely submit a completed request for expedited review form with all supporting documents will result in denial of the request. The expedited

review form must be submitted a minimum of twenty (20) business days prior to the RFQ/IFB/RFP opening or date/time of the deadline for submission of the response to the solicitation. The solicitation number for which the expedited review is being requested must be identified on the form and proof of publication of the solicitation must be attached to the request. Expedited reviews will only be considered for an applicant with a pending solicitation as a prime or subcontractor.

(1) Corporations:

- a. List of the corporation's current full-time and part-time employees, including leased employees and/or independent contractors by length of service;
- b. Proof of business location and operation in Palm Beach County;
- c. Articles of incorporation, including date approved by the state, and any subsequent amendments;
- d. By-laws;
- e. Prior three (3) years' financial statement prepared by an independent CPA or accountant (in instances where the applicant business has not been in existence three (3) years, it shall provide the documentation for the years the business has been in existence);
- f. Prior three (3) years' federal corporate tax returns, including all schedules, as signed and filed (in instances where the applicant business has not been in existence three (3) years, it shall provide the documentation for the years the business has been in existence);
- g. Copies of last three (3) months' corporate payroll and/or payments to independent contractors;
- h. Any necessary licenses to perform the work for which certification is sought;
- i. Palm Beach County business tax receipt and municipal business tax receipt, when applicable;
- j. A list of all affiliates;
- k. Resume of principals and management personnel showing education, training and employment dates;
- l. Stock transfer agreements;
- m. Copies of the corporation's distribution of profits for the previous year;
- n. Copies of third party agreements, such as rental and lease agreements, management agreements, and purchase agreements;
- o. Proof of stock purchase and capital investments

(2) Partnerships:

- a. List of the partnership's current full-time and part-time employees, including leased employees and/or independent contractors by length of service;
- b. Proof of business location and operation in Palm Beach County;

- c. Partnership agreement;
- d. Prior three (3) years' financial statements prepared by an independent CPA or accountant (in instances where the applicant business has not been in existence three (3) years, it shall provide the documentation for the years the business has been in existence);
- e. Prior three (3) years' federal tax returns, including all schedules, as signed and filed (in instances where the applicant business has not been in existence three (3) years, it shall provide the documentation for the years the business has been in existence);
- f. Any necessary licenses to perform the work for which certification is sought;
- g. Copies of last three (3) months' corporate payroll and/or payments to independent contractors;
- h. Palm Beach County business tax receipt municipal business tax receipt, when applicable;
- i. A list of all affiliates;
- j. Resumes of all partners and management personnel showing education, training and employment dates;
- k. Buy-out rights agreements;
- l. Profit sharing agreement;
- m. Proof of capital investment;
- n. Copies of the partnership distribution of profits for the previous year;
- o. Copies of third party agreements, such as rental and lease agreements, management agreements, or purchase agreements.

(3) Sole Proprietors:

- a. Any necessary licenses to perform the work for which certification is sought;
- b. Verification of fictitious name registration;
- c. Prior three (3) years' federal tax returns, including all schedules, as signed and filed (in instances where the applicant business has not been in existence three (3) years, it shall provide the documentation for the years the business has been in existence);
- d. List of current full-time and part-time employees including leased employees and/or independent contractors by length of service;
- e. Proof of business location and operation in Palm Beach County;
- f. Palm Beach County business tax receipt municipal business tax receipt, when applicable;
- g. A list of all affiliates;
- h. Resumes of owner and management personnel showing education, training, and employment dates;

- i. Copies of third party agreements such as rental and lease agreements, management agreements or purchase agreements.
- j. Copies of last three (3) months' payroll and/or payments to independent contractors.

**9.1.C. Application Review Procedures.** Once an applicant has submitted the application and all supporting documentation, certification review will commence and the following procedures will apply:

- (1) The application and all supporting documents will be logged in as appropriate. The application will be reviewed for completeness and accuracy. The Office of EBO will inform the applicant of any missing documentation. Any applicant failing to submit the requested documentation within thirty (30) days of the notice shall be deemed to have abandoned its application.
- (2) References will be called and information verified by third parties, when appropriate. The Office of EBO will review the goods or services provided by the applicant to determine the appropriate National Institute of Government Procurement (NIGP) classification codes. Businesses will only be certified in the areas where they provide a Commercially Useful Function. In those instances when the NIGP codes are broader than the goods or services provided by the applicant, the Office of EBO will appropriately limit the certification to those goods or services for which the application performs a Commercially Useful Function.
- (3) A personal interview or site visit will be scheduled with the principal(s) to discuss the documentation submitted and determine if the applicant meets the established criteria.

## **9.2 Minority Business Enterprise Certification**

Applicants shall receive certification decisions either by mail or other appropriate communication mediums. If an applicant is denied certification, such denial letter shall inform the applicant of their right to appeal. The appeals process and requirements are set forth in the EBO Ordinance.

**9.2.A. Eligibility Standards.** An eligible Minority Business Enterprise (MBE) is a business that satisfies the criteria set forth in the definition of Minority Business Enterprise in Section 2-80.21 of the EBO Ordinance and whose gross revenues are in accordance with those set forth in the above Section 9.1.A. In addition, an eligible MBE's number of employees shall be no greater than the following:

- (1) For a provider of Construction Services: fifty (50) employees.
- (2) For a provider of Goods: twenty (20) employees.
- (3) For a provider of Professional Services procured pursuant to the CCNA statute: thirty (30) employees.
- (4) For a provider of other Non-CCNA Professional Services: twenty-five (25) employees.
- (5) For a provider of Other Services: twenty-five (25) employees.

**9.2.B. Application Procedures.** All applicants wishing to be certified as an MBE shall apply for that certification by completing the required MBE disclosure affidavit and any other pertinent documentation as determined by the Office of EBO. All required forms may be obtained through the Office of EBO. In addition, applicants shall submit the documentation identified in the above Section 9.1.B, as applicable.

**9.2.C. Application Review Procedures.** The procedures identified in the above Section 9.1.C. shall apply to MBE certification applications.

### **9.3 Women Business Enterprise Certification**

**9.3.A. Eligibility Standards.** An eligible Woman Business Enterprise (WBE) is a business that satisfies the criteria set forth in the definition of Woman Business Enterprise in Section 2-80.21 of the EBO Ordinance and whose gross revenues are in accordance with those set forth in the above Section 9.1.A.

**9.3.B. Application Procedures.** All applicants wishing to be certified as a WBE shall apply for that certification by completing the required WBE disclosure affidavit and any other pertinent documentation as determined by the Office of EBO. All required forms may be obtained through the Office of EBO. In addition, applicants shall submit the documentation identified in the above Section 9.1.B, as applicable.

**9.3.C. Application Review Procedures.** The procedures identified in the above Section 9.1.C. shall apply to WBE certification applications.

### **9.4 Decertification**

If during the period of certification the County has reason to believe that a business received certification improperly or that there has been a change in circumstances where one of the requirements for certification are no longer met, the Office of EBO may conduct an investigation. If it is determined that the business no longer meets the eligibility requirements for certification, a firm shall be decertified and shall not be eligible to reapply for one year from the date of the final adverse decision. If the business has been debarred or suspended as a vendor by the County Purchasing Department, the business may reapply for certification at the expiration of the suspension. See EBO Ordinance Section 2-80.28(b)(2)(n).

## **10. S/M/WBE SUBSTITUTIONS, MODIFICATIONS, OR REMOVAL**

After contract award, the Prime Contractor/consultant will only be permitted to substitute a certified S/M/WBE that is unwilling or unable to perform. The Prime Contractor/consultant will only be permitted to modify the scope of work or price of an S/M/WBE listed at bid opening or date/time for submission of the response to the solicitation as a result of the County's issuance of an amendment, alternate or change orders on a project. Substitutions shall be done with like certified S/M/WBEs in order to maintain the participation percentages submitted with the bid or proposal.

In the case of CCNA proposals where points are awarded during the selection process for S/M/WBE participation, S/M/WBEs will be substituted with like S/M/WBEs. All requests for modifications or substitutions shall be submitted to the Originating Department and the Office of EBO on the EBO Request for SBE or M/WBE Substitution Modification Removal Form for review.

Upon receiving an approval for substitution, the Prime Contractor/consultant shall submit a completed and signed Schedule 2 for the new S/M/WBE; the new S/M/WBE shall specify the type of work to be performed, and the dollar amount and/or percentage shall also be specified upon receiving approval for modification or substitution.

The Prime Contractor/consultant shall submit a new properly executed Schedule 2 that specifies the revised scope of work to be performed by the S/M/WBE, along with the revised dollar amount and/or percentage. A detailed quote or proposal may be attached with a properly executed Schedule 2.

## **11. EXCEPTIONS, WAIVERS AND GOOD FAITH EFFORTS**

- a. Pre-Bid Waiver.** If a Respondent or bidder is unable to comply with the API requirements imposed by the GSC under the terms of the EBO Ordinance, such respondent or bidder shall submit, as required in the Solicitation, a request for a waiver or partial waiver at the time specifically set forth in the Solicitation. Such waiver or partial waiver request shall include specified documentation that demonstrates satisfactory GFEs were undertaken by the Respondent or bidder to comply with the requirements as described under the selected API. The GFE waiver request shall be submitted to the County at least seven (7) days prior to the proposal or bid due date as stated in the Solicitation, and shall be reviewed, evaluated, and scored in the first instance by the Office of EBO within seven (7) days of receipt. If the Office of EBO determines that adequate GFEs have been demonstrated by the Respondent or bidder to warrant a partial or total waiver of the applied API, the Solicitation shall be amended accordingly to reflect the partial or total waiver, and any proposals or bids received in the interim shall be returned unopened in accordance with the return policy of the Purchasing Department or the Originating Department. The amended solicitation shall then be advertised to all prospective Respondents or bidders, including, but not limited to the Respondent or bidder that requested the waiver. However, if the Office of EBO determines that the respondent or bidder failed to submit documentation sufficient to demonstrate that GFEs were undertaken by the Respondent or bidder to support its waiver or partial waiver request, the request for waiver or partial waiver shall be denied, and the Solicitation shall remain unchanged. Any proposal or bid that fails to comply with API requirements stated in the Solicitation after the period allowed for waiver requests has lapsed shall be deemed non-responsive to the entire solicitation. In the event of an adverse waiver or partial waiver request decision, the Respondent or bidder shall have the right to request reconsideration of the adverse decision by the Director of the Office of EBO, and if still aggrieved, shall be subsequently entitled to appeal to a Special Master as referenced in EBO Ordinance Section 2.-80.28 (b). The solicitation due date shall only be extended until the Director of the Office of EBO's reconsideration and/or Special Master appeal processes have concluded. Any proposal or bid that fails to comply with the API requirements stated in the Solicitation after the period allowed for waiver requests has lapsed shall be deemed non-responsive to the entire solicitation.
- b. Post Bid/Post Award Waiver.** If, after the proposal or bid due date, a Prime Contractor/consultant is unable, through no fault of its own, to meet the participation requirements for S/M/WBEs specified at response submittal, the Prime Contractor/consultant must immediately notify the Office of EBO and seek substitute S/M/WBEs to fulfill the requirements. The requested substitution must be approved by the Director of the Office of EBO or designee and the Originating Department Director or designee. If, after reasonable GFEs, the Prime Contractor/consultant is unable to find an acceptable substitute S/M/WBE, a post-bid opening waiver or post-award waiver may be

requested. The request shall document the reasons for the Prime Contractor's/consultant's inability to meet the goal requirement. In the event the Prime Contractor/consultant is found not to have performed GFEs in its attempt to find a suitable substitute for the initial S/M/WBE proposed utilization, one or more of the penalties and sanctions of the EBO ordinance may be imposed.

- c. **Originating Department Waiver Request.** Upon submission of a prospective draft Formal Solicitation to the Office of EBO, and prior to the public release of any Formal Solicitations, an Originating Department or the Purchasing Department may request the Director of the Office of EBO or designee to waive or modify the application of API requirements for S/M/WBE participation by submitting its reasons in writing. In the event consensus cannot be reached regarding the request, the request for exception of the solicitation from the EBO program shall be resolved by the County Administrator or designee. The County Administrator or designee may grant such an exception or modification of application of an API upon a determination that:
- i. The extraordinary and necessary requirements of the contract render application of the APIs infeasible or impractical;
  - ii. The nature of the goods or services being procured are excluded from the scope of the EBO Ordinance; or,
  - iii. Sufficient qualified S/M/WBEs providing the goods or services required by the contract are unavailable in Palm Beach County despite every reasonable attempt to locate them.

Otherwise, such Formal Solicitations shall be forwarded to the Director of the Office of EBO for review and also to the GSC for possible application of APIs. Any further requests from an Originating Department or the Purchasing Department, as applicable, for modification of Goal amounts or other APIs as established by the GSC shall be presented to the County Administrator or designee, whose decisions on such requests shall be final.

- d. **Other Waivers.** The Director of the Office of EBO may waive the application of APIs to enhance S/M/WBE utilization for a specific contract in accordance with the procedures set forth in the EBO Ordinance Sec. 2-80.22 (Scope and Exclusions) The Originating Department or Purchasing Department, as applicable, certifies to the Director of the Office of EBO and County Administrator or designee:
- i. That an emergency exists which requires goods or supplies to be provided with such immediacy that it is unable to comply with the requirements of the EBO Ordinance or this PPM;
  - ii. That the prospective Prime Contractor/consultant is an S/M/WBE or, if not, that the prospective Prime Contractor/consultant will make a GFE to utilize S/M/WBEs; and,
  - iii. The conditions imposed by law, or the external source of funding for the contract or grant effectively prohibits the application of the EBO Ordinance and this PPM.

## **12. PENALTIES AND SANCTIONS**

Upon recommendation of sanctions by the Director of EBO or designee in consultation with the Originating Department regarding the failure of a contractor, vendor, respondent or bidder or other business representative to comply with any portion of the EBO Ordinance, the Director of the EBO or designee (for purposes of imposing penalties, the Purchasing Director shall serve as the EBO

designee) may impose any or all of the following penalties on the non-complying party any or all of the following penalties:

- a. Suspension of contract;
- b. Withholding of funds;
- c. Termination of contract based upon a material breach of contract pertaining to EBO Program compliance;
- d. Refusal to accept a response or proposal;
- e. Suspension or Debarment of a Respondent or bidder, Prime Contractor/consultant or other business entity from eligibility for providing goods or services to the County for a period not to exceed three (3) years;
- f. Liquidated damages equal to the difference in dollar value of S/M/WBE participation as committed to in the contract, and the dollar value of S/M/WBE participation as actually achieved; and
- g. Reduction of preference points in future selections.

### **13. EFFECTIVE DATE**

This PPM shall become effective January 1, 2019, and various features of the EBO Program may be phased in as soon as practicable over the course of the subsequent six (6) months at the discretion of the County Administrator.

**ATTACHMENT 1**  
**Affirmative Procurement Initiatives (APIs)**

Palm Beach County Code Section 2.80.27 sets out the APIs approved for use by the Goal Setting Committee (GSC). The APIs are summarized below. The GSC evaluates all Solicitations at least fourteen (14) days prior to advertisement to determine which of the following industry-specific APIs shall be applied to a given contract within a particular industry. After the GSC makes a decision regarding the application of an API, the Purchasing Department or the Originating Department (as applicable), in consultation with the Office of EBO, and the County Attorney's Office inserts the appropriate language in each Solicitation prior to advertisement. The Affirmative Procurement Initiatives are summarized as follows:

**CONSTRUCTION APIs**

**1. CONSTRUCTION INDUSTRY (RACE AND GENDER NEUTRAL REMEDIES)**

**a. Bond Waiver and Assistance Programs – Reserved for Recommendations of Work Group**

**b. SBE Sheltered Market for Small Construction Contracts**

The GSC may reserve small prime construction contracts (single trade or multi-trade) valued at or below \$100,000 for sheltered market competition solely among SBEs where only certified SBEs are eligible to submit bids or quotes.

**c. SBE Subcontracting Program**

A minimum mandatory goal of 20% SBE participation is established for County contracts, however the Office of EBO shall reduce or waive this goal when there is insufficient availability of SBE prime and/or subcontractor firms. Respondents/bidders may request such waivers at least seven (7) days prior to bid opening based on submission of sufficient Good Faith Efforts documentation. In the absence of a waiver granted by the Office of EBO, a respondent/bidder who does not commit to satisfying the SBE subcontracting goal shall be considered non-Responsive to the entire solicitation.

**d. SBE Mentor-Protégé Program – Reserved for Recommendations of Work Group**

**e. SBE Price Preference**

For construction contracts where there are no opportunities for subcontracting (i.e. single trade), the GSC may include a provision requiring awards of the contract to be made to the lowest responsive, responsible respondent or bidder unless a certified SBE's bid is within the ten (10) percent of the lowest non-small business bid, in which case the award shall be made to the certified small business bidder submitting the lowest responsive, responsible bid at the price that it bid.

## **2. CONSTRUCTION INDUSTRY (RACE AND GENDER CONSCIOUS REMEDIES)**

GSC shall consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with subsection "a." below. The GSC shall review each construction Formal Solicitation prior to advertisement and shall determine whether to apply any of the other Race-Conscious APIs based upon the following criteria: i) whether significant disparity exists in the utilization of available M/WBEs; ii) whether race/gender neutral remedies alone are likely to eliminate such disparities; iii) whether a particular API is and narrowly tailored; iv) whether the API is appropriate.

### **a. Annual Aspirational Goals**

For each fiscal year, the GSC shall establish non-mandatory annual aspirational percentage goals for overall M/WBE prime and subcontract participation on County Construction contracts.

The Annual Aspirational Goals for M/WBE prime contract participation in County Construction contracts have initially been established at 28% MBE and 13% WBE respectively of the total cumulative construction prime contract dollars to be awarded and spent on an annual basis, and at 24% MBE and 14% WBE respectively of the total cumulative construction subcontract dollars to be awarded and spent on an annual basis. These annual aspirational goals are based upon the M/WBE availability estimates by industry set forth in accordance with the County's 2017 Disparity Study findings.

Each Annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the M/WBE availability by industry segment in accordance with the County's 2017 Disparity Study findings, along with relative M/WBE availability data to be collected by the County through its CBR System, and the actual utilization of M/WBEs reflected therein.

Annual Aspirational Goals shall not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the EBO Program on an annual basis in addressing identified disparities, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and APIs being applied pursuant to this EBO Ordinance.

Annual Aspirational Goals may be stated only in those County bid solicitations that do not contain contract-specific S/M/WBE goals, and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this EBO Ordinance. **b. M/WBE Subcontracting Goals**

The GSC may, on a contract-by-contract basis, require that a predetermined percentage of a specific Construction contract, up to 40%, be subcontracted to eligible M/WBEs (i.e., certified M/WBE firms owned by African Americans, Hispanic Americans, Asian Americans, Native Americans, and non-minority women). However, the Office of EBO shall reduce or waive this goal when there is insufficient availability of M/WBE prime and/or subcontractor firms. Respondents/bidders may request such waivers at least seven (7) days prior to bid opening based on submission of sufficient Good Faith Efforts documentation. In the absence of a waiver granted by the Office of EBO, a respondent/bidder who does not commit to satisfying the M/WBE subcontracting goal shall be considered non-Responsive to the entire solicitation.

### **c. M/WBE Segmented Subcontracting Goals**

The GSC may establish M/WBE Segmented Subcontracting Goals on an individual County contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals that specifically target the participation of a particular segment of Minority Group Member segments or the WBE segment based upon that segment's relative availability. Such segmented goals shall specifically target the participation of a particular segment of business enterprises owned and controlled by women or certain Minority Group Members (e.g., African-Americans, Hispanic-Americans, Asian-Americans, or Native Americans) based upon relative availability, as well as the existence of consistently and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. (For example, if an overall M/WBE subcontracting goal is set at 38% on a given contract, the segmented subcontracting goal may require that at least 23% of that 38% shall be satisfied through the utilization of African American and Hispanic subcontractors.) M/WBE Segmented Subcontracting Goals shall operate in the same manner as the M/WBE Subcontracting Goals set forth in the EBO Program.

**d. M/WBE Joint Venture/Partnership/Teaming Incentive**

For contracts valued at greater than \$2.5 million, the GSC may establish incentives to promote joint ventures, partnerships, or teaming arrangements between larger established firms and M/WBE firms, or between and among SBE and M/WBE firms. For RFPs, the incentive may be for up to twenty percent (20%) of one hundred evaluation points to be reserved for qualifying M/WBE joint ventures where the certified M/WBE joint venture partner owns 50% or greater, and performs 50% or greater of the work, of the overall joint venture. Proportionately fewer evaluation preference points would be awarded to the joint venture based upon lesser percentages of ownership by the M/WBE partner.

**e. M/WBE Mentor-Protégé Program – Reserved for Recommendations of Work Group**

**f. M/WBE Evaluation Preference for RFPs**

Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign point preferences equal to up to 15% of the total points assigned for the evaluation, scoring and ranking of construction-related proposals submitted by those certified M/WBE firms.

**PROFESSIONAL SERVICES APIs**

**3. PROFESSIONAL SERVICES (RACE AND GENDER NEUTRAL REMEDIES)**

**a. SBE Vendor Rotation**

Under this API, there are two options for the selective use of a prequalified panel of SBE vendors by the County:

**Option 1**

For smaller County non-CCNA professional services contracts valued at less than \$100,000, a prequalified panel of SBE professional services firms may be assigned work tasks on a rotating basis. Periodically, the SBE Vendor Rotation list shall be re-ordered according to the firm with the least amount of dollars received to the most dollars received from the County based upon the cumulative dollars received within the past year.

### **Option 2**

When the County requires price competition in its solicitations, and when quotations from several firms are required before award of contracts valued at less than \$100,000, solicitations for price quotations shall be affirmatively and directly sought from the next three firms appearing in the SBE Vendor Rotation list of prequalified firms for that type of professional service prior to contract award. With each successive solicitation of quotations of this type, the list shall be rotated to the next group of three SBE vendors appearing in the rotation.

### **b. Evaluation Preference for New SBE Prime Respondents**

Up to 15 percent (15%) of the total number of evaluation points allocated for selection of a professional services firm by the County shall be reserved for SBE prime respondents that have only received their first contract award with the County within the past year, or have not yet received a cumulative total of \$1,000,000 or more in payments from the County for professional services rendered.

### **c. SBE Reserve for Contracts Up to \$5,000 and Required SBE Quotations on Informal Solicitations for non-CCNA Professional Services**

The GSC may reserve certain categories of small professional services contracts valued at less than \$5,000 exclusively for competition among SBE professional services firms. For larger non-CCNA professional services contracts valued below \$100,000, the GSC shall require at least two to three quotations or proposals be solicited from SBE professional services firms before the County may make an award.

### **d. SBE Evaluation Preference for Prime Bidders**

For professional services RFPs, the GSC has two options:

#### **Option 1**

An SBE evaluation preference of up to 15 percent (15%) of the total number of available evaluation points for scoring of proposals shall be reserved for all SBE prime bidders on County professional services contracts valued at less than \$500,000.

## **Option 2**

Evaluation preference points shall be awarded on a sliding scale from zero up to 15 percent (15%) of the total available evaluation points for scoring of proposals to those firms responding to Professional Services solicitations valued at \$500,000 or greater. The sliding scale shall be based upon the relative level of SBE dollar participation that has been committed to on the prime respondent/bidder's team (e.g., zero SBE participation on a prime respondent/bidder's team shall yield zero evaluation points, whereas the maximum SBE participation among all prime bidders, at the prime contract and subcontract levels combined, shall yield award of fifteen evaluation preference points out of 100; and a prime respondent/bidder's team that achieves only half as many dollars in SBE participation as the firm with the greatest SBE dollar participation at the prime contract and subcontract levels combined shall be awarded 7.5 evaluation points out of 100).

### **e. SBE Subcontracting Goals for Professional Services**

A minimum mandatory goal of 20% SBE participation is established for County contracts, however the Office of EBO shall reduce or waive this goal when there is insufficient availability of SBE prime and/or subcontractor firms. Respondents/bidders may request such waivers at least seven (7) days prior to bid opening based on submission of sufficient Good Faith Efforts documentation. In the absence of a waiver granted by the Office of EBO, a respondent/bidder who does not commit to satisfying the SBE subcontracting goal shall be considered non-Responsive to the entire solicitation.

## **4. PROFESSIONAL SERVICES (RACE AND GENDER CONSCIOUS REMEDIES)**

GSC shall consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with subsection "a." below. The GSC shall review each professional services Formal Solicitation prior to advertisement and shall determine whether to apply any of the other Race-Conscious APIs based upon the following criteria: i) whether significant disparity exists in the utilization of available M/WBEs; ii) whether race/gender neutral remedies alone are likely to eliminate such disparities; iii) whether a particular API is and narrowly tailored; iv) whether the API is appropriate.

### **a. Annual Aspirational M/WBE Goals**

For each fiscal year, the GSC shall establish non-mandatory annual aspirational percentage goals for overall M/WBE prime and subcontract participation on County Professional Services contracts.

The Annual Aspirational Goals for M/WBE prime contract participation in County Professional Services contracts have initially been established at 23% MBE and 19% WBE respectively of the total cumulative professional services prime contract dollars to be awarded and spent on an annual basis, and at 25% MBE and 21% WBE respectively of the total cumulative professional services subcontract dollars to be awarded and spent on an annual basis. These annual aspirational goals are based upon the M/WBE availability estimates by industry set forth in accordance with the County's 2017 Disparity Study findings.

Each Annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the M/WBE availability by industry segment in accordance with the County's 2017 Disparity Study findings, along with relative M/WBE availability data to be collected by the County through its VOLT system, and the actual utilization of M/WBEs reflected therein.

Annual Aspirational Goals shall not be routinely applied to individual Solicitations, but are intended to serve as a benchmark against which to measure the overall effectiveness of the EBO Program on an annual basis in addressing identified disparities, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and APIs being applied pursuant to this EBO Ordinance.

Annual Aspirational Goals may be stated only in those County Solicitations that do not contain contract-specific S/M/WBE goals, and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this EBO Ordinance.

**b. M/WBE Evaluation Preferences for Professional Services**

Evaluation preference points shall be awarded on a sliding scale from zero up to 15 percent (15%) of the total available evaluation points for scoring of proposals to those firms responding to professional services solicitations. The sliding scale shall be based upon the relative level of M/WBE dollar participation that has been committed to on the prime respondent/bidder's team (e.g., zero M/WBE participation on a prime respondent/bidder's team shall yield zero evaluation points, whereas the proposal from the prime respondent/bidder that proposes achieving the maximum M/WBE participation among all prime respondent/bidders, at the prime contract and subcontract levels combined, shall yield award of fifteen evaluation preference points out of 100 to that bidder; and a prime respondent/bidder's team that achieves only half as many dollars in M/WBE participation as the firm with the greatest M/WBE dollar participation at the prime contract and subcontract levels combined shall be awarded 7.5 evaluation points out of 100).

**c. M/WBE Subcontracting Goals for Professional Services**

The GSC, on a contract-by-contract basis, may require that a predetermined percentage of a specific Professional Services contract, up to 40%, be subcontracted to eligible M/WBEs (i.e., certified M/WBE firms owned by African American, Hispanic American, Asian American, Native American, and non-minority women persons). However, the Office of EBO shall reduce or waive this goal when there is insufficient availability of M/WBE prime and/or subcontractor firms. Respondents/bidders may request such waivers at least seven (7) days prior to bid opening based on submission of sufficient Good Faith Efforts documentation. In the absence of a waiver granted by the Office of EBO, a respondent/bidder who does not commit to satisfying the M/WBE subcontracting goal shall be considered non-Responsive to the entire solicitation.

**d. M/WBE Segmented Subcontracting Goals for Professional Services**

The GSC may establish M/WBE Segmented Subcontracting Goals on an individual County contract where an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals that specifically target the participation of a particular segment

of Minority Group Member segments or the WBE segment based upon that segment's relative availability. Such segmented goals shall specifically target the participation of a particular segment of business enterprises owned and controlled by women or certain Minority Group Members (e.g., African-Americans) based upon relative availability, as well as the existence of consistently and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. (For example, if an overall M/WBE subcontracting goal is set at 46% on a given contract, the segmented subcontracting goal may require that at least 10% of that 46% shall be satisfied through the utilization of African American subcontractors.) M/WBE Segmented Subcontracting Goals shall operate in the same manner as the M/WBE Subcontracting Goals set forth in the EBO Ordinance.

**e. M/WBE Vendor Rotation**

Under this API, there are two options for the selective use of a prequalified panel of M/WBE vendors by the County:

**Option 1**

For smaller non-CCNA County professional services contracts valued at less than \$100,000, a prequalified panel of M/WBE professional services firms may be assigned work tasks on a rotating basis. Periodically, the M/WBE Vendor Rotation list shall be re-ordered according to the firm with the least amount of dollars received to the most dollars received from the County based upon the cumulative dollars received within the past year.

**Option 2**

When the County requires price competition in its Solicitations, and when quotations from several firms are required before award of contracts valued at less than \$100,000, Solicitations for price quotations shall be affirmatively and directly sought from the next three firms appearing in the M/WBE Vendor Rotation list of prequalified firms for that type of professional service prior to contract award. With each successive solicitation of quotations of this type, the list shall be rotated to the next group of three M/WBE vendors appearing in the rotation.

**f. M/WBE Required Quotations for Contracts Up to \$5,000 and Required M/WBE Solicitations for non-CCNA Professional Services Contracts Valued Under \$100,000**

The GSC may require quotations from up to three M/WBE firms for certain categories of small DPO professional services contracts valued at less than \$5,000. For larger non-CCNA professional services contracts valued below \$100,000, the GSC shall require the County to solicit at least two to three quotations or proposals from M/WBE professional services firms before the County may make an award.

## **GOODS AND OTHER SERVICES APIs**

### **5. GOODS AND OTHER SERVICES (RACE AND GENDER NEUTRAL REMEDIES)**

#### **a. SBE Vendor Rotation**

The GSC has two options for the selective use of a prequalified panel of SBE vendors by the County:

##### **Option 1**

For smaller County Goods and Other Services contracts valued at less than \$100,000, a prequalified panel of SBE Goods and Other Services firms may be assigned work tasks on a rotating basis. Periodically, the SBE Vendor Rotation list shall be re-ordered according to the firm with the least amount of dollars received to the most dollars received from the County based upon the cumulative dollars received within the past year.

##### **Option 2**

When the County requires price competition in its Solicitations, and when quotations from several firms are required before award of contracts valued at less than \$100,000, price quotations shall be sought from the next three firms appearing in the SBE Vendor Rotation list of prequalified firms for that type of professional service prior to contract award. With each successive solicitation of quotations of this type, the list shall be rotated to the next group of three SBE vendors appearing in the rotation.

#### **b. SBE Reserve for Contracts Below \$5,000 and Required SBE Quotations on Informal Solicitations Below \$100,000**

The GSC may reserve certain categories of small Goods and Other Services contracts valued at less than \$5,000 exclusively for competition among SBE Goods and Other Services firms. For larger Goods and Other Services contracts valued below \$100,000, the GSC shall require at least two to three quotations or proposals be solicited from SBE Goods and Other Services firms before the County may make an award.

#### **c. SBE Evaluation Preference for Prime Bidders**

For Other Services RFPs the GSC has two options:

##### **Option 1**

An SBE evaluation preference of up to 15 percent (15%) of the total number of available evaluation points for scoring of proposals shall be reserved for all SBE prime bidders on County Other Services contracts valued at less than \$500,000.

## **Option 2**

Evaluation preference points shall be awarded on a sliding scale from zero up to 15 percent (15%) of the total available evaluation points for scoring of proposals to those firms bidding on Other Services contracts valued at \$500,000 or greater. The sliding scale shall be based upon the relative level of SBE dollar participation that has been committed to on the prime bidder's team (e.g., zero SBE participation on a prime bidder's team shall yield zero evaluation points, whereas the maximum SBE participation among all prime bidders, at the prime contract and subcontract levels combined, shall yield award of fifteen evaluation preference points out of 100; and a prime bidder's team that achieves only half as many dollars in SBE participation as the firm with the greatest SBE dollar participation at the prime contract and subcontract levels combined shall be awarded 7.5 evaluation points out of 100).

### **d. SBE Joint Venture Incentive for Other Services Contracts**

The GSC may establish joint venture incentives for joint ventures between larger established firms and local SBE firms on Other Services contracts valued at greater than \$5 million. Such joint venture incentives may include: (1) additional option years for contracts; and/or (2) access to mobilization funds; and/or (3) evaluation preferences of up to 15 percent of all evaluation points to be assigned for joint ventures between two or more certified SBE firms, or between SBE and non-SBE joint venture partners that have an overall minimum percentage (e.g., 20%) SBE participation in ownership and management of the joint venture.

### **e. SBE Subcontracting Goals for Other Services Contracts Valued at Greater Than \$5 Million**

For larger Other Services contracts valued at greater than \$5 million wherein there are sufficient numbers of commercially useful functions available for subcontracting purposes, the GSC may consider applying a mandatory subcontracting goal for the participation of SBE subcontractors. The Board has established a minimum mandatory goal of 20% SBE participation for County contracts, however the Office of EBO shall reduce or waive this goal when there is insufficient availability of SBE prime and / or subcontractor firms. Respondents/bidders may request such waivers at least seven (7) days prior to bid opening based on submission of sufficient Good Faith Efforts documentation. In the absence of a waiver granted by the Office of EBO, a respondent/bidder who does not commit to satisfying the SBE subcontracting goal shall be considered non-Responsive to the entire solicitation.

### **f. SBE Price Preference**

The GSC may apply certain purchasing procedures to increase SBE participation, including, but not limited to, purchases valued below the Formal Solicitation threshold amount set forth in the Purchasing Code, and purchases made by decentralized purchase orders (DPOs) for Goods and Other Services valued under five thousand dollars (\$5,000.00). The purchasing procedures shall include a provision that every effort will be made by buyers to contact all registered certified SBEs that are available within a particular commodity area for such purchases. The purchasing procedures shall also include a process so as to allow as many vendors as possible to compete in providing

goods and services to Palm Beach County. The purchasing procedures shall also include a provision requiring awards of purchases to be made to the lowest responsive, responsible bidder unless a certified SBE's bid is within ten (10) percent of the lowest non-small business bid, in which case the award shall be made to the certified small business bidder submitting the lowest responsive, responsible bid at the price that it bid. This section shall not apply to procurement of Construction Services.

## **6. GOODS AND OTHER SERVICES (RACE AND GENDER CONSCIOUS REMEDIES)**

GSC shall consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with subsection "a." below. The GSC shall review each Goods and Other Services Formal Solicitation prior to advertisement and shall determine whether to apply any of the other Race-Conscious APIs based upon the following criteria: i) whether significant disparity exists in the utilization of available M/WBEs; ii) whether race/gender neutral remedies alone are likely to eliminate such disparities; iii) whether a particular API is narrowly tailored; iv) whether the API is appropriate.

### **a. Annual Aspirational M/WBE Goals**

For each fiscal year, the GSC shall establish non-mandatory annual aspirational percentage goals for overall M/WBE prime and subcontract participation on County Goods and Other Services contracts.

The Annual Aspirational Goals for M/WBE prime contract participation in County Goods and Other Services contracts have initially been established at 16% MBE and 17% WBE respectively of the total cumulative Goods and Other Services contract dollars to be awarded and spent on an annual basis. These annual aspirational goals are based upon the M/WBE availability estimates by industry set forth in accordance with the County's 2017 Disparity Study findings.

Each Annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the M/WBE availability by industry segment in accordance with the County's 2017 Disparity Study findings, along with relative M/WBE availability data to be collected by the County through its CBR system, and the actual utilization of M/WBEs reflected therein.

Annual Aspirational Goals shall not be routinely applied to individual solicitations, but are intended to serve as a benchmark against which to measure the overall effectiveness of the EBO Program on an annual basis in addressing identified disparities, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and APIs being applied pursuant to this EBO Ordinance.

Annual Aspirational Goals may be stated only in those County Solicitations that do not contain contract-specific S/M/WBE goals, and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this EBO Ordinance.

### **b. M/WBE Vendor Rotation**

The GSC has two options for the selective use of a prequalified panel of M/WBE vendors:

### **Option 1**

For smaller Goods and Other Services contracts valued at less than \$100,000, a prequalified panel of M/WBE Goods or Other Services firms may be assigned work tasks or supply orders on a rotating basis. Periodically, the M/WBE Vendor Rotation list shall be re-ordered according to the firm with the least amount of dollars received to the most dollars received from the County based upon the cumulative dollars received within the past year.

### **Option 2**

When the County requires price competition in its Solicitations, and when quotations from several firms are required before award of contracts valued at less than \$100,000, price quotations shall be sought from the next three firms appearing in the M/WBE Vendor Rotation list of prequalified firms for that type of Good or Other Service prior to contract award. With each successive solicitation of quotations of this type, the list shall be rotated to the next group of three M/WBE vendors appearing in the rotation.

### **c. Voluntary M/WBE Distributorship Development Program**

The GSC may apply this API to any solicitation and subsequent award for Goods contracts that have a base term with contract extensions for the County's purchase of Goods and related services when each of the following conditions has been met:

- i. Manufacturers often sell such goods or supplies to the County indirectly through authorized distributorships or authorized dealers;
- ii. One or more such manufacturers indirectly competing for such County supply requirements contracts have no such authorized distributorships or authorized dealers that are also certified as M/WBE firms, that are headquartered or have a Significant Business Presence within Palm Beach County, and are available to sell such goods and supplies to the County;
- iii. At least one manufacturer of such goods and supplies has established, or has agreed to establish, an authorized distributorship or authorized dealer that is certified as an M/WBE, is headquartered or has a Significant Business Presence in Palm Beach County through which the manufacturer has agreed to sell the goods or supplies to the County for the duration of the contract, including all of the contract's option years;
- iv. The Office of EBO has examined the terms of the authorized distributorship or authorized dealer agreement entered into between the manufacturer and its certified M/WBE authorized distributorship or authorized dealer and determined that the M/WBE distributor or dealer is headquartered or has a Significant Business Presence in Palm Beach County, and determined that such terms are non-discriminatory in that the certified M/WBE's agreement is no different from that of non-M/WBE authorized distributorships and authorized dealers for the manufacturer regarding such matters as scope of geographical territory allocation, scope of potential public and private sector customers, scope of product line, price lists for goods and supplies, volume discounts in pricing, rebates, credit terms,

delivery terms, marketing and technical support from manufacturer, and any other material terms that may affect the competitive viability of the authorized distributorship or authorized dealer.

Provided the manufacturer and its certified M/WBE authorized distributorship or authorized dealer meets conditions iii. and iv. above, and provided further that the certified M/WBE authorized distributorship or authorized dealer has won a bid for the supply of such Goods and/or related services to the County, under this API, notwithstanding any provision in this EBO Ordinance to the contrary, the Director of the Office of EBO may extend the length of the supply contract by additional option years without rebidding the contract, and/or the County may accelerate payment of invoices. The Office of EBO and Originating Department shall carefully monitor the contract to ensure that the certified M/WBE authorized distributorship or authorized dealer is performing a Commercially Useful Function under the contract, and that it is being treated in accordance with the terms of its agreement with the manufacturer. This assessment shall be made by the Office of EBO prior to the County's exercise of any option year on the supply contract. In the event the Office of EBO determines that these conditions have not been met, the County shall decline to exercise the next option year on the supply contract and shall instead re-bid the contract.

#### **d. Mandatory M/WBE Distributorship Development Program**

In instances where manufacturers have violated the County's Commercial Nondiscrimination Policy set forth in Resolution 2017-1770 as amended by excluding or discriminating against M/WBE suppliers that seek to become authorized dealers/distributors, this API requires the manufacturer to establish such an authorized dealership with an M/WBE supplier under the terms of API Sec. 2-80.27 (6) (c) as a condition for being eligible to sell commodities to the County.

#### **e. M/WBE Evaluation Preferences**

For Other Services contracts valued at less than \$500,000, evaluation preference points for M/WBE participation shall be awarded on a sliding scale from zero up to 15 percent (15%) of the total available evaluation points. The sliding scale shall be based upon the relative level of M/WBE dollar participation that has been committed to on the prime bidder's team (e.g., zero M/WBE participation on a prime bidder's team shall yield zero M/WBE evaluation preference points, whereas the proposal from the prime bidder that proposes achieving the maximum M/WBE participation among all prime bidders, at the prime contract and subcontract levels combined, shall yield award of all fifteen M/WBE evaluation preference points to that bidder out of the total overall 100 available evaluation points; and a prime bidder's team that achieves only half as many dollars in M/WBE participation as the firm with the greatest M/WBE dollar participation at the prime contract and subcontract levels combined shall be awarded 7.5 evaluation points out of the fifteen M/WBE evaluation preference points). Alternatively, the GSC may restrict award of the 15 percent (15%) evaluation preference to those M/WBE Other Services firms that have not previously been awarded a contract by the County. In such instances, the M/WBE firms shall remain eligible for such 15% evaluation preferences for up to one year from date of their first contract award, or until cumulative total payments on County contracts (prime contract and subcontract dollars) to that new entrant firm have reached \$1 million, whichever period of time is longer.

**f. M/WBE Joint Venture Incentives**

For contracts valued at greater than \$5 million, the GSC may establish incentives to promote joint ventures between larger established firms and M/WBE firms, or between and among SBE and M/WBE firms. For RFPs, the incentive may be for up to fifteen percent (15%) of one hundred evaluation points to be reserved for qualifying S/M/WBE joint ventures wherein the certified M/WBE joint venture partner owns 50% or greater, and performs 50% or greater of the work, of the overall joint venture. Proportionately fewer evaluation preference points would be awarded to the joint venture based upon lesser percentages of ownership by the M/WBE partner. Alternatively, incentives may include bonding waivers, assignment of multiple task orders on job order contracts totaling up to \$1,000,000 in value, and accelerated payments or mobilization payments to be afforded to qualifying S/M/WBE joint ventures. This API should be reserved for those occasions wherein there are sufficient numbers of qualified M/WBE firms available of sufficient size to meaningfully joint venture for purposes of performing larger contracts.

**g. M/WBE Subcontracting Goals of Other Services Contracts Valued at Greater Than \$5 Million**

The GSC may, on a contract-by-contract basis, require that a predetermined percentage up to 40% of a specific Other Services contract that is valued at greater than \$5 million shall be subcontracted to eligible M/WBEs (i.e., certified M/WBE firms owned by African American, Hispanic, and Caucasian women persons). However, the Office of EBO shall reduce or waive this goal when there is insufficient availability of M/WBE prime and / or subcontractor firms. Respondents/bidders may request such waivers at least seven (7) days prior to bid opening based on submission of sufficient Good Faith Efforts documentation. In the absence of a waiver granted by the Office of EBO, a respondent/bidder who does not commit to satisfying the M/WBE subcontracting goal shall be considered non-Responsive to the entire solicitation.

**PBC Disparity Study Summary**

CONSTRUCTION	Disparity (Availability)
Prime Contracts <\$50,000	Hispanic (12.94%)
Prime Contracts \$50,000 – \$1,296,000	African American (13.16%) Hispanic (12.94%)
Subcontracts \$0 - \$1,296,000	African American (11.15%) Hispanic (11.61%)

CCNA	Disparity (Availability)
Prime Contracts \$0-\$301,000	African American (8.06%)
(no subcontract data for CCNA; included in Professional Services below)	

PROFESSIONAL SERVICES (including CCNA)	Disparity (Availability)
Prime Contracts < \$50,000	African American (10.24%) Caucasian Female (19.14%)
Prime Contracts \$50,000 - \$301,000	African American (10.24%) Caucasian Female (19.14%)
Subcontracts \$0 - \$301,000	African American (10.62%)

GOODS AND SERVICES	Disparity (Availability)
Prime Contracts < \$50,000	African American (6.91%) Caucasian Female (16.81%)
Prime Contracts \$50,000 - \$321,000	African American (6.91%) Asian (1.68%) Hispanic (8.03%) Caucasian Female (16.81%)
No subcontract data	

## ATTACHMENT 2

### GOODS AND SERVICES EXEMPT FROM THE EQUAL BUSINESS OPPORTUNITY ORDINANCE

1. The Equal Business Opportunity Ordinance shall not apply to:
  - a. Agreements between the Board and nonprofit organizations or other governments that provide for the transfer, sale or exchange of goods or services.
  - b. Procurement of dues and memberships in trade or professional organizations; subscriptions to periodicals; advertisements; postage; utility services; copyrighted materials; professional medical services; authorized hospitality expenses; fees and costs of job-related seminars and training, including materials provided with, or as an integral part of, that training; and, admission fees for amusement parks and entertainment activities included in County recreational programs for youth, teens, adults, seniors, and persons with disabilities.
  - c. Presenters, lecturers, and facilitators for County sponsored programs.
  - d. Recreational instructors and sports officials.
  - e. Concessions as defined in 49 CFR Part 23.
  - f. Vending machines.
  - g. Goods or services purchased with donations, gifts or bequests containing restrictions that would interfere with or prevent the application of the requirements of the Purchasing Code.
  - h. Goods purchased with petty cash in accordance with established County procedures.
  - i. Labor negotiation services, legal services, expert witnesses, court reporter services, and other expenses pertaining to claims, negotiations, or litigation.
  - j. Artwork as defined by applicable County policy and procedure.
  - k. Full or part-time contractual employees of the Board.
  - l. Event specific stage production or programming including, but not limited to, fireworks or individuals or groups providing musical or theatrical performances or lectures.
  - m. County sponsorships or the solicitation of sponsorships.
  - n. Golf tee time advertising and sales services for County golf courses.
  - o. Bond underwriters.
  - p. Grant funded training, events, activities, and grant payments to recipients and sub-recipients.
  - q. Codification of County Ordinances
  - r. Emergency procurements.
  - s. Sole Source procurements.
  - t. Procurements where conditions established by the grant or by law or by external sources of funding prohibit application of the EBO Program.
  - u. Federal and or state funded projects
  - v. Services provided by a government agency.

- w. Contracts for the County's lease or purchase of real property where the County is lessee or purchaser.
2. The following categories of procurements that are not referenced above are exempt unless the County Administrator or designee determines that the circumstances of a particular procurement/solicitation requires full or partial compliance with the Equal Business Opportunity Ordinance:
- a. Real property interests or any acquisition, disposition or lease and made pursuant to the Palm Beach County Real Property Acquisition, Disposition, and Leasing Ordinance (the "PREM Ordinance"), applicable law, or Federal rule/regulation, except that **Concession and Developer Agreements procured pursuant to the PREM Ordinance are not exempt.** Leases for governmental services, Operating Agreements, acquisition and disposition agreements are exempt from the requirements of the Equal Business Opportunity Ordinance.
  - b. Procurements for Constitutional officers, specifically the Clerk and Comptroller, Sheriff, Supervisor of Elections, Property Appraiser, State Attorney, Public Defender, and Tax Collector.

## ATTACHMENT 3

### PILOT PROGRAM INITIATIVES

#### CONSTRUCTION

The following RFP evaluation preferences shall be implemented as a pilot program for a period of up to two (2) years. The Office of EBO will be responsible for evaluating and reporting to the County Administrator on the effectiveness of these RFP evaluation preferences, effectiveness can be measured by the increase in the number or dollar value of contracts and subcontracts awarded to SBE firms and other relevant factors as developed by the Office of EBO and the Construction Departments.

#### 1. Construction Industry (Race and Gender Neutral Remedies) - SBE Mentor-Protégé Program

The GSC may apply the following evaluation preferences for construction-related RFPs, such as construction manager at risk (CMR) or design-build (D-B) or property development (Developer):

Evaluation Preference for Mentoring. Under this preference the GSC shall require that evaluation panels assign point preferences up to 5% of the total points assigned for construction-related proposals where the proposer firm agrees to mentor an SBE firm for purposes of providing management guidance and training. The Mentor-Protégé Program will be administered in accordance with the County's CM/SBE Partnering Guidelines which set out the program objectives, qualifications and the Mentor and Protégé responsibilities. A copy of the CM/SBE Partnering Guidelines may be obtained by contacting the Director, Facilities Development & Operations.

Evaluation Preference for SBE Participation. Under this evaluation preference, points shall be awarded on a sliding scale from zero up to 10 percent (10%) of the total available evaluation points. The sliding scale shall be based upon the following factors: 1. Firm's history of SBE participation on prior government or private sector projects; 2. Firm's SBE participation plan, i.e. how the firm will achieve applicable APIs when subcontracts are let, and 3. Firm's commitment to achieving APIs applicable to subcontracts.

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

## **2. Construction Industry (Race and Gender Conscious Remedies) – M/WBE Mentor-Protégé Program**

The GSC may apply the following evaluation preferences for construction-related RFPs, such as construction manager at risk (CMR) or design-build (D-B) or property development (Developer):

Evaluation Preference for Mentoring. Under this preference the GSC shall require that evaluation panels assign point preferences up to 5% of the total points assigned for construction-related proposals where the proposer firm agrees to mentor an M/WBE firm for purposes of providing management guidance and training. The Mentor-Protégé Program will be administered in accordance with the County's CM / MWBE Partnering Guidelines which sets out the program objectives, qualifications and the Mentor and Protégé responsibilities. A copy of the CM / MWBE Partnering Guidelines may be obtained by contacting the Director, Facilities Development & Operations.

Evaluation Preference for M/WBE Participation. Under this evaluation preference, points shall be awarded on a sliding scale from zero up to 10 percent (10%) of the total available evaluation points. The sliding scale shall be based upon the following factors: 1. Firm's history of M/WBE participation on prior government or private sector projects; 2. Firm's M/WBE participation plan, i.e. how the firm will achieve applicable APIs when subcontracts are let, and 3. Firm's commitment to achieving APIs applicable to subcontracts.

For construction related RFPs, such as CMR or D-B or Developer, the APIs applicable to the construction phase of the contract (i.e. the subcontracts) will be applied by the GSC prior to the advertisement and bidding of subcontracts by the CM or D-B or Developer firm.