

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: December 10, 2024 Consent Regular
 Ordinance Public Hearing

Department: Administration
 Submitted By: Office of Equal Business Opportunity

I. EXECUTIVE BRIEF

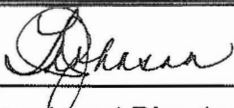
Motion and Title: Staff recommends motion to approve on preliminary reading and permission to advertise for public hearing on January 14, 2025 at 9:30 am: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE III, DIVISION 2, PART C OF THE PALM BEACH COUNTY CODE, (ORDINANCE NO. 2018-021), PERTAINING TO THE EQUAL BUSINESS OPPORTUNITY PROGRAM; PROVIDING FOR POLICY, PURPOSE, AND OBJECTIVES; PROVIDING FOR DEFINITIONS; PROVIDING FOR SCOPE AND EXCLUSIONS; PROVIDING FOR OFFICE OF EQUAL BUSINESS OPPORTUNITY; PROVIDING FOR COMMERCIAL NONDISCRIMINATION POLICY; PROVIDING FOR ADMINISTRATIVE REFORMS; PROVIDING FOR AFFIRMATIVE PROCUREMENT INITIATIVES; PROVIDING FOR PROGRAM ADMINISTRATION; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

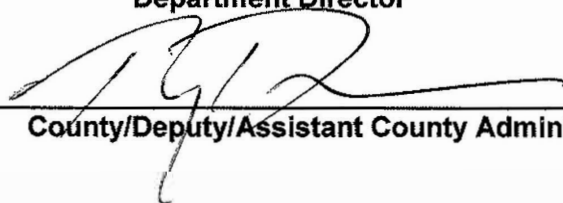
Summary: The Equal Business Opportunity (EBO) Ordinance is amended to ensure consistency between the "Procurement and/or Purchasing Code," which became effective on November 16, 2024. Additional amendments are made to Administrative Reforms, Affirmative Procurement Initiatives (APIs) and Program Administration that are consistent with EBO policies, processes and practices. The pertinent edits include:

- 1) Aligning the EBO Ordinance with the Procurement Code (Code) to ensure consistency and incorporate recent changes to the Code;
- 2) Added, revising, deleting and clarifying definitions as needed, including, but not limited to, making definitions consistent with the Procurement Code, defining the Active Vendor Directory, and defining the capabilities of the Enterprise Contract Management System (eCMS);
- 3) Incorporating the Small Business Enterprise (SBE) and Minority/Women Business Enterprise (M/WBE) Mentor Protégé Pilot Program as a permanent part of the EBO Ordinance due to its demonstrated effectiveness. This program, also known as Construction Manager at Risk (CM@R), offers evaluation preferences for construction-related proposals when the proposing firm agrees to mentor an SBE or M/WBE, providing management guidance and training. Evaluation criteria includes the firm's history of SBE participation on previous government or private sector projects, its SBE or M/WBE participation plan, and its commitment to achieving Affirmative Procurement Initiatives for applicable subcontracts;
- 4) Adding language to SBE Price Preference for construction contracts where there are no opportunities for subcontracting to indicate that the majority of the work must be performed by the Prime SBE respondent;
- 5) Adding language to vendor invoice and payment procedures for payment of undisputed invoices and included Local Government Prompt Payment Act language as defined in Section 218.70 et seq., Florida Statutes; **(Summary continued on Page 3)**

Attachments:

- 1) Proposed OEBO Ordinance (strike-through/underlined version)
- 2) Proposed OEBO Ordinance (clean)

Recommended by:  11/22/2024
 Department Director Date

Approved By:  11/29/2024
 County/Deputy/Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2025	2026	2027	2028	2029
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT					
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes ___ No X
 Does this item include the use of federal funds? Yes ___ No X
 Is this Item using State funds? Yes ___ No X

Budget Account No.: Fund ___ Dept ___ Unit ___ Object ___
 Reporting Category _____

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

C. Department Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

Laura M. [Signature] 11/21/2024
 CB 11/20 OFMB
 APC 11/20

Brandi [Signature] 11/22/24
 Contract Dev. and Control
 267 11.22.24

B. Approved as to form and Legal Sufficiency:

[Signature]
 County Attorney *Lo RS*

C. Other Department Review: _____

 Department Director

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

Summary: (Continued from Page 1)

- 6) Adding language to evaluation and preference provisions to prioritize the participation of Small Business Enterprise (SBE) respondents and bidders;
- 7) Updating fees for Special Master Hearing appeal bond to align with the Procurement Code, ensuring transparency of the fee structure; and
- 8) Clarifying frequency of reporting requirements as follows: The OEBO will issue quarterly performance reports to be submitted to the Board of County Commissioners (BCC) as receive and file agenda items; semiannual and annual reports will be presented to the BCC and County Administration; and elements of reporting that do not reflect the current capabilities of the existing reporting system will be removed. **Countywide (RS)**

Background and Policy Issues:

It is the policy of the Board of County Commissioners of Palm Beach County, Florida (BCC), 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 connect 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, sexual orientation, gender identity or expression, disability or genetic information.

The proposed amendments additions, changes and clarifications to certain definitions, Office of Equal Business Opportunity functions, administrative reforms, Affirmative Procurement Initiatives, program administration and grammatical revisions are necessary to fully effectuate the purpose and objectives established in the EBO Ordinance.

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

ORDINANCE NO. 2025-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE III, DIVISION 2, PART C OF THE PALM BEACH COUNTY CODE, (ORDINANCE NO. 2018-021), PERTAINING TO THE EQUAL BUSINESS OPPORTUNITY PROGRAM; PROVIDING FOR POLICY, PURPOSE, AND OBJECTIVES; PROVIDING FOR DEFINITIONS; PROVIDING FOR SCOPE AND EXCLUSIONS; PROVIDING FOR OFFICE OF EQUAL BUSINESS OPPORTUNITY; PROVIDING FOR COMMERCIAL NONDISCRIMINATION POLICY; PROVIDING FOR ADMINISTRATIVE REFORMS; PROVIDING FOR AFFIRMATIVE PROCUREMENT INITIATIVES; PROVIDING FOR PROGRAM ADMINISTRATION; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AND EFFECTIVE DATE.

25 **WHEREAS**, the Director of the Office of Equal Business Opportunity, in collaboration with
26 the County Administrator and the Director of Procurement, is directed to periodically recommend to
27 the Board of County Commissioners (BCC) amendments to the Equal Business Opportunity
28 Ordinance (EBO Ordinance) necessary to fully effectuate the purposes and objectives established in
29 the ordinance; and

30 **WHEREAS**, on May 20, 2024 the BCC deemed it necessary to repeal and replace sections
31 2-51 through 2-63 of the Palm Beach County Code (the "Procurement and/or Purchasing Code"),
32 which became effective on November 16, 2024; and

33 **WHEREAS**, in order to ensure consistency between the Procurement Code and the EBO
34 Ordinance, the EBO Ordinance must be amended to reflect the changes to the Procurement Code;
35 and

36 **WHEREAS**, due to the effectiveness to the Small Business Enterprise Mentor Protégé pilot
37 program, it will now be incorporated as a permanent part of the EBO Ordinance; and

38 **WHEREAS**, the foregoing amendments and additions, changes, and clarifications to certain
39 definitions, Office of Equal Business Opportunity functions, administrative reforms, Affirmative
40 Procurement Initiatives, program administration, and grammatical revisions are necessary to fully
effectuate the purposes and objectives established in the EBO Ordinance; and

41 **WHEREAS**, this proposed amendment is narrowly-tailored in accordance with the
42 applicable law, and the specific barriers to S/M/WBE participation.

43

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

46 **SECTION 1. POLICY, PURPOSE, AND OBJECTIVES.** Section 2-80.20 of the Palm Beach

47 County Code is hereby amended to read as follows:

48 In accordance with this Ordinance, it is the policy of the Board of County Commissioners of
49 Palm Beach County, Florida (The Board/BCC) that the County shall have directed staff to use its best
50 efforts to ensure that all segments of its business population, including, but not limited to, small,
51 local, minority, and women-owned businesses, have an equitable opportunity to participate in the
52 County's procurement process, prime contract, and subcontract opportunities, and that no business
53 shall be excluded from participation, denied benefits of, or otherwise discriminated against, in
54 connection with the award and performance of any contracts with the County on the grounds of race,
55 color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation,
56 gender identity or expression, disability or genetic information. Moreover, the specific purposes and
57 objectives of this Part are as follows:

58 (1) This Equal Business Opportunity (EBO) Ordinance, and the Policy and Procedure Manual
59 (PPM) guidelines established pursuant to this Part, shall serve the County's compelling
60 interest to remedy the various ongoing effects of marketplace discrimination against
61 Small/Minority/Women Business Enterprises (S/M/WBEs) that are ready, willing, and
62 able to sell goods and services, including construction-related goods and services and
63 professional services (collectively "goods and services"), to the County.

64 (2) The narrowly-tailored remedial efforts established in this EBO Ordinance are designed to
65 promote greater availability, capacity development, and contract participation by
66 S/M/WBEs in County contracts, and in doing so, enhance competition to the benefit of the
67 County's residents and taxpayers.

68 (3) This EBO Ordinance is intended, in part, to further the County's compelling interest in
69 ensuring that it is neither an active nor passive participant in private sector marketplace
70 discrimination, and to actively promote equal opportunity for all segments of the
71 contracting and business community to participate in County contract opportunities.

72 (4) The County shall resort to the use of race- and gender-conscious means for addressing
73 disparities within the realm of its contracting only when it is apparent that the use of race-

74 and gender-neutral means alone will likely be insufficient to remedy the effects of
75 identified discrimination.

76 (5) Having found that it has a compelling governmental interest to remedy the effects of
77 discrimination upon County contracts, the Board directs the County Administrator or
78 designee, the Director of ~~Purchasing-Procurement~~ or designee, and the Director of the
79 Office of Equal Business Opportunity (Office of EBO) or designee to collaborate in
80 periodically recommending to the Board possible future amendments necessary to fully
81 effectuate the purposes and objectives established in this EBO Ordinance. Such proposed
82 amendments shall also be narrowly-tailored in accordance with applicable law, and the
83 specific barriers to S/M/WBE participation identified within the County's factual predicate
84 as described below in Section 2-80.25 of this EBO Ordinance.

85 (6) It is the policy of the County to take all necessary, reasonable, and legal action to prevent
86 discrimination and to ensure that all businesses, including S/M/WBEs, are afforded the
87 maximum practicable opportunity to participate in the County's purchasing and contracting
88 processes.

89 (7) As referenced in Resolution R2017-1770 as amended, it is the policy of the Board to ensure
90 that the firms it engages in business with do not discriminate on the basis of race, color,
91 national origin, religion, ancestry, sex, age, marital status, familial status, sexual
92 orientation, gender identity or expression, disability, or genetic information in the
93 solicitation, selection, hiring or commercial treatment of subcontractors, vendors,
94 suppliers, or commercial customers, nor shall any such firms retaliate against any person
95 for reporting instances of such discrimination. The firms shall provide equal opportunity
96 for subcontractors.

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

101 An inclusive, robust, and competitive local marketplace is consistent with the County's public interest
102 in reducing the economic burden on the County residents and taxpayers it serves. In furtherance of

103 its mission to efficiently and cost-effectively serve the public interest on behalf of the residents of
104 Palm Beach County, the County seeks to promote the formation, growth, and competitive viability
105 of its indigenous business population through the economic inclusion policies and procedures set
106 forth in this EBO Ordinance.

107 **SECTION 2. DEFINITIONS.** Section 2-80.21 of the Palm Beach County Code is hereby
108 amended to read as follows:

109 *Acting as a conduit* means, in part, not acting as a regular dealer by making sales of material,
110 goods or supplies from items bought, kept in stock and regularly sold to the public, as opposed to
111 only government agencies, in the usual course of business. Brokers, manufacturer's representatives,
112 sales representatives and non-stocking distributors are considered to be conduits that do not perform
113 a Commercially Useful Function.

114 Active Vendor Directory is a compilation of all vendors which are maintained electronically
115 in the Vendor Self Service (VSS) and posted on the County's website and made available to the
116 general public for use in identifying subcontractor, material suppliers, etc.

117 *Affiliation* means that the entity applying for S/M/WBE certification controls, has the power to
118 control, or is controlled by another entity or entities, or an identity of interests exists between the
119 entity applying for S/M/WBE certification and another entity or entities. In determining whether an
120 Affiliation exists, it is necessary to consider factors including, but not limited to, common ownership,
121 common management, common use of facilities, equipment, and employees, contractual obligations
122 and family interest in the business. Affiliated entities must be considered together in terms of gross
123 receipts in determining whether a business entity meets S/M/WBE eligibility criteria.

124 *Affirmative Procurement Initiatives (API)* ~~refers to are various EBO Program program tools and~~
125 ~~Solicitation solicitation incentives~~ that are used to encourage greater prime and subcontract
126 participation by Small Business Enterprise (SBE) firms or Minority/Women Business Enterprise
127 (M/WBE) firms, including, but not limited to, bonding assistance, evaluation preferences,
128 subcontracting goals, vendor rotations, and joint venture incentives. ~~The County's EBO Program~~
129 ~~PPM and other PPMs adopted by the County Administrator will contain complete details on the~~
130 ~~operation of each API.~~

131 *Best Value Contracting or Request for Proposal (RFP)* means any competitive method of
132 procurement in which low price may be only one (1) factor of several factors, but not necessarily the
133 determining factor in the awarding of a contract.

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

135 *Business Category* means Construction; professional services procured pursuant to the
136 Consultants' Competitive Negotiations Act (CCNA Services); professional services other than
137 CCNA, Goods, and Other Services. For purposes of S/M/WBE eligibility criteria, a business entity
138 shall be considered for certification eligibility in the business categories in which it successfully has
139 performed and demonstrated capability.

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

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

142 ~~*Centralized Bidder Registration System (CBR)* means an electronic system of hardware and
143 software programs, including, but not limited to, the VSS, by which the County requires all
144 prospective respondents or bidders and subcontractors that are ready, willing, and able to sell goods
145 or services to the County to register. All businesses awarded a County contract shall be required to
146 register in the CBR. The CBR System assigns a unique identifier to each registrant that is then
147 required for the purpose of submitting solicitation responses and invoices, and for receiving payments
148 from the County. The CBR-assigned identifiers are also used by the Office of EBO for measuring
149 relative availability and tracking utilization of S/M/WBE and all other firms at the prime and
150 subcontract levels by industry or commodity codes and for establishing annual Aspirational Goals
151 and contract-by-contract subcontracting goals. The details regarding fields of information captured
152 and the functionalities of the CBR system shall be reflected in the EBO Program PPM.~~

153 *Certification* means the process by which the Office of EBO determines a firm to be a bona-fide
154 small, minority, and/or women business enterprise. Any firm may apply for multiple certifications
155 that cover each and every status category e.g., SBE, Minority Business Enterprise (MBE), or Women
156 Business Enterprise (WBE) for which it is able to satisfy eligibility standards. The Office of EBO
157 may contract these services to a regional certification agency or other entity. For purposes of
158 certification, the County may accept any firm that is certified by local government entities and other
159 organizations identified by the Office of EBO that have adopted certification standards and

160 procedures similar to those followed by the Office of EBO, provided the prospective firm satisfies
161 the eligibility requirements set forth in the County's PPM.

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

165 *Code* means the Palm Beach County Code.

166 *Commercially Useful Function* is a term that means an S/M/WBE firm is performing a
167 Commercially Useful Function when it is responsible for execution of the work of the County's
168 contract and is carrying out its responsibilities by actually performing, staffing, managing and
169 supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm
170 must also be responsible, with respect to materials and supplies used on the contract, and that are a
171 subset of the broader scope of work that is the subject matter of the goods and services that are being
172 purchased by the County under the terms of the prime contract. The S/M/WBE firm must also be
173 responsible for negotiating price, determining quantity and quality, ordering the material, and
174 installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE
175 firm is performing a Commercially Useful Function, an evaluation must be performed of the amount
176 of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be
177 paid under the contract is commensurate with the work it is actually performing and the S/M/WBE
178 credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE
179 firm does not perform a Commercially Useful Function if its role is limited to that of an extra
180 participant in a transaction, contract or project through which funds are passed in order to obtain the
181 appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which
182 S/M/WBE firms do not participate, there is no such role performed.

183 *Committee* means the Equal Business Opportunity Advisory Committee (EBOAC).

184 *Construction* has the meaning set forth in Section 2-52 of the Palm Beach County Procurement
185 Code, as may be amended, means ~~Construction as defined in the Palm Beach County Purchasing~~
186 ~~Code (Purchasing Code), including but not limited to the use of services and skilled trades for the~~
187 ~~assembly of materials necessary to build or improve land or infrastructure such as roads and bridges~~
188 ~~and paved surfaces, or to build, improve, or repair vertical structures such as buildings.~~

189 *Contract* has the meaning set forth in section 2-52 of the Palm Beach County Procurement Code,
190 as may be amended. ~~means Contract as defined in the Purchasing Code, including but not limited to~~
191 ~~all types of agreements, regardless of what they may be called (purchase orders, decentralized~~
192 ~~purchase orders (DPOs), agreements, etc.), for the procurement of goods and services; narrowly~~
193 ~~defined as a written agreement signed by all parties for the procurement of professional services or~~
194 ~~construction.~~

195 ~~*Contract Request* means a requisition for the procurement of professional services or~~
196 ~~construction services.~~

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

201 *County* means Palm Beach County.

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

203 *Decentralized Purchase Order (DPO)* has the meaning set forth in Section 2-52 of the Palm
204 Beach County Procurement Code, as may be amended. ~~means any purchase of less than five thousand~~
205 ~~dollars (\$5,000.00).~~

206 *Domiciled in the County* means the business holds a valid Palm Beach County business tax
207 receipt for the dedicated space and has a Significant Business Presence in the County. In order to
208 establish a Significant Business Presence in the County, the business must:

- 209 (1) Demonstrate that the business has been conducted at the county location, and sufficient
210 full-time employees are maintained in the County to perform the contracted work;
- 211 (2) The County business tax receipt bears the county address, and the county location is in an
212 area zoned for the conduct of such business;
- 213 (3) The county location must be verifiable through documentation which may include, but is
214 not limited to, asuch as property tax bill or lease agreement. All lease agreements must
215 have a minimum term of one (1) year and identify a dedicated space or location within
216 Palm Beach County; and

217 (4) The county location should be identifiable through signage, telephone listing, and/or
218 website or social media, where permissible. On-site visits may be conducted at any time to
219 determine continued adherence to requirements and additional documentation may be
220 requested on a case-by-case basis. A county telephone number or post office box in the
221 County shall not be sufficient without further documentation, to establish the domicile
222 requirements and other requirements of the code.

223 Enterprise Contract Management System (eCMS) refers to the system used to track contracts
224 issued and payments received from the County. The system will track utilization of S/M/WBEs and
225 all other firms at the prime and subcontract levels by industry and contract-by-contract
226 subcontracting goals. The details regarding fields of information captured and the functionalities of
227 eCMS shall be reflected in the PPM.

228 Equal Business Opportunity Advisory Committee (EBOAC) refers to a citizen committee made
229 up of no more than fifteen (15) representatives of trade groups and members of the general business
230 community designated and appointed by the County Administrator or designee, the Office of EBO,
231 and the Board as specified in the PPM. EBOAC members must be residents of Palm Beach County.
232 This advisory group shall: (a) assist the Director of the Office or EBO or designee, the County
233 Administrator or designee, and the Board in reviewing the continuing policies, practices, and
234 programs for vendors, prime contractors, and subcontractors that promote S/M/WBE participation;
235 and (b) make recommendations to the Director of the Office of EBO, the County Administrator or
236 designee, and the Board concerning modifications of such policies, programs, and practices
237 established pursuant to this EBO Ordinance.

238 Evaluation Preference means an API that may be applied by the Goal Setting Committee to
239 Requests for Proposals (RFPs) for Construction, Professional Services, Other services, and Goods
240 contracts that are to be awarded on a basis that includes factors other than lowest price and wherein
241 responses that are submitted to the County by S/M/WBE firms or firms that have teamed with
242 S/M/WBE firms may be awarded additional points in the evaluation process in the scoring and
243 ranking of their proposals against those submitted by other prime respondents or bidders.

244 Expired means a vendor's certification term has ended and is no longer valid.

245 *Formal Solicitations* has the meaning set forth in Section 2-52 of the Palm Beach County
246 Procurement Code, as may be amended. ~~means Solicitations for contracts that are equal to or exceed~~
247 ~~the Mandatory Bid or Proposal amount as defined in the Purchasing Code, one hundred thousand~~
248 ~~dollars (\$100,000.00) or greater as may be amended.~~

249 *Front* means a business which purports to be a S/M/WBE business, but which is actually owned
250 and/or controlled in a manner which does not comply with the County's requirements of certification,
251 or a business that purports to be performing a portion of work under a contract as a certified
252 S/M/WBE firm, but is not performing a Commercially Useful Function.

253 *Goals* means the level of S/M/WBE participation projected to be obtained either annually within
254 a business category, or in the performance of a specific contract, and is expressed as a percentage of
255 the total dollar volume of participation of all businesses in the County's procurement of goods,
256 services and construction either annually within a given business category, or within a specific
257 contract. In the absence of waivers or exclusions, the standard SBE contract-specific subcontracting
258 goal is twenty (20) percent regardless of industry segment. M/WBE contract-specific subcontracting
259 goals are set on a case-by-case basis by the Goal Setting Committee and are subject to waiver requests
260 from Originating Departments and prospective respondents or bidders. Such contract-specific
261 S/M/WBE subcontracting goals are set based upon various criteria, including the relative availability
262 of qualified S/M/WBE subcontractors to perform the scope of work required for performance of a
263 particular contract.

264 *Goal Setting Committee (GSC)* means a committee, or series of committees, appointed and
265 chaired by the County Administrator or designee that includes, at a minimum, the Director of the
266 Office of EBO or designee, the Director of Contract Development and Control or designee, the
267 ~~Director of Purchasing~~Procurement ~~or designee,~~ the Director of Facilities Development and
268 ~~Operations (FDO) or designee, the County Attorney or designee~~Director of Public Safety or
269 designee, ~~and the Director or designee of the Originating Department (if the Originating Department~~
270 ~~is neither Purchasing~~Procurement ~~nor FDO)~~ all without duplication of designees. The GSC
271 establishes S/M/WBE Program Goals for Palm Beach County (e.g., Annual Aspirational Goals and
272 Contract-by-Contract Subcontracting Goals) based upon Industry Categories, vendor availability and

273 project-specific characteristics. The GSC also makes determinations about which Affirmative
274 Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

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

294 *Goods* has the meaning set forth in Section 2-52 of the Palm Beach County Procurement Code,
295 as may be amended. ~~means Goods as defined in the Purchasing Code, including but not limited to~~
296 ~~commodities, merchandise, other tangible materials, and/or manufactured products that are bought~~
297 ~~and sold in commerce.~~

298 *Graduation* means when an S/M/WBE firm has exceeded the gross revenue standards or size
299 standards on an industry specific basis (i.e., Construction Consultants' Competitive Negotiation Act
300 (CCNA) Professional Services, including Architectural and Engineering Design firms and
301 Surveyors), Professional Services (Non-CCNA), and Goods or Other services as reflected in this

302 ~~Ordinance, as may be amended, graduates from the County's EBO Program because it has met the~~
303 ~~criteria for graduation as set forth in the County's PPM. A firm's graduation from participation as an~~
304 ~~S/M/WBE firm in the EBO Program does not permanently affect its eligibility to be recertified and~~
305 ~~to participate in the County's EBO program as an S/M/WBE. Graduated S/M/WBE firms shall be~~
306 ~~eligible to apply for S/M/WBE certification following the expiration of the two-year period~~
307 ~~immediately following graduation. Such application for S/M/WBE certification shall be granted only~~
308 ~~on condition that the graduated S/M/WBE firm presents documentation as required by the Office of~~
309 ~~EBO that establishes that the S/M/WBE firm's annual revenues have fallen below the small business~~
310 ~~size standards for the relevant industry as reflected in the PPM for two (2) consecutive years~~
311 ~~following the initial post-graduation period.~~

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

316 ~~Home business-Business~~ means a small business that operates from the business owner's home.
317 Home businesses usually have a very small number of employees that are often members of the
318 business owner's family. A home business is not affiliated with, nor a subsidiary of another company
319 located outside of the home. Home businesses meeting this definition are eligible for certification as
320 a small business, provided they meet all other certification criteria and local zoning requirements.
321 Home offices of an employee working for a company located in another county do not establish
322 domicile in Palm Beach County.

323 ~~ILA~~ means interlocal agreement; agreement between government entities.

324 ~~Independent business-Business is means~~ a business that operates free of control or reliance on
325 another business. Recognition of the business as a separate legal entity for tax or corporate purposes
326 is not necessarily sufficient for recognition as an independent business. In determining whether a
327 potential small business is an independent business, the County shall consider all relevant factors,
328 including but not limited to, the date the business was established, the adequacy of its resources for
329 the type of work specified, relationships with affiliates and subsidiaries, and the degree to which
330 financial, equipment leasing and other relationships with other businesses vary from established

331 industry practices. If there has been a recent change in ownership of the business, a review of whether
332 the acquisition of the business was done pursuant to an arm's length transaction will also be
333 considered in determining independence of the business.

334 ~~*Independent contractor*~~ *Contractor* means an individual who is self-employed and operates their
335 own business. The individual is classified as an independent contractor if the hiring party has the
336 right to control or direct only the outcome of the work, but does not have control over the methods
337 or means by which the work is performed. ~~a person who contracts to do work for another person~~
338 ~~according to his or her own processes and methods and is not subject to the control of the other person~~
339 ~~except for what is specified in the agreement for a specific job.~~

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

341 ~~*Informal Solicitation* means any Solicitation where the value of the goods or services being~~
342 ~~solicited is equal to or greater than five thousand dollars (\$5,000.00) and less than one hundred~~
343 ~~thousand dollars (\$100,000.00) as stated in the Purchasing Code, as amended.~~

344 *Joint Venture* means an association or teaming of two (2) or more persons or businesses to carry
345 out a single business enterprise for profit for which purpose they combine their property, capital,
346 efforts, skills and knowledge.

347 *Joint Venture Incentives* means an Affirmative Procurement Initiative ("API") that provides
348 inducements for non-S/M/WBE firms to collaborate with S/M/WBE partners in responses to
349 solicitations and for purposes of performing a Prime Contract to supply Goods to, or to perform
350 Construction, Professional, or Other Services on behalf of the County. Joint Ventures are established
351 by written agreements between two (2) or more independently owned and controlled business firms
352 to form a team or a third business entity solely for purposes of undertaking distinct roles and
353 responsibilities in the completion of a given contract. Under this business arrangement, each Joint
354 Venture partner shares in the management of the Joint Venture and also shares in the profits or losses
355 of the Joint Venture enterprise commensurately with its contribution to the venture. Incentives under
356 this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE
357 participation in the joint venture, and extra contract option years or mobilization fees provided to
358 qualifying Joint Ventures in certain Construction Services, Professional Services, Goods and Other
359 Services contracts.

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

365 *Mandatory Bid or Proposal Amount* has the same meaning set forth in Section 2-52 of the Palm
366 Beach County Procurement Code, as may be amended.

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

369 *Minority Business Enterprise (MBE)* means any legal entity, except a joint venture, that is
370 organized to engage in for-profit transactions, which is certified as being at least fifty-one (51)
371 percent owned, managed and controlled by one (1) or more Minority Group Members, and that is
372 ready, willing, and able to sell goods or services that are purchased by the County. To qualify as an
373 MBE, the enterprise's annual revenues and number of employees shall be no greater than the business
374 size standards for its industry as specified in the PPM, and the MBE shall meet the Significant
375 Business Presence requirements as defined herein. In order to be eligible for participation in
376 S/M/WBE APIs, the MBE firm shall be currently certified as being in compliance with the size
377 standards as reflected in the PPM, and as having satisfied all eligibility requirements to participate
378 in the EBO Program. Unless otherwise stated, the term MBE as used in this Program is not inclusive
379 of women-owned business enterprises (WBE).

380 *Minority Group Members* means African-Americans, Hispanic-Americans, Asian-Pacific
381 Americans, and Native Americans legally residing in, or that are citizens of, the United States or its
382 territories, as defined below:

383 *African-Americans:* Persons with origins in any of the black racial groups of Africa.

384 *Hispanic-Americans:* Persons of Mexican, Puerto Rican, Cuban, Spanish, or Central and South
385 American origin.

386 *Asian-Pacific Americans:* Persons having origins in any of the original peoples of the Far East,
387 Southeast Asia, the Indian subcontinent, or the Pacific Islands.

388 *Native Americans:* Persons that are members of a federally recognized Indian tribe or that have
389 no less than one-sixteenth percentage origin in any of the Native American Tribes, as recognized
390 by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by
391 possession of personal tribal role documents. A "federally recognized Indian tribe" means an
392 Indian tribe, band, nation, rancheria, pueblo, colony or other organized group or community,
393 including any Alaska native village, which was recognized by the Secretary of the Interior on
394 October 1, 1985, as having special rights and is recognized as eligible for the services provided
395 by the United States to Indians because of their status as Indians, and any tribe that has a pending
396 application for federal recognition on October 1, 1985, as having special rights and is recognized
397 as eligible for the services provided by the United States to Indians because of their status as
398 Indians, and any tribe that has a pending application for federal recognition on October 1, 1985.

399 *Minority/Women Business Enterprise (M/WBE)* means a firm that is certified as either a
400 minority business enterprise or as a women business enterprise for purposes of the EBO Program as
401 being at least fifty-one (51) percent owned, managed, and controlled by minority group members
402 and/or women of legal majority age that are lawfully residing in, or are citizens of, the United States
403 or its territories, that is ready, willing, and able to sell goods or services that are purchased by the
404 County, and that meets the Significant Business Presence requirements as defined herein. In order to
405 be eligible for participation in S/M/WBE APIs, the M/WBE firm shall be currently certified as being
406 in compliance with the size standards as reflected in the PPM, and as having satisfied all eligibility
407 requirements to participate in the ~~EBO~~-Program. Unless otherwise stated, the term MBE as used in
408 this Program is not inclusive of women-owned business enterprises (WBE).

409 In addition, the Director of the Office of EBO is authorized to establish a second tier size
410 standard for Emerging M/WBEs whose size standards are fifty (50) percent or less than the size
411 standards for M/WBEs that are eligible for APIs whose application is limited to Emerging M/WBEs.
412 The size standards for Emerging M/WBEs shall be posted in the PPM.

413 *M/WBE Segmented Subcontracting Goals* means the application of multiple goals for M/WBE
414 participation within annual Aspirational Goals or for M/WBE subcontracting goals on an individual
415 County contract wherein an overall aggregated M/WBE goal is accompanied by subsets of one (1)
416 or more smaller goals. Such segmented goals specifically target the participation of a particular

417 segment of business enterprises owned and controlled by WBEs or certain Minority Group Members
418 (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly
419 greater patterns of underutilization and disparity within an industry as compared to other gender and
420 Minority Group member categories of M/WBEs. The application of Segmented M/WBE goals is
421 intended to ensure that those segments of M/WBEs that have been most significantly and persistently
422 underutilized receive a fair measure of remedial assistance.

423 *Other Services* means services that are neither CCNA Services, Professional Services nor
424 Construction-related.

425 *Originating Department or User Department* means the requestor, person or ~~unit~~ Department
426 or Division requesting the item good or service to be purchased. When a Construction Department is
427 managing the procurement for either itself or for a User Department, the program responsibilities
428 assigned under the EBO Ordinance and PPM, as may be amended, to an Originating Department or
429 Division will be performed by the Construction Department.

430 *Owned*, for the purpose of determining whether a business is an MBE or WBE, shall mean that
431 the minorities or women, as the context requires, shall possess an ownership interest of at least fifty-
432 one (51) percent.

433 *Points* means the quantitative assignment of value for specific evaluation criteria in the vendor
434 selection process used in some construction, professional services, other services, and goods
435 contracts (e.g., 15 points out of a total of one hundred (100) points assigned for S/M/WBE
436 participation as stated in response to a Request for Proposals.)

437 *Policies and Procedures Manual (PPM)* refers to the administrative policies and procedures
438 manual for the EBO Program.

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

441 *Procurement Code* means Sections 2-51 through 2-63 of the Palm Beach County Code, as may
442 be amended.

443 *Professional Services* means ~~Professional Services as defined in the Purchasing Code, including~~
444 but not limited to any narrow discipline wherein a practitioner is required to have attained an
445 advanced educational degree and/or credentials certifying a certain level of competency in the field

446 that have been issued by an independent private body or board on behalf of the profession, prior to
447 representing themselves to the public as a practicing member of that narrow discipline; a practitioner
448 of a Professional Service has, through education and practical experience related to a particular field,
449 developed expert advisory and programming skills as a vocation; as one (1) where the high level of
450 skills, technical expertise in the field, and/or the advanced complexity and quality of advice provided
451 by the potential or known practitioner(s) warrants a competitive proposal or submittal process
452 wherein the strength of professional credentials are weighed heavily in the selection process (e.g.,
453 accounting, legal services, mapping, laboratory testing services, physician services, nursing services,
454 pharmacists, scientists, dentistry, financial advisory services, realtors, surveying services, landscape
455 design services, appraisers, engineers, architects, etc.).

456 ~~*Purchasing Code* means Sections 2-51 through 2-58 of the Code as may be amended.~~

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

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

463 *Relevant Marketplace* means the geographic market area affecting the EBO Program as
464 determined for purposes of collecting data for the 2017 Disparity Study, and for determining
465 eligibility for participation under various programs established by this EBO Ordinance and is defined
466 as Palm Beach County.

467 ~~*Request for Proposal (RFP)* has the meaning set forth in Section 2-52 of the Procurement Code,
468 as may be amended. means Request for Proposal as defined in the Purchasing Code, includes but is
469 not limited to a competitive Solicitation where price is not the sole factor in determining contract
470 award; see also Best Value Contracting.~~

471 ~~*Responsible Bidder or Offeror*; has the meaning set forth in Section 2-52 of the Procurement
472 Code, as may be amended. as defined in the Purchasing Code, includes but is not limited to a
473 person/firm with the capability in all respects to perform fully the contract requirements, and the~~

474 tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, financial
475 responsibility and credit which will assure good faith performance.

476 *Responsive Bidder or Offeror*; has the meaning set forth in Section 2-52 of the Procurement
477 Code, as may be amended, as defined in the Purchasing Code, includes but is not limited to a
478 person/firm that has submitted a bid or proposal which conforms in all material respects to the
479 requirements set forth in the invitation to bid, or request for proposal, including, but not limited to,
480 the requirements and specifications of the EBO Program.

481 *Significant Business Presence* means that in order to qualify for participation as an S/M/WBE
482 firm in the EBO Program program, the applicant must meet the domicile requirements for Palm Beach
483 County in which one or more of its employees are regularly based. Such a place of business must
484 have initial designated street address of the S/M/WBE firm's principal office as stated in its filings
485 with the Florida Department of State must be located within Palm Beach County, or the firm must
486 have a significant business presence for at least one (1) year within Palm Beach County, defined as:
487 an established place of business in Palm Beach County, from which at least fifty (50) percent of its
488 total full-time, part-time and contract employees are domiciled and regularly based in Palm Beach
489 County, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful
490 Function on the County contract is conducted. A location utilized solely as a post office box, mail
491 drop or telephone message center or any combination thereof, with no other substantial work
492 function, shall not be construed to constitute a significant business presence.

493 *Small Business Enterprise (SBE)* means a corporation, partnership, sole proprietorship, or other
494 legal entity for the purpose of making a profit that: (1) is independently owned and operated by
495 individuals legally residing in, or that are citizens of, the United States or its territories; and (2) is
496 currently certified as having annual revenues that satisfy S/M/WBE size standards on an industry-
497 specific basis (i.e., Construction, CCNA Professional Services including Architectural and
498 Engineering Design firms, Professional Services, Goods, and Other Services) that are reflected in the
499 PPM; and (3) also is domiciled in Palm Beach County and satisfies the Significant Business Presence
500 and other eligibility requirements for participation in the ~~EBO~~ Program as defined herein. The size
501 standards for SBE firms are as follows, and may be periodically revised by the Director of the Office
502 of EBO as necessary to satisfy and better serve the purposes and objectives of this EBO Ordinance,

503 and shall thereafter be reflected in the PPM:

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

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

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

516 (4) For a provider of Goods, the annual gross revenue shall not exceed seven million dollars
517 (\$7,000,000.00) (averaged over the previous three (3) most recent years, or if in business
518 less than three (3) years, averaged over the duration of the provider's existence).

519
520 (5) For a provider of Other Services, the average annual gross revenue shall not exceed five
521 million, seven hundred thousand dollars (\$5,700,000.00) (averaged over the previous three
522 (3) most recent years, or if in business less than three years, averaged over the duration of
523 the provider's existence).

524 In addition, the Director of the Office of EBO is authorized to establish a second tier size
525 standard for Emerging SBEs that are eligible for small sheltered market contracts; and whose size
526 standards are fifty (50) percent or less than the size standards for SBEs. If, and when, established,
527 the size standards for Emerging SBEs and Emerging M/WBEs shall be fifty (50) percent or less of
528 the sizes of SBE size standards, and shall also be the posted in the PPM.

529 *Small/Minority/Women Business Enterprise (S/M/WBE)* means any for-profit business firm that
530 is certified as being either small, minority, and/or women-owned, controlled, and managed.

531 ~~S/M/WBE Directory~~ means a compilation of certified, graduated, and/or suspended small
532 businesses and M/WBEs which is maintained electronically and posted on the County website by the
533 Office of EBO and made available to contractor(s) or vendor(s) for use in identifying subcontractors,
534 material suppliers, etc.

535 *Solicitation* is a generic term for an invitation that is issued by the County to prospective
536 respondents or bidders, vendors, or contractors asking them to compete for County commercial
537 contract awards for specified goods or services through response to either an Invitation for Bid or a
538 Request for Proposal.

539 *Subcontractor/Subconsultant* means ~~any vendor or contractor~~ a subcontractor or a subconsultant
540 that is providing goods or services, or expertise to a prime contractor in direct furtherance of the
541 prime contractor's performance of a defined scope of work or deliverables under a contract or
542 purchase order with the County as evidenced by an executed binding agreement between the prime
543 contractor and the subcontractor/subconsultant which shall be submitted prior to the County's
544 issuance of a notice to proceed to the prime contractor.

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

547 *Supplier* means a business that supplies goods or materials. A supplier may be distinguished
548 from a contractor or subcontractor who commonly adds specialized services or input to deliverable
549 commodities.

550 *Vendor Self Service System (VSS)* means the electronic system of hardware and software
551 programs by which the County requires all vendors, including subcontractors that are ready, willing,
552 and able to sell goods or services to the County to register. ~~All vendors awarded a County~~
553 ~~contract~~ Prior to award, all vendors shall be required to register in VSS. The assigned identifiers are
554 also used by the Office of EBO for measuring relative availability and tracking utilization of
555 S/M/WBE and all other firms at the prime and subcontract levels by industry or commodity codes
556 and for establishing annual Aspirational Goals and contract-by-contract subcontracting goals. The
557 details regarding fields of information captured and the functionalities of the CBR system shall be
558 reflected in the EBO Program PPM.

559 *Women Business Enterprise (WBE)* means any legal entity, except a joint venture, that is
560 organized to engage in for-profit transactions, that is certified for purposes of the EBO Program as
561 being at least fifty-one percent (51) percent owned, managed, and under the control of one (1) or
562 more non-minority women individuals of legal majority age that are lawfully residing in, or are
563 citizens of, the United States or its territories, that is ready, willing, and able to sell goods or services
564 that are purchased by the County, and that meets the domicile and Significant Business Presence
565 requirements as defined herein. In order to be eligible for participation in S/M/WBE APIs, the WBE
566 firm shall be currently certified as being in compliance with the size standards as reflected in the
567 PPM, and as having satisfied all eligibility requirements to participate in the EBO Program. Unless
568 otherwise stated, the term WBE as used in this Program is not inclusive of MBEs.

569 All terms not specifically defined herein, but defined in the County's purchasing
570 ordinance Procurement Code, chapter 2, article III, division 2, part A of the County Code, as may be
571 amended, shall carry the definition therein described.

572 **SECTION 3. SCOPE AND EXCLUSIONS.** Section 2-80.22 of the Palm Beach County Code is
573 hereby amended to read as follows:

574 This Part shall apply to the ~~Solicitation~~ solicitation of all goods, services and construction by
575 the County which are governed by the County ~~purchasing ordinance~~ Procurement Code (sections
576 Sections 2-51—2-572-63 of the County Code, as may be amended), including, but not limited to,
577 every contract or other agreement between the County and any governmental agency, quasi-
578 governmental agency, corporation, vendor, or contractor, under which the agency, corporation,
579 vendor, or contractor directly or indirectly receives any fiscal assistance or remuneration from the
580 County for the purpose of contracting with businesses to perform construction, professional services,
581 goods, or other services contracts, or for the purpose of directly or indirectly purchasing goods or
582 services for use by the County. As such, the County shall require the agency, corporation, vendor, or
583 contractor to comply with this EBO Program Code in the solicitation, the award, and administration
584 of that contract or agreement, provided; however, that the following categories of contracts shall be
585 excluded from the scope and application of this EBO Program:

- 586 (1) Contracts for the purchase of goods or services of a unique nature for which the County's
587 ~~Purchasing-Procurement~~ Department determines and confirms there is only a sole source
588 of supply;
- 589 (2) Contracts for electricity or water and sewage services from a municipal utility district or
590 governmental agency;
- 591 (3) Emergency Purchase means a procurement made in response to a need when the delay
592 incident to complying with all governing rules, regulations, or procedures would be
593 detrimental to the interests, health, safety, or welfare of the County;
- 594 (4) Contracts for the County's lease or purchase of real property where the County is lessee or
595 purchaser;
- 596 (5) Contracts for personal services involving the unique abilities or style of a particular
597 individual;
- 598 (6) Contracts or grants where conditions established by law or by external sources of funding
599 prohibit application of the EBO Program; and
- 600 (7) Any additional exclusions from the scope of this EBO Ordinance shall be set forth in the
601 EBO Program PPM.

602 **SECTION 4.OFFICE OF EQUAL BUSINESS OPPORTUNITY.** Section 2-80.23 of the Palm
603 Beach County Code is hereby amended to read as follows:

604 The Equal Business Opportunity (EBO) Program will be administered and managed by the
605 Director of the Office of EBO. The Director of the Office of EBO shall be managed by, and report
606 directly to, the County Administrator or designee. The Director of the Office of Equal Business
607 Opportunity or designee shall attend all County Board meetings to address any Equal Business
608 Opportunity Program issues that are addressed by the Board's meeting agenda. The Office of EBO
609 also shall be primarily responsible for the application of Affirmative Procurement Initiatives under
610 the EBO Program preferences, recommendations to the Purchasing Department and the Office of
611 the County Attorney regarding imposition of corrective actions and sanctions for non-compliance
612 with EBO Policies, Programs, and Procedures, and other administrative reforms that serve the
613 objectives of this Part.

614 A representative of the Office of EBO shall serve as a voting selection panel member for the
615 ~~shortlist and award of~~ on all selection committees for all "best value" solicitations of the County
616 where low price is not the sole determining factor in contract award decisions. The role of the
617 Office of EBO representative on such selection panels is to promote fairness in scoring that does
618 not improperly favor large and incumbent firms over the comparable meaningful qualifications of
619 S/M/WBE firms.

620 In addition, all prospective Formal Solicitations shall be reviewed in advance by the Office of
621 EBO for the purpose of recommending elimination of unnecessarily restrictive contract terms,
622 conditions, contract bundling features or selection criteria that may serve as barriers or
623 impediments to S/M/WBE participation. The Office of EBO shall, when appropriate, recommend
624 de-bundling of large contracts to the Purchasing Department and the Originating Department when
625 such de-bundling may substantially increase S/M/WBE contract opportunities and participation
626 without imposing an undue burden on the County in terms of contract management or cost.

627 The Goal Setting Committee shall determine which, if any, Affirmative Procurement
628 Initiatives shall be applied to each County Solicitation. The County Administrator or designee shall
629 make the final determination whenever consensus cannot be reached between the Office of EBO,
630 the Purchasing Department, and the Originating Department regarding proposed contract
631 specifications and modifications to same.

632 **SECTION 5. COMMERCIAL NONDISCRIMINATION POLICY.** Section 2-80.24 of the Palm
633 Beach County Code is hereby amended to read as follows:

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

642 of discrimination that have occurred or are occurring in the relevant marketplace for Palm Beach
643 County.

644 (b) *Policy Implementation.* The Office of EBO shall implement this policy by periodically
645 conducting outreach and by distributing educational materials to the County's contracting and
646 vendor community and related trade associations to advise such contractors, vendors and
647 prospective respondents or bidders of this policy and the procedures to be followed in submitting
648 complaints alleging violations of this policy. In addition, the County Administrator, the Director
649 of Purchasing, and the Office of the County Attorney shall ensure that the following commercial
650 nondiscrimination clause language is set forth in, and incorporated into, all the County contracts
651 that result from Formal Solicitations:

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

654 As a condition of entering into this agreement, the company represents and warrants that it will
655 comply with the County's Commercial Nondiscrimination Policy as described in Resolution R2017-
656 1770 as amended. As part of such compliance, the company shall not discriminate on the basis of
657 race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual
658 orientation, gender identity or expression, disability, or genetic information in the solicitation,
659 selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial
660 customers, nor shall the company retaliate against any person for reporting instances of such
661 discrimination. The company shall provide equal opportunity for subcontractors, vendors and
662 suppliers to participate in all of its public sector and private sector subcontracting and supply
663 opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful
664 efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the
665 County's relevant marketplace in Palm Beach County. The company understands and agrees that a
666 material violation of this clause shall be considered a material breach of this agreement and may
667 result in termination of this agreement, disqualification or debarment of the company from
668 participating in County contracts, or other sanctions. This clause is not enforceable by or for the
669 benefit of, and creates no obligation to, any third party.

670 All Formal Solicitations issued shall reflect the Commercial Nondiscrimination Policy and
671 contain words that are similar in meaning to the following:

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

674 In preparing its response on this Solicitation, the respondent or bidder has considered all
675 proposals submitted from qualified, potential Subcontractors and suppliers, and has not engaged in
676 "discrimination" as defined in the County's Commercial Nondiscrimination Policy as set forth in
677 Resolution R2017-1770 as amended, to wit: discrimination in the solicitation, selection or
678 commercial treatment of any Subcontractor, vendor, supplier or commercial customer on the basis
679 of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual
680 orientation, gender identity or expression, disability, or genetic information, or on the basis of any
681 otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's
682 employees or owners; provided that nothing in this policy shall be construed to prohibit or limit
683 otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring
684 in the County's relevant marketplace of Palm Beach County. Without limiting the foregoing,
685 "discrimination" also includes retaliating against any person or other entity for reporting any incident
686 of "discrimination." Without limiting any other provision of the solicitation for responses on this
687 project, it is understood and agreed that, if this certification is false, such false certification will
688 constitute grounds for the County to reject the response submitted by the respondent or bidder for
689 this Solicitation, and to terminate any contract awarded based on the response. As part of its response,
690 the respondent or bidder shall provide to the County a list of all instances within the immediate past
691 four (4) years where there has been a final adjudicated determination in a legal or administrative
692 proceeding in the State of Florida that the respondent or bidder discriminated against its
693 Subcontractors, vendors, suppliers or commercial customers, and a description of the status or
694 resolution of that complaint, including any remedial action taken. As a condition of submitting a
695 response to the County, the respondent or bidder agrees to comply with the County's Commercial
696 Nondiscrimination Policy as described in Resolution R2017-1770 as amended.

697 **SECTION 6. ADMINISTRATIVE REFORMS.** Section 2-80.26 of the Palm Beach County Code
698 is hereby amended to read as follows:

699 In furtherance of the objectives of this ~~EBO Program~~program, the County Administrator or
700 designee shall be responsible for implementing the following procurement policy reforms and non-
701 industry-specific remedies to address ongoing effects of discrimination that adversely affect M/WBE
702 access to public and private sector contracting opportunities and that will further facilitate the
703 efficient implementation and successful enforcement of the ~~EBO Program~~program:

704 (1) ~~Centralized Bidder Registration System/Data Management Enhancements~~. Establish and
705 ~~maintain~~Maintain a user-friendly automated web-based centralized bidder registration
706 ~~system~~Active Vendor Directory capable of tracking availability of all ~~prime~~primes and
707 subcontractors interested in performing on County contracts by industry segment and
708 commodity codes that represent the types of goods and services sold by each registrant
709 ~~firm~~, and ~~tracking~~Enterprise Contract Management System (eCMS) tracks utilization of
710 registrant firms by the County dollars spent with each firm at the ~~prime contract~~contractor
711 ~~and subcontract~~subcontractor levels. Registration in this system should be mandatory for
712 every ~~prime contractor and subcontractor~~ that is ready, willing, and qualified to sell some
713 good or service that the County purchases, and that wants to be solicited to bid on County
714 contracts or subcontracts, that wants to participate on County contracts as a prime
715 contractor or subcontractor, and/or that wants to have an invoice processed and paid by the
716 County for goods and services it has provided on behalf of the County. The ~~CBReCMS~~CMS
717 should be fully integrated with the County's VSS vendor registration system,
718 ~~S/M/WBEOEBO Admin~~ certification system, ~~vendor~~Advantage financial systems, and
719 ~~accounting~~Capital Improvement Program (CIP) systems. The ~~CBR~~system~~eCMS~~ should
720 include capabilities that enable the Office of EBO to monitor progress on each County
721 contract (including multi-year contracts and change orders) to determine whether prime
722 contractors are on target to satisfy their S/M/WBE participation commitments, and to
723 enable appropriate intervention by the County to avoid non-compliance by prime
724 contractors in satisfaction of S/M/WBE participation commitments. ~~CBR-generated~~
725 ~~estimates~~Estimates of relative S/M/WBE availability by commodity code shall be used by
726 the GSC in setting annual and contract-specific SBE and M/WBE participation Goals. ~~Each~~
727 ~~CBR bidder profile established by a registrant firm shall be password protected and~~

728 accessible to editing of most fields by the registrant firm. CBR registrations shall be subject
729 to mandatory renewal on a periodic basis. The detailed specifications for the CBR's
730 functionalities and the fields of information that it captures (e.g., CBR ID number,
731 registrant firm ethnicity/gender ownership status and S/M/WBE certification status, prime
732 contractor/subcontractor status, contact info, business and trade licenses, tax identification
733 numbers, textual descriptions of goods and services sold, primary commodity codes, and
734 website address) shall be established by the County and posted in the PPM.

735 (2) *Solicitation Review*. Each Formal Solicitation issued by the County shall be referred to the
736 Office of EBO and the Director of Purchasing sufficiently in advance of publication to
737 determine whether it contains any terms, conditions, contract bundling features, or
738 selection criteria that may unnecessarily restrict competition or adversely impact the ability
739 of S/M/WBE firms to respond or to participate as subcontractors. If such objectionable
740 terms, conditions, contract bundling features, or selection criteria (including brand name
741 specifications or onerous and unreasonable experience requirements) are identified through
742 this review process, the Director of Purchasing, the Director or designee of the Office of
743 EBO, and the Project Manager for the Originating Department shall seek consensus in
744 developing an acceptable modification to the Solicitation. In the event consensus cannot
745 be reached, the County Administrator or designee shall make a final determination
746 regarding the proposed modifications to the Solicitation. The technical specifications are
747 the responsibility of the Originating Department.

748 (3) *De-bundling/Repackaging of Solicitations*. Each Formal Solicitation issued by the County
749 shall be referred to the Office of EBO in advance of publication to determine whether it
750 contains any requirements that may unnecessarily restrict competition or adversely impact
751 the ability of S/M/WBE firms to respond or participate as subcontractors. Such review shall
752 also consider whether it is feasible to de-bundle the contract by reducing the size of the
753 procurement or contract to maximize participation opportunities for S/M/WBE ~~prime~~
754 ~~contractors~~Prime Contractors and ~~subcontractors~~Subcontractors without imposing undue
755 costs or administrative burdens upon the County. Similarly, such review shall also consider
756 whether smaller contracts should be aggregated into somewhat larger contract

757 opportunities that will render such contracts more feasible and profitable for available
758 S/M/WBE firms to undertake. If such objectionable specifications are identified through
759 this review process, the Director of the Office of EBO, the Director of Purchasing, and the
760 Director or designee for the Originating Department, shall seek consensus in developing
761 an acceptable modification to the specification. In the event consensus cannot be reached,
762 the County Administrator or designee shall make a final determination regarding the
763 proposed modifications to the specification.

764 (4) *Subcontract Remedies (Mobilization/Working Capital/Direct Payments)*. The County
765 Administrator or designee, in collaboration with the Director of the Office of EBO and the
766 Director of Purchasing, and in consultation with the Banking Consortium, shall establish
767 and convene a work group of County personnel to research, explore, and recommend a
768 variety of options for better addressing the working capital needs of S/M/WBE firms on
769 County prime contracts and subcontracts. Such options shall include, but not be limited to,
770 models for providing initial start-up mobilization fees to prime contractors and
771 subcontractors in advance of first-phase contract performance; revolving working capital
772 funds administered by third parties; direct payment by County of subcontractor invoices in
773 limited circumstances (with approval of prime contractors); and assistance with, or
774 facilitation of, equipment or fleet purchases or leases and acquisition of specialized
775 equipment. The work group should conclude its research and present its findings and
776 recommendations for consideration by the County Administrator or designee within six (6)
777 months of enactment of this Part.

778 (5) *Uniform Lead Time for Bid Submittals*. In the interest of providing a fair opportunity for
779 smaller firms to compete for County contracts, and for purposes of maximizing
780 competition, absent emergency purchases necessary to protect public health or safety, all
781 Formal Solicitations to the extent practical shall have a closing date that is at least thirty
782 (30) calendar days after the date such Solicitation is issued publicly.

783 (6) *Debriefings for Unsuccessful Respondents or Bidders*. For any contract in which the
784 S/M/WBE has submitted a bid or proposal in response to a Formal Solicitation and
785 subsequent evaluation of responses in accordance with a "Best Value Contracting" method

786 of procurement, the Director of the department issuing the solicitation, or of the department
787 on whose behalf the solicitation was issued, or their designees, shall provide a de-briefing
788 to any non-recommended respondent or bidder, upon request. At a minimum, debriefings
789 shall include disclosures of scoring criteria and scores from the evaluation panel
790 responsible for making the selection for each response that was evaluated. To the extent
791 possible, the de-briefing should also identify for each non-recommended respondent or
792 bidder those areas where its submittal was not as competitive as others, with an explanation
793 as to why. Bid solicitation language and the Office of EBO shall encourage unsuccessful
794 respondents or bidders to avail themselves of such bid-debriefing opportunities.

795 (7) *Expedited Payment Program.* The County Administrator or designee, in collaboration with
796 the Director of the Office of EBO, the Palm Beach County Clerk & Comptroller, and the
797 Director of Purchasing, shall establish and convene a work group of County personnel to
798 research, explore, and recommend a variety of options for accelerating payment of invoices
799 in ten (10) days or less. Such options shall include consideration of incentives such as
800 acceptance of percentage discount offers in contractor/vendor invoices that are paid by
801 County within ten (10) or fewer days of receipt. Streamlining of the invoice approval
802 process shall also be part of the focus of this work group. Moreover, the work group shall
803 explore the feasibility of inserting clauses into contracts that enable prime contractors to
804 authorize the County to directly pay undisputed invoices from subcontractors that are over
805 thirty (30) days old, and to deduct such amounts from the prime contractor's invoice when
806 other disputes or issues unrelated to subcontractors' performance are delaying the County's
807 payment to the prime. The intent of the Expedited Payment Program is to attract more
808 respondents or bidders, enhance competition, and obtain lower prices on behalf of the
809 County and its taxpayers. ~~The work group should conclude its research and present its~~
810 ~~findings and recommendations for consideration by the County Administrator by no later~~
811 ~~than six (6) months after enactment of this Part.~~

812 (8) *Disputed Invoices—Ten (10) Day Notice Requirement.* Within ten (10) days of the County's
813 receipt of any payment request or invoice from a contractor or vendor, the County shall
814 notify such contractor or vendor in writing regarding any and all deficiencies in its payment

815 request or invoice that will prevent prompt processing and issuance of payment. To the
816 extent there is an undisputed portion of the invoice that can be paid, the County shall
817 proceed with prompt payment of that portion of the invoice.

818 (9) *Re-evaluation of ~~Evaluation Panel~~Short-List/Selection Committee Procedures.* The
819 County Administrator shall convene a work group comprised of the Director of the Office
820 of EBO, the Director of Purchasing, and the Directors of each Originating Department for
821 purposes of revisiting the procedures that are followed during ~~evaluation panel~~Short-
822 List/Selection Committee interviews and/or scoring of proposals and respondent or bidder
823 teams for purposes of vendor selection on best value contracts. Specifically, consideration
824 should be given to limiting comments on prospective respondents or bidders to persons
825 serving on the ~~evaluation panels~~Short-List/Selection Committee, and also to establishing
826 an opportunity for debriefing and open discussion by evaluation panel members prior to
827 scoring of proposals and/or respondent or bidder teams that are under consideration. The
828 intent of this provision is to facilitate more transparency and accountability among
829 ~~evaluation panel~~Short-List/Selection Committee members for the scores that each submits.

830 (10) *Prior Approval of S/M/WBE Subcontractor/Subconsultant Substitutions.* Upon ~~submittal~~
831 ~~of any subcontracting plan or any subcontract agreements from a prime contractor to the~~
832 ~~County that state the names of proposed S/M/WBE subcontractors and their respective~~
833 ~~scopes of work, as well as the prime contractor's commitment for dollar payments to~~
834 ~~(and/or percentage utilization of) S/M/WBE subcontractors for their performance on a~~
835 ~~specific contract bid, proposal, or contract, the~~ A prime ~~Prime~~ contractor may not substitute
836 any other subcontractor (S/M/WBE or ~~otherwise~~Non-SBE) for performance of such scopes
837 of work without obtaining prior written approval for ~~cause for~~ such substitutions from the
838 Office of EBO.

839 (11) *Staff Training re: EBO Program Policies and Procedures.* The Office of EBO shall
840 coordinate and provide for ~~annual~~ quarterly staff training of key County personnel
841 regarding the EBO Ordinance, policy, and procedures, including, but not limited to,
842 instruction on the purpose and objectives of the program, reporting requirements and staff
843 responsibilities ~~in implementing for the EBO Program~~ program and related procedures.

844 **SECTION 7. AFFIRMATIVE PROCUREMENT INITIATIVES.** Section 2-80.27 of the Palm
845 Beach County Code is hereby amended to read as follows:

846 The Goal Setting Committee shall be established by the County Administrator as defined herein
847 and shall have the responsibility of evaluating Solicitation documents at least fourteen (14) calendar
848 days in advance of scheduled posting an advertisement or release of the Solicitation to the public to
849 determine which of the following industry-specific Affirmative Procurement Initiatives (APIs) shall
850 be applied to a given contract within a particular industry. After the GSC makes a decision regarding
851 the application of an API, the Director of ~~Purchasing~~Procurement, in collaboration with the Director
852 of the Office of EBO, and the Office of the County Attorney shall then be responsible for inserting
853 the appropriate language in each Solicitation to effectuate the application of the selected API to that
854 Solicitation in advance of its publication and release. The Affirmative Procurement Initiatives may
855 be considered by the GSC as follows:

856 (1) *Construction Industry (Race-and Gender-Neutral Remedies).*

857 a. *Bond Waiver and Assistance Programs.* The County Administrator shall establish a
858 work group of County personnel to research, consider, and recommend a variety of
859 "best practice" models from the State of Florida and across the nation for providing
860 bond waivers and other forms of bonding assistance to S/M/WBE firms. To the extent
861 feasible, bonds should continue to be waived for contracts below two hundred
862 thousand dollars (\$200,000.00). In addition, the work group should research and
863 consider other models that shall include, but not be limited to, technical assistance,
864 Owner Controlled Insurance Programs ("OCIP"), bond premium cost
865 reimbursements, incremental bonding requirements for multi-year projects, and bond
866 guarantee programs. The work group shall report its findings and recommendations
867 to the County Administrator no later than six (6) months following enactment of this
868 Part.

869 b. *SBE Sheltered Market for Small Construction Contracts.* The Goal Setting Committee
870 may reserve small prime construction contracts (single trade or multi-trade) valued at
871 or below one hundred fifty thousand dollars (~~\$100,000.00~~150,000) for sheltered

872 market competition solely among SBEs where only certified SBEs are eligible to
873 submit bids or quotes. Size standards for participating SBE construction prime
874 contractors (either single trade or multi-trade) shall be established in the EBO PPM.

875 c. *SBE Subcontracting Program.* Under this API, the County establishes a minimum
876 mandatory goal of twenty (20) percent SBE participation for County contracts,
877 provided that the Office of EBO shall agree to a reasonable reduction or waiver of this
878 goal in instances where it can be factually demonstrated that there is inadequate
879 availability of SBE prime and/or subcontractor firms qualified to perform
880 Commercially Useful Functions that are valued at twenty (20) percent of the total
881 estimated dollar value of the County contract. Prospective respondents or bidders shall
882 be provided an adequate opportunity to formally request such waivers at least seven
883 (7) days prior to bid opening based upon submission of adequate Good Faith Efforts
884 documentation as specified by the Office of EBO and as stated in bid solicitation
885 language.

886 Factors to be considered by the GSC in making this determination shall include the
887 relative availability of SBE firms to perform Commercially Useful Functions on the
888 specific contract.

889 A prospective respondent or bidder, to a County Solicitation for which price and scope
890 are defined, shall submit at the time as required in the Solicitation such documentation
891 as required by the Office of EBO that provides:

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

898 A prospective respondent or bidder on a County Solicitation for which the project
899 scope is not predefined, shall submit as required in the solicitation such

900 documentation as required by the Office of EBO to affirm its intent to meet the
901 subcontracting requirements indicated in the Solicitation. Failure of a Respondent or
902 Bidder to commit as required in the solicitation to satisfying the SBE subcontracting
903 goal shall render its response non-responsive.

904 During the price proposal negotiation phase, respondents or bidders shall be required
905 to submit:

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

912 A respondent or bidder may request a full or partial waiver of this mandatory
913 subcontracting requirement for good cause by submitting the appropriate form(s) and
914 documentation at the time as required in the Solicitation. Under no circumstances
915 shall a waiver of a mandatory subcontracting requirement be granted without
916 submission of adequate documentation of Good Faith Efforts by the respondent or
917 bidder and careful review by the Office of EBO. The Office of EBO shall base its
918 determination of a waiver request on criteria such as, but not limited to:

- 919 1. Whether the requestor of the waiver has made Good Faith Efforts to
920 subcontract with qualified and available SBEs;
- 921 2. Whether subcontracting would be inappropriate and/or not provide a
922 "Commercially Useful Function" under the scope of the contract; and
- 923 3. Whether there are no certified SBE firms that are qualified and available to
924 provide the goods or services required.

925 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor
926 to commit as required in the Solicitation to satisfying the SBE subcontracting goal
927 shall render its response non-Responsive. Provided, however, that on any prime

928 contract valued under ten million dollars (\$10,000,000.00), if the Prime Contractor is
929 a certified SBE firm, then the Prime Contractor is allowed to self-perform up to the
930 entire SBE subcontracting goal amount with its own forces. To the extent that the
931 certified SBE Prime Contractor does not self-perform a portion of the SBE
932 subcontracting goal, it shall be responsible for complying with all other requirements
933 of this API for that portion of work that is subcontracted. This self-performance option
934 for certified SBE Prime Contractors may be suspended at the discretion of the Director
935 of the Office of EBO or designee in the event it determines that the adverse cumulative
936 effect of the use of this self-performance option upon subcontractor opportunities is
937 too great.

938 In the absence of a waiver granted by the Office of EBO or the self-performance of a
939 portion or all of the SBE subcontracting goal by a certified SBE Prime Contractor, the
940 failure of a Prime Contractor to attain a subcontracting goal for SBE participation in
941 the performance of its contract or otherwise comply with the provisions of this API
942 shall be considered a material breach of contract, grounds for termination of that
943 contract with the County, and shall be subject to any penalties and sanctions available
944 under the terms of the EBO Program, its contract terms with the County, or by law.

945 A Prime Contractor is only permitted to substitute another subcontractor for a
946 designated SBE subcontractor ~~for cause, that is unwilling or unable to perform.~~
947 Substitutions shall be done with like certified S/M/WBEs in order to maintain the
948 participation percentages submitted with the bid or proposal. ~~and~~ The Prime is
949 required to notify and obtain prior written approval from the Office of EBO in advance
950 of any such substitution of a designated SBE subcontractor, or reduction in
951 subcontract scope, unless such reduction in scope is the direct and immediate result
952 of a County-mandated change order or contract amendment, or the County has
953 mandated the decertification, suspension, debarment, ~~graduation~~ or termination of a
954 designated SBE Subcontractor. However, under such circumstances, the Prime
955 Contractor shall undertake Good Faith Efforts to replace the expired, decertified,

956 suspended, debarred, ~~graduated~~ or terminated SBE with one (1) or more other
957 certified SBE Subcontractors and shall submit a post-contract award waiver request
958 to the Office of EBO in the event such Good Faith Efforts are unsuccessful.

959 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
960 shall be required to submit accurate progress payment information with each invoice
961 regarding each of its Subcontractors, including SBE Subcontractors. The Originating
962 Department shall audit the reported payments to SBE and non-SBE Subcontractors to
963 ensure that the Prime Contractor's reported subcontract participation is accurate.
964 County contracts with Prime Contractors shall include clauses requiring Prime
965 Contractors to pay Subcontractors in compliance with Florida prompt payment laws,
966 and such clauses shall mandate that in the event of a ~~Prime Contractor's~~ Prime's non-
967 compliance regarding such payments, the Prime Contractor shall be subject to any
968 penalties and sanctions available under the terms of the EBO Ordinance, its contract
969 terms with the County, or by law.

- 970 d. *SBE Mentor-Protégé Program (Construction Manager at Risk (CM@R)).* ~~The County~~
971 ~~Administrator or designee shall establish a work group of County personnel and~~
972 ~~construction industry and surety industry stakeholders to research, consider, and~~
973 ~~recommend a variety of "best practice" models from the State of Florida and across~~
974 ~~the nation for mentor-protégé programs to facilitate the successful growth and~~
975 ~~competitive viability of S/M/WBE firms in the construction industry. Such models for~~
976 ~~purposes of research and consideration shall include, but not be limited to, programs~~
977 ~~that team up more established and successful construction firm mentors with less~~
978 ~~established SBE firms for purposes of providing management guidance and training;~~
979 ~~programs that provide incentives to mentor firms by reserving certain contracts for~~
980 ~~competition upon approved mentor-protégé teams; and also programs that provide~~
981 ~~other incentives to mentor-protégé teams such as accelerated payments, access to~~
982 ~~working capital funds, and direct purchasing of supplies by County on behalf of~~
983 ~~mentor-protégé teams. The work group shall report its findings and recommendations~~

984 to the County Administrator no later than six (6) months after enactment of this
985 ~~Part.~~ The Mentor/Protégé RFP evaluation preferences is now a permanent policy, as
986 amended, due to its effectiveness and will continue to be available for use by the GSC
987 for construction-related RFPs. Refer to the PPM for detailed instructions.

- 988 e. *SBE Price Preference.* For construction contracts where there are no opportunities for
989 subcontracting (~~i.e.e.g.~~, single trade), the GSC may include a provision requiring
990 awards of the contract to be made to the lowest responsive, responsible respondent or
991 bidder unless a certified SBE's bid is within the ten (10) percent of the lowest non-
992 small business bid, in which case the award shall be made to the certified small
993 business respondent or bidder submitting the lowest responsive, responsible bid at the
994 price that it bid. Prime SBE respondents must perform the majority of the associated
995 work under this API.

996 (2) *Construction Industry (Race- and Gender-Conscious Remedies).* The Goal Setting
997 Committee (GSC) shall consider establishment of an overall M/WBE Annual Aspirational
998 Goal in accordance with subsection 'a' below and, in addition, shall review each prospective
999 County Construction Formal Solicitation in advance of its public release and
1000 advertisement, and shall make a determination whether to apply any of the other Race-
1001 Conscious APIs to those Construction solicitations based upon the following criteria:

- 1002 a. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious
1003 APIs indicate that Construction contracts of this type have exhibited significant
1004 disparities in the utilization of available M/WBE Subcontractors and/or M/WBE
1005 Prime Contractors;
- 1006 b. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any
1007 such disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime
1008 Contractors based upon past contract Award and Payment data;
- 1009 c. Whether a particular API is the least burdensome available remedy to non-M/WBE
1010 Respondents or Bidders that is narrowly-tailored and that can effectively eliminate the
1011 disparities in the utilization of M/WBEs in Construction contracts; and

1012 d. Whether the particular API is appropriate for the specific type of Construction contract
1013 being procured.

1014 Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs
1015 to Construction solicitations, it shall provide an explanation in the solicitation documents
1016 of its reasons for doing so based upon its determinations pursuant to these criteria. In
1017 making such determinations, the GSC may also take into consideration the experiences of
1018 other jurisdictions within Palm Beach County for Construction services.

1019 a.i. *Annual Aspirational Goals.* For each fiscal year, the GSC shall establish non-
1020 mandatory annual aspirational percentage goals for overall M/WBE prime and
1021 subcontract participation on County Construction contracts.

1022 The Annual Aspirational Goals for M/WBE prime contract participation in County
1023 Construction contracts have initially been established at twenty-eight (28) percent
1024 MBE and thirteen (13) percent WBE respectively of the total cumulative construction
1025 prime contract dollars to be awarded and spent on an annual basis, and at twenty-four
1026 (24) percent MBE and fourteen (14) percent WBE respectively of the total cumulative
1027 construction subcontract dollars to be awarded and spent on an annual basis. These
1028 annual aspirational goals are based upon the M/WBE availability estimates by
1029 industry set forth in accordance with the County's 2017 Disparity Study findings.

1030 Each Annual Aspirational Goal is to be reviewed on an annual basis for potential
1031 adjustment by the GSC based upon the M/WBE availability by industry segment in
1032 accordance with the County's 2017 Disparity Study findings, along with relative
1033 M/WBE availability data to be collected by the County through ~~its CBR system~~ CMS,
1034 and the actual utilization of M/WBEs reflected therein.

1035 Annual Aspirational Goals shall not to be routinely applied to individual solicitations,
1036 but are intended to serve as a benchmark against which to measure the overall
1037 effectiveness of the EBO Program on an annual basis in addressing identified
1038 disparities, and to gauge the need for future adjustments to the mix and aggressiveness
1039 of remedies and APIs being applied pursuant to this EBO Ordinance.

1040 Annual Aspirational Goals may be stated only in those County bid solicitations that
1041 do not contain contract-specific S/M/WBE goals, and when provided, shall be
1042 advisory only, and must also be accompanied by the full definition of the term as
1043 stated in this EBO Ordinance.

1044 b-ii. M/WBE Subcontracting Goals. The GSC may, on a contract-by-contract basis, require
1045 that a predetermined percentage of a specific Construction contract, up to forty (40)
1046 percent, be subcontracted to eligible M/WBEs (i.e., certified M/WBE firms owned by
1047 African-Americans, Hispanic-Americans, Asian-Americans, Native Americans, and
1048 non-minority women). Factors to be considered by the GSC in making this
1049 determination shall include the relative availability of M/WBE firms to perform
1050 Commercially Useful Functions on the specific contract weighted according to the
1051 relative dollar value of the construction sub-specialties available for subcontracting.

1052 A prospective respondent or bidder on a County solicitation, for which price and scope
1053 are defined, shall submit at the time as required in the solicitation such documentation
1054 as required by the County that provides:

- 1055 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- 1056 2. The percentage of prime contract dollars and the absolute dollar value of
1057 subcontracting services to be provided by each M/WBE;
- 1058 3. A description of the work that each M/WBE Subcontractor shall perform; and
- 1059 4. Documentation confirming the Subcontractor's commitment to perform the
1060 work at the stated price.

1061 A prospective respondent or bidder to a County solicitation, for which project scope
1062 is not predefined, shall submit at the time as required in the solicitation such
1063 documentation as required by the County to affirm its intent to meet the
1064 subcontracting requirements indicated in the solicitation. In the absence of a waiver
1065 granted by the Office of EBO, failure of a respondent or bidder to commit as required
1066 in the solicitation to satisfying the M/WBE subcontracting goal shall render its
1067 response non-responsive.

1068 During the price proposal negotiation phase, respondents or bidders shall be required
1069 to submit:

- 1070 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- 1071 2. The percentage of prime contract dollars and the absolute dollar value of
1072 subcontracting services to be provided by each M/WBE; and
- 1073 3. A description of the work that each M/WBE Subcontractor shall perform.

1074 A respondent or bidder may request a full or partial waiver of this mandatory
1075 subcontracting requirement for good cause by submitting the appropriate form(s) and
1076 documentation at the time as required in the Solicitation. Under no circumstances
1077 shall a waiver of a mandatory subcontracting requirement be granted without
1078 submission of adequate documentation of Good Faith Efforts by the respondent or
1079 bidder and careful review by the Office of EBO. The Office of EBO shall base its
1080 determination on a waiver request on criteria such as, but not limited to:

- 1081 1. Whether the requestor of the waiver has made Good Faith Efforts to
1082 subcontract with qualified and available M/WBEs;
- 1083 2. Whether subcontracting would be inappropriate and/or not provide a
1084 "Commercially Useful Function" under the scope of the contract; and
- 1085 3. Whether there are no certified M/WBE firms that are qualified and available
1086 to provide the goods or services required.

1087 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor
1088 to commit as required in the solicitation to satisfying the M/WBE subcontracting goal
1089 shall render its response non-Responsive. Provided, however, that on any prime
1090 contract valued under \$10 million, if the Prime Contractor is a certified M/WBE firm,
1091 then the Prime Contractor is allowed to self-perform up to the entire M/WBE
1092 subcontracting goal amount with its own forces. To the extent that the certified
1093 M/WBE Prime Contractor does not self-perform a portion of the M/WBE
1094 subcontracting goal, it shall be responsible for complying with all other requirements
1095 of this API for that portion of work that is subcontracted. This self-performance option

1096 for certified M/WBE Prime Contractors may be suspended at the discretion of the
1097 Director of the Office of EBO in the event he or she determines that the adverse
1098 cumulative effect of the use of this self-performance option upon subcontractor
1099 opportunities is too great.

1100 In the absence of a waiver granted by the Office of EBO, or the self-performance of
1101 a portion or all of the M/WBE subcontracting goal by a certified M/WBE Prime
1102 Contractor, the failure of a Prime Contractor to attain a subcontracting goal for
1103 M/WBE participation in the performance of its contract or otherwise comply with the
1104 provisions of this API shall be considered a material breach of contract, grounds for
1105 termination of that contract with the County and shall be subject to any penalties and
1106 sanctions available under the terms of the EBO Program, its contract with the County,
1107 or by law.

1108 A Prime Contractor is required to notify and obtain prior written approval from the
1109 Director of the Office of EBO in advance of any reduction in subcontract scope, unless
1110 such reduction in scope is the direct and immediate result of a County-mandated
1111 change order or contract amendment, or the County has mandated the decertification,
1112 suspension, ~~graduation~~ or termination of a designated M/WBE Subcontractor,
1113 However, under such circumstances, the Prime Contractor shall undertake Good Faith
1114 Efforts to replace the expired, decertified, suspended, ~~graduated~~ or terminated
1115 M/WBE Subcontractor(s) with one (1) or more other certified M/WBE
1116 Subcontractor(s) and shall submit a waiver request to the Office of EBO in the event
1117 such Good Faith Efforts are unsuccessful.

1118 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
1119 shall be required to submit accurate progress payment information with each invoice
1120 regarding each of its Subcontractors, including S/M/WBE Subcontractors. The
1121 Originating Department shall audit the reported payments to S/M/WBE and non-
1122 S/M/WBE Subcontractor to ensure that the Prime Contractors' reported subcontract
1123 participation is accurate. Absent a waiver from the Office of EBO, a Prime

1124 Contractor's failure to reach the required level of S/M/WBE subcontracting shall be
1125 considered a material breach of contract. County contracts with Prime Contractors
1126 shall include clauses requiring Prime Contractors to pay Subcontractors in compliance
1127 with Florida Prompt Payment Law, and such clauses shall mandate that in the event
1128 of Prime Contractor non-compliance regarding such payments, the Prime Contractor
1129 shall be subject to any penalties and sanctions available under the terms of the EBO
1130 Program, its contract with the County, or by law.

1131 c. *M/WBE Segmented Subcontracting Goals.* Under this API, the GSC may establish
1132 M/WBE Segmented Subcontracting Goals on an individual County contract wherein
1133 an overall combined M/WBE goal is accompanied by subsets of one (1) or more
1134 smaller goals that specifically target the participation of a particular segment of
1135 Minority Group Member segments or the WBE segment based upon that segment's
1136 relative availability. Such segmented goals shall specifically target the participation
1137 of a particular segment of business enterprises owned and controlled by women or
1138 certain Minority Group Members (e.g., African-Americans, Hispanic-Americans,
1139 Asian-Americans, or Native Americans) based upon relative availability, as well as
1140 the existence of consistently and significantly greater patterns of underutilization and
1141 disparity within an industry as compared to other gender and Minority Group Member
1142 categories of M/WBEs. (For example, if an overall M/WBE subcontracting goal is set
1143 at thirty-eight (38) percent on a given contract, the segmented subcontracting goal
1144 may require that at least twenty-three (23) percent of that thirty-eight (38) percent
1145 shall be satisfied through the utilization of African-American and Hispanic-American
1146 subcontractors.) The application of Segmented M/WBE Subcontracting Goals is
1147 intended to ensure that those segments of M/WBEs that have been most significantly
1148 and persistently underutilized receive a fair measure of remedial assistance. In all
1149 other respects, M/WBE Segmented Subcontracting Goals shall operate in the same
1150 manner as the M/WBE Subcontracting Goals set forth in this EBO Program.

1151 d. *M/WBE Joint Venture/Partnership/Teaming Incentive*. Under this API, for contracts
1152 valued at greater than two million five hundred thousand dollars (\$2,500,000.00), the
1153 GSC may establish incentives to promote joint ventures, partnerships, or teaming
1154 arrangements between larger established firms and M/WBE firms, or between and
1155 among SBE and M/WBE firms. For "best value" contracts wherein low price is not
1156 the only criterion for award, the incentive may be for up to twenty (20) percent of one
1157 hundred (100) evaluation points to be reserved for qualifying M/WBE joint ventures
1158 wherein the certified M/WBE joint venture partner owns fifty (50) percent or greater,
1159 and performs fifty (50) percent or greater of the work, of the overall joint venture.
1160 Proportionately fewer evaluation preference points would be awarded to the joint
1161 venture based upon lesser percentages of ownership by the M/WBE partner.
1162 Alternatively, incentives may include bonding assistance, assignment of multiple task
1163 orders on job order contracts totaling up to two million five hundred thousand dollars
1164 (\$2,500,000.00) in value, and accelerated payments or mobilization payments to be
1165 afforded to qualifying M/WBE joint ventures. This API should be reserved for those
1166 occasions wherein there are sufficient numbers of qualified M/WBE firms available
1167 of sufficient size to meaningfully joint venture or partner for purposes of performing
1168 larger contracts. Another consideration for application of this API is whether there are
1169 larger non-local M/WBE firms, or larger M/WBE firms that may have graduated from
1170 eligibility for the program, that are available and willing to joint venture with certified
1171 smaller local M/WBEs for purposes of enhancing local capacity at the prime contract
1172 level.

1173 A prospective M/WBE joint venture respondent or bidder on such County contracts
1174 shall submit in response to the solicitation such documentation as required by the
1175 County that includes, but is not limited to:

- 1176 1. The names of the M/WBE joint venture, partnership, or team and each of its
1177 partners or team members that will participate on the contract;
- 1178 2. The percentage of Prime Contract dollars and the absolute dollar value of the

1179 services to be provided by the M/WBE joint venture partner or team member;
1180 and

1181 3. A description of the work, management responsibilities, and other
1182 contributions that each joint venture partner or team member shall perform or
1183 provide under the terms of its joint venture, partnership, or teaming agreement.

1184 e. *M/WBE Mentor-Protégé Program (Construction Manager at Risk (CM@R)).* The
1185 Mentor/Protégé RFP evaluation preferences is now a permanent policy, as amended,
1186 due to its effectiveness and will continue to be available for use by the GSC for
1187 construction-related RFPs. Refer to the PPM for detailed instructions.~~The County~~
1188 ~~Administrator or designee shall establish a work group of County personnel and~~
1189 ~~construction industry and surety industry stakeholders to research, consider, and~~
1190 ~~recommend a variety of "best practice" models from the State of Florida and across~~
1191 ~~the nation for mentor protégé programs to facilitate the successful growth and~~
1192 ~~competitive viability of S/M/WBE firms in the construction industry. Such models for~~
1193 ~~purposes of research and consideration shall include, but not be limited to, programs~~
1194 ~~that team up more established and successful construction firm mentors with less~~
1195 ~~established M/WBE firms for purposes of providing management guidance and~~
1196 ~~training; programs that provide incentives to mentor firms by reserving certain~~
1197 ~~contracts for competition upon approved mentor protégé teams; and also programs~~
1198 ~~that provide other incentives to mentor protégé teams such as accelerated payments,~~
1199 ~~access to working capital funds, and direct purchasing of supplies by County on behalf~~
1200 ~~of mentor protégé teams. The work group shall report its findings and~~
1201 ~~recommendations to the County Administrator no later than six (6) months after the~~
1202 ~~effective date of this Part.~~

1203 f. *M/WBE Evaluation Preference for "Best Value" RFPs.* The GSC may apply this API
1204 to Formal Solicitations for County bid solicitations that are issued pursuant to a "Best
1205 Value" method of procurement wherein criteria other than price are factored into the
1206 selection process. Under the terms of this Evaluation Preference, the GSC shall require

1207 that evaluation panels assign point preferences equal to up to fifteen (15) percent of
1208 the total points assigned for the evaluation, scoring and ranking of construction-
1209 related proposals submitted by those certified M/WBE firms. M/WBE Prime
1210 respondents must perform the majority of the associated work under this API.

1211 An M/WBE that is awarded a prime contract under this program may not subcontract
1212 more than forty-nine (49) percent of the contract value to a non-S/M/WBE firm. In
1213 determining whether a particular contract is eligible for this Program, the GSC shall
1214 consider: (a) the relative availability of S/M/WBEs, with the preference of at least
1215 three (3) S/M/WBEs that are likely to bid as a Prime Contractor for the contract; and
1216 (b) the degree of underutilization of the S/M/WBEs in the specific Industry
1217 Categories.

1218 (3) *Professional Services (Race- and Gender-Neutral Remedies).*

1219 a. *SBE Vendor Rotation.* Under this API, there are two (2) options for the selective use
1220 of a prequalified panel of SBE vendors by the County:

1221 Option 1

1222 For smaller County non-CCNA professional services contracts valued at less than one
1223 hundred fifty thousand dollars (~~\$100,000.00~~150,000), a prequalified panel of SBE
1224 professional services firms may be assigned work tasks on a rotating basis.
1225 Periodically, the SBE Vendor Rotation list shall be re-ordered according to the firm
1226 with the least amount of dollars received to the most dollars received from the County
1227 based upon the cumulative dollars received within the past year.

1228 Option 2

1229 When the County requires price competition in its solicitations, and when quotations
1230 from several firms are required before award of contracts valued at less than one
1231 hundred fifty thousand dollars (~~\$100,000.00~~150,000), solicitations for price
1232 quotations shall be affirmatively and directly sought from the next three (3) firms
1233 appearing in the SBE Vendor Rotation list of prequalified firms for that type of

1234 professional service prior to contract award. With each successive solicitation of
1235 quotations of this type, the list shall be rotated to the next group of three (3) SBE
1236 vendors appearing in the rotation.

1237 b. *Evaluation Preference for New SBE Prime Respondents or Bidders.* Under this API,
1238 the GSC shall establish point preferences in the evaluation of proposals for those first-
1239 time SBE entrants that are competing for County Professional Services contracts for
1240 up to one (1) year after submission of an SBE prime respondent's or bidder's first
1241 successful proposal with the County, or until the firm has received a cumulative total
1242 of one million dollars (\$1,000,000.00) or more in payments for services performed on
1243 behalf of the County (whichever period of time is longer). Up to fifteen (15) percent
1244 of the total number of evaluation points allocated for selection of a professional
1245 services firm by the County shall be reserved for SBE prime respondents or bidders
1246 that have only received their first contract award with the County within the past year
1247 or have not yet received a cumulative total of one million dollars (\$1,000,000.00) or
1248 more in payments from the County for professional services rendered. One (1) year
1249 after a new entrant SBE prime respondent or bidder has won its first County contract,
1250 assuming it has received a cumulative total of one million dollars (\$1,000,000.00) or
1251 more in payments from the County, it shall no longer be eligible to receive such
1252 evaluation preference points for new SBE prime respondents or bidders, but may
1253 remain eligible to receive other evaluation preference points reserved for SBE prime
1254 respondents or bidders that are not new. This API is intended to address the natural
1255 bias that has been identified on the part of some selection panels against smaller firms
1256 that are unknown and that have no significant prior track record with the County. SBE
1257 Prime respondents must perform the majority of the associated work under this API.

1258 c. SBE Reserve for Contracts Up to ~~five-ten~~ thousand dollars (~~\$5,000.00~~10,000) and
1259 Required SBE Quotations on Informal Solicitations for non-CCNA Professional
1260 Services. Under this API, the GSC may reserve certain categories of small
1261 professional services contracts valued at less than ~~five-ten~~ thousand dollars

1262 (\$5,000.0010,000) exclusively for competition among SBE professional services
1263 firms. For larger non-CCNA professional services contracts valued below one
1264 hundred fifty thousand dollars (~~\$100,000.00~~150,000), the GSC shall require at least
1265 two to three quotations or proposals be affirmatively solicited directly from SBE
1266 professional services firms before the County may make an award. In selecting the
1267 use of this API, the GSC shall consider whether the County has had difficulty in
1268 obtaining prime contract bids or proposals from available SBE firms for that type of
1269 professional services contracts.

- 1270 d. *SBE Evaluation Preference for Prime Respondents or Bidders.* Under this API, there
1271 are two (2) options available for the GSC to enhance contract opportunities for SBE
1272 Prime Respondents or Bidders on "Best Value" professional services contracts where
1273 low bid price is not the only consideration in contract award:

1274 Option 1

1275 An SBE evaluation preference of up to fifteen (15) percent of the total number of
1276 available evaluation points for scoring of proposals shall be reserved for all SBE
1277 prime respondents or bidders on County professional services contracts valued at less
1278 than five hundred thousand dollars (\$500,000.00). SBE Prime respondents must
1279 perform the majority of the associated work under this API.

1280 Option 2

1281 Evaluation preference points shall be awarded on a sliding scale from zero up to
1282 fifteen (15) percent of the total available evaluation points for scoring of proposals to
1283 those firms responding to Professional Services solicitations valued at five hundred
1284 thousand dollars (\$500,000.00) or greater. The sliding scale shall be based upon the
1285 relative level of SBE dollar participation that has been committed to on the prime
1286 respondent's or bidder's team (e.g., zero SBE participation on a prime respondent or
1287 bidder's team shall yield zero evaluation points, whereas the maximum SBE
1288 participation among all prime respondents or bidders, at the prime contract and
1289 subcontract levels combined, shall yield award of fifteen (15) evaluation preference

1290 points out of one hundred (100); and a prime respondent's or bidder's team that
1291 achieves only half as many dollars in SBE participation as the firm with the greatest
1292 SBE dollar participation at the prime contract and subcontract levels combined shall
1293 be awarded seven and one-half (7.5) evaluation points out of one hundred (100).

1294 e. *SBE Subcontracting Goals for Professional Services.* The Board has established a
1295 minimum mandatory goal of twenty (20) percent SBE participation for County
1296 contracts, provided that the Office of EBO shall agree to a reasonable reduction or
1297 waiver of this goal in instances where it can be factually demonstrated that there is
1298 inadequate availability of SBE prime and/or subcontractor firms qualified to perform
1299 Commercially Useful Functions that are valued at twenty (20) percent of the total
1300 estimated dollar value of the County contract. Prospective respondents or bidders shall
1301 be provided an adequate opportunity to formally request such waivers prior to bid
1302 opening based upon submission of adequate Good Faith Efforts documentation as
1303 specified by the Office of EBO and as stated in Solicitation language.

1304 Under this API, the GSC shall, on a contract-specific basis, require that at least twenty
1305 (20) percent of the total value of a prime contract be subcontracted to eligible SBEs.
1306 Factors to be considered by the GSC in making this determination shall include the
1307 relative availability of SBE firms to perform Commercially Useful Functions on the
1308 specific contract.

1309 A prospective respondent or bidder, to a County Solicitation for which price and scope
1310 are defined, shall submit at the time as required in the solicitation such documentation
1311 as required by the Office of EBO that provides:

- 1312 1. The name(s) of the SBE Subcontractor(s) it intends to use on the project;
- 1313 2. The percentage of prime contract dollars and the absolute dollar value of
1314 subcontracting services to be provided by each SBE;
- 1315 3. A description of the work that each SBE Subcontractor shall perform; and
- 1316 4. Documentation confirming the Subcontractor's commitment to perform the
1317 work at the stated price.

1318 A prospective respondent or bidder on a County Solicitation for which respondents or
1319 bidders are not initially evaluated based on price, or for which the project scope is not
1320 predefined, shall submit as required in the solicitation such documentation as required
1321 by the Office of EBO to affirm its intent to meet the subcontracting requirements
1322 indicated in the solicitation. Failure of a respondent or bidder to commit as required
1323 in the solicitation to satisfying the SBE subcontracting goal shall render its response
1324 non-responsive.

1325 During the price proposal negotiation phase, respondents or bidders shall be required
1326 to submit:

- 1327 1. The name(s) of the SBE Subcontractor(s) it intends to use on the project;
- 1328 2. The percentage of prime contract dollars and the absolute dollar value of
1329 subcontracting services to be provided by each SBE;
- 1330 3. A description of the work that each SBE Subcontractor shall perform; and
- 1331 4. Documentation confirming the Subcontractor's commitment to perform the
1332 work at the stated price.

1333 A respondent or bidder may request a full or partial waiver of this mandatory
1334 subcontracting requirement for good cause by submitting the appropriate form(s) and
1335 documentation at the time as required in the Solicitation. Under no circumstances
1336 shall a waiver of a mandatory subcontracting requirement be granted without
1337 submission of adequate documentation of Good Faith Efforts by the respondent or
1338 bidder and careful review by the Office of EBO. The Office of EBO shall base its
1339 determination of a waiver request on criteria such as, but not limited to:

- 1340 1. Whether the requestor of the waiver has made Good Faith Efforts to
1341 subcontract with qualified and available SBEs;
- 1342 2. Whether subcontracting would be inappropriate and/or not provide a
1343 "Commercially Useful Function" under the scope of the contract; and
- 1344 3. Whether there are no certified SBE firms that are qualified and available to
1345 provide the goods or services required.

1346 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor
1347 to commit as required in the solicitation to satisfying the SBE subcontracting goal
1348 shall render its response non-Responsive. Provided, however, that on any prime
1349 contract valued under \$10 million, if the Prime Contractor is a certified SBE firm,
1350 then the Prime Contractor is allowed to self-perform up to the entire SBE
1351 subcontracting goal amount with its own forces. To the extent that the certified SBE
1352 Prime Contractor does not self-perform a portion of the SBE subcontracting goal, it
1353 shall be responsible for complying with all other requirements of this API for that
1354 portion of work that is subcontracted. This self-performance option for certified SBE
1355 Prime Contractors may be suspended at the discretion of the Director of the Office of
1356 EBO or designee in the event he or she determines that the adverse cumulative effect
1357 of the use of this self-performance option upon subcontractor opportunities is too
1358 great.

1359 In the absence of a waiver granted by the Office of EBO or the self-performance of a
1360 portion or all of the SBE subcontracting goal by a certified SBE Prime Contractor, the
1361 failure of a Prime Contractor to attain a subcontracting goal for SBE participation in
1362 the performance of its contract or otherwise comply with the provisions of this API
1363 shall be considered a material breach of contract, grounds for termination of that
1364 contract with the County, and shall be subject to any penalties and sanctions available
1365 under the terms of the EBO Ordinance, its contract terms with the County, or by law.

1366 A Prime Contractor is only permitted to substitute another subcontractor for a
1367 designated SBE subcontractor for cause, that is unwilling or unable to perform.
1368 Substitutions shall be done with like certified S/M/WBEs in order to maintain the
1369 participation percentages submitted with the bid or proposal. ~~and~~The Prime is
1370 required to notify and obtain prior written approval from the Office of EBO in advance
1371 of any such substitution of a designated SBE subcontractor, or reduction in
1372 subcontract scope, unless such reduction in scope is the direct and immediate result
1373 of a County-mandated change order or contract amendment, or the County has

1374 mandated the decertification, suspension, debarment, ~~graduation~~ or termination of a
1375 designated SBE Subcontractor. However, under such circumstances, the Prime
1376 Contractor shall undertake Good Faith Efforts to replace the expired, decertified,
1377 suspended, debarred, graduated or terminated SBE with one or more other certified
1378 SBE Subcontractors and shall submit a waiver request to the Office of EBO in the
1379 event such Good Faith Efforts are unsuccessful.

1380 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
1381 shall be required to submit accurate progress payment information with each invoice
1382 regarding each of its Subcontractors, including SBE Subcontractors. The Originating
1383 Department shall audit the reported payments to SBE and non-SBE Subcontractors to
1384 ensure that the Prime Contractor's reported subcontract participation is accurate.
1385 County contracts with Prime Contractors shall include clauses requiring Prime
1386 Contractors to pay Subcontractors in compliance with Florida prompt payment laws,
1387 and such clauses shall mandate that in the event of a Prime Contractor's non-
1388 compliance regarding such payments, the Prime Contractor shall be subject to any
1389 penalties and sanctions available under the terms of the EBO Ordinance, its contract
1390 terms with the County, or by law.

1391 (4) *Professional Services (Race-and Gender-Conscious Remedies)*. The GSC shall consider
1392 establishment of an overall M/WBE Annual Aspirational Goal in accordance with
1393 subsection 'a' below and, in addition, shall review each prospective County Professional
1394 Services Formal Solicitation in advance of its public release and advertisement, and shall
1395 make a determination whether to apply any of the other Race- and Gender-Conscious APIs
1396 to those Professional Services solicitations based upon the following criteria:

- 1397 1. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious
1398 APIs indicate that Professional Services contracts of this type have exhibited
1399 significant disparities in the utilization of available M/WBE Subcontractors and/or
1400 M/WBE Prime Contractors;

- 1401 2. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any
1402 such disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime
1403 Contractors based upon past contract Award and Payment data;
- 1404 3. Whether a particular API is the least burdensome available remedy to non-M/WBE
1405 respondents or bidders that is narrowly-tailored and that can effectively eliminate the
1406 disparities in the utilization of M/WBEs in Professional Services contracts; and
- 1407 4. Whether the particular API is appropriate for the specific type of Professional Services
1408 contract being procured.

1409 Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs
1410 to Professional Services solicitations, it shall provide an explanation in the solicitation
1411 documents of its reasons for doing so based upon its determinations pursuant to these
1412 criteria. In making such determinations, the GSC may also take into consideration the
1413 experiences of other jurisdictions within Palm Beach County for Professional Services.

- 1414 a. *Annual Aspirational M/WBE Goals.* For each fiscal year, the GSC shall establish non-
1415 mandatory annual aspirational percentage goals for overall M/WBE prime and
1416 subcontract participation on County Professional Services contracts.

1417 The Annual Aspirational Goals for M/WBE prime contract participation in County
1418 Professional Services contracts have initially been established at twenty-three (23)
1419 percent MBE and nineteen (19) percent WBE respectively of the total cumulative
1420 professional services prime contract dollars to be awarded and spent on an annual
1421 basis, and at twenty-five (25) percent MBE and twenty-one (21) percent WBE
1422 respectively of the total cumulative professional services subcontract dollars to be
1423 awarded and spent on an annual basis. These annual aspirational goals are based upon
1424 the M/WBE availability estimates by industry set forth in accordance with the
1425 County's 2017 Disparity Study findings.

1426 Each Annual Aspirational Goal is to be reviewed on an annual basis for potential
1427 adjustment by the GSC based upon the M/WBE availability by industry segment in
1428 accordance with the County's 2017 Disparity Study findings, along with relative

1429 M/WBE availability data through eCMS and the actual utilization of M/WBEs
1430 reflected therein to be collected by the County through its CBR system, and the actual
1431 utilization of M/WBEs reflected therein.

1432 Annual Aspirational Goals shall not be routinely applied to individual Solicitations,
1433 but are intended to serve as a benchmark against which to measure the overall
1434 effectiveness of the ~~EBO~~ Program on an annual basis in addressing identified
1435 disparities, and to gauge the need for future adjustments to the mix and aggressiveness
1436 of remedies and APIs being applied pursuant to this EBO Ordinance.

1437 Annual Aspirational Goals may be stated only in those County Solicitations that do
1438 not contain contract-specific S/M/WBE goals, and when provided, shall be advisory
1439 only, and must also be accompanied by the full definition of the term as stated in this
1440 EBO Ordinance.

- 1441 b. *M/WBE Evaluation Preferences for Professional Services.* Under this API, evaluation
1442 preference points shall be awarded on a sliding scale from zero up to fifteen (15)
1443 percent of the total available evaluation points for scoring of proposals to those firms
1444 responding to professional services solicitations. The sliding scale shall be based upon
1445 the relative level of M/WBE dollar participation that has been committed to on the
1446 prime respondent's or bidder's team (e.g., zero M/WBE participation on a prime
1447 respondent's or bidder's team shall yield zero evaluation points, whereas the proposal
1448 from the prime respondent or bidder that proposes achieving the maximum M/WBE
1449 participation among all prime respondents or bidders, at the prime contract and
1450 subcontract levels combined, shall yield award of fifteen (15) evaluation preference
1451 points out of one hundred (100) to that respondent or bidder; and a prime respondent's
1452 or bidder's team that achieves only half as many dollars in M/WBE participation as
1453 the firm with the greatest M/WBE dollar participation at the prime contract and
1454 subcontract levels combined shall be awarded seven and one-half (7.5) evaluation
1455 points out of one hundred (100).

1456 c. *M/WBE Subcontracting Goals for Professional Services.* The GSC, on a contract-by-
1457 contract basis, may require that a predetermined percentage of a specific Professional
1458 Services contract, up to forty (40) percent, be subcontracted to eligible M/WBEs (i.e.,
1459 certified M/WBE firms owned by African-American, Hispanic-American, Asian-
1460 American, Native American, and non-minority women persons). Factors to be
1461 considered by the GSC in making this determination shall include the relative
1462 availability of M/WBE firms to perform Commercially Useful Functions on the
1463 specific contract weighted according to the relative dollar value of the construction
1464 sub-specialties available for subcontracting.

1465 A prospective respondent or bidder on a County solicitation, for which price and scope
1466 are defined, shall submit at the time as required in the solicitation such documentation
1467 as required by the County that provides:

- 1468 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- 1469 2. The percentage of prime contract dollars and the absolute dollar value of
1470 subcontracting services to be provided by each M/WBE;
- 1471 3. A description of the work that each M/WBE Subcontractor shall perform; and
- 1472 4. Documentation confirming the Subcontractor's commitment to perform the
1473 work at the stated price.

1474 A prospective respondent or bidder to a County Solicitation, for which project scope
1475 is not predefined, shall submit at the time as required in the Solicitation such
1476 documentation as required by the County to affirm its intent to meet the
1477 subcontracting requirements indicated in the solicitation. In the absence of a waiver
1478 request granted by the Office of EBO, failure of a respondent or bidder to commit as
1479 required in the solicitation to satisfying the M/WBE subcontracting goal shall render
1480 its response non-responsive.

1481 During the price proposal negotiation phase, or prior to contract award for CCNA
1482 Services, respondents or bidders shall be required to submit:

- 1483 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;

- 1484 2. The percentage of prime contract dollars and the absolute dollar value of
1485 subcontracting services to be provided by each M/WBE; and
1486 3. A description of the work that each M/WBE Subcontractor shall perform.

1487 A respondent or bidder may request a full or partial waiver of this mandatory
1488 subcontracting requirement for good cause by submitting the appropriate form(s) and
1489 documentation at the time as required in the Solicitation. Under no circumstances
1490 shall a waiver of a mandatory subcontracting requirement be granted without
1491 submission of adequate documentation of Good Faith Efforts by the respondent or
1492 bidder and careful review by the Office of EBO. The Office of EBO shall base its
1493 determination on a waiver request on criteria such as, but not limited to:

- 1494 1. Whether the requestor of the waiver has made Good Faith Efforts to
1495 subcontract with qualified and available M/WBEs;
1496 2. Whether subcontracting would be inappropriate and/or not provide a
1497 "Commercially Useful Function" under the scope of the contract; and
1498 3. Whether there are no certified M/WBE firms that are qualified and available
1499 to provide the goods or services required.

1500 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor
1501 to commit as required in the Solicitation to satisfying the M/WBE subcontracting goal
1502 shall render its response non-responsive. Provided, however, that on any prime
1503 contract valued under one million dollars (\$1,000,000.00), if the Prime Contractor is
1504 a certified M/WBE firm, then the Prime Contractor is allowed to self-perform up to
1505 the entire M/WBE subcontracting goal amount with its own forces. To the extent that
1506 the certified M/WBE Prime Contractor does not self-perform a portion of the M/WBE
1507 subcontracting goal, it shall be responsible for complying with all other requirements
1508 of this API for that portion of work that is subcontracted. This self-performance option
1509 for certified M/WBE Prime Contractors may be suspended at the discretion of the
1510 Director of the Office of EBO in the event he or she determines that the adverse

1511 cumulative effect of the use of this self-performance option upon subcontractor
1512 opportunities is too great.

1513 In the absence of a waiver granted by the Office of EBO, or the self-performance of
1514 a portion or all of the M/WBE subcontracting goal by a certified M/WBE Prime
1515 Contractor, the failure of a Prime Contractor to attain a subcontracting goal for
1516 M/WBE participation in the performance of its contract or otherwise comply with the
1517 provisions of this API shall be considered a material breach of contract, grounds for
1518 termination of that contract with the County and shall be subject to any penalties and
1519 sanctions available under the terms of the EBO Ordinance, its contract with the
1520 County, or by law.

1521 A Prime Contractor is required to notify and obtain prior written approval from the
1522 Director of the Office of EBO in advance of any reduction in subcontract scope, unless
1523 such reduction in scope is the direct and immediate result of a County-mandated
1524 change order or contract amendment, or the County has mandated the decertification,
1525 suspension, ~~graduation~~ or termination of a designated M/WBE Subcontractor,
1526 However, under such circumstances, the Prime Contractor shall undertake Good Faith
1527 Efforts to replace the expired, decertified, suspended, ~~graduated~~ or terminated
1528 M/WBE Subcontractor(s) with one (1) or more other certified M/WBE
1529 Subcontractor(s) and shall submit a waiver request to the Office of EBO in the event
1530 such Good Faith Efforts are unsuccessful.

1531 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
1532 shall be required to submit accurate progress payment information with each invoice
1533 regarding each of its Subcontractors, including S/M/WBE Subcontractors. The
1534 Originating Department shall audit the reported payments to S/M/WBE and non-
1535 S/M/WBE Subcontractors to ensure that the Prime Contractors' reported subcontract
1536 participation is accurate. Absent a waiver from the Office of EBO, a Prime
1537 Contractor's failure to reach the required level of S/M/WBE subcontracting shall be
1538 considered a material breach of contract. County contracts with Prime Contractors

1539 shall include clauses requiring Prime Contractors to pay Subcontractors in compliance
1540 with Florida Prompt Payment Law, and such clauses shall mandate that in the event
1541 of Prime Contractor non-compliance regarding such payments, the Prime Contractor
1542 shall be subject to any penalties and sanctions available under the terms of the EBO
1543 Ordinance, its contract with the County, or by law.

1544 d. *M/WBE Segmented Subcontracting Goals for Professional Services.* Under this API,
1545 the GSC may establish M/WBE Segmented Subcontracting Goals on an individual
1546 County contract wherein an overall combined M/WBE goal is accompanied by
1547 subsets of one (1) or more smaller goals that specifically target the participation of a
1548 particular segment of Minority Group Member segments or the WBE segment based
1549 upon that segment's relative availability. Such segmented goals shall specifically
1550 target the participation of a particular segment of business enterprises owned and
1551 controlled by women or certain Minority Group Members (e.g., African-Americans)
1552 based upon relative availability, as well as the existence of consistently and
1553 significantly greater patterns of underutilization and disparity within an industry as
1554 compared to other gender and Minority Group Member categories of M/WBEs. (For
1555 example, if an overall M/WBE subcontracting goal is set at forty-six (46) percent on
1556 a given contract, the segmented subcontracting goal may require that at least ten (10)
1557 percent of that forty-six (46) percent shall be satisfied through the utilization of
1558 African-American subcontractors.) The application of Segmented M/WBE
1559 Subcontracting Goals is intended to ensure that those segments of M/WBEs that have
1560 been most significantly and persistently underutilized receive a fair measure of
1561 remedial assistance. In all other respects, M/WBE Segmented Subcontracting Goals
1562 shall operate in the same manner as the M/WBE Subcontracting Goals set forth in this
1563 EBO Ordinance.

1564 e. *M/WBE Vendor Rotation.* Under this API, there are two options for the selective use
1565 of a prequalified panel of M/WBE vendors by the County:

1566 Option 1

1567 For smaller non-CCNA County professional services contracts valued at less than one
1568 hundred fifty thousand dollars (~~\$100,000.00~~150,000), a prequalified panel of M/WBE
1569 professional services firms may be assigned work tasks on a rotating basis.
1570 Periodically, the M/WBE Vendor Rotation list shall be re-ordered according to the
1571 firm with the least amount of dollars received to the most dollars received from the
1572 County based upon the cumulative dollars received within the past year.

1573 Option 2

1574 When the County requires price competition in its Solicitations, and when quotations
1575 from several firms are required before award of contracts valued at less than one
1576 hundred fifty thousand dollars (~~\$100,000.00~~150,000), Solicitations for price
1577 quotations shall be affirmatively and directly sought from the next three (3) firms
1578 appearing in the M/WBE Vendor Rotation list of prequalified firms for that type of
1579 professional service prior to contract award. With each successive solicitation of
1580 quotations of this type, the list shall be rotated to the next group of three (3) M/WBE
1581 vendors appearing in the rotation. In selecting this API, the GSC shall consider the
1582 extent to which the County has been unsuccessful in obtaining bids from available
1583 M/WBE professional services firms.

1584 f. *M/WBE Required Quotations for Contracts Up to ~~five~~ten thousand dollars*
1585 *(~~\$5,000.00~~10,000) and Required M/WBE Solicitations for non-CCNA Professional*
1586 *Services Contracts Valued Under one hundred fifty thousand dollars*
1587 *(~~\$100,000.00~~150,000). Under this API, the GSC may require direct affirmative*
1588 *Solicitation of quotations from up to three (3) M/WBE firms for certain categories of*
1589 *small DPO professional services contracts valued at less than ~~five~~ten thousand dollars*
1590 *(~~\$5,000.00~~10,000). For larger non-CCNA professional services contracts valued*
1591 *below one hundred fifty thousand dollars (~~\$100,000.00~~150,000), the GSC shall*
1592 *require the County to directly and affirmatively solicit at least two (2) to three (3)*
1593 *quotations or proposals from M/WBE professional services firms before the County*
1594 *may make an award. In selecting the use of this API, the GSC shall consider whether*

1595 the County has had difficulty in obtaining prime contract bids or proposals from
1596 available M/WBE firms for that type of non-CCNA professional services contracts.

1597 (5) *Goods and Other Services (Race- and Gender-Neutral Remedies).*

1598 a. *SBE Vendor Rotation.* Under this API, there are two (2) options for the selective use
1599 of a prequalified panel of SBE vendors by the County:

1600 Option 1

1601 For smaller County Goods and Other Services contracts valued at less than one
1602 hundred fifty thousand dollars (~~\$100,000.00~~150,000), a prequalified panel of SBE
1603 Goods and Other Services firms may be assigned work tasks on a rotating basis.
1604 Periodically, the SBE Vendor Rotation list shall be re-ordered according to the firm
1605 with the least amount of dollars received to the most dollars received from the County
1606 based upon the cumulative dollars received within the past year.

1607 Option 2

1608 When the County requires price competition in its Solicitations, and when quotations
1609 from several firms are required before award of contracts valued at less than one
1610 hundred fifty thousand dollars (~~\$100,000.00~~150,000), Solicitations for price
1611 quotations shall be affirmatively and directly sought from the next three (3) firms
1612 appearing in the SBE Vendor Rotation list of prequalified firms for that type of
1613 professional service prior to contract award. With each successive solicitation of
1614 quotations of this type, the list shall be rotated to the next group of three SBE vendors
1615 appearing in the rotation.

1616 b. *SBE Reserve for Contracts ~~Below~~ below Five ~~Ten~~ Thousand Dollars*
1617 *(~~\$5,000.00~~10,000) and Required SBE Quotations on Informal Solicitations ~~Below~~*
1618 *below One Hundred Fifty Thousand Dollars (~~\$100,000.00~~150,000).* Under this API,
1619 the GSC may reserve certain categories of small Goods and Other Services contracts
1620 valued at less than ~~five~~ ten thousand dollars (~~\$5,000.00~~10,000) exclusively for
1621 competition among SBE Goods and Other firms. For larger Goods and Other Services

1622 contracts valued below one hundred fifty thousand dollars (~~\$100,000.00~~150,000), the
1623 GSC shall require at least two to three quotations or proposals be affirmatively
1624 solicited directly from SBE Goods and Other Services firms before the County may
1625 make an award. In selecting the use of this API, the GSC shall consider whether the
1626 County has had difficulty in obtaining prime contract bids or proposals from available
1627 SBE firms for that type of Good or Other Service contract.

1628 c. *SBE Evaluation Preference for Prime Respondents or Bidders.* Under this API, there
1629 are two (2) options available for the GSC to enhance contract opportunities for SBE
1630 Prime respondents or bidders on "best value" Other Services contracts where low bid
1631 price is not the only consideration in contract award:

1632 Option 1

1633 An SBE evaluation preference of up to fifteen (15) percent of the total number of
1634 available evaluation points for scoring of proposals shall be reserved for all SBE
1635 prime respondents or bidders on County Other Services contracts valued at less than
1636 five hundred thousand dollars (\$500,000.00). SBE Prime respondents must perform
1637 the majority of the associated work under this API.

1638 Option 2

1639 Evaluation preference points shall be awarded on a sliding scale from zero up to
1640 fifteen (15) percent of the total available evaluation points for scoring of proposals to
1641 those firms bidding on Other Services contracts valued at five hundred thousand
1642 dollars (\$500,000.00) or greater. The sliding scale shall be based upon the relative
1643 level of SBE dollar participation that has been committed to on the prime respondent's
1644 or bidder's team (e.g., zero SBE participation on a prime respondent's or bidder's team
1645 shall yield zero evaluation points, whereas the maximum SBE participation among all
1646 prime respondents or bidders, at the prime contract and subcontract levels combined,
1647 shall yield award of fifteen (15) evaluation preference points out of one hundred
1648 (100); and a prime respondent's or bidder's team that achieves only half as many
1649 dollars in SBE participation as the firm with the greatest SBE dollar participation at

1650 the prime contract and subcontract levels combined shall be awarded seven and one-
1651 half (7.5) evaluation points out of one hundred (100).

1652 d. *SBE Joint Venture Incentive for Other Services Contracts.* Under this API, the GSC
1653 may establish joint venture incentives for joint ventures between larger established
1654 firms and local SBE firms on Other Services contracts valued at greater than five
1655 million dollars (\$5,000,000.00). Such joint venture incentives may include: (1)
1656 additional option years for contracts; and/or (2) access to mobilization funds; and/or
1657 (3) evaluation preferences of up to fifteen (15) percent of all evaluation points to be
1658 assigned for joint ventures between two (2) or more certified SBE firms, or between
1659 SBE and non-SBE joint venture partners that have an overall minimum percentage
1660 (e.g., twenty (20) percent) SBE participation in ownership and management of the
1661 joint venture. The GSC should consider use of this API in circumstance when the
1662 County has a priority for promoting the growth of S/M/WBE capacity in a given
1663 industry segment.

1664 e. *SBE Subcontracting Goals for Other Services Contracts Valued at Greater Than Five*
1665 *Million Dollars (\$5,000,000.00).* For larger Other Services contracts valued at greater
1666 than five million dollars (\$5,000,000.00) wherein there are adequate numbers of
1667 commercially useful functions available for subcontracting purposes, the GSC may
1668 consider applying a mandatory subcontracting goal for the participation of SBE
1669 subcontractors. The Board has established a minimum mandatory goal of twenty (20)
1670 percent SBE participation for County contracts, provided that the Office of EBO shall
1671 agree to a reasonable reduction or waiver of this goal in instances where it can be
1672 factually demonstrated that there is inadequate availability of SBE prime and/or
1673 subcontractor firms qualified to perform Commercially Useful Functions that are
1674 valued at twenty (20) percent of the total estimated dollar value of the County contract.
1675 Prospective respondents or bidders shall be provided an adequate opportunity to
1676 formally request such waivers prior to bid opening based upon submission of adequate

1677 Good Faith Efforts documentation as specified by the Office of EBO and as stated in
1678 Solicitation language.

1679 Under this API, a prospective respondent or bidder to a County Solicitation shall
1680 submit at the time as required in the solicitation such documentation as required by
1681 the Office of EBO that provides:

- 1682 1. The name(s) of the SBE Subcontractor(s) it intends to use on the project;
- 1683 2. The percentage of prime contract dollars and the absolute dollar value of
1684 subcontracting services to be provided by each SBE;
- 1685 3. A description of the work that each SBE Subcontractor shall perform; and
- 1686 4. Documentation confirming the Subcontractor's commitment to perform the
1687 work at the stated price.

1688 A respondent or bidder may request a full or partial waiver of this mandatory
1689 subcontracting requirement for good cause by submitting the appropriate form(s) and
1690 documentation at the time as required in the Solicitation. Under no circumstances
1691 shall a waiver of a mandatory subcontracting requirement be granted without
1692 submission of adequate documentation of Good Faith Efforts by the respondent or
1693 bidder and careful review by the Office of EBO. The Office of EBO shall base its
1694 determination of a waiver request on criteria such as, but not limited to:

- 1695 1. Whether the requestor of the waiver has made Good Faith Efforts to
1696 subcontract with qualified and available SBEs;
- 1697 2. Whether subcontracting would be inappropriate and/or not provide a
1698 "Commercially Useful Function" under the scope of the contract; and
- 1699 3. Whether there are no certified SBE firms that are qualified and available to
1700 provide the goods or services required.

1701 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor
1702 to commit as required in the solicitation to satisfying the SBE subcontracting goal
1703 shall render its response non-responsive. Provided, however, that on any prime
1704 contract valued under \$10 million, if the Prime Contractor is a certified SBE firm,

1705 then the Prime Contractor is allowed to self-perform up to the entire SBE
1706 subcontracting goal amount with its own forces. To the extent that the certified SBE
1707 Prime Contractor does not self-perform a portion of the SBE subcontracting goal, it
1708 shall be responsible for complying with all other requirements of this API for that
1709 portion of work that is subcontracted. This self-performance option for certified SBE
1710 Prime Contractors may be suspended at the discretion of the Director of the Office of
1711 EBO or designee in the event he or she determines that the adverse cumulative effect
1712 of the use of this self-performance option upon subcontractor opportunities is too
1713 great.

1714 In the absence of a waiver granted by the Office of EBO or the self-performance of a
1715 portion or all of the SBE subcontracting goal by a certified SBE Prime Contractor, the
1716 failure of a Prime Contractor to attain a subcontracting goal for SBE participation in
1717 the performance of its contract or otherwise comply with the provisions of this API
1718 shall be considered a material breach of contract, grounds for termination of that
1719 contract with the County, and shall be subject to any penalties and sanctions available
1720 under the terms of the EBO Ordinance, its contract terms with the County, or by law.

1721 A Prime Contractor is only permitted to substitute another subcontractor for a
1722 designated SBE subcontractor for cause, that is unwilling and unable to perform.
1723 Substitutions shall be done with like certified S/M/WBEs in order to maintain the
1724 participation percentages submitted with the bid or proposal. and The Prime is
1725 required to notify and obtain prior written approval from the Office of EBO in advance
1726 of any such substitution of a designated SBE subcontractor, or reduction in
1727 subcontract scope, unless such reduction in scope is the direct and immediate result
1728 of a County-mandated change order or contract amendment, or the County has
1729 mandated the decertification, suspension, debarment, ~~graduation~~ or termination of a
1730 designated SBE Subcontractor. However, under such circumstances, the Prime
1731 Contractor shall undertake Good Faith Efforts to replace the expired, decertified,
1732 suspended, debarred, graduated or terminated SBE with one (1) or more other

1733 certified SBE Subcontractors and shall submit a waiver request to the Office of EBO
1734 in the event such Good Faith Efforts are unsuccessful.

1735 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
1736 shall be required to submit accurate progress payment information with each invoice
1737 regarding each of its Subcontractors, including SBE Subcontractors. The Originating
1738 Department shall audit the reported payments to SBE and non-SBE Subcontractors to
1739 ensure that the Prime Contractor's reported subcontract participation is accurate.
1740 County contracts with Prime Contractors shall include clauses requiring Prime
1741 Contractors to pay Subcontractors in compliance with Florida prompt payment laws,
1742 and such clauses shall mandate that in the event of a Prime Contractor's non-
1743 compliance regarding such payments, the Prime Contractor shall be subject to any
1744 penalties and sanctions available under the terms of the EBO Ordinance, its contract
1745 terms with the County, or by law.

1746 f. *SBE Price Preference.* Under this API, the GSC may apply certain purchasing
1747 procedures to increase SBE participation, including, but not limited to, purchases
1748 valued below the Formal Solicitation threshold amount set forth in the Purchasing
1749 Procurement Code, and purchases made by decentralized purchase orders (DPOs) for
1750 Goods and Other Services valued under ~~five-ten~~ ten thousand dollars (~~\$5,000.00~~10,000).
1751 The purchasing procedures shall include a provision that every effort will be made by
1752 buyers to contact all registered certified SBEs that are available within a particular
1753 commodity area for such purchases. The purchasing procedures shall also include a
1754 process so as to allow as many vendors as possible to compete in providing goods and
1755 services to Palm Beach County. The purchasing procedures shall also include a
1756 provision requiring awards of purchases to be made to the lowest responsive,
1757 responsible respondent or bidder unless a certified SBE's bid is within ten (10) percent
1758 of the lowest non-small business bid, in which case the award shall be made to the
1759 certified small business respondent or bidder submitting the lowest responsive,
1760 responsible bid at the price that it bid. This section shall not apply to procurement of

1761 Construction Services. SBE Prime respondents must perform the majority of the
1762 associated work under this API.

1763 (6) *Goods and Other Services (Race- and Gender-Conscious Remedies)*. The GSC shall
1764 consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with
1765 subsection 'a' below and, in addition, shall review each prospective County Goods and
1766 Other Services Formal Solicitation in advance of its public release and advertisement, and
1767 shall make a determination whether to apply any of the other Race- and Gender-Conscious
1768 APIs to those Good and Other Services Solicitations based upon the following criteria:

- 1769 1. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious
1770 APIs indicate that Goods and Other Services contracts of this type have exhibited
1771 significant disparities in the utilization of available M/WBE Subcontractors and/or
1772 M/WBE Prime Contractors;
- 1773 2. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any
1774 such disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime
1775 Contractors based upon past contract Award and Payment data;
- 1776 3. Whether a particular API is the least burdensome available remedy to non-M/WBE
1777 respondents or bidders that is narrowly-tailored and that can effectively eliminate the
1778 disparities in the utilization of M/WBEs in Goods and Other Services contracts; and
- 1779 4. Whether the particular API is appropriate for the specific type of Goods and Other
1780 Services contract being procured.

1781 Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs
1782 to Goods and Other Services Solicitations, it shall provide an explanation in the Solicitation
1783 documents of its reasons for doing so based upon its determinations pursuant to these
1784 criteria. In making such determinations, the GSC may also take into consideration the
1785 experiences of other jurisdictions within Palm Beach County for Goods and Other Services.

1786 a. *Annual Aspirational M/WBE Goals.* For each fiscal year, the GSC shall establish non-
1787 mandatory annual aspirational percentage goals for overall M/WBE prime and
1788 subcontract participation on County Goods and Other Services contracts.

1789 The Annual Aspirational Goals for M/WBE prime contract participation in County
1790 Goods and Other Services contracts have initially been established at sixteen (16)
1791 percent MBE and seventeen (17) percent WBE respectively of the total cumulative
1792 Goods and Other Services contract dollars to be awarded and spent on an annual basis.
1793 These annual aspirational goals are based upon the M/WBE availability estimates by
1794 industry set forth in accordance with the County's 2017 Disparity Study findings.

1795 Each Annual Aspirational Goal is to be reviewed on an annual basis for potential
1796 adjustment by the GSC based upon the M/WBE availability by industry segment in
1797 accordance with the County's 2017 Disparity Study findings, along with relative
1798 M/WBE availability data to be collected by the County through its ~~CBR system,~~ eCMS
1799 and the actual utilization of M/WBEs reflected therein.

1800 Annual Aspirational Goals shall not be routinely applied to individual solicitations,
1801 but are intended to serve as a benchmark against which to measure the overall
1802 effectiveness of the EBO Program on an annual basis in addressing identified
1803 disparities, and to gauge the need for future adjustments to the mix and aggressiveness
1804 of remedies and APIs being applied pursuant to this EBO Ordinance.

1805 Annual Aspirational Goals may be stated only in those County Solicitations that do
1806 not contain contract-specific S/M/WBE goals, and when provided, shall be advisory
1807 only, and must also be accompanied by the full definition of the term as stated in this
1808 EBO Ordinance.

1809 b. *M/WBE Vendor Rotation.* Under this API, there are two options for the selective use
1810 of a prequalified panel of M/WBE vendors by the County:

1811 Option 1

1812 For smaller Goods and Other Services contracts valued at less than one hundred fifty
1813 thousand (\$100,000150,000), a prequalified panel of M/WBE Goods or Other
1814 Services firms may be assigned work tasks or supply orders on a rotating basis.
1815 Periodically, the M/WBE Vendor Rotation list shall be re-ordered according to the
1816 firm with the least amount of dollars received to the most dollars received from the
1817 County based upon the cumulative dollars received within the past year.

1818 Option 2

1819 When the County requires price competition in its Solicitations, and when quotations
1820 from several firms are required before award of contracts valued at less than one
1821 hundred fifty thousand (\$100,000150,000), solicitations for price quotations shall be
1822 affirmatively and directly sought from the next three firms appearing in the M/WBE
1823 Vendor Rotation list of prequalified firms for that type of Good or Other Service prior
1824 to contract award. With each successive solicitation of quotations of this type, the list
1825 shall be rotated to the next group of three M/WBE vendors appearing in the rotation.
1826 In selecting this API, the GSC shall consider the extent to which the County has been
1827 unsuccessful in obtaining bids from available M/WBE Goods and Other Services
1828 firms.

1829 c. *Voluntary M/WBE Distributorship Development Program.* The GSC may apply this
1830 API to any solicitation and subsequent award for Goods contracts that have a base
1831 term with contract extensions for the County's purchase of Goods and related services
1832 when each of the following conditions has been met:

- 1833 1. Manufacturers often sell such goods or supplies to the County indirectly
1834 through authorized distributorships or authorized dealers;
- 1835 2. One or more such manufacturers indirectly competing for such County supply
1836 requirements contracts have no such authorized distributorships or authorized
1837 dealers that are also certified as M/WBE firms, that are headquartered or have
1838 a Significant Business Presence within Palm Beach County, and are available
1839 to sell such goods and supplies to the County;

1840 3. At least one manufacturer of such goods and supplies has established, or has
1841 agreed to establish, an authorized distributorship or authorized dealer that is
1842 certified as an M/WBE, is headquartered or has a Significant Business
1843 Presence in Palm Beach County through which the manufacturer has agreed
1844 to sell the goods or supplies to the County for the duration of the contract,
1845 including all of the contract's option years;

1846 4. The Office of EBO has examined the terms of the authorized distributorship or
1847 authorized dealer agreement entered into between the manufacturer and its
1848 certified M/WBE authorized distributorship or authorized dealer and determined
1849 that the M/WBE distributor or dealer is headquartered or has a Significant
1850 Business Presence in Palm Beach County, and determined that such terms are
1851 non-discriminatory in that the certified M/WBE's agreement is no different from
1852 that of non-M/WBE authorized distributorships and authorized dealers for the
1853 manufacturer regarding such matters as scope of geographical territory
1854 allocation, scope of potential public and private sector customers, scope of
1855 product line, price lists for goods and supplies, volume discounts in pricing,
1856 rebates, credit terms, delivery terms, marketing and technical support from
1857 manufacturer, and any other material terms that may affect the competitive
1858 viability of the authorized distributorship or authorized dealer.

1859 Provided the manufacturer and its certified M/WBE authorized distributorship
1860 or authorized dealer meets conditions 3. and 4. above, and provided further that
1861 the certified M/WBE authorized distributorship or authorized dealer has won a
1862 bid for the supply of such Goods and/or related services to the County, under this
1863 API, notwithstanding any provision in this EBO Ordinance to the contrary, the
1864 Director of the Office of EBO may extend the length of the supply contract by
1865 additional option years without rebidding the contract, and/or the County may
1866 accelerate payment of invoices. The Office of EBO and Originating Department
1867 shall carefully monitor the contract to ensure that the certified M/WBE
1868 authorized distributorship or authorized dealer is performing a Commercially

1869 Useful Function under the contract, and that it is being treated in accordance with
1870 the terms of its agreement with the manufacturer. This assessment shall be made
1871 by the Office of EBO prior to the County's exercise of any option year on the
1872 supply contract. In the event the Office of EBO determines that these conditions
1873 have not been met, the County shall decline to exercise the next option year on
1874 the supply contract and shall instead re-bid the contract.

1875 d. *Mandatory M/WBE Distributorship Development Program.* In instances wherein
1876 manufacturers have violated the County's Commercial Nondiscrimination Policy set
1877 forth in Resolution R2017-1770 as amended by excluding or discriminating against
1878 M/WBE suppliers that seek to become authorized dealers/distributors, this API
1879 requires the manufacturer to establish such an authorized dealership with an M/WBE
1880 supplier under the terms of API subsection 2-80.27(6)c. as a condition for being
1881 eligible to sell commodities to the County.

1882 e. *M/WBE Evaluation Preferences.* Under this API, evaluation preference points shall
1883 be awarded on a sliding scale from zero up to fifteen (15) percent of the total available
1884 evaluation points for scoring of proposals to those firms bidding on "best value" Other
1885 Services contracts valued at less than five hundred thousand (\$500,000.00) The
1886 sliding scale shall be based upon the relative level of M/WBE dollar participation that
1887 has been committed to on the prime respondent's or bidder's team (e.g., zero M/WBE
1888 participation on a prime respondent's or bidder's team shall yield zero M/WBE
1889 evaluation preference points, whereas the proposal from the prime respondent or
1890 bidder that proposes achieving the maximum M/WBE participation among all prime
1891 respondents or bidders, at the prime contract and subcontract levels combined, shall
1892 yield award of all fifteen (15) M/WBE evaluation preference points to that respondent
1893 or bidder out of the total overall one hundred (100) available evaluation points; and a
1894 prime respondent's or bidder's team that achieves only half as many dollars in M/WBE
1895 participation as the firm with the greatest M/WBE dollar participation at the prime
1896 contract and subcontract levels combined shall be awarded seven and one-half (7.5)

1897 evaluation points out of the fifteen M/WBE evaluation preference points).
1898 Alternatively, the GSC may restrict award of the fifteen (15) percent evaluation
1899 preference to those M/WBE Other Services firms that have not previously been
1900 awarded a contract by the County. In such instances, the M/WBE firms shall remain
1901 eligible for such fifteen (15) percent evaluation preferences for up to one (1) year from
1902 date of their first contract award, or until cumulative total payments on County
1903 contracts (prime contract and subcontract dollars) to that new entrant firm have
1904 reached one million dollars (\$1,000,000.00), whichever period of time is longer.

1905 f. *M/WBE Joint Venture Incentives.* Under this API, for contracts valued at greater than
1906 five million dollars (\$5,000,000.00), the GSC may establish incentives to promote
1907 joint ventures between larger established firms and M/WBE firms, or between and
1908 among SBE and M/WBE firms. For "best value" contracts wherein low price is not
1909 the only criterion for award, the incentive may be for up to fifteen (15) percent of one
1910 hundred (100) evaluation points to be reserved for qualifying S/M/WBE joint ventures
1911 wherein the certified M/WBE joint venture partner owns fifty (50) percent or greater,
1912 and performs fifty (50) percent or greater of the work, of the overall joint venture.
1913 Proportionately fewer evaluation preference points would be awarded to the joint
1914 venture based upon lesser percentages of ownership by the M/WBE partner.
1915 Alternatively, incentives may include bonding waivers, assignment of multiple task
1916 orders on job order contracts totaling up to one million dollars (\$1,000,000.00) in
1917 value, and accelerated payments or mobilization payments to be afforded to qualifying
1918 S/M/WBE joint ventures. This API should be reserved for those occasions wherein
1919 there are sufficient numbers of qualified M/WBE firms available of sufficient size to
1920 meaningfully joint venture for purposes of performing larger contracts. Another
1921 consideration for application of this API is whether there are larger non-local
1922 S/M/WBE firms, or larger S/M/WBE firms that may have graduated from eligibility
1923 for the program, that are available and willing to joint venture with certified smaller
1924 local M/WBEs for purposes of enhancing local capacity at the prime contract level.

1925 g. *M/WBE Subcontracting Goals of Other Services Contracts Valued at Greater than*
1926 *Five Million Dollars (\$5,000,000.00)*. The GSC may, on a contract-by-contract basis,
1927 require that a predetermined percentage up to forty (40) percent of a specific Other
1928 Services contract that is valued at greater than five million dollars (\$5,000,000.00)
1929 shall be subcontracted to eligible M/WBEs (i.e., certified M/WBE firms owned by
1930 African-American, Hispanic, and Caucasian female persons). Factors to be considered
1931 by the GSC in making this determination shall include the relative availability of
1932 M/WBE firms to perform Commercially Useful Functions on the specific contract
1933 weighted according to the relative dollar value of the construction sub-specialties
1934 available for subcontracting.

1935 A prospective respondent or bidder on a County solicitation, for which price and scope
1936 are defined, shall submit at the time as required in the solicitation such documentation
1937 as required by the County that provides:

- 1938 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- 1939 2. The percentage of prime contract dollars and the absolute dollar value of
1940 subcontracting services to be provided by each M/WBE;
- 1941 3. A description of the work that each M/WBE Subcontractor shall perform; and
- 1942 4. Documentation confirming the Subcontractor's commitment to perform the
1943 work at the stated price.

1944 A prospective respondent or bidder to a County solicitation, for which respondents or
1945 bidders are not initially evaluated based on price, or for which project scope is not
1946 predefined, shall submit at the time as required in the solicitation such documentation
1947 as required by the County to affirm its intent to meet the subcontracting requirements
1948 indicated in the solicitation. In the absence of a waiver request granted by the Office
1949 of EBO, failure of a respondent or bidder to commit as required in the solicitation to
1950 satisfying the M/WBE subcontracting goal shall render its response non-responsive.

1951 During the price proposal negotiation phase, respondents or bidders shall be required
1952 to submit:

- 1953 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- 1954 2. The percentage of prime contract dollars and the absolute dollar value of
- 1955 subcontracting services to be provided by each M/WBE; and
- 1956 3. A description of the work that each M/WBE Subcontractor shall perform.

1957 A respondent or bidder may request a full or partial waiver of this mandatory

1958 subcontracting requirement for good cause by submitting the appropriate form(s) and

1959 documentation at the time as required in the solicitation. Under no circumstances shall

1960 a waiver of a mandatory subcontracting requirement be granted without submission

1961 of adequate documentation of Good Faith Efforts by the respondent or bidder and

1962 careful review by the Office of EBO. The Office of EBO shall base its determination

1963 on a waiver request on criteria such as, but not limited to:

- 1964 1. Whether the requestor of the waiver has made Good Faith Efforts to
- 1965 subcontract with qualified and available M/WBEs;
- 1966 2. Whether subcontracting would be inappropriate and/or not provide a
- 1967 "Commercially Useful Function" under the scope of the contract; and
- 1968 3. Whether there are no certified M/WBE firms that are qualified and available
- 1969 to provide the goods or services required.

1970 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor

1971 to commit as required in the Solicitation to satisfying the M/WBE subcontracting goal

1972 shall render its response non-responsive. Provided, however, that on any prime

1973 contract valued under five million dollars (\$5,000,000.00), if the Prime Contractor is

1974 a certified M/WBE firm, then the Prime Contractor is allowed to self-perform up to

1975 the entire M/WBE subcontracting goal amount with its own forces. To the extent that

1976 the certified M/WBE Prime Contractor does not self-perform a portion of the M/WBE

1977 subcontracting goal, it shall be responsible for complying with all other requirements

1978 of this API for that portion of work that is subcontracted. This self-performance option

1979 for certified M/WBE Prime Contractors may be suspended at the discretion of the

1980 Director of the Office of EBO in the event he or she determines that the adverse

1981 cumulative effect of the use of this self-performance option upon subcontractor
1982 opportunities is too great.

1983 In the absence of a waiver granted by the Office of EBO, or the self-performance of
1984 a portion or all of the M/WBE subcontracting goal by a certified M/WBE Prime
1985 Contractor, the failure of a Prime Contractor to attain a subcontracting goal for
1986 M/WBE participation in the performance of its contract or otherwise comply with the
1987 provisions of this API shall be considered a material breach of contract, grounds for
1988 termination of that contract with the County and shall be subject to any penalties and
1989 sanctions available under the terms of the EBO Ordinance, its contract with the
1990 County, or by law.

1991 A Prime Contractor is only permitted to substitute a certified S/M/WBE that is
1992 unwilling and unable to perform. Substitutions shall be done with like certified
1993 S/M/WBEs in order to maintain the participation percentages submitted with the bid
1994 proposal. The Prime is required to notify and obtain prior written approval from the
1995 Director of the Office of EBO or designee in advance of any reduction in subcontract
1996 scope, unless such reduction in scope is the direct and immediate result of a County-
1997 mandated change order or contract amendment, or the County has mandated the
1998 decertification, suspension, ~~graduation~~ or termination of a designated M/WBE
1999 Subcontractor, However, under such circumstances, the Prime Contractor shall
2000 undertake Good Faith Efforts to replace the ~~expired, decertified, suspended, graduated~~
2001 or terminated M/WBE Subcontractor(s) with one (1) or more other certified M/WBE
2002 Subcontractor(s) and shall submit a waiver request to the Office of EBO in the event
2003 such Good Faith Efforts are unsuccessful.

2004 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
2005 shall be required to submit accurate progress payment information with each invoice
2006 regarding each of its Subcontractors, including S/M/WBE Subcontractors. The
2007 Originating Department shall audit the reported payments to S/M/WBE and non-
2008 S/M/WBE Subcontractor to ensure that the Prime Contractors' reported subcontract

2009 participation is accurate. Absent a waiver from the Office of EBO, a Prime
2010 Contractor's failure to reach the required level of S/M/WBE subcontracting shall be
2011 considered a material breach of contract. County contracts with Prime Contractors
2012 shall include clauses requiring Prime Contractors to pay Subcontractors in compliance
2013 with Florida Prompt Payment Law, and such clauses shall mandate that in the event
2014 of Prime Contractor non-compliance regarding such payments, the Prime Contractor
2015 shall be subject to any penalties and sanctions available under the terms of the EBO
2016 Ordinance, its contract with the County, or by law.

2017 **SECTION 8. PROGRAM ADMINISTRATION.** Section 2-80.28 of the Palm Beach County Code
2018 is hereby amended to read as follows:

2019 (a) *Originating Departments—Duties and Responsibilities.* It shall be the responsibility of the
2020 ~~Purchasing-Procurement~~ Department to ensure that solicitations emanating from the department
2021 adhere to the procedures and provisions set forth in this EBO Program. The Originating
2022 Department Director or Manager or designee shall assume joint responsibility with ~~Purchasing~~
2023 ~~the Procurement Department~~ for assuring vendor and contractor compliance with the policy
2024 objectives of this ~~EBO Program~~ program (as stated within the material Solicitation and material
2025 deliverable requirements). The Originating Department shall review, on a continuing basis, all
2026 aspects of the Program's operations that it is involved in to any degree, and make adjustments
2027 to its efforts, as necessary, to assure that the EBO Ordinance's purpose is being achieved. The
2028 Originating Department, in collaboration with ~~Purchasing-the Procurement Department~~ and the
2029 Office of EBO, shall ensure the following actions are taken to ensure that S/M/WBEs have the
2030 maximum practicable opportunity to participate on County contracts:

2031 (1) Post all Formal Solicitations on the County's website, for the solicitation period required
2032 by state law for the type of procurement, and then direct targeted e-mail alerts containing
2033 links to the webpage where such County solicitations are posted at least thirty (30) days in
2034 advance of bid or proposal due dates where practical. Such e-mail alerts should be directed
2035 to all respondents or bidders that have registered with the appropriate commodity/industry
2036 codes on the County's ~~CBR-VSS~~ system;

- 2037 (2) Encourage all prospective Prime Contractor respondents or bidders for County solicitations
2038 to post their subcontract opportunities on the County webpage where the solicitation
2039 specifications have been posted by the County.
- 2040 (3) Ensure that the Commercial Nondiscrimination Policy statement, compliance language,
2041 and any other material requirements specified by the EBO Ordinance are included in all
2042 Solicitation and contract documents;
- 2043 (4) Preview and evaluate all Formal Solicitations in an effort to de-bundle the total
2044 requirements of a contract into smaller units to promote maximum and reasonable
2045 opportunities for S/M/WBE participation, without making separate, sequential or
2046 component purchases in violation of state purchasing laws;
- 2047 (5) Establish procedures to ensure that all contractors submitting correct and undisputed
2048 invoices are paid within thirty (30) days and that Subcontractors are paid within ten (10)
2049 days after the County pays the Prime Contractor. Insert a requirement in all contracts that
2050 Prime Contractors must inform subcontractors of written notice of disputed invoices within
2051 five (5) days of receipt, and clearly state in such notices the reasons for the disputed
2052 invoice;
- 2053 (6) Ensure that a County contract is not executed and that a Notice to Proceed is not issued
2054 until binding agreements between the Prime and subcontracting S/M/WBEs have been
2055 executed by all parties and submitted to the Originating Department;
- 2056 (7) Ensure that all required statistics and documentation regarding bid, contract, invoice, and
2057 payment information are submitted to the Office of EBO as requested;
- 2058 (8) If circumstances prevent the Originating Department from meeting notification
2059 requirements contained herein, the Originating Department shall engage in direct and
2060 extensive outreach to S/M/WBE associations or other relevant organizations to inform
2061 them of the contracting opportunity, unless the circumstances are exigent and an
2062 emergency exists that requires immediate action to protect the public health, safety or
2063 welfare; and

2064 (9) Notify the Director of the Office of EBO or designee of all change orders and amendments
2065 to contracts that are subject to this EBO Ordinance and take necessary steps to ensure that
2066 APIs applied to the contract by the GSC are also extended and enforced, to the maximum
2067 practical extent, with regard to any modified scope of work under the terms of such change
2068 orders and contract amendments.

2069 (b) *Office of EBO—Duties and Responsibilities.* The following duties and responsibilities of the
2070 Office of EBO are in addition to those set forth in Section 2-80.23:

2071 (1) *General Duties.* The EBO Ordinance will be administered and managed by the Director of
2072 the Office of EBO or designee. The Director of the Office of EBO shall attend all Board
2073 agenda meetings to address any S/M/WBE or EBO Program issues. The Office of EBO
2074 shall be responsible for the overall administration of the County's EBO Program. At a
2075 minimum, the Office of EBO shall:

2076 a. Report to the County and the public, based on available data, on at least an annual
2077 basis as to the County's progress toward satisfying the EBO Ordinance purposes and
2078 objectives.

2079 b. Formulate, establish, distribute and implement additional forms, rules and procedures
2080 for EBO Program waivers, improvements and adjustments to the goal-setting
2081 methodologies and other EBO Program features;

2082 c. Have advance substantive input in a contract specification review process consistent
2083 with this EBO Ordinance to ensure that contract solicitation specifications are not
2084 unnecessarily restrictive and unduly burdensome to S/M/WBE firms;

2085 d. Receive and analyze external and internal information, including statistical data and
2086 anecdotal testimony regarding the barriers encountered by S/M/WBE firms in
2087 attempting to obtain contract opportunities at the County, and the relative
2088 effectiveness of various APIs in addressing those barriers;

- 2089 e. Monitor and support the implementation of the EBO Program program policies and
2090 procedures and propose modifications to appropriate County officials as necessary to
2091 fully achieve the purpose and objectives of the EBO Program policies and procedures;
- 2092 f. Provide public education and advocacy internally and externally regarding the
2093 purposes and objectives of the EBO Ordinance;
- 2094 g. ~~Develop, maintain and distribute~~ Maintain a directories directory of certified SBEs and
2095 M/WBEs;
- 2096 h. ~~Assess technical assistance needs of S/M/WBE firms and provide~~ Provide seminars
2097 and technical assistance referrals to S/M/WBE firms to enhance their ability to
2098 effectively compete for County contracts;
- 2099 i. Investigate alleged violations of this EBO Ordinance and provide written
2100 recommendations to appropriate authorities for remedial action and imposition of
2101 sanctions and penalties when necessary;
- 2102 j. Determine Prime Contractor compliance with EBO Ordinance requirements prior to
2103 award and again prior to release of final retainage;
- 2104 k. Oversee the maintenance of an accurate contract performance and compliance
2105 reporting system;
- 2106 l. Provide staff support for the GSC and the EBOAC; and
- 2107 m. ~~Collaborate with Information Systems Services, FDO, and the Purchasing~~
2108 ~~Department~~ County Departments to streamline the invoice and payment procedures at
2109 the County so as to accelerate payments for undisputed invoices within thirty (30)
2110 days of receipt to prime contractors and vendors, and to require such primes and
2111 vendors to then pay undisputed subcontractor invoices within ten (10) days of receipt
2112 of invoice. To the extent there is an undisputed portion of the invoice that can be
2113 paid and to the extent that payment is required by the Local Government Prompt
2114 Payment Act, section 218.70 et seq., Florida Statutes, the County shall proceed with
2115 the prompt payment of that portion of the invoice.

2116 (2) *Certification.* Certification of all S/M/WBE firms shall be the ultimate responsibility of the
2117 Office of EBO. The Office of EBO shall be responsible for reviewing all S/M/WBE
2118 Certification and recertification forms used by its selected certifying agent or organization
2119 to ensure that they are sufficient for purposes of gathering information consistent with the
2120 standards, definitions and intent established by this EBO Ordinance. The Office of EBO
2121 shall also maintain an automated and up-to-date web-based registry of all certified
2122 S/M/WBE firms that is readily available to the general public, as well as to County
2123 personnel.

2124 a. In executing its responsibility in connection with these Certifications, the Office of
2125 EBO may, at the Director's discretion, contract with a regional governmental or
2126 certification agency/organization for the purpose of issuing Certifications in a manner
2127 that is consistent with the eligibility standards established under this EBO Ordinance.

2128 b. A firm eligible for Certification(s) under this EBO Ordinance shall be an
2129 Independently Owned and Operated business. The ownership and Control by Minority
2130 Group Members or Women shall be real and substantial, and shall be indicated by
2131 customary incidents of ownership as demonstrated by an examination of the
2132 substance, rather than the form, of ownership and operating arrangements. In
2133 determining whether a potential firm is an Independently Owned and Operated
2134 business, the certifying agency considers all relevant factors including, but not limited
2135 to:

- 2136 1. The date the business was established;
- 2137 2. The adequacy of its resources ~~for the work of the contract~~ to perform the
2138 contracted work; and
- 2139 3. The degree to which financial, equipment leasing, supplier and other
2140 relationships with non-minority businesses vary from industry practice.

2141 c. The Minority Group Member or women owners must possess and exercise the power
2142 to direct the management and policies of the firm and to make day-to-day decisions,
2143 as well as any decisions on matters of management policy, and operations. The firm

2144 shall not be subject to any formal or informal restrictions which limit the customary
2145 discretion of the Minority Group Member or women owners. There shall be no
2146 restrictions by partnership agreements, charter requirements, operating agreements or
2147 other arrangements which prevent the Minority Group Member or women owners
2148 from making business decisions for the firm without the cooperation or vote of any
2149 owner that is not minority or female.

2150 d. Recognition of the business as a separate entity for tax or corporate purposes is not
2151 necessarily sufficient for recognition as an S/M/WBE. Certification as S/M/WBE
2152 firms will be in accordance with the definitions established in this EBO Ordinance
2153 and the PPM.

2154 e. A claim of minority status as a Minority Group Member must be directly related to
2155 the applicant's parents' status. Neither birthplace nor marriage has any bearing on
2156 minority status of the Certification applicant. All Minority Group and women owners
2157 of certified firms must be Individuals that are lawfully residing in, or are citizens of,
2158 the United States or its territories.

2159 f. A firm seeking Certification or Recertification status under this EBO Ordinance shall
2160 cooperate fully with the County (or its designated certification agent) in supplying
2161 additional information and in facilitating a site visit of the enterprise which may be
2162 requested in order to make a determination. Failure or refusal to cooperate shall result
2163 in denial or repeal of Certification.

2164 g. Proof of Certification by another certifying entity may be accepted by the County in
2165 lieu of the County's own Certification process if the certifying entity adheres to the
2166 same or similar policies and standards as those established by the County. To the
2167 extent the County's factual predicate for its EBO Ordinance requires, under applicable
2168 law, a narrower definition of S/M/WBE firm categories (e.g., due to ethnicity/gender
2169 of ownership or relevant geographic market considerations), the County shall limit
2170 the categories of S/M/WBE firms certified by other jurisdictions that shall be eligible
2171 for participation in the County's EBO Program as necessary to ensure that the Race-

2172 Conscious remedial relief provided by the County's Program remains appropriately
2173 narrowly-tailored.

2174 h. Before accepting another jurisdiction's S/M/WBE Certification program, the Office
2175 of EBO shall examine the definitions, standards and Certification practices of the
2176 program to ensure that it adheres to established County Certification guidelines.

2177 i. If the owners of the business who are not Minority Group Members or women are
2178 disproportionately responsible for the operation of the firm, the firm is not ~~Controlled~~
2179 controlled by minorities and/or women and may not be considered to be an M/WBE
2180 within the meaning of this EBO Ordinance. Where the actual management of the
2181 business is contracted out to Individuals other than the owner, those persons who have
2182 the ultimate power to hire and fire the managers may, for the purposes of this EBO
2183 Ordinance, be considered as ~~Controlling~~controlling the business.

2184 j. All securities that constitute ownership or Control of a corporation for purposes of
2185 establishing it as an M/WBE under this EBO Ordinance shall be held directly by
2186 Minority Group Members or women. Securities held in trust, or by any guardian for
2187 a minor, may not be considered as being held by Minority Group Members or women
2188 in determining the ownership or Control of a corporation.

2189 k. The contributions of capital or expertise by the Minority Group Member or women
2190 owners to acquire their interests in the business shall be real and substantial. Examples
2191 of insufficient capital contributions include:

- 2192 1. A promise to contribute capital;
- 2193 2. A note payable to the business or its owners who are not socially and
2194 economically disadvantaged, Minority Group Members or Women; and
- 2195 3. Contributions in labor or expertise that result solely in employee
2196 compensation, without participation in business profits as an owner.

2197 l. Special consideration of the following additional circumstances in determining
2198 eligibility:

- 2199 1. Newly-formed businesses and businesses whose ownership or Control has
2200 changed since the date of the advertisement of the contract shall be closely
2201 scrutinized to determine the reasons for the timing of the formation of, or
2202 change in, the businesses;
- 2203 2. A previous or continuing employer-employee relationship between or among
2204 present owners shall be carefully reviewed to ensure that the employee-owner
2205 has management responsibilities and capabilities discussed in this EBO
2206 Ordinance; and
- 2207 3. Any relationship between an M/WBE and a business that is not an M/WBE,
2208 but that has an interest in the M/WBE, shall be carefully reviewed to determine
2209 if the interest of the non-minority business conflicts with the ownership and
2210 Control requirements of this EBO Ordinance.
- 2211 4. Once certified, an S/M/WBE firm shall update its status triennially by
2212 submitting a Certification affidavit. If ownership or ~~Control~~control of the firm
2213 has changed, the S/M/WBE firm shall submit a new Certification affidavit to
2214 the Office of EBO (or its contracted Certification agency) within thirty (30)
2215 days of the change.
- 2216 5. The certifying entity will notify applicants of staff's determinations on
2217 certification and recertification status.
- 2218 m. Once denied certification, a firm may not reapply for certification until one year has
2219 lapsed since the date of final determination regarding certification denial.
- 2220 n. A firm shall be decertified when it no longer meets the eligibility requirements for
2221 certification, and such decertified firms shall not be eligible to reapply for one year
2222 from the date of the final adverse decision.
- 2223 o. Within twenty (20) days of the issuance of letter stating the basis for denial of
2224 certification status, the applicant may seek reconsideration of the decision by
2225 submitting a request for reconsideration in writing to the Director of the Office of the
2226 EBO. The applicant shall state the basis for its request for reconsideration. The

2227 applicant may also seek a conference with the Director for purposes of being heard on
2228 the matter. Upon completion of conference and administrative review of the request
2229 for reconsideration, the Director of the EBO Office shall issue a final written
2230 determination within thirty (30) days of conclusion of the conference. The Director of
2231 the EBO shall take one (1) of the following actions on the request for reconsideration:

- 2232 1. Reverse the decision. If a determination is made that certification was denied contrary
2233 to the provisions of the code, the director may reverse the decision of certification
2234 denial, and a certification certificate shall be issued.
- 2235 2. Uphold the certification denial decision. If denied, the applicant has the right to
2236 request an appeal before a special master as follows:
 - 2237 A. The request for a special master hearing shall be in writing to the director of the
2238 EBO, and shall be made within five (5) business days of issuance of the director
2239 of the EBO's determination. The request for a hearing shall be accompanied by an
2240 ~~appeal bond of one thousand dollars (\$1,000.00) which shall be remitted in the~~
2241 ~~form of a money order, a certified check, a cashier's check or a bank check payable~~
2242 ~~to the county, in the amount of: 1) one thousand five hundred dollars (\$1,500) for~~
2243 ~~solicitations less than one million dollars (\$1,000,000); 2) three thousand dollars~~
2244 ~~(\$3,000) for solicitations one million dollars (\$1,000,000) to less than five million~~
2245 ~~dollars (\$5,000,000); or 3) five thousand dollars (\$5,000) for solicitations five~~
2246 ~~million dollars (\$5,000,000) or greater, which shall be remitted in the form of a~~
2247 ~~money order, certified check, cashier's check, or a bank check payable to Palm~~
2248 ~~Beach County.~~
 - 2249 B. At no time shall the applicant or any other person contact a special master
2250 regarding any issue pertaining to, or involving, the appeal. Contact between the
2251 county and the special master shall be limited to scheduling and other
2252 administrative issues, including the provision and copying of public records
2253 pertinent to the appeal.
 - 2254 C. The Office of EBO shall establish rules and regulations by separate policy and

2255 procedure detailing the selection of special masters, the appeals process, and the
2256 conduct governing appeal hearings. Such rules shall provide that the special
2257 master may not consider any evidence which was not available at the time of the
2258 application or recommendation for decertification or recommendation for denial
2259 of certification or recertification. Such rules shall also provide that the special
2260 master shall render a written decision within ten (10) business days of the hearing.

2261 D. Special Masters shall have the jurisdiction and authority to hear and decide
2262 appeals. The special master shall make a recommendation as to whether the appeal
2263 should be upheld or denied.

2264 i. If the special master upholds the appeal, the special master shall
2265 recommend the director of the EBO issue a certification
2266 certificate. In these instances, the EBO shall return the appeal
2267 bond to the applicant.

2268 ii. If the special master denies the appeal, the special master shall
2269 recommend that the certification be withheld, and in these
2270 instances, the applicant's bond shall be forfeited.

2271 p. Certification, once granted, remains in effect for three (3) years, except in accordance
2272 with the graduation and suspension provisions of this EBO Ordinance.

2273 (3) *Compliance Responsibilities.* The Office of EBO, along with contracting staff of each
2274 County department, shall monitor compliance with these EBO Program requirements
2275 during the term of the contract. If it is determined that there is cause to believe that a Prime
2276 Contractor or Subcontractor has failed (or will likely fail) to comply with any of the
2277 requirements of this EBO Ordinance, or with the contract provisions pertaining to
2278 S/M/WBE utilization, the Director of the Office of EBO or designee shall so notify the
2279 Originating Department and the contractor. The Director of the Office of EBO or designee
2280 may require such reports, information, and documentation from contractors, respondents
2281 or bidders and the head of any County department, division, or office as are reasonably
2282 necessary to determine compliance with the EBO Ordinance requirements, within fifteen

2283 (15) calendar days after the notice of noncompliance is issued. If the requested materials
2284 are not received within fifteen (15) calendar days, then a finding of noncompliance is
2285 determined and appropriate penalties and sanctions will apply as stated in this EBO
2286 Ordinance and the PPM.

2287 Joint responsibility is shared by the Director of the Office of EBO or designee and the
2288 Originating Department or designee to attempt to resolve a contractor's, subcontractor's, or
2289 vendor's noncompliance with the requirements of this EBO Ordinance, including any non-
2290 compliance with contract provisions pertaining to S/M/WBE utilization, within fifteen (15)
2291 calendar days after the apparent noncompliance is discovered. A written notice of the
2292 noncompliance should immediately be sent by the Office of EBO or designee to those
2293 contractors, subcontractors, or vendors that are in noncompliance, and to the Director or
2294 Manager of the Originating Department or designee. If noncompliance cannot be resolved
2295 within fifteen (15) calendar days after notice is sent, the Director of the Office of EBO or
2296 designee and the Director or Manager of the Originating Department or designee shall
2297 submit written recommendations to the County Administrator or designee, and if the
2298 County Administrator or designee concurs with the finding, such sanctions as stated in this
2299 EBO Ordinance and the PPM shall be imposed.

2300 Whenever the Director of the Office of EBO or designee finds, after investigation, that an
2301 Originating Department has failed to comply with the provisions of this EBO Ordinance
2302 or the contract provisions pertaining to S/M/WBE utilization, a written finding specifying
2303 the nature of the noncompliance shall be transmitted to the Originating Department, and
2304 the Director of the Office of EBO or designee shall attempt to resolve any noncompliance
2305 through conference and conciliation. Should such attempt fail to resolve the
2306 noncompliance, the Director of the Office of EBO or designee shall transmit a copy of the
2307 finding of noncompliance, with a statement that conciliation was attempted and failed, to
2308 the County Administrator or designee who shall take appropriate action under this EBO
2309 Ordinance to secure compliance.

2310 The Director of the Office of EBO, or designee, shall submit a written annual report to the
2311 County Administrator and the Board on the progress of the County toward the utilization
2312 goals and objectives established by this EBO Ordinance together with the identification of
2313 any problems and specific recommendations for improving the County's performance.

2314 The Director of the Office of EBO or designee and Originating Departments shall work
2315 closely with the Office of the County Attorney to include language in all County contracts
2316 that ensures compliance with the EBO Ordinance. This language should also include a time
2317 period for the contractor to correct any and all deficiencies no later than fifteen (15)
2318 calendar days after notification of non-compliance.

2319 The Director of the Office of EBO shall also establish certification, recertification, and
2320 graduation procedures for S/M/WBE firms to be certified by an independent third-party
2321 entity as being at least fifty-one (51) percent owned, controlled, and managed in accordance
2322 with eligibility standards and definitions established by this EBO Ordinance, and the size
2323 standards set forth in the PPM. Processing of certification applications shall be at no cost
2324 to the applicants. Director of the Office of EBO shall diligently review the practices and
2325 standards of prospective certifying entities to ensure that they are consistent with best
2326 practices for maintaining economic inclusion program integrity.

2327 (4) *Reporting Requirements—Office of EBO.* The Director of the Office of EBO or designee
2328 shall monitor the implementation of this EBO Program and periodically issue quarterly
2329 performance reports on the level of S/M/WBE participation achieved on completed
2330 contracts. Semiannual and annual written reports (preferably quarterly) on the progress of
2331 the EBO Programprogram and the various EBO Programprogram elements shall be
2332 reported to the BCC and County Administrator. Also, on no less than an annual basis, the
2333 Director of the Office of EBO or designee shall report to the County Board and the County
2334 Administrator on the implementation of the Program and, as data becomes available,
2335 progress on achieving the goals and objectives of the EBO Ordinance and the effectiveness
2336 of the EBO Program. Such reports shall include the achievement of contract participation
2337 goals for S/M/WBEs by ethnicity and gender of ownership, by industry segment, by

2338 location, and by API. The Director of the Office of EBO or designee shall also issue a
2339 written report on an annual basis to the County Administrator and the Board that
2340 summarizes contract payments to ~~Prime~~ Contractors and all Subcontractors for each of
2341 these categories. This written report should also address stated ~~EBO~~ Program objectives
2342 including, but not limited to, enhancement of competition as reflected in solicitation
2343 response activity, growth in availability and ~~business capacity for S/M/WBE firms;~~
2344 removal of barriers to S/M/WBE contract participation, reduction or elimination of
2345 disparities in contract awards and contract payments to M/WBE firms in County contracts.
2346 Other specific performance measures by which the success of the EBO Ordinance might
2347 be evaluated (depending upon the availability of data) include: (a) growth in the numbers
2348 of SBE and M/WBE firms winning their first contract awards from the County; (b) growth
2349 in the County's overall SBE and M/WBE Prime Contracting dollar volume; ~~(c) growth in~~
2350 ~~the numbers of SBE and M/WBE firms that are bondable and in the collective bonding~~
2351 ~~capacity of SBE and M/WBE firms; (d) growth in the numbers of SBE and M/WBE firms~~
2352 ~~that successfully graduate from the programs and remain as viable competitors after the~~
2353 ~~passage of two (2) years; (e)(c) growth in the numbers of graduated SBE and M/WBE firms~~
2354 ~~that successfully compete for County contracts; and (f)(d) growth in the size of the largest~~
2355 County contracts won and successfully performed by SBE and M/WBE firms respectively;
2356 ~~(g) comparability in the annual growth rates and median sales of SBE firms and M/WBE~~
2357 ~~firms as compared to other firms; and (h) growth in the percentage of contract dollar~~
2358 ~~participation of M/WBE firms in the private sector of the Relevant Marketplace. The~~
2359 written report should also contain any recommendations for modifications, suspension, or
2360 termination of any portion of this EBO Program, with justifications for each such
2361 recommendation.

2362 (c) *Contractor/Vendor Responsibilities.* To facilitate the Office of EBO completing its
2363 responsibilities in administering EBO Program elements, a contractor/vendor shall:

2364 (1) Ensure that ALL proposed subcontractors/subconsultants register in VSS before contract
2365 award. It is the vendor's responsibility to ensure VSS registration includes ALL

2366 commodity codes for goods and/or services the vendor provides. If vendor fails to register
2367 commodity codes for the goods and/or services in which vendor provides, vendor WILL
2368 NOT receive solicitation email alerts.

2369 ~~(1)~~(2) Permit the Office of EBO to inspect any relevant matter, including records and the
2370 jobsite, and to interview Subcontractors and workers (field compliance).

2371 (3) Ensure that all proposed subcontractors/subconsultants or suppliers (S/M/WBE and Non-
2372 SBE) are included on properly executed Schedules 1 and 2. When a minimum mandatory
2373 API Goal applies, failure to submit properly executed Schedules 1 and 2 will result in a
2374 determination of non-responsiveness to the solicitation.

2375 ~~(2)~~(4) If performing a County Construction contract, ensure that all Subcontractors are paid
2376 any undisputed amount to which the Subcontractor is entitled within ten (10) calendar days
2377 of receiving a progress or final payment from the County and otherwise comply with the
2378 County's contract terms and conditions which set forth the obligations of the Prime
2379 Contractor and Subcontractors and the remedies for delinquency or nonpayment of
2380 undisputed amounts.

2381 ~~(3)~~(5) Notify the County in writing of any changes to their S/M/WBE utilization and/or
2382 subcontracting plan. All changes (substitutions and/or terminations) must be approved in
2383 advance and in writing by the Office of EBO.

2384 ~~(4)~~(6) Amendment for unforeseen circumstances: If at any time after submission of a
2385 solicitation response and before execution of a contract, the apparent successful respondent
2386 or bidder determines that a certified S/M/WBE listed on the participation schedule has
2387 become or will become unavailable, then the apparent successful respondent or bidder shall
2388 immediately notify the Office of EBO. Any desired change in the S/M/WBE participation
2389 schedule shall be approved in advance by the Office of EBO and shall indicate the Prime
2390 Contractor's Good Faith Efforts to substitute another certified S/M/WBE Subcontractor (as
2391 appropriate) to perform the work. Any desired changes (including substitutions or
2392 termination and self-performance) must be approved in writing in advance by the Office
2393 of EBO.

2394 ~~(5)~~(7) Notify the Originating Department and Office of EBO regarding any transfer or
2395 assignment of a contract with the County.

2396 ~~(6)~~(8) Retain records of all Subcontractor payments for a minimum of four (4) years
2397 following project termination date.

2398 (d) *Exceptions and Waivers.*

2399 (1) If a respondent or bidder is unable to comply with the API requirements imposed by GSC
2400 under the terms of this EBO Ordinance, such respondent or bidder shall submit, as required
2401 in the Solicitation, a request for a waiver or partial waiver at the time as required in the
2402 Solicitation. Such waiver request shall include specified documentation that demonstrates
2403 satisfactory Good Faith Efforts were undertaken by respondent or bidder to comply with
2404 the requirements as described under the selected API. The Good Faith Effort waiver request
2405 shall be submitted to the County at least seven (7) days prior to the bid closing date as
2406 stated in the Solicitation, and shall be reviewed, evaluated, and scored in the first instance
2407 by the Office of EBO within seven (7) days of receipt. If the Office of EBO determines
2408 that adequate Good Faith Efforts have been demonstrated by the respondent or bidder to
2409 warrant a partial or total waiver of the applied API, then the Solicitation shall be amended
2410 accordingly to reflect the partial or total waiver, and the any bids received by the County
2411 in the interim shall be returned unopened. The amended solicitation shall then be advertised
2412 to all prospective respondents or bidders, including, but not limited to the respondent or
2413 bidder that requested the waiver. However, if the Office of EBO determines that the
2414 respondent or bidder failed to submit documentation sufficient to demonstrate that Good
2415 Faith Efforts were undertaken by respondent or bidder to support its waiver or partial
2416 waiver request, the request for waiver or partial waiver shall be denied, and the Solicitation
2417 shall remain unchanged. Any bid that fails to comply with API requirements stated in the
2418 Solicitation after the period allowed for waiver requests has lapsed shall be deemed non-
2419 responsive. In the event of an adverse waiver or partial waiver request decision, the
2420 respondent or bidder shall have the right to request reconsideration of the adverse decision
2421 by the Director of the EBO Office, and if still aggrieved, shall be subsequently entitled to

2422 the process for an appeal to a Special Master as referenced in EBO Ordinance Section 2.-
2423 80.28 (b). The contract award process shall only be upheld until the EBO Director
2424 reconsideration and Special Master appeal processes have concluded.

2425 (2) If, ~~after solicitation due date~~ after bid or proposal due date, a contractor is unable, through
2426 no fault of its own, to meet the participation requirements for S/M/WBEs specified at
2427 response submittal, the contractor must immediately seek substitute S/M/WBEs to fulfill
2428 the requirements; the requested substitution must be approved by the Director of the Office
2429 of EBO or designee and the Originating Department Director or designee. If, after
2430 reasonable Good Faith Efforts, the contractor is unable to find an acceptable substitute
2431 S/M/WBE, a post-bid opening waiver may be requested. The request shall document the
2432 reasons for the contractor's inability to meet the goal requirement. In the event the
2433 contractor is found not to have performed Good Faith Efforts in its attempt to find a suitable
2434 a substitute for the initial S/M/WBE proposed utilization, one (1) or more of the penalties
2435 and sanctions of the EBO ordinance may be imposed. No waiver is required if an S/M/WBE
2436 counting toward the participation requirements for S/M/WBEs specified at response
2437 submittal exceeds the SBE size standards stated in the EBO Ordinance or PPM, as
2438 amended, and graduates from the EBO Ordinance during the course of the resulting
2439 contract. In such cases, an S/M/WBE counting toward a participation goal will count
2440 toward the goal for the life of the contract and until the contract ends.

2441 (3) Upon submission of a prospective draft Solicitation to the Office of EBO, and prior to the
2442 public release of solicitations, an Originating Department or Department of Purchasing
2443 may request the Director of the Office of EBO or designee to waive or modify the
2444 application of API requirements for S/M/WBE participation by submitting its reasons in
2445 writing. In the event consensus cannot be reached regarding the request, the request for
2446 exception of the solicitation from the EBO Ordinance shall be resolved by the County
2447 Administrator or designee. The County Administrator or designee may grant such an
2448 exception or modification of application of an API upon a determination that:

- 2449 a. The extraordinary and necessary requirements of the contract render application of
2450 the APIs infeasible or impractical;
- 2451 b. The nature of the goods or services being procured are excluded from the scope of
2452 this EBO Ordinance; or
- 2453 c. Sufficient qualified S/M/WBEs providing the goods or services required by the
2454 contract are unavailable in Palm Beach County despite every reasonable attempt to
2455 locate them.

2456 Otherwise, such Solicitations shall be forwarded to the Director of the Office of EBO or
2457 designee for review and also to the GSC for possible application of APIs. Any further
2458 requests from an Originating Department or Purchasing Department for modification of
2459 Goal amounts or other APIs as established by the GSC shall be presented to the County
2460 Administrator or designee, whose decisions on such requests shall be final.

2461 (4) The Director of the Office of the EBO may waive the application of APIs to enhance
2462 S/M/WBE utilization for a specific contract in accordance with the procedures set forth in
2463 the EBO Ordinance Section 2-80.22.

- 2464 a. The Originating Department or Purchasing certifies to the Director of the Office of
2465 EBO and County Administrator or designee:
- 2466 b. That an emergency exists which requires goods or supplies to be provided with such
2467 immediacy that it is unable to comply with the requirements of this Part;
- 2468 c. That the prospective contractor is an S/M/WBE or, if not, that the prospective
2469 contractor will make a Good Faith Effort to utilize S/M/WBEs; and
- 2470 d. That the conditions imposed by law, or the external source of funding for the contract
2471 or grant effectively prohibits the application of the EBO Ordinance.

2472 Final approval of all such exceptions and waivers shall be made by the County
2473 Administrator or designee.

2474 (e) *Penalties and Sanctions.*

- 2475 (1) ~~Upon recommendation of sanctions by the~~The Director of EBO or designee in consultation
2476 with the Originating Department regarding the failure of a contractor, vendor, respondent
2477 or bidder or other business representative to comply with any portion of this EBO
2478 Ordinance, ~~the Director of the EBO or designee may impose~~shall recommend any or all of
2479 ~~the following penalties be imposed upon the non-complying party any or all of the~~
2480 ~~following penalties~~by the Procurement Director:
- 2481 a. Suspension of contract;~~;~~
 - 2482 b. Withholding of funds;~~;~~
 - 2483 c. Termination of contract based upon a material breach of contract pertaining to EBO
2484 Program compliance;~~;~~
 - 2485 d. Suspension or Debarment of a respondent or bidder, contractor or other business entity
2486 from eligibility for providing goods or services to the County for a period not to
2487 exceed three (3) years; ~~and~~
 - 2488 e. Liquidated damages equal to the difference in dollar value of S/M/WBE participation
2489 as committed to in the contract, and the dollar value of S/M/WBE participation as
2490 actually achieved.
- 2491 (2) It is a violation of this EBO Ordinance to:
- 2492 a. Fraudulently obtain, retain or attempt to obtain, retain or aid another in fraudulently
2493 obtaining, retaining or attempting to obtain or retain Certification status as an
2494 S/M/WBE for purposes of this EBO Ordinance.
 - 2495 b. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or
2496 make any false, fictitious or fraudulent statements or representations, or make use of
2497 any false writing or document, knowing the same to contain any false, fictitious or
2498 fraudulent statement or entry pursuant to the terms of this EBO Ordinance.
 - 2499 c. Willfully obstruct, impede or attempt to obstruct impede any authorized official or
2500 employee who is investigating the qualifications of a business entity which has
2501 requested Certification as an S/M/WBE.

- 2502 d. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or
2503 attempting to obtain public monies to which the person is not entitled under the terms
2504 of this EBO Ordinance.
- 2505 e. Make false statements to any entity that any other entity is or is not certified as an
2506 S/M/WBE for purposes of this EBO Ordinance.
- 2507 (3) Any person who violates these provisions shall be subject to penalties and sanctions
2508 established by this EBO Ordinance and related policies and procedures posted in the PPM,
2509 and also to the maximum penalty provided by law.
- 2510 (f) *Equal Business Opportunity Advisory Committee (EBOAC)*. The Director of the Office of EBO
2511 or designee in collaboration with the County Administrator or designee shall nominate a fifteen-
2512 member citizens committee made up of representatives of trade groups and members of the
2513 general business community (as specified below), and subject to formal appointment by the
2514 Board, this advisory group shall serve as the Equal Business Opportunity Advisory Committee
2515 to: (a) assist the Director of the Office of EBO or designee, the County Administrator or
2516 designee, and the Board in reviewing the administration of various programs and policies that
2517 promote S/M/WBE participation in County prime contract and subcontract opportunities; and
2518 (b) make recommendations to the Director of the Office of EBO or designee, the County
2519 Administrator or designee, and Board concerning modifications of such programs, policies, and
2520 procedures established pursuant to this EBO Code. As vacancies become available, they shall
2521 be filled as soon as practicable through the same nomination and appointment process.
- 2522 (1) Membership: The EBOAC shall consist of the following members:
- 2523 a. One (1) African American business owner certified as a small business by the county;
- 2524 b. One (1) Hispanic business owner certified as a small business by the county;
- 2525 c. One (1) women business owner certified as a small business by the county;
- 2526 d. One (1) white male business owner certified as a small business by the county;
- 2527 e. One (1) business owner domiciled in the county;
- 2528 f. One (1) representative of a business incubator program;

- 2529 g. One (1) representative of a Hispanic business organization;
- 2530 h. One (1) representative of the National Association of Women in Construction;
- 2531 i. One (1) representative of a women's business organization;
- 2532 j. One (1) certified minority contractor;
- 2533 k. One (1) representative of the Associated General Contractors Association;
- 2534 l. One (1) representative of the Small Business Development Center;
- 2535 m. One (1) representative of a financial institution that assists small businesses;
- 2536 n. One (1) representative of a Black Chamber of Commerce of Palm Beach County;
- 2537 o. One (1) representative of a professional services organization.

2538 (2) *Appointment Process/Terms/Vacancies/Reimbursements.* Members shall be appointed at
2539 large by the Board of County Commissioners and shall serve for staggered terms of three
2540 (3) years. Members must be Palm Beach County residents and may only serve for three (3)
2541 consecutive three-year terms. Vacancies shall be filled in the same manner as the original
2542 appointments for the remainder of the vacant term. Each member shall serve without
2543 compensation and may be removed without cause by the Board of County Commissioners
2544 at any time. Travel reimbursement is limited to expenses incurred only for travel outside
2545 the county necessary to fulfill board member responsibilities when sufficient funds are
2546 budgeted and available, and upon approval of the County Administrator or designee.

2547 (3) *Additional Duties and functions.* The committee shall have the following duties and
2548 functions:

- 2549 a. Review and evaluate the effectiveness of small business programs within county
2550 government;
- 2551 b. Monitor and evaluate the effectiveness of the county's small business policies and
2552 procedures, resolutions and ordinances, including their implementation by the various
2553 county departments;

- 2554 c. Study and evaluate the necessity for further county regulations and procedures
2555 regarding small business participation;
- 2556 d. Receive and where necessary, analyze information concerning the presence of
2557 discrimination in the bidding and contracting process and recommend to the Board of
2558 County Commissioners further steps to alleviate such discrimination;
- 2559 e. Prepare, adopt and present an annual report to the Board of County Commissioners;
- 2560 f. Research and review other jurisdictions' small business programs;
- 2561 g. Act as a conduit between the county and the community, industry; organizations, trade
2562 associations, chambers of commerce and small and minority/women businesses;
- 2563 h. Plan and participate in education and training for small businesses; and
- 2564 i. Research and recommend to the Board of County Commissioners race- and gender-
2565 neutral mechanisms which will assist small businesses.
- 2566 j. Monitor and report on level of minority/women business enterprise participation.
- 2567 k. Monitor legislative initiatives and other issues and activities which impact small and
2568 M/WBE businesses and advise the Board of County Commissioners concerning same.
- 2569 (4) *Meetings and organizations.* The committee shall meet on a regular basis (but no less than
2570 four (4) times per year). A majority of members appointed shall constitute a quorum. In
2571 the presence of a quorum, committee business shall be conducted by a vote of a majority
2572 present. The meetings shall be governed by the Robert's Rules of Order. Reasonable public
2573 notice of all committee meetings shall be provided, and all such meetings shall be open to
2574 the public at all times.
- 2575 (5) *Assistance to the committee.* The committee may request information from any department
2576 or agency of the county, local, regional, state, or federal government for information or
2577 advice in the performance of its work. The Office of EBO shall be responsible for providing
2578 staffing and data needs for the EBOAC.

2579 (6) *Chair and Vice-Chair.* A chair and vice-chair shall be initially appointed by the County
2580 Administrator and subsequently elected by a majority of the committee and shall serve for
2581 a term of one (1) year. The duties of the chair shall be to:

- 2582 a. Call committee meetings and set the agenda for the same;
- 2583 b. Preside at committee meetings;
- 2584 c. Establish subcommittees, appoint subcommittee chairs, and charge subcommittees
2585 with specific tasks;
- 2586 d. Perform other functions as the committee may assign by rule or order.

2587 The vice-chair shall perform the duties of the chair in the chair's absence, and such other
2588 duties as the chair may assign.

2589 If a vacancy occurs in the office of the chair, the vice-chair shall become the chair for the
2590 unexpired term. If a vacancy occurs in the office of the vice-chair, the committee will elect
2591 another member to fill the unexpired term of the vice-chair.

2592 (7) *Attendance.* Members shall be automatically removed for lack of attendance. Lack of
2593 attendance is defined as failure to attend three (3) consecutive meetings or failure to attend
2594 more than two-thirds ($\frac{2}{3}$) of the meetings scheduled during a calendar year. Participation
2595 for less than three-fourths ($\frac{3}{4}$) of a meeting shall constitute lack of attendance. Members
2596 removed under this section shall not continue to serve until a new appointment is made and
2597 removal shall create a vacancy.

2598 (8) *Conflict of interest.* Committee members shall be governed by the applicable provisions of
2599 the Palm Beach County Ethics Resolution R-94-693, as may be amended.

2600 (g) *Goal Setting Committee.* The Goal Setting Committee (GSC) is to be appointed and chaired by
2601 the County Administrator or designee. The GSC shall include, at a minimum, the Director of
2602 the Office of EBO or designee, the Director of the Purchasing Department or designee, the
2603 Director of Contract Development and Control or designee, the Director of FDO or designee,
2604 ~~the County Attorney or designee~~ the Director of Public Safety or designee, the Director or
2605 designee of the Originating Department whose contract(s) are under consideration by the GSC

2606 (if the Originating Department is neither FDO nor Purchasing) all without duplication of
2607 designees. The GSC establishes S/M/WBE goals for the EBO Program (e.g., Annual
2608 Aspirational Goals and contract-by-contract subcontracting goals and determining which
2609 M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon
2610 Industry Categories, vendor availability, project-specific characteristics, and M/WBE
2611 utilization. The GSC also makes determinations about which APIs are to be applied to specific
2612 contracts based upon various criteria. Rather than review each solicitation the GSC may
2613 determine that a particular API is appropriate for a category of contracts or a group of contracts.

2614 (1) At a minimum, the GSC shall:

- 2615 a. Meet as often as it deems necessary to accomplish its duties as outlined in this Part,
2616 but not less than once monthly;
- 2617 b. Formulate, recommend to the County Administrator or designee and implement
2618 additional rules and procedures for EBO Program goal-setting and other aspects of its
2619 duties in selecting and applying specific APIs to County solicitations and contracts in
2620 an efficient and effective manner; and
- 2621 c. Monitor and support the implementation of the EBO Program.

2622 (h) *Support to Goal Setting Committee and EBO Advisory Committee.* The Office of EBO shall
2623 provide staff support and logistical support for the Goal Setting Committee and the EBOAC as
2624 necessary. Such support shall include, but not be limited to, scheduling, facilitating data
2625 requests, analysis, communications, and meeting logistics.

2626 **SECTION 9. REPEAL OF LAWS IN CONFLICT.**

2627 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
2628 repealed to the extent of such conflict.

2629 **SECTION 10. SAVINGS CLAUSE.**

2630 Notwithstanding Section 3, Repeal of Laws in Conflict, all administrative and county orders,
2631 fines, and pending enforcement issued pursuant to the authority and procedures established by
2632 Ordinance 2018-021 shall remain in full force and effect.

2633 **SECTION 11. SEVERABILITY CLAUSE.**

2634 If any section, paragraph, sentence, clause, phrase or word of this Equal Business Opportunity
2635 Ordinance, Policies, Procedures, or the application thereof, to any person or circumstance is for any
2636 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, invalid or void,
2637 such holding shall not affect the remainder of this Equal Business Opportunity Ordinance or the
2638 application of any other provisions of this Ordinance which can be given effect without the invalid
2639 provision or application, and to this end, all the provisions of this Ordinance are hereby declared to
2640 be severable.

2641 **SECTION 12. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

2642 The provisions of this Ordinance shall become and be made a part of the Code of Laws and
2643 Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or
2644 re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or
2645 other appropriate word.

2646 **SECTION 13. CAPTIONS.**

2647 The captions, section headings, and section designations used in this Ordinance are for
2648 convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

2649 **SECTION 14. EFFECTIVE DATE.**

2650 The provisions of this Ordinance shall become effective upon filing with the Department of
2651 State.

2652

2653

2654 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this
2655 the _____ day of _____, 2025.

2656 **JOSEPH ABRUZZO,**
2657 **CLERK OF THE CIRCUIT**
2658 **COURT & COMPTROLLER**

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

2660
2661 **By: _____**
2662 **Deputy Clerk**

By: _____
Maria G. Marino, Mayor

2663
2664 **APPROVED AS TO FORM AND**
2665 **LEGAL SUFFICIENCY**

2666

2667 **By:** _____

2668 **County Attorney**

2669

2670 **EFFECTIVE DATE: Filed with the Department of State of the ____ day of _____,**

2671 **2025.**

41 **WHEREAS**, this proposed amendment is narrowly-tailored in accordance with the
42 applicable law, and the specific barriers to S/M/WBE participation.

43

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

46 **SECTION 1. POLICY, PURPOSE, AND OBJECTIVES.** Section 2-80.20 of the Palm Beach

47 County Code is hereby amended to read as follows:

48 In accordance with this Ordinance, the Board of County Commissioners of Palm Beach County,
49 Florida (BCC) has directed staff to use its best efforts to ensure that all segments of its business
50 population, including, but not limited to, small, local, minority, and women-owned businesses, have
51 an equitable opportunity to participate in the County's procurement process, prime contract, and
52 subcontract opportunities, and that no business shall be excluded from participation, denied benefits
53 of, or otherwise discriminated against, in connection with the award and performance of any contracts
54 with the County on the grounds of race, color, national origin, religion, ancestry, sex, age, marital
55 status, familial status, sexual orientation, gender identity or expression, disability or genetic
56 information. Moreover, the specific purposes and objectives of this Part are as follows:

- 57 (1) This Equal Business Opportunity (EBO) Ordinance, and the Policy and Procedure Manual
58 (PPM) guidelines established pursuant to this Part, shall serve the County's compelling
59 interest to remedy the various ongoing effects of marketplace discrimination against
60 Small/Minority/Women Business Enterprises (S/M/WBEs) that are ready, willing, and
61 able to sell goods and services, including construction-related goods and services and
62 professional services (collectively "goods and services"), to the County.
- 63 (2) The narrowly-tailored remedial efforts established in this EBO Ordinance are designed to
64 promote greater availability, capacity development, and contract participation by
65 S/M/WBEs in County contracts, and in doing so, enhance competition to the benefit of the
66 County's residents and taxpayers.
- 67 (3) This EBO Ordinance is intended, in part, to further the County's compelling interest in
68 ensuring that it is neither an active nor passive participant in private sector marketplace
69 discrimination, and to actively promote equal opportunity for all segments of the
70 contracting and business community to participate in County contract opportunities.
- 71 (4) The County shall resort to the use of race- and gender-conscious means for addressing
72 disparities within the realm of its contracting only when it is apparent that the use of race-
73 and gender-neutral means alone will likely be insufficient to remedy the effects of
74 identified discrimination.

75 (5) Having found that it has a compelling governmental interest to remedy the effects of
76 discrimination upon County contracts, the Board directs the County Administrator or
77 designee, the Director of Procurement or designee, and the Director of the Office of Equal
78 Business Opportunity (Office of EBO) or designee to collaborate in periodically
79 recommending to the Board possible future amendments necessary to fully effectuate the
80 purposes and objectives established in this EBO Ordinance. Such proposed amendments
81 shall also be narrowly-tailored in accordance with applicable law, and the specific barriers
82 to S/M/WBE participation identified within the County's factual predicate as described
83 below in Section 2-80.25 of this EBO Ordinance.

84 (6) It is the policy of the County to take all necessary, reasonable, and legal action to prevent
85 discrimination and to ensure that all businesses, including S/M/WBEs, are afforded the
86 maximum practicable opportunity to participate in the County's purchasing and contracting
87 processes.

88 (7) As referenced in Resolution R2017-1770 as amended, it is the policy of the Board to ensure
89 that the firms it engages in business with do not discriminate on the basis of race, color,
90 national origin, religion, ancestry, sex, age, marital status, familial status, sexual
91 orientation, gender identity or expression, disability, or genetic information in the
92 solicitation, selection, hiring or commercial treatment of subcontractors, vendors,
93 suppliers, or commercial customers, nor shall any such firms retaliate against any person
94 for reporting instances of such discrimination. The firms shall provide equal opportunity
95 for subcontractors.

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

100 An inclusive, robust, and competitive local marketplace is consistent with the County's public interest
101 in reducing the economic burden on the County residents and taxpayers it serves. In furtherance of
102 its mission to efficiently and cost-effectively serve the public interest on behalf of the residents of
103 Palm Beach County, the County seeks to promote the formation, growth, and competitive viability

104 of its indigenous business population through the economic inclusion policies and procedures set
105 forth in this EBO Ordinance.

106 **SECTION 2. DEFINITIONS.** Section 2-80.21 of the Palm Beach County Code is hereby
107 amended to read as follows:

108 *Acting as a conduit* means, in part, not acting as a regular dealer by making sales of material,
109 goods or supplies from items bought, kept in stock and regularly sold to the public, as opposed to
110 only government agencies, in the usual course of business. Brokers, manufacturer's representatives,
111 sales representatives and non-stocking distributors are considered to be conduits that do not perform
112 a Commercially Useful Function.

113 Active Vendor Directory is a compilation of all vendors which are maintained electronically
114 in the Vendor Self Service (VSS) and posted on the County's website and made available to the
115 general public for use in identifying subcontractor, material suppliers, etc.

116 *Affiliation* means that the entity applying for S/M/WBE certification controls, has the power to
117 control, or is controlled by another entity or entities, or an identity of interests exists between the
118 entity applying for S/M/WBE certification and another entity or entities. In determining whether an
119 Affiliation exists, it is necessary to consider factors including, but not limited to, common ownership,
120 common management, common use of facilities, equipment, and employees, contractual obligations
121 and family interest in the business. Affiliated entities must be considered together in terms of gross
122 receipts in determining whether a business entity meets S/M/WBE eligibility criteria.

123 *Affirmative Procurement Initiatives (API)* are various program tools and solicitation incentives
124 that are used to encourage greater prime and subcontract participation by Small Business Enterprise
125 (SBE) firms or Minority/Women Business Enterprise (M/WBE) firms, including, but not limited to,
126 bonding assistance, evaluation preferences, subcontracting goals, vendor rotations, and joint venture
127 incentives.

128 *Best Value Contracting* or *Request for Proposal (RFP)* means any competitive method of
129 procurement in which low price may be only one (1) factor of several factors, but not necessarily the
130 determining factor in the awarding of a contract.

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

132 *Business Category* means Construction; professional services procured pursuant to the
133 Consultants' Competitive Negotiations Act (CCNA Services); professional services other than
134 CCNA, Goods, and Other Services. For purposes of S/M/WBE eligibility criteria, a business entity
135 shall be considered for certification eligibility in the business categories in which it successfully has
136 performed and demonstrated capability.

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

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

139

140 *Certification* means the process by which the Office of EBO determines a firm to be a bona-fide
141 small, minority, and/or women business enterprise. Any firm may apply for multiple certifications
142 that cover each and every status category e.g., SBE, Minority Business Enterprise (MBE), or Women
143 Business Enterprise (WBE) for which it is able to satisfy eligibility standards. The Office of EBO
144 may contract these services to a regional certification agency or other entity. For purposes of
145 certification, the County may accept any firm that is certified by local government entities and other
146 organizations identified by the Office of EBO that have adopted certification standards and
147 procedures similar to those followed by the Office of EBO, provided the prospective firm satisfies
148 the eligibility requirements set forth in the County's PPM.

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

152 *Code* means the Palm Beach County Code.

153 *Commercially Useful Function* means an S/M/WBE firm is performing a Commercially Useful
154 Function when it is responsible for execution of the work of the County's contract and is carrying out
155 its responsibilities by actually performing, staffing, managing and supervising the work involved. To
156 perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect
157 to materials and supplies used on the contract, and that are a subset of the broader scope of work that
158 is the subject matter of the goods and services that are being purchased by the County under the terms
159 of the prime contract. The S/M/WBE firm must also be responsible for negotiating price, determining
160 quantity and quality, ordering the material, and installing (where applicable) and paying for the

161 material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful
162 Function, an evaluation must be performed of the amount of work subcontracted, normal industry
163 practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate
164 with the work it is actually performing and the S/M/WBE credit claimed for its performance of the
165 work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially
166 Useful Function if its role is limited to that of an extra participant in a transaction, contract or project
167 through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE
168 participation, when in similar transactions in which S/M/WBE firms do not participate, there is no
169 such role performed.

170 *Committee* means the Equal Business Opportunity Advisory Committee (EBOAC).

171 *Construction* has the meaning set forth in Section 2-52 of the Palm Beach County Procurement
172 Code, as may be amended.

173 *Contract* has the meaning set forth in section 2-52 of the Palm Beach County Procurement Code,
174 as may be amended.

175
176 *Control* means the authority of a person or business owner to sign responses to solicitations and
177 contracts, make price negotiation decisions, sell or liquidate the business, and have the primary
178 authority to direct the day-to-day management and operation of a business enterprise without
179 interference from others.

180 *County* means Palm Beach County.

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

182 *Decentralized Purchase Order (DPO)* has the meaning set forth in Section 2-52 of the Palm
183 Beach County Procurement Code, as may be amended.

184 *Domiciled in the County* means the business holds a valid Palm Beach County business tax
185 receipt for the dedicated space and has a Significant Business Presence in the County. In order to
186 establish a Significant Business Presence in the County, the business must:

- 187 (1) Demonstrate that the business has been conducted at the county location, and sufficient
188 full-time employees are maintained in the County to perform the contracted work;

- 189 (2) The County business tax receipt bears the county address, and the county location is in an
190 area zoned for the conduct of such business;
- 191 (3) The county location must be verifiable through documentation which may include, but is
192 not limited to, a property tax bill or lease agreement. All lease agreements must have a
193 minimum term of one (1) year and identify a dedicated space or location within Palm Beach
194 County; and
- 195 (4) The county location should be identifiable through signage, telephone listing, and/or
196 website or social media, where permissible. On-site visits may be conducted at any time to
197 determine continued adherence to requirements and additional documentation may be
198 requested on a case-by-case basis. A county telephone number or post office box in the
199 County shall not be sufficient without further documentation, to establish the domicile
200 requirements and other requirements of the code.

201 *Enterprise Contract Management System (eCMS)* refers to the system used to track contracts
202 issued and payments received from the County. The system will track utilization of S/M/WBEs and
203 all other firms at the prime and subcontract levels by industry and contract-by-contract
204 subcontracting goals. The details regarding fields of information captured and the functionalities of
205 eCMS shall be reflected in the PPM.

206 *Equal Business Opportunity Advisory Committee (EBOAC)* refers to a citizen committee made
207 up of no more than fifteen (15) representatives of trade groups and members of the general business
208 community designated and appointed by the County Administrator or designee, the Office of EBO,
209 and the Board as specified in the PPM. EBOAC members must be residents of Palm Beach County.
210 This advisory group shall: (a) assist the Director of the Office or EBO or designee, the County
211 Administrator or designee, and the Board in reviewing the continuing policies, practices, and
212 programs for vendors, prime contractors, and subcontractors that promote S/M/WBE participation;
213 and (b) make recommendations to the Director of the Office of EBO, the County Administrator or
214 designee, and the Board concerning modifications of such policies, programs, and practices
215 established pursuant to this EBO Ordinance.

216 *Evaluation Preference* means an API that may be applied by the Goal Setting Committee to
217 Requests for Proposals (RFPs) for Construction, Professional Services, Other services, and Goods

218 contracts that are to be awarded on a basis that includes factors other than lowest price and wherein
219 responses that are submitted to the County by S/M/WBE firms or firms that have teamed with
220 S/M/WBE firms may be awarded additional points in the evaluation process in the scoring and
221 ranking of their proposals against those submitted by other prime respondents or bidders.

222 *Expired* means a vendor's certification term has ended and is no longer valid.

223 *Formal Solicitations* has the meaning set forth in Section 2-52 of the Palm Beach County
224 Procurement Code, as may be amended.

225 *Front* means a business which purports to be a S/M/WBE business, but which is actually owned
226 and/or controlled in a manner which does not comply with the County's requirements of certification,
227 or a business that purports to be performing a portion of work under a contract as a certified
228 S/M/WBE firm, but is not performing a Commercially Useful Function.

229 *Goals* means the level of S/M/WBE participation projected to be obtained either annually within
230 a business category, or in the performance of a specific contract, and is expressed as a percentage of
231 the total dollar volume of participation of all businesses in the County's procurement of goods,
232 services and construction either annually within a given business category, or within a specific
233 contract. In the absence of waivers or exclusions, the standard SBE contract-specific subcontracting
234 goal is twenty (20) percent regardless of industry segment. M/WBE contract-specific subcontracting
235 goals are set on a case-by-case basis by the Goal Setting Committee and are subject to waiver requests
236 from Originating Departments and prospective respondents or bidders. Such contract-specific
237 S/M/WBE subcontracting goals are set based upon various criteria, including the relative availability
238 of qualified S/M/WBE subcontractors to perform the scope of work required for performance of a
239 particular contract.

240 *Goal Setting Committee (GSC)* means a committee, or series of committees, appointed and
241 chaired by the County Administrator or designee that includes, at a minimum, the Director of the
242 Office of EBO or designee, the Director of Contract Development and Control or designee, the
243 Director of Procurement or designee, the Director of Facilities Development and Operations (FDO)
244 or designee, the Director of Public Safety or designee, and the Director or designee of the Originating
245 Department (if the Originating Department is neither Procurement nor FDO) all without duplication
246 of designees. The GSC establishes S/M/WBE Program Goals for Palm Beach County (e.g., Annual

247 Aspirational Goals and Contract-by-Contract Subcontracting Goals) based upon Industry Categories,
248 vendor availability and project-specific characteristics. The GSC also makes determinations about
249 which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon
250 various criteria.

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

269 *Goods* has the meaning set forth in Section 2-52 of the Palm Beach County Procurement Code,
270 as may be amended.

271 *Graduation* means when an S/M/WBE firm has exceeded the gross revenue standards or size
272 standards on an industry specific basis (i.e., Construction Consultants' Competitive Negotiation Act
273 (CCNA) Professional Services, including Architectural and Engineering Design firms and
274 Surveyors), Professional Services (Non-CCNA), and Goods or Other services as reflected in this
275 Ordinance, as may be amended.

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

280 *Home Business* means a small business that operates from the business owner's home. Home
281 businesses usually have a very small number of employees that are often members of the business
282 owner's family. A home business is not affiliated with, nor a subsidiary of another company located
283 outside of the home. Home businesses meeting this definition are eligible for certification as a small
284 business, provided they meet all other certification criteria and local zoning requirements. Home
285 offices of an employee working for a company located in another county do not establish domicile
286 in Palm Beach County.

287 *ILA* means interlocal agreement; agreement between government entities.

288 *Independent Business* means a business that operates free of control or reliance on another
289 business. Recognition of the business as a separate legal entity for tax or corporate purposes is not
290 necessarily sufficient for recognition as an independent business. In determining whether a potential
291 small business is an independent business, the County shall consider all relevant factors, including
292 but not limited to, the date the business was established, the adequacy of its resources for the type of
293 work specified, relationships with affiliates and subsidiaries, and the degree to which financial,
294 equipment leasing and other relationships with other businesses vary from established industry
295 practices. If there has been a recent change in ownership of the business, a review of whether the
296 acquisition of the business was done pursuant to an arm's length transaction will also be considered
297 in determining independence of the business.

298 *Independent Contractor* means an individual who is self-employed and operates their own
299 business. The individual is classified as an independent contractor if the hiring party has the right to
300 control or direct only the outcome of the work, but does not have control over the methods or means
301 by which the work is performed.

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

303 *Joint Venture* means an association or teaming of two (2) or more persons or businesses to carry
304 out a single business enterprise for profit for which purpose they combine their property, capital,
305 efforts, skills and knowledge.

306 *Joint Venture Incentives* means an Affirmative Procurement Initiative ("API") that provides
307 inducements for non-S/M/WBE firms to collaborate with S/M/WBE partners in responses to
308 solicitations and for purposes of performing a Prime Contract to supply Goods to, or to perform
309 Construction, Professional, or Other Services on behalf of the County. Joint Ventures are established
310 by written agreements between two (2) or more independently owned and controlled business firms
311 to form a team or a third business entity solely for purposes of undertaking distinct roles and
312 responsibilities in the completion of a given contract. Under this business arrangement, each Joint
313 Venture partner shares in the management of the Joint Venture and also shares in the profits or losses
314 of the Joint Venture enterprise commensurately with its contribution to the venture. Incentives under
315 this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE
316 participation in the joint venture, and extra contract option years or mobilization fees provided to
317 qualifying Joint Ventures in certain Construction Services, Professional Services, Goods and Other
318 Services contracts.

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

324 *Mandatory Bid or Proposal Amount* has the same meaning set forth in Section 2-52 of the Palm
325 Beach County Procurement Code, as may be amended.

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

328 *Minority Business Enterprise (MBE)* means any legal entity, except a joint venture, that is
329 organized to engage in for-profit transactions, which is certified as being at least fifty-one (51)
330 percent owned, managed and controlled by one (1) or more Minority Group Members, and that is
331 ready, willing, and able to sell goods or services that are purchased by the County. To qualify as an

332 MBE, the enterprise's annual revenues and number of employees shall be no greater than the business
333 size standards for its industry as specified in the PPM, and the MBE shall meet the Significant
334 Business Presence requirements as defined herein. In order to be eligible for participation in
335 S/M/WBE APIs, the MBE firm shall be currently certified as being in compliance with the size
336 standards as reflected in the PPM, and as having satisfied all eligibility requirements to participate
337 in the EBO Program. Unless otherwise stated, the term MBE as used in this Program is not inclusive
338 of women-owned business enterprises (WBE).

339 *Minority Group Members* means African-Americans, Hispanic-Americans, Asian-Pacific
340 Americans, and Native Americans legally residing in, or that are citizens of, the United States or its
341 territories, as defined below:

342 *African-Americans:* Persons with origins in any of the black racial groups of Africa.

343 *Hispanic-Americans:* Persons of Mexican, Puerto Rican, Cuban, Spanish, or Central and South
344 American origin.

345 *Asian-Pacific Americans:* Persons having origins in any of the original peoples of the Far East,
346 Southeast Asia, the Indian subcontinent, or the Pacific Islands.

347 *Native Americans:* Persons that are members of a federally recognized Indian tribe or that have
348 no less than one-sixteenth percentage origin in any of the Native American Tribes, as recognized
349 by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by
350 possession of personal tribal role documents. A "federally recognized Indian tribe" means an
351 Indian tribe, band, nation, rancheria, pueblo, colony or other organized group or community,
352 including any Alaska native village, which was recognized by the Secretary of the Interior on
353 October 1, 1985, as having special rights and is recognized as eligible for the services provided
354 by the United States to Indians because of their status as Indians, and any tribe that has a pending
355 application for federal recognition on October 1, 1985, as having special rights and is recognized
356 as eligible for the services provided by the United States to Indians because of their status as
357 Indians, and any tribe that has a pending application for federal recognition on October 1, 1985.

358 *Minority/Women Business Enterprise (M/WBE)* means a firm that is certified as either a
359 minority business enterprise or as a women business enterprise for purposes of the EBO Program as
360 being at least fifty-one (51) percent owned, managed, and controlled by minority group members

361 and/or women of legal majority age that are lawfully residing in, or are citizens of, the United States
362 or its territories, that is ready, willing, and able to sell goods or services that are purchased by the
363 County, and that meets the Significant Business Presence requirements as defined herein. In order to
364 be eligible for participation in S/M/WBE APIs, the M/WBE firm shall be currently certified as being
365 in compliance with the size standards as reflected in the PPM, and as having satisfied all eligibility
366 requirements to participate in the Program. Unless otherwise stated, the term MBE as used in this
367 Program is not inclusive of women-owned business enterprises (WBE).

368 In addition, the Director of the Office of EBO is authorized to establish a second tier size
369 standard for Emerging M/WBEs whose size standards are fifty (50) percent or less than the size
370 standards for M/WBEs that are eligible for APIs whose application is limited to Emerging M/WBEs.
371 The size standards for Emerging M/WBEs shall be posted in the PPM.

372 *M/WBE Segmented Subcontracting Goals* means the application of multiple goals for M/WBE
373 participation within annual Aspirational Goals or for M/WBE subcontracting goals on an individual
374 County contract wherein an overall aggregated M/WBE goal is accompanied by subsets of one (1)
375 or more smaller goals. Such segmented goals specifically target the participation of a particular
376 segment of business enterprises owned and controlled by WBEs or certain Minority Group Members
377 (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly
378 greater patterns of underutilization and disparity within an industry as compared to other gender and
379 Minority Group member categories of M/WBEs. The application of Segmented M/WBE goals is
380 intended to ensure that those segments of M/WBEs that have been most significantly and persistently
381 underutilized receive a fair measure of remedial assistance.

382 *Other Services* means services that are neither CCNA Services, Professional Services nor
383 Construction-related.

384 *Originating Department or User Department* means the requestor, person or Department or
385 Division requesting the good or service to be purchased. When a Construction Department is
386 managing the procurement for either itself or for a User Department, the program responsibilities
387 assigned under the EBO Ordinance and PPM, as may be amended, to an Originating Department or
388 Division will be performed by the Construction Department.

389 *Owned*, for the purpose of determining whether a business is an MBE or WBE, shall mean that
390 the minorities or women, as the context requires, shall possess an ownership interest of at least fifty-
391 one (51) percent.

392 *Points* means the quantitative assignment of value for specific evaluation criteria in the vendor
393 selection process used in some construction, professional services, other services, and goods
394 contracts (e.g., 15 points out of a total of one hundred (100) points assigned for S/M/WBE
395 participation as stated in response to a Request for Proposals.)

396 *Policies and Procedures Manual (PPM)* refers to the administrative policies and procedures
397 manual for the EBO Program.

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

400 *Procurement Code* means Sections 2-51 through 2-63 of the Palm Beach County Code, as may
401 be amended.

402 *Professional Services* means Professional Services, including but not limited to any narrow
403 discipline wherein a practitioner is required to have attained an advanced educational degree and/or
404 credentials certifying a certain level of competency in the field that have been issued by an
405 independent private body or board on behalf of the profession, prior to representing themselves to
406 the public as a practicing member of that narrow discipline; a practitioner of a Professional Service
407 has, through education and practical experience related to a particular field, developed expert
408 advisory and programming skills as a vocation; as one (1) where the high level of skills, technical
409 expertise in the field, and/or the advanced complexity and quality of advice provided by the potential
410 or known practitioner(s) warrants a competitive proposal or submittal process wherein the strength
411 of professional credentials are weighed heavily in the selection process (e.g., accounting, legal
412 services, mapping, laboratory testing services, physician services, nursing services, pharmacists,
413 scientists, dentistry, financial advisory services, realtors, surveying services, landscape design
414 services, appraisers, engineers, architects, etc.).

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

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

421 *Relevant Marketplace* means the geographic market area affecting the EBO Program as
422 determined for purposes of collecting data for the 2017 Disparity Study, and for determining
423 eligibility for participation under various programs established by this EBO Ordinance and is defined
424 as Palm Beach County.

425 *Request for Proposal (RFP)* has the meaning set forth in Section 2-52 of the Procurement Code,
426 as may be amended.

427 *Responsible Bidder or Offeror* has the meaning set forth in Section 2-52 of the Procurement
428 Code, as may be amended.

429 *Responsive Bidder or Offeror* has the meaning set forth in Section 2-52 of the Procurement
430 Code, as may be amended.

431 *Significant Business Presence* means that in order to qualify for participation as an S/M/WBE
432 firm in the program, the applicant must meet the domicile requirements for Palm Beach County in
433 which one or more of its employees are regularly based. Such a place of business must have a
434 substantial role in the S/M/WBE's performance of a Commercially Useful Function on the County
435 contract. A location utilized solely as a post office box, mail drop or telephone message center or any
436 combination thereof, with no other substantial work function, shall not be construed to constitute a
437 significant business presence.

438 *Small Business Enterprise (SBE)* means a corporation, partnership, sole proprietorship, or other
439 legal entity for the purpose of making a profit that: (1) is independently owned and operated by
440 individuals legally residing in, or that are citizens of, the United States or its territories; and (2) is
441 currently certified as having annual revenues that satisfy S/M/WBE size standards on an industry-
442 specific basis (i.e., Construction, CCNA Professional Services including Architectural and
443 Engineering Design firms, Professional Services, Goods, and Other Services) that are reflected in the
444 PPM; and (3) also is domiciled in Palm Beach County and satisfies the Significant Business Presence
445 and other eligibility requirements for participation in the Program as defined herein. The size
446 standards for SBE firms are as follows, and may be periodically revised by the Director of the Office

447 of EBO as necessary to satisfy and better serve the purposes and objectives of this EBO Ordinance,
448 and shall thereafter be reflected in the PPM:

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

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

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

461 (4) For a provider of Goods, the annual gross revenue shall not exceed seven million dollars
462 (\$7,000,000.00) (averaged over the previous three (3) most recent years, or if in business
463 less than three (3) years, averaged over the duration of the provider's existence).

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

468 In addition, the Director of the Office of EBO is authorized to establish a second tier size
469 standard for Emerging SBEs that are eligible for small sheltered market contracts; and whose size
470 standards are fifty (50) percent or less than the size standards for SBEs. If, and when, established,
471 the size standards for Emerging SBEs and Emerging M/WBEs shall be fifty (50) percent or less of
472 the sizes of SBE size standards, and shall also be the posted in the PPM.

473 *Small/Minority/Women Business Enterprise (S/M/WBE)* means any for-profit business firm that
474 is certified as being either small, minority, and/or women-owned, controlled, and managed.

475 *Solicitation* is a generic term for an invitation that is issued by the County to prospective
476 respondents or bidders, vendors, or contractors asking them to compete for County commercial
477 contract awards for specified goods or services through response to either an Invitation for Bid or a
478 Request for Proposal.

479 *Subcontractor/Subconsultant* means a subcontractor or a subconsultant that is providing goods,
480 services, or expertise to a prime contractor in direct furtherance of the prime contractor's performance
481 of a defined scope of work or deliverables under a contract or purchase order with the County as
482 evidenced by an executed binding agreement between the prime contractor and the
483 subcontractor/subconsultant which shall be submitted prior to the County's issuance of a notice to
484 proceed to the prime contractor.

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

487 *Supplier* means a business that supplies goods or materials. A supplier may be distinguished
488 from a contractor or subcontractor who commonly adds specialized services or input to deliverable
489 commodities.

490 *Vendor Self Service System (VSS)* means the electronic system of hardware and software
491 programs by which the County requires all vendors, including subcontractors that are ready, willing,
492 and able to sell goods or services to the County to register. Prior to award, all vendors shall be
493 required to register in VSS. The assigned identifiers are also used by the Office of EBO for measuring
494 relative availability and tracking utilization of S/M/WBE and all other firms at the prime and
495 subcontract levels by industry or commodity codes and for establishing annual Aspirational Goals
496 and contract-by-contract subcontracting goals. The details regarding fields of information captured
497 and the functionalities of the CBR system shall be reflected in the EBO Program PPM.

498 *Women Business Enterprise (WBE)* means any legal entity, except a joint venture, that is
499 organized to engage in for-profit transactions, that is certified for purposes of the EBO Program as
500 being at least fifty-one percent (51) percent owned, managed, and under the control of one (1) or
501 more non-minority women individuals of legal majority age that are lawfully residing in, or are
502 citizens of, the United States or its territories, that is ready, willing, and able to sell goods or services
503 that are purchased by the County, and that meets the domicile and Significant Business Presence

504 requirements as defined herein. In order to be eligible for participation in S/M/WBE APIs, the WBE
505 firm shall be currently certified as being in compliance with the size standards as reflected in the
506 PPM, and as having satisfied all eligibility requirements to participate in the EBO Program. Unless
507 otherwise stated, the term WBE as used in this Program is not inclusive of MBEs.

508 All terms not specifically defined herein, but defined in the County's Procurement Code, as may
509 be amended, shall carry the definition therein described.

510 **SECTION 3.SCOPE AND EXCLUSIONS.** Section 2-80.22 of the Palm Beach County Code is
511 hereby amended to read as follows:

512 This Part shall apply to the solicitation of all goods, services and construction by the County
513 which are governed by the County Procurement Code (Sections 2-51—2-63 of the County Code, as
514 may be amended), including, but not limited to, every contract or other agreement between the
515 County and any governmental agency, quasi-governmental agency, corporation, vendor, or
516 contractor, under which the agency, corporation, vendor, or contractor directly or indirectly receives
517 any fiscal assistance or remuneration from the County for the purpose of contracting with businesses
518 to perform construction, professional services, goods, or other services contracts, or for the purpose
519 of directly or indirectly purchasing goods or services for use by the County. As such, the County
520 shall require the agency, corporation, vendor, or contractor to comply with this EBO Program Code
521 in the solicitation, the award, and administration of that contract or agreement, provided; however,
522 that the following categories of contracts shall be excluded from the scope and application of this
523 EBO Program:

- 524 (1) Contracts for the purchase of goods or services of a unique nature for which the County's
525 Procurement Department determines and confirms there is only a sole source of supply;
- 526 (2) Contracts for electricity or water and sewage services from a municipal utility district or
527 governmental agency;
- 528 (3) Emergency Purchase means a procurement made in response to a need when the delay
529 incident to complying with all governing rules, regulations, or procedures would be
530 detrimental to the interests, health, safety, or welfare of the County;
- 531 (4) Contracts for the County's lease or purchase of real property where the County is lessee or
532 purchaser;

- 533 (5) Contracts for personal services involving the unique abilities or style of a particular
534 individual;
- 535 (6) Contracts or grants where conditions established by law or by external sources of funding
536 prohibit application of the EBO Program; and
- 537 (7) Any additional exclusions from the scope of this EBO Ordinance shall be set forth in the
538 EBO Program PPM.

539 **SECTION 4.OFFICE OF EQUAL BUSINESS OPPORTUNITY.** Section 2-80.23 of the Palm
540 Beach County Code is hereby amended to read as follows:

541 The Equal Business Opportunity (EBO) Program will be administered and managed by the
542 Director of the Office of EBO. The Director of the Office of EBO shall be managed by, and report
543 directly to, the County Administrator or designee. The Director of the Office of Equal Business
544 Opportunity or designee shall attend all County Board meetings to address any Equal Business
545 Opportunity Program issues that are addressed by the Board's meeting agenda. The Office of EBO
546 also shall be primarily responsible for the application of Affirmative Procurement Initiatives under
547 the EBO Program preferences, recommendations to the Purchasing Department and the Office of
548 the County Attorney regarding imposition of corrective actions and sanctions for non-compliance
549 with EBO Policies, Programs, and Procedures, and other administrative reforms that serve the
550 objectives of this Part.

551 A representative of the Office of EBO shall serve as a voting member on all selection
552 committees for all "best value" solicitations of the County where low price is not the sole
553 determining factor in contract award decisions. The role of the Office of EBO representative on
554 such selection panels is to promote fairness in scoring that does not improperly favor large and
555 incumbent firms over the comparable meaningful qualifications of S/M/WBE firms.

556 In addition, all prospective Formal Solicitations shall be reviewed in advance by the Office of
557 EBO for the purpose of recommending elimination of unnecessarily restrictive contract terms,
558 conditions, contract bundling features or selection criteria that may serve as barriers or
559 impediments to S/M/WBE participation. The Office of EBO shall, when appropriate, recommend
560 de-bundling of large contracts to the Purchasing Department and the Originating Department when

561 such de-bundling may substantially increase S/M/WBE contract opportunities and participation
562 without imposing an undue burden on the County in terms of contract management or cost.

563 The Goal Setting Committee shall determine which, if any, Affirmative Procurement
564 Initiatives shall be applied to each County Solicitation. The County Administrator or designee shall
565 make the final determination whenever consensus cannot be reached between the Office of EBO,
566 the Purchasing Department, and the Originating Department regarding proposed contract
567 specifications and modifications to same.

568 **SECTION 5. COMMERCIAL NONDISCRIMINATION POLICY.** Section 2-80.24 of the Palm
569 Beach County Code is hereby amended to read as follows:

570 (a) *Statement of Policy.* It is the policy of the County not to enter into a contract or to be engaged
571 in a business relationship with any business entity that has discriminated in the solicitation,
572 selection, hiring or commercial treatment of vendors, suppliers, subcontractors or commercial
573 customers on the basis of race, color, national origin, religion, ancestry, sex, age, marital status,
574 familial status, sexual orientation, gender identity or expression, disability, or genetic
575 information, or on the basis of any otherwise unlawful use of characteristics regarding the
576 vendor's, supplier's or commercial customer's employees or owners; provided that nothing in
577 this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects
578 of discrimination that have occurred or are occurring in the relevant marketplace for Palm Beach
579 County.

580 (b) *Policy Implementation.* The Office of EBO shall implement this policy by periodically
581 conducting outreach and by distributing educational materials to the County's contracting and
582 vendor community and related trade associations to advise such contractors, vendors and
583 prospective respondents or bidders of this policy and the procedures to be followed in submitting
584 complaints alleging violations of this policy. In addition, the County Administrator, the Director
585 of Purchasing, and the Office of the County Attorney shall ensure that the following commercial
586 nondiscrimination clause language is set forth in, and incorporated into, all the County contracts
587 that result from Formal Solicitations:

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

590 As a condition of entering into this agreement, the company represents and warrants that it will
591 comply with the County's Commercial Nondiscrimination Policy as described in Resolution R2017-
592 1770 as amended. As part of such compliance, the company shall not discriminate on the basis of
593 race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual
594 orientation, gender identity or expression, disability, or genetic information in the solicitation,
595 selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial
596 customers, nor shall the company retaliate against any person for reporting instances of such
597 discrimination. The company shall provide equal opportunity for subcontractors, vendors and
598 suppliers to participate in all of its public sector and private sector subcontracting and supply
599 opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful
600 efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the
601 County's relevant marketplace in Palm Beach County. The company understands and agrees that a
602 material violation of this clause shall be considered a material breach of this agreement and may
603 result in termination of this agreement, disqualification or debarment of the company from
604 participating in County contracts, or other sanctions. This clause is not enforceable by or for the
605 benefit of, and creates no obligation to, any third party.

606 All Formal Solicitations issued shall reflect the Commercial Nondiscrimination Policy and
607 contain words that are similar in meaning to the following:

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

610 In preparing its response on this Solicitation, the respondent or bidder has considered all
611 proposals submitted from qualified, potential Subcontractors and suppliers, and has not engaged in
612 "discrimination" as defined in the County's Commercial Nondiscrimination Policy as set forth in
613 Resolution R2017-1770 as amended, to wit: discrimination in the solicitation, selection or
614 commercial treatment of any Subcontractor, vendor, supplier or commercial customer on the basis
615 of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual
616 orientation, gender identity or expression, disability, or genetic information, or on the basis of any
617 otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's
618 employees or owners; provided that nothing in this policy shall be construed to prohibit or limit

619 otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring
620 in the County's relevant marketplace of Palm Beach County. Without limiting the foregoing,
621 "discrimination" also includes retaliating against any person or other entity for reporting any incident
622 of "discrimination." Without limiting any other provision of the solicitation for responses on this
623 project, it is understood and agreed that, if this certification is false, such false certification will
624 constitute grounds for the County to reject the response submitted by the respondent or bidder for
625 this Solicitation, and to terminate any contract awarded based on the response. As part of its response,
626 the respondent or bidder shall provide to the County a list of all instances within the immediate past
627 four (4) years where there has been a final adjudicated determination in a legal or administrative
628 proceeding in the State of Florida that the respondent or bidder discriminated against its
629 Subcontractors, vendors, suppliers or commercial customers, and a description of the status or
630 resolution of that complaint, including any remedial action taken. As a condition of submitting a
631 response to the County, the respondent or bidder agrees to comply with the County's Commercial
632 Nondiscrimination Policy as described in Resolution R2017-1770 as amended.

633 **SECTION 6. ADMINISTRATIVE REFORMS.** Section 2-80.26 of the Palm Beach County Code
634 is hereby amended to read as follows:

635 In furtherance of the objectives of this program, the County Administrator or designee shall be
636 responsible for implementing the following procurement policy reforms and non-industry-specific
637 remedies to address ongoing effects of discrimination that adversely affect M/WBE access to public
638 and private sector contracting opportunities and that will further facilitate the efficient
639 implementation and successful enforcement of the program:

640 (1) Maintain a user-friendly automated web-based Active Vendor Directory capable of
641 tracking availability of all primes and subcontractors interested in performing on County
642 contracts by industry segment and commodity codes that represent the types of goods and
643 services sold by each registrant firm. Enterprise Contract Management System (eCMS)
644 tracks utilization of registrant firms by the County dollars spent with each firm at the prime
645 contractor and subcontractor levels. eCMS should be fully integrated with the County's
646 VSS vendor registration system, OEBO Admin certification system, Advantage financial
647 systems, and Capital Improvement Program (CIP) systems. eCMS should include

648 capabilities that enable the Office of EBO to monitor progress on each County contract
649 (including multi-year contracts and change orders) to determine whether prime contractors
650 are on target to satisfy their S/M/WBE participation commitments, and to enable
651 appropriate intervention by the County to avoid non-compliance by prime contractors in
652 satisfaction of S/M/WBE participation commitments. Estimates of relative S/M/WBE
653 availability by commodity code shall be used by the GSC in setting annual and contract-
654 specific SBE and M/WBE participation Goals.

655 (2) *Solicitation Review.* Each Formal Solicitation issued by the County shall be referred to the
656 Office of EBO and the Director of Purchasing sufficiently in advance of publication to
657 determine whether it contains any terms, conditions, contract bundling features, or
658 selection criteria that may unnecessarily restrict competition or adversely impact the ability
659 of S/M/WBE firms to respond or to participate as subcontractors. If such objectionable
660 terms, conditions, contract bundling features, or selection criteria (including brand name
661 specifications or onerous and unreasonable experience requirements) are identified through
662 this review process, the Director of Purchasing, the Director or designee of the Office of
663 EBO, and the Project Manager for the Originating Department shall seek consensus in
664 developing an acceptable modification to the Solicitation. In the event consensus cannot
665 be reached, the County Administrator or designee shall make a final determination
666 regarding the proposed modifications to the Solicitation. The technical specifications are
667 the responsibility of the Originating Department.

668 (3) *De-bundling/Repackaging of Solicitations.* Each Formal Solicitation issued by the County
669 shall be referred to the Office of EBO in advance of publication to determine whether it
670 contains any requirements that may unnecessarily restrict competition or adversely impact
671 the ability of S/M/WBE firms to respond or participate as subcontractors. Such review shall
672 also consider whether it is feasible to de-bundle the contract by reducing the size of the
673 procurement or contract to maximize participation opportunities for S/M/WBE Prime
674 Contractors and Subcontractors without imposing undue costs or administrative burdens
675 upon the County. Similarly, such review shall also consider whether smaller contracts
676 should be aggregated into somewhat larger contract opportunities that will render such

677 contracts more feasible and profitable for available S/M/WBE firms to undertake. If such
678 objectionable specifications are identified through this review process, the Director of the
679 Office of EBO, the Director of Purchasing, and the Director or designee for the Originating
680 Department, shall seek consensus in developing an acceptable modification to the
681 specification. In the event consensus cannot be reached, the County Administrator or
682 designee shall make a final determination regarding the proposed modifications to the
683 specification.

684 (4) *Subcontract Remedies (Mobilization/Working Capital/Direct Payments)*. The County
685 Administrator or designee, in collaboration with the Director of the Office of EBO and the
686 Director of Purchasing, and in consultation with the Banking Consortium, shall establish
687 and convene a work group of County personnel to research, explore, and recommend a
688 variety of options for better addressing the working capital needs of S/M/WBE firms on
689 County prime contracts and subcontracts. Such options shall include, but not be limited to,
690 models for providing initial start-up mobilization fees to prime contractors and
691 subcontractors in advance of first-phase contract performance; revolving working capital
692 funds administered by third parties; direct payment by County of subcontractor invoices in
693 limited circumstances (with approval of prime contractors); and assistance with, or
694 facilitation of, equipment or fleet purchases or leases and acquisition of specialized
695 equipment. The work group should conclude its research and present its findings and
696 recommendations for consideration by the County Administrator or designee within six (6)
697 months of enactment of this Part.

698 (5) *Uniform Lead Time for Bid Submittals*. In the interest of providing a fair opportunity for
699 smaller firms to compete for County contracts, and for purposes of maximizing
700 competition, absent emergency purchases necessary to protect public health or safety, all
701 Formal Solicitations to the extent practical shall have a closing date that is at least thirty
702 (30) calendar days after the date such Solicitation is issued publicly.

703 (6) *Debriefings for Unsuccessful Respondents or Bidders*. For any contract in which the
704 S/M/WBE has submitted a bid or proposal in response to a Formal Solicitation and
705 subsequent evaluation of responses in accordance with a "Best Value Contracting" method

706 of procurement, the Director of the department issuing the solicitation, or of the department
707 on whose behalf the solicitation was issued, or their designees, shall provide a de-briefing
708 to any non-recommended respondent or bidder, upon request. At a minimum, debriefings
709 shall include disclosures of scoring criteria and scores from the evaluation panel
710 responsible for making the selection for each response that was evaluated. To the extent
711 possible, the de-briefing should also identify for each non-recommended respondent or
712 bidder those areas where its submittal was not as competitive as others, with an explanation
713 as to why. Bid solicitation language and the Office of EBO shall encourage unsuccessful
714 respondents or bidders to avail themselves of such bid-debriefing opportunities.

715 (7) *Expedited Payment Program.* The County Administrator or designee, in collaboration with
716 the Director of the Office of EBO, the Palm Beach County Clerk & Comptroller, and the
717 Director of Purchasing, shall establish and convene a work group of County personnel to
718 research, explore, and recommend a variety of options for accelerating payment of invoices
719 in ten (10) days or less. Such options shall include consideration of incentives such as
720 acceptance of percentage discount offers in contractor/vendor invoices that are paid by
721 County within ten (10) or fewer days of receipt. Streamlining of the invoice approval
722 process shall also be part of the focus of this work group. Moreover, the work group shall
723 explore the feasibility of inserting clauses into contracts that enable prime contractors to
724 authorize the County to directly pay undisputed invoices from subcontractors that are over
725 thirty (30) days old, and to deduct such amounts from the prime contractor's invoice when
726 other disputes or issues unrelated to subcontractors' performance are delaying the County's
727 payment to the prime. The intent of the Expedited Payment Program is to attract more
728 respondents or bidders, enhance competition, and obtain lower prices on behalf of the
729 County and its taxpayers.

730 (8) *Disputed Invoices—Ten (10) Day Notice Requirement.* Within ten (10) days of the County's
731 receipt of any payment request or invoice from a contractor or vendor, the County shall
732 notify such contractor or vendor in writing regarding any and all deficiencies in its payment
733 request or invoice that will prevent prompt processing and issuance of payment. To the

734 extent there is an undisputed portion of the invoice that can be paid, the County shall
735 proceed with prompt payment of that portion of the invoice.

736 (9) *Re-evaluation of Short-List/Selection Committee Procedures.* The County Administrator
737 shall convene a work group comprised of the Director of the Office of EBO, the Director
738 of Purchasing, and the Directors of each Originating Department for purposes of revisiting
739 the procedures that are followed during Short-List/Selection Committee interviews and/or
740 scoring of proposals and respondent or bidder teams for purposes of vendor selection on
741 best value contracts. Specifically, consideration should be given to limiting comments on
742 prospective respondents or bidders to persons serving on the Short-List/Selection
743 Committee, and also to establishing an opportunity for debriefing and open discussion by
744 evaluation panel members prior to scoring of proposals and/or respondent or bidder teams
745 that are under consideration. The intent of this provision is to facilitate more transparency
746 and accountability among Short-List/Selection Committee members for the scores that
747 each submits.

748 (10) *Prior Approval of S/M/WBE Subcontractor/Subconsultant Substitutions.* A Prime
749 contractor may not substitute any other subcontractor (S/M/WBE or Non-SBE) for
750 performance without obtaining prior written approval for such substitutions from the Office
751 of EBO.

752 (11) *Staff Training re: EBO Program Policies and Procedures.* The Office of EBO shall
753 coordinate and provide for quarterly staff training of key County personnel regarding the
754 EBO Ordinance, policy, and procedures, including, but not limited to, instruction on the
755 purpose and objectives of the program, reporting requirements and staff responsibilities for
756 the program and related procedures.

757 **SECTION 7. AFFIRMATIVE PROCUREMENT INITIATIVES.** Section 2-80.27 of the Palm
758 Beach County Code is hereby amended to read as follows:

759 The Goal Setting Committee shall be established by the County Administrator as defined herein
760 and shall have the responsibility of evaluating Solicitation documents at least fourteen (14) calendar
761 days in advance of scheduled posting an advertisement or release of the Solicitation to the public to
762 determine which of the following industry-specific Affirmative Procurement Initiatives (APIs) shall

763 be applied to a given contract within a particular industry. After the GSC makes a decision regarding
764 the application of an API, the Director of Procurement, in collaboration with the Director of the
765 Office of EBO, and the Office of the County Attorney shall then be responsible for inserting the
766 appropriate language in each Solicitation to effectuate the application of the selected API to that
767 Solicitation in advance of its publication and release. The Affirmative Procurement Initiatives may
768 be considered by the GSC as follows:

769 (1) *Construction Industry (Race-and Gender-Neutral Remedies).*

770 a. *Bond Waiver and Assistance Programs.* The County Administrator shall establish a
771 work group of County personnel to research, consider, and recommend a variety of
772 "best practice" models from the State of Florida and across the nation for providing
773 bond waivers and other forms of bonding assistance to S/M/WBE firms. To the extent
774 feasible, bonds should continue to be waived for contracts below two hundred
775 thousand dollars (\$200,000.00). In addition, the work group should research and
776 consider other models that shall include, but not be limited to, technical assistance,
777 Owner Controlled Insurance Programs ("OCIP"), bond premium cost
778 reimbursements, incremental bonding requirements for multi-year projects, and bond
779 guarantee programs. The work group shall report its findings and recommendations
780 to the County Administrator no later than six (6) months following enactment of this
781 Part.

782 b. *SBE Sheltered Market for Small Construction Contracts.* The Goal Setting Committee
783 may reserve small prime construction contracts (single trade or multi-trade) valued at
784 or below one hundred fifty thousand dollars (\$150,000) for sheltered market
785 competition solely among SBEs where only certified SBEs are eligible to submit bids
786 or quotes. Size standards for participating SBE construction prime contractors (either
787 single trade or multi-trade) shall be established in the EBO PPM.

788 c. *SBE Subcontracting Program.* Under this API, the County establishes a minimum
789 mandatory goal of twenty (20) percent SBE participation for County contracts,
790 provided that the Office of EBO shall agree to a reasonable reduction or waiver of this

791 goal in instances where it can be factually demonstrated that there is inadequate
792 availability of SBE prime and/or subcontractor firms qualified to perform
793 Commercially Useful Functions that are valued at twenty (20) percent of the total
794 estimated dollar value of the County contract. Prospective respondents or bidders shall
795 be provided an adequate opportunity to formally request such waivers at least seven
796 (7) days prior to bid opening based upon submission of adequate Good Faith Efforts
797 documentation as specified by the Office of EBO and as stated in bid solicitation
798 language.

799 Factors to be considered by the GSC in making this determination shall include the
800 relative availability of SBE firms to perform Commercially Useful Functions on the
801 specific contract.

802 A prospective respondent or bidder, to a County Solicitation for which price and scope
803 are defined, shall submit at the time as required in the Solicitation such documentation
804 as required by the Office of EBO that provides:

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

811 A prospective respondent or bidder on a County Solicitation for which the project
812 scope is not predefined, shall submit as required in the solicitation such
813 documentation as required by the Office of EBO to affirm its intent to meet the
814 subcontracting requirements indicated in the Solicitation. Failure of a Respondent or
815 Bidder to commit as required in the solicitation to satisfying the SBE subcontracting
816 goal shall render its response non-responsive.

817 During the price proposal negotiation phase, respondents or bidders shall be required
818 to submit:

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

825 A respondent or bidder may request a full or partial waiver of this mandatory

826 subcontracting requirement for good cause by submitting the appropriate form(s) and

827 documentation at the time as required in the Solicitation. Under no circumstances

828 shall a waiver of a mandatory subcontracting requirement be granted without

829 submission of adequate documentation of Good Faith Efforts by the respondent or

830 bidder and careful review by the Office of EBO. The Office of EBO shall base its

831 determination of a waiver request on criteria such as, but not limited to:

- 832 1. Whether the requestor of the waiver has made Good Faith Efforts to
- 833 subcontract with qualified and available SBEs;
- 834 2. Whether subcontracting would be inappropriate and/or not provide a
- 835 "Commercially Useful Function" under the scope of the contract; and
- 836 3. Whether there are no certified SBE firms that are qualified and available to
- 837 provide the goods or services required.

838 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor

839 to commit as required in the Solicitation to satisfying the SBE subcontracting goal

840 shall render its response non-Responsive. Provided, however, that on any prime

841 contract valued under ten million dollars (\$10,000,000.00), if the Prime Contractor is

842 a certified SBE firm, then the Prime Contractor is allowed to self-perform up to the

843 entire SBE subcontracting goal amount with its own forces. To the extent that the

844 certified SBE Prime Contractor does not self-perform a portion of the SBE

845 subcontracting goal, it shall be responsible for complying with all other requirements

846 of this API for that portion of work that is subcontracted. This self-performance option

847 for certified SBE Prime Contractors may be suspended at the discretion of the Director
848 of the Office of EBO or designee in the event it determines that the adverse cumulative
849 effect of the use of this self-performance option upon subcontractor opportunities is
850 too great.

851 In the absence of a waiver granted by the Office of EBO or the self-performance of a
852 portion or all of the SBE subcontracting goal by a certified SBE Prime Contractor, the
853 failure of a Prime Contractor to attain a subcontracting goal for SBE participation in
854 the performance of its contract or otherwise comply with the provisions of this API
855 shall be considered a material breach of contract, grounds for termination of that
856 contract with the County, and shall be subject to any penalties and sanctions available
857 under the terms of the EBO Program, its contract terms with the County, or by law.

858 A Prime Contractor is only permitted to substitute another subcontractor for a
859 designated SBE subcontractor that is unwilling or unable to perform. Substitutions
860 shall be done with like certified S/M/WBEs in order to maintain the participation
861 percentages submitted with the bid or proposal. The Prime is required to notify and
862 obtain prior written approval from the Office of EBO in advance of any such
863 substitution of a designated SBE subcontractor, or reduction in subcontract scope,
864 unless such reduction in scope is the direct and immediate result of a County-
865 mandated change order or contract amendment, or the County has mandated the
866 decertification, suspension, debarment, or termination of a designated SBE
867 Subcontractor. However, under such circumstances, the Prime Contractor shall
868 undertake Good Faith Efforts to replace the expired, decertified, suspended, debarred,
869 or terminated SBE with one (1) or more other certified SBE Subcontractors and shall
870 submit a post-contract award waiver request to the Office of EBO in the event such
871 Good Faith Efforts are unsuccessful.

872 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
873 shall be required to submit accurate progress payment information with each invoice
874 regarding each of its Subcontractors, including SBE Subcontractors. The Originating

875 Department shall audit the reported payments to SBE and non-SBE Subcontractors to
876 ensure that the Prime Contractor's reported subcontract participation is accurate.
877 County contracts with Prime Contractors shall include clauses requiring Prime
878 Contractors to pay Subcontractors in compliance with Florida prompt payment laws,
879 and such clauses shall mandate that in the event of a Prime's non-compliance
880 regarding such payments, the Prime Contractor shall be subject to any penalties and
881 sanctions available under the terms of the EBO Ordinance, its contract terms with the
882 County, or by law.

883 d. *SBE Mentor-Protégé Program (Construction Manager at Risk (CM@R))*. The
884 Mentor/Protégé RFP evaluation preferences is now a permanent policy, as amended,
885 due to its effectiveness and will continue to be available for use by the GSC for
886 construction-related RFPs. Refer to the PPM for detailed instructions.

887 e. *SBE Price Preference*. For construction contracts where there are no opportunities for
888 subcontracting (e.g., single trade), the GSC may include a provision requiring awards
889 of the contract to be made to the lowest responsive, responsible respondent or bidder
890 unless a certified SBE's bid is within the ten (10) percent of the lowest non-small
891 business bid, in which case the award shall be made to the certified small business
892 respondent or bidder submitting the lowest responsive, responsible bid at the price
893 that it bid. Prime SBE respondents must perform the majority of the associated work
894 under this API.

895 (2) *Construction Industry (Race- and Gender-Conscious Remedies)*. The Goal Setting
896 Committee (GSC) shall consider establishment of an overall M/WBE Annual Aspirational
897 Goal in accordance with subsection 'a' below and, in addition, shall review each prospective
898 County Construction Formal Solicitation in advance of its public release and
899 advertisement, and shall make a determination whether to apply any of the other Race-
900 Conscious APIs to those Construction solicitations based upon the following criteria:

901 a. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious
902 APIs indicate that Construction contracts of this type have exhibited significant

903 disparities in the utilization of available M/WBE Subcontractors and/or M/WBE
904 Prime Contractors;

905 b. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any
906 such disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime
907 Contractors based upon past contract Award and Payment data;

908 c. Whether a particular API is the least burdensome available remedy to non-M/WBE
909 Respondents or Bidders that is narrowly-tailored and that can effectively eliminate the
910 disparities in the utilization of M/WBEs in Construction contracts; and

911 d. Whether the particular API is appropriate for the specific type of Construction contract
912 being procured.

913 Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs
914 to Construction solicitations, it shall provide an explanation in the solicitation documents
915 of its reasons for doing so based upon its determinations pursuant to these criteria. In
916 making such determinations, the GSC may also take into consideration the experiences of
917 other jurisdictions within Palm Beach County for Construction services.

918 i. *Annual Aspirational Goals.* For each fiscal year, the GSC shall establish non-
919 mandatory annual aspirational percentage goals for overall M/WBE prime and
920 subcontract participation on County Construction contracts.

921 The Annual Aspirational Goals for M/WBE prime contract participation in County
922 Construction contracts have initially been established at twenty-eight (28) percent
923 MBE and thirteen (13) percent WBE respectively of the total cumulative construction
924 prime contract dollars to be awarded and spent on an annual basis, and at twenty-four
925 (24) percent MBE and fourteen (14) percent WBE respectively of the total cumulative
926 construction subcontract dollars to be awarded and spent on an annual basis. These
927 annual aspirational goals are based upon the M/WBE availability estimates by
928 industry set forth in accordance with the County's 2017 Disparity Study findings.

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

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

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

943 ii. *M/WBE Subcontracting Goals.* The GSC may, on a contract-by-contract basis, require
944 that a predetermined percentage of a specific Construction contract, up to forty (40)
945 percent, be subcontracted to eligible M/WBEs (i.e., certified M/WBE firms owned by
946 African-Americans, Hispanic-Americans, Asian-Americans, Native Americans, and
947 non-minority women). Factors to be considered by the GSC in making this
948 determination shall include the relative availability of M/WBE firms to perform
949 Commercially Useful Functions on the specific contract weighted according to the
950 relative dollar value of the construction sub-specialties available for subcontracting.

951 A prospective respondent or bidder on a County solicitation, for which price and scope
952 are defined, shall submit at the time as required in the solicitation such documentation
953 as required by the County that provides:

- 954 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- 955 2. The percentage of prime contract dollars and the absolute dollar value of
956 subcontracting services to be provided by each M/WBE;

- 957 3. A description of the work that each M/WBE Subcontractor shall perform; and
958 4. Documentation confirming the Subcontractor's commitment to perform the
959 work at the stated price.

960 A prospective respondent or bidder to a County solicitation, for which project scope
961 is not predefined, shall submit at the time as required in the solicitation such
962 documentation as required by the County to affirm its intent to meet the
963 subcontracting requirements indicated in the solicitation. In the absence of a waiver
964 granted by the Office of EBO, failure of a respondent or bidder to commit as required
965 in the solicitation to satisfying the M/WBE subcontracting goal shall render its
966 response non-responsive.

967 During the price proposal negotiation phase, respondents or bidders shall be required
968 to submit:

- 969 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
970 2. The percentage of prime contract dollars and the absolute dollar value of
971 subcontracting services to be provided by each M/WBE; and
972 3. A description of the work that each M/WBE Subcontractor shall perform.

973 A respondent or bidder may request a full or partial waiver of this mandatory
974 subcontracting requirement for good cause by submitting the appropriate form(s) and
975 documentation at the time as required in the Solicitation. Under no circumstances
976 shall a waiver of a mandatory subcontracting requirement be granted without
977 submission of adequate documentation of Good Faith Efforts by the respondent or
978 bidder and careful review by the Office of EBO. The Office of EBO shall base its
979 determination on a waiver request on criteria such as, but not limited to:

- 980 1. Whether the requestor of the waiver has made Good Faith Efforts to
981 subcontract with qualified and available M/WBEs;
982 2. Whether subcontracting would be inappropriate and/or not provide a
983 "Commercially Useful Function" under the scope of the contract; and
984 3. Whether there are no certified M/WBE firms that are qualified and available

985 to provide the goods or services required.

986 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor
987 to commit as required in the solicitation to satisfying the M/WBE subcontracting goal
988 shall render its response non-Responsive. Provided, however, that on any prime
989 contract valued under \$10 million, if the Prime Contractor is a certified M/WBE firm,
990 then the Prime Contractor is allowed to self-perform up to the entire M/WBE
991 subcontracting goal amount with its own forces. To the extent that the certified
992 M/WBE Prime Contractor does not self-perform a portion of the M/WBE
993 subcontracting goal, it shall be responsible for complying with all other requirements
994 of this API for that portion of work that is subcontracted. This self-performance option
995 for certified M/WBE Prime Contractors may be suspended at the discretion of the
996 Director of the Office of EBO in the event he or she determines that the adverse
997 cumulative effect of the use of this self-performance option upon subcontractor
998 opportunities is too great.

999 In the absence of a waiver granted by the Office of EBO, or the self-performance of
1000 a portion or all of the M/WBE subcontracting goal by a certified M/WBE Prime
1001 Contractor, the failure of a Prime Contractor to attain a subcontracting goal for
1002 M/WBE participation in the performance of its contract or otherwise comply with the
1003 provisions of this API shall be considered a material breach of contract, grounds for
1004 termination of that contract with the County and shall be subject to any penalties and
1005 sanctions available under the terms of the EBO Program, its contract with the County,
1006 or by law.

1007 A Prime Contractor is required to notify and obtain prior written approval from the
1008 Director of the Office of EBO in advance of any reduction in subcontract scope, unless
1009 such reduction in scope is the direct and immediate result of a County-mandated
1010 change order or contract amendment, or the County has mandated the decertification,
1011 suspension, or termination of a designated M/WBE Subcontractor, However, under
1012 such circumstances, the Prime Contractor shall undertake Good Faith Efforts to

1013 replace the expired, decertified, suspended, or terminated M/WBE Subcontractor(s)
1014 with one (1) or more other certified M/WBE Subcontractor(s) and shall submit a
1015 waiver request to the Office of EBO in the event such Good Faith Efforts are
1016 unsuccessful.

1017 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
1018 shall be required to submit accurate progress payment information with each invoice
1019 regarding each of its Subcontractors, including S/M/WBE Subcontractors. The
1020 Originating Department shall audit the reported payments to S/M/WBE and non-
1021 S/M/WBE Subcontractor to ensure that the Prime Contractors' reported subcontract
1022 participation is accurate. Absent a waiver from the Office of EBO, a Prime
1023 Contractor's failure to reach the required level of S/M/WBE subcontracting shall be
1024 considered a material breach of contract. County contracts with Prime Contractors
1025 shall include clauses requiring Prime Contractors to pay Subcontractors in compliance
1026 with Florida Prompt Payment Law, and such clauses shall mandate that in the event
1027 of Prime Contractor non-compliance regarding such payments, the Prime Contractor
1028 shall be subject to any penalties and sanctions available under the terms of the EBO
1029 Program, its contract with the County, or by law.

1030 c. *M/WBE Segmented Subcontracting Goals.* Under this API, the GSC may establish
1031 M/WBE Segmented Subcontracting Goals on an individual County contract wherein
1032 an overall combined M/WBE goal is accompanied by subsets of one (1) or more
1033 smaller goals that specifically target the participation of a particular segment of
1034 Minority Group Member segments or the WBE segment based upon that segment's
1035 relative availability. Such segmented goals shall specifically target the participation
1036 of a particular segment of business enterprises owned and controlled by women or
1037 certain Minority Group Members (e.g., African-Americans, Hispanic-Americans,
1038 Asian-Americans, or Native Americans) based upon relative availability, as well as
1039 the existence of consistently and significantly greater patterns of underutilization and
1040 disparity within an industry as compared to other gender and Minority Group Member

1041 categories of M/WBEs. (For example, if an overall M/WBE subcontracting goal is set
1042 at thirty-eight (38) percent on a given contract, the segmented subcontracting goal
1043 may require that at least twenty-three (23) percent of that thirty-eight (38) percent
1044 shall be satisfied through the utilization of African-American and Hispanic-American
1045 subcontractors.) The application of Segmented M/WBE Subcontracting Goals is
1046 intended to ensure that those segments of M/WBEs that have been most significantly
1047 and persistently underutilized receive a fair measure of remedial assistance. In all
1048 other respects, M/WBE Segmented Subcontracting Goals shall operate in the same
1049 manner as the M/WBE Subcontracting Goals set forth in this EBO Program.

- 1050 d. *M/WBE Joint Venture/Partnership/Teaming Incentive.* Under this API, for contracts
1051 valued at greater than two million five hundred thousand dollars (\$2,500,000.00), the
1052 GSC may establish incentives to promote joint ventures, partnerships, or teaming
1053 arrangements between larger established firms and M/WBE firms, or between and
1054 among SBE and M/WBE firms. For "best value" contracts wherein low price is not
1055 the only criterion for award, the incentive may be for up to twenty (20) percent of one
1056 hundred (100) evaluation points to be reserved for qualifying M/WBE joint ventures
1057 wherein the certified M/WBE joint venture partner owns fifty (50) percent or greater,
1058 and performs fifty (50) percent or greater of the work, of the overall joint venture.
1059 Proportionately fewer evaluation preference points would be awarded to the joint
1060 venture based upon lesser percentages of ownership by the M/WBE partner.
1061 Alternatively, incentives may include bonding assistance, assignment of multiple task
1062 orders on job order contracts totaling up to two million five hundred thousand dollars
1063 (\$2,500,000.00) in value, and accelerated payments or mobilization payments to be
1064 afforded to qualifying M/WBE joint ventures. This API should be reserved for those
1065 occasions wherein there are sufficient numbers of qualified M/WBE firms available
1066 of sufficient size to meaningfully joint venture or partner for purposes of performing
1067 larger contracts. Another consideration for application of this API is whether there are
1068 larger non-local M/WBE firms, or larger M/WBE firms that may have graduated from
1069 eligibility for the program, that are available and willing to joint venture with certified

1070 smaller local M/WBEs for purposes of enhancing local capacity at the prime contract
1071 level.

1072 A prospective M/WBE joint venture respondent or bidder on such County contracts
1073 shall submit in response to the solicitation such documentation as required by the
1074 County that includes, but is not limited to:

- 1075 1. The names of the M/WBE joint venture, partnership, or team and each of its
1076 partners or team members that will participate on the contract;
- 1077 2. The percentage of Prime Contract dollars and the absolute dollar value of the
1078 services to be provided by the M/WBE joint venture partner or team member;
1079 and
- 1080 3. A description of the work, management responsibilities, and other
1081 contributions that each joint venture partner or team member shall perform or
1082 provide under the terms of its joint venture, partnership, or teaming agreement.

1083 e. *M/WBE Mentor-Protégé Program (Construction Manager at Risk (CM@R))*. The
1084 Mentor/Protégé RFP evaluation preferences is now a permanent policy, as amended,
1085 due to its effectiveness and will continue to be available for use by the GSC for
1086 construction-related RFPs. Refer to the PPM for detailed instructions.

1087 f. *M/WBE Evaluation Preference for "Best Value" RFPs*. The GSC may apply this API
1088 to Formal Solicitations for County bid solicitations that are issued pursuant to a "Best
1089 Value" method of procurement wherein criteria other than price are factored into the
1090 selection process. Under the terms of this Evaluation Preference, the GSC shall require
1091 that evaluation panels assign point preferences equal to up to fifteen (15) percent of
1092 the total points assigned for the evaluation, scoring and ranking of construction-
1093 related proposals submitted by those certified M/WBE firms. M/WBE Prime
1094 respondents must perform the majority of the associated work under this API.

1095 An M/WBE that is awarded a prime contract under this program may not subcontract
1096 more than forty-nine (49) percent of the contract value to a non-S/M/WBE firm. In
1097 determining whether a particular contract is eligible for this Program, the GSC shall

1098 consider: (a) the relative availability of S/M/WBEs, with the preference of at least
1099 three (3) S/M/WBEs that are likely to bid as a Prime Contractor for the contract; and
1100 (b) the degree of underutilization of the S/M/WBEs in the specific Industry
1101 Categories.

1102 (3) *Professional Services (Race- and Gender-Neutral Remedies).*

1103 a. *SBE Vendor Rotation.* Under this API, there are two (2) options for the selective use
1104 of a prequalified panel of SBE vendors by the County:

1105 Option 1

1106 For smaller County non-CCNA professional services contracts valued at less than one
1107 hundred fifty thousand dollars (\$150,000), a prequalified panel of SBE professional
1108 services firms may be assigned work tasks on a rotating basis. Periodically, the SBE
1109 Vendor Rotation list shall be re-ordered according to the firm with the least amount
1110 of dollars received to the most dollars received from the County based upon the
1111 cumulative dollars received within the past year.

1112 Option 2

1113 When the County requires price competition in its solicitations, and when quotations
1114 from several firms are required before award of contracts valued at less than one
1115 hundred fifty thousand dollars (\$150,000), solicitations for price quotations shall be
1116 affirmatively and directly sought from the next three (3) firms appearing in the SBE
1117 Vendor Rotation list of prequalified firms for that type of professional service prior
1118 to contract award. With each successive solicitation of quotations of this type, the list
1119 shall be rotated to the next group of three (3) SBE vendors appearing in the rotation.

1120 b. *Evaluation Preference for New SBE Prime Respondents or Bidders.* Under this API,
1121 the GSC shall establish point preferences in the evaluation of proposals for those first-
1122 time SBE entrants that are competing for County Professional Services contracts for
1123 up to one (1) year after submission of an SBE prime respondent's or bidder's first
1124 successful proposal with the County, or until the firm has received a cumulative total

1125 of one million dollars (\$1,000,000.00) or more in payments for services performed on
1126 behalf of the County (whichever period of time is longer). Up to fifteen (15) percent
1127 of the total number of evaluation points allocated for selection of a professional
1128 services firm by the County shall be reserved for SBE prime respondents or bidders
1129 that have only received their first contract award with the County within the past year
1130 or have not yet received a cumulative total of one million dollars (\$1,000,000.00) or
1131 more in payments from the County for professional services rendered. One (1) year
1132 after a new entrant SBE prime respondent or bidder has won its first County contract,
1133 assuming it has received a cumulative total of one million dollars (\$1,000,000.00) or
1134 more in payments from the County, it shall no longer be eligible to receive such
1135 evaluation preference points for new SBE prime respondents or bidders, but may
1136 remain eligible to receive other evaluation preference points reserved for SBE prime
1137 respondents or bidders that are not new. This API is intended to address the natural
1138 bias that has been identified on the part of some selection panels against smaller firms
1139 that are unknown and that have no significant prior track record with the County. SBE
1140 Prime respondents must perform the majority of the associated work under this API.

- 1141 c. SBE Reserve for Contracts Up to ten thousand dollars (\$10,000) and Required SBE
1142 Quotations on Informal Solicitations for non-CCNA Professional Services. Under this
1143 API, the GSC may reserve certain categories of small professional services contracts
1144 valued at less than ten thousand dollars (\$10,000) exclusively for competition among
1145 SBE professional services firms. For larger non-CCNA professional services
1146 contracts valued below one hundred fifty thousand dollars (\$150,000), the GSC shall
1147 require at least two to three quotations or proposals be affirmatively solicited directly
1148 from SBE professional services firms before the County may make an award. In
1149 selecting the use of this API, the GSC shall consider whether the County has had
1150 difficulty in obtaining prime contract bids or proposals from available SBE firms for
1151 that type of professional services contracts.

1152 d. *SBE Evaluation Preference for Prime Respondents or Bidders.* Under this API, there
1153 are two (2) options available for the GSC to enhance contract opportunities for SBE
1154 Prime Respondents or Bidders on "Best Value" professional services contracts where
1155 low bid price is not the only consideration in contract award:

1156 Option 1

1157 An SBE evaluation preference of up to fifteen (15) percent of the total number of
1158 available evaluation points for scoring of proposals shall be reserved for all SBE
1159 prime respondents or bidders on County professional services contracts valued at less
1160 than five hundred thousand dollars (\$500,000.00). SBE Prime respondents must
1161 perform the majority of the associated work under this API.

1162 Option 2

1163 Evaluation preference points shall be awarded on a sliding scale from zero up to
1164 fifteen (15) percent of the total available evaluation points for scoring of proposals to
1165 those firms responding to Professional Services solicitations valued at five hundred
1166 thousand dollars (\$500,000.00) or greater. The sliding scale shall be based upon the
1167 relative level of SBE dollar participation that has been committed to on the prime
1168 respondent's or bidder's team (e.g., zero SBE participation on a prime respondent or
1169 bidder's team shall yield zero evaluation points, whereas the maximum SBE
1170 participation among all prime respondents or bidders, at the prime contract and
1171 subcontract levels combined, shall yield award of fifteen (15) evaluation preference
1172 points out of one hundred (100); and a prime respondent's or bidder's team that
1173 achieves only half as many dollars in SBE participation as the firm with the greatest
1174 SBE dollar participation at the prime contract and subcontract levels combined shall
1175 be awarded seven and one-half (7.5) evaluation points out of one hundred (100).

1176 e. *SBE Subcontracting Goals for Professional Services.* The Board has established a
1177 minimum mandatory goal of twenty (20) percent SBE participation for County
1178 contracts, provided that the Office of EBO shall agree to a reasonable reduction or
1179 waiver of this goal in instances where it can be factually demonstrated that there is

1180 inadequate availability of SBE prime and/or subcontractor firms qualified to perform
1181 Commercially Useful Functions that are valued at twenty (20) percent of the total
1182 estimated dollar value of the County contract. Prospective respondents or bidders shall
1183 be provided an adequate opportunity to formally request such waivers prior to bid
1184 opening based upon submission of adequate Good Faith Efforts documentation as
1185 specified by the Office of EBO and as stated in Solicitation language.

1186 Under this API, the GSC shall, on a contract-specific basis, require that at least twenty
1187 (20) percent of the total value of a prime contract be subcontracted to eligible SBEs.
1188 Factors to be considered by the GSC in making this determination shall include the
1189 relative availability of SBE firms to perform Commercially Useful Functions on the
1190 specific contract.

1191 A prospective respondent or bidder, to a County Solicitation for which price and scope
1192 are defined, shall submit at the time as required in the solicitation such documentation
1193 as required by the Office of EBO that provides:

- 1194 1. The name(s) of the SBE Subcontractor(s) it intends to use on the project;
- 1195 2. The percentage of prime contract dollars and the absolute dollar value of
1196 subcontracting services to be provided by each SBE;
- 1197 3. A description of the work that each SBE Subcontractor shall perform; and
- 1198 4. Documentation confirming the Subcontractor's commitment to perform the
1199 work at the stated price.

1200 A prospective respondent or bidder on a County Solicitation for which respondents or
1201 bidders are not initially evaluated based on price, or for which the project scope is not
1202 predefined, shall submit as required in the solicitation such documentation as required
1203 by the Office of EBO to affirm its intent to meet the subcontracting requirements
1204 indicated in the solicitation. Failure of a respondent or bidder to commit as required
1205 in the solicitation to satisfying the SBE subcontracting goal shall render its response
1206 non-responsive.

1207 During the price proposal negotiation phase, respondents or bidders shall be required
1208 to submit:

- 1209 1. The name(s) of the SBE Subcontractor(s) it intends to use on the project;
- 1210 2. The percentage of prime contract dollars and the absolute dollar value of
1211 subcontracting services to be provided by each SBE;
- 1212 3. A description of the work that each SBE Subcontractor shall perform; and
- 1213 4. Documentation confirming the Subcontractor's commitment to perform the
1214 work at the stated price.

1215 A respondent or bidder may request a full or partial waiver of this mandatory
1216 subcontracting requirement for good cause by submitting the appropriate form(s) and
1217 documentation at the time as required in the Solicitation. Under no circumstances
1218 shall a waiver of a mandatory subcontracting requirement be granted without
1219 submission of adequate documentation of Good Faith Efforts by the respondent or
1220 bidder and careful review by the Office of EBO. The Office of EBO shall base its
1221 determination of a waiver request on criteria such as, but not limited to:

- 1222 1. Whether the requestor of the waiver has made Good Faith Efforts to
1223 subcontract with qualified and available SBEs;
- 1224 2. Whether subcontracting would be inappropriate and/or not provide a
1225 "Commercially Useful Function" under the scope of the contract; and
- 1226 3. Whether there are no certified SBE firms that are qualified and available to
1227 provide the goods or services required.

1228 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor
1229 to commit as required in the solicitation to satisfying the SBE subcontracting goal
1230 shall render its response non-Responsive. Provided, however, that on any prime
1231 contract valued under \$10 million, if the Prime Contractor is a certified SBE firm,
1232 then the Prime Contractor is allowed to self-perform up to the entire SBE
1233 subcontracting goal amount with its own forces. To the extent that the certified SBE
1234 Prime Contractor does not self-perform a portion of the SBE subcontracting goal, it

1235 shall be responsible for complying with all other requirements of this API for that
1236 portion of work that is subcontracted. This self-performance option for certified SBE
1237 Prime Contractors may be suspended at the discretion of the Director of the Office of
1238 EBO or designee in the event he or she determines that the adverse cumulative effect
1239 of the use of this self-performance option upon subcontractor opportunities is too
1240 great.

1241 In the absence of a waiver granted by the Office of EBO or the self-performance of a
1242 portion or all of the SBE subcontracting goal by a certified SBE Prime Contractor, the
1243 failure of a Prime Contractor to attain a subcontracting goal for SBE participation in
1244 the performance of its contract or otherwise comply with the provisions of this API
1245 shall be considered a material breach of contract, grounds for termination of that
1246 contract with the County, and shall be subject to any penalties and sanctions available
1247 under the terms of the EBO Ordinance, its contract terms with the County, or by law.

1248 A Prime Contractor is only permitted to substitute another subcontractor for a
1249 designated SBE subcontractor that is unwilling or unable to perform. Substitutions
1250 shall be done with like certified S/M/WBEs in order to maintain the participation
1251 percentages submitted with the bid or proposal. The Prime is required to notify and
1252 obtain prior written approval from the Office of EBO in advance of any such
1253 substitution of a designated SBE subcontractor, or reduction in subcontract scope,
1254 unless such reduction in scope is the direct and immediate result of a County-
1255 mandated change order or contract amendment, or the County has mandated the
1256 decertification, suspension, debarment, or termination of a designated SBE
1257 Subcontractor. However, under such circumstances, the Prime Contractor shall
1258 undertake Good Faith Efforts to replace the expired, decertified, suspended, debarred,
1259 or terminated SBE with one or more other certified SBE Subcontractors and shall
1260 submit a waiver request to the Office of EBO in the event such Good Faith Efforts are
1261 unsuccessful.

1262 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
1263 shall be required to submit accurate progress payment information with each invoice
1264 regarding each of its Subcontractors, including SBE Subcontractors. The Originating
1265 Department shall audit the reported payments to SBE and non-SBE Subcontractors to
1266 ensure that the Prime Contractor's reported subcontract participation is accurate.
1267 County contracts with Prime Contractors shall include clauses requiring Prime
1268 Contractors to pay Subcontractors in compliance with Florida prompt payment laws,
1269 and such clauses shall mandate that in the event of a Prime Contractor's non-
1270 compliance regarding such payments, the Prime Contractor shall be subject to any
1271 penalties and sanctions available under the terms of the EBO Ordinance, its contract
1272 terms with the County, or by law.

1273 (4) *Professional Services (Race-and Gender-Conscious Remedies)*. The GSC shall consider
1274 establishment of an overall M/WBE Annual Aspirational Goal in accordance with
1275 subsection 'a' below and, in addition, shall review each prospective County Professional
1276 Services Formal Solicitation in advance of its public release and advertisement, and shall
1277 make a determination whether to apply any of the other Race- and Gender-Conscious APIs
1278 to those Professional Services solicitations based upon the following criteria:

- 1279 1. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious
1280 APIs indicate that Professional Services contracts of this type have exhibited
1281 significant disparities in the utilization of available M/WBE Subcontractors and/or
1282 M/WBE Prime Contractors;
- 1283 2. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any
1284 such disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime
1285 Contractors based upon past contract Award and Payment data;
- 1286 3. Whether a particular API is the least burdensome available remedy to non-M/WBE
1287 respondents or bidders that is narrowly-tailored and that can effectively eliminate the
1288 disparities in the utilization of M/WBEs in Professional Services contracts; and

1289 4. Whether the particular API is appropriate for the specific type of Professional Services
1290 contract being procured.

1291 Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs
1292 to Professional Services solicitations, it shall provide an explanation in the solicitation
1293 documents of its reasons for doing so based upon its determinations pursuant to these
1294 criteria. In making such determinations, the GSC may also take into consideration the
1295 experiences of other jurisdictions within Palm Beach County for Professional Services.

1296 a. *Annual Aspirational M/WBE Goals.* For each fiscal year, the GSC shall establish non-
1297 mandatory annual aspirational percentage goals for overall M/WBE prime and
1298 subcontract participation on County Professional Services contracts.

1299 The Annual Aspirational Goals for M/WBE prime contract participation in County
1300 Professional Services contracts have initially been established at twenty-three (23)
1301 percent MBE and nineteen (19) percent WBE respectively of the total cumulative
1302 professional services prime contract dollars to be awarded and spent on an annual
1303 basis, and at twenty-five (25) percent MBE and twenty-one (21) percent WBE
1304 respectively of the total cumulative professional services subcontract dollars to be
1305 awarded and spent on an annual basis. These annual aspirational goals are based upon
1306 the M/WBE availability estimates by industry set forth in accordance with the
1307 County's 2017 Disparity Study findings.

1308 Each Annual Aspirational Goal is to be reviewed on an annual basis for potential
1309 adjustment by the GSC based upon the M/WBE availability by industry segment in
1310 accordance with the County's 2017 Disparity Study findings, along with relative
1311 M/WBE availability data through eCMS and the actual utilization of M/WBEs
1312 reflected therein.

1313 Annual Aspirational Goals shall not be routinely applied to individual Solicitations,
1314 but are intended to serve as a benchmark against which to measure the overall
1315 effectiveness of the Program on an annual basis in addressing identified disparities,

1316 and to gauge the need for future adjustments to the mix and aggressiveness of
1317 remedies and APIs being applied pursuant to this EBO Ordinance.

1318 Annual Aspirational Goals may be stated only in those County Solicitations that do
1319 not contain contract-specific S/M/WBE goals, and when provided, shall be advisory
1320 only, and must also be accompanied by the full definition of the term as stated in this
1321 EBO Ordinance.

1322 b. *M/WBE Evaluation Preferences for Professional Services.* Under this API, evaluation
1323 preference points shall be awarded on a sliding scale from zero up to fifteen (15)
1324 percent of the total available evaluation points for scoring of proposals to those firms
1325 responding to professional services solicitations. The sliding scale shall be based upon
1326 the relative level of M/WBE dollar participation that has been committed to on the
1327 prime respondent's or bidder's team (e.g., zero M/WBE participation on a prime
1328 respondent's or bidder's team shall yield zero evaluation points, whereas the proposal
1329 from the prime respondent or bidder that proposes achieving the maximum M/WBE
1330 participation among all prime respondents or bidders, at the prime contract and
1331 subcontract levels combined, shall yield award of fifteen (15) evaluation preference
1332 points out of one hundred (100) to that respondent or bidder; and a prime respondent's
1333 or bidder's team that achieves only half as many dollars in M/WBE participation as
1334 the firm with the greatest M/WBE dollar participation at the prime contract and
1335 subcontract levels combined shall be awarded seven and one-half (7.5) evaluation
1336 points out of one hundred (100).

1337 c. *M/WBE Subcontracting Goals for Professional Services.* The GSC, on a contract-by-
1338 contract basis, may require that a predetermined percentage of a specific Professional
1339 Services contract, up to forty (40) percent, be subcontracted to eligible M/WBEs (i.e.,
1340 certified M/WBE firms owned by African-American, Hispanic-American, Asian-
1341 American, Native American, and non-minority women persons). Factors to be
1342 considered by the GSC in making this determination shall include the relative
1343 availability of M/WBE firms to perform Commercially Useful Functions on the

1344 specific contract weighted according to the relative dollar value of the construction
1345 sub-specialties available for subcontracting.

1346 A prospective respondent or bidder on a County solicitation, for which price and scope
1347 are defined, shall submit at the time as required in the solicitation such documentation
1348 as required by the County that provides:

- 1349 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- 1350 2. The percentage of prime contract dollars and the absolute dollar value of
1351 subcontracting services to be provided by each M/WBE;
- 1352 3. A description of the work that each M/WBE Subcontractor shall perform; and
- 1353 4. Documentation confirming the Subcontractor's commitment to perform the
1354 work at the stated price.

1355 A prospective respondent or bidder to a County Solicitation, for which project scope
1356 is not predefined, shall submit at the time as required in the Solicitation such
1357 documentation as required by the County to affirm its intent to meet the
1358 subcontracting requirements indicated in the solicitation. In the absence of a waiver
1359 request granted by the Office of EBO, failure of a respondent or bidder to commit as
1360 required in the solicitation to satisfying the M/WBE subcontracting goal shall render
1361 its response non-responsive.

1362 During the price proposal negotiation phase, or prior to contract award for CCNA
1363 Services, respondents or bidders shall be required to submit:

- 1364 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- 1365 2. The percentage of prime contract dollars and the absolute dollar value of
1366 subcontracting services to be provided by each M/WBE; and
- 1367 3. A description of the work that each M/WBE Subcontractor shall perform.

1368 A respondent or bidder may request a full or partial waiver of this mandatory
1369 subcontracting requirement for good cause by submitting the appropriate form(s) and
1370 documentation at the time as required in the Solicitation. Under no circumstances

1371 shall a waiver of a mandatory subcontracting requirement be granted without
1372 submission of adequate documentation of Good Faith Efforts by the respondent or
1373 bidder and careful review by the Office of EBO. The Office of EBO shall base its
1374 determination on a waiver request on criteria such as, but not limited to:

- 1375 1. Whether the requestor of the waiver has made Good Faith Efforts to
1376 subcontract with qualified and available M/WBEs;
- 1377 2. Whether subcontracting would be inappropriate and/or not provide a
1378 "Commercially Useful Function" under the scope of the contract; and
- 1379 3. Whether there are no certified M/WBE firms that are qualified and available
1380 to provide the goods or services required.

1381 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor
1382 to commit as required in the Solicitation to satisfying the M/WBE subcontracting goal
1383 shall render its response non-responsive. Provided, however, that on any prime
1384 contract valued under one million dollars (\$1,000,000.00), if the Prime Contractor is
1385 a certified M/WBE firm, then the Prime Contractor is allowed to self-perform up to
1386 the entire M/WBE subcontracting goal amount with its own forces. To the extent that
1387 the certified M/WBE Prime Contractor does not self-perform a portion of the M/WBE
1388 subcontracting goal, it shall be responsible for complying with all other requirements
1389 of this API for that portion of work that is subcontracted. This self-performance option
1390 for certified M/WBE Prime Contractors may be suspended at the discretion of the
1391 Director of the Office of EBO in the event he or she determines that the adverse
1392 cumulative effect of the use of this self-performance option upon subcontractor
1393 opportunities is too great.

1394 In the absence of a waiver granted by the Office of EBO, or the self-performance of
1395 a portion or all of the M/WBE subcontracting goal by a certified M/WBE Prime
1396 Contractor, the failure of a Prime Contractor to attain a subcontracting goal for
1397 M/WBE participation in the performance of its contract or otherwise comply with the
1398 provisions of this API shall be considered a material breach of contract, grounds for

1399 termination of that contract with the County and shall be subject to any penalties and
1400 sanctions available under the terms of the EBO Ordinance, its contract with the
1401 County, or by law.

1402 A Prime Contractor is required to notify and obtain prior written approval from the
1403 Director of the Office of EBO in advance of any reduction in subcontract scope, unless
1404 such reduction in scope is the direct and immediate result of a County-mandated
1405 change order or contract amendment, or the County has mandated the decertification,
1406 suspension, or termination of a designated M/WBE Subcontractor. However, under
1407 such circumstances, the Prime Contractor shall undertake Good Faith Efforts to
1408 replace the expired, decertified, suspended, or terminated M/WBE Subcontractor(s)
1409 with one (1) or more other certified M/WBE Subcontractor(s) and shall submit a
1410 waiver request to the Office of EBO in the event such Good Faith Efforts are
1411 unsuccessful.

1412 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
1413 shall be required to submit accurate progress payment information with each invoice
1414 regarding each of its Subcontractors, including S/M/WBE Subcontractors. The
1415 Originating Department shall audit the reported payments to S/M/WBE and non-
1416 S/M/WBE Subcontractors to ensure that the Prime Contractors' reported subcontract
1417 participation is accurate. Absent a waiver from the Office of EBO, a Prime
1418 Contractor's failure to reach the required level of S/M/WBE subcontracting shall be
1419 considered a material breach of contract. County contracts with Prime Contractors
1420 shall include clauses requiring Prime Contractors to pay Subcontractors in compliance
1421 with Florida Prompt Payment Law, and such clauses shall mandate that in the event
1422 of Prime Contractor non-compliance regarding such payments, the Prime Contractor
1423 shall be subject to any penalties and sanctions available under the terms of the EBO
1424 Ordinance, its contract with the County, or by law.

1425 d. *M/WBE Segmented Subcontracting Goals for Professional Services.* Under this API,
1426 the GSC may establish M/WBE Segmented Subcontracting Goals on an individual

1427 County contract wherein an overall combined M/WBE goal is accompanied by
1428 subsets of one (1) or more smaller goals that specifically target the participation of a
1429 particular segment of Minority Group Member segments or the WBE segment based
1430 upon that segment's relative availability. Such segmented goals shall specifically
1431 target the participation of a particular segment of business enterprises owned and
1432 controlled by women or certain Minority Group Members (e.g., African-Americans)
1433 based upon relative availability, as well as the existence of consistently and
1434 significantly greater patterns of underutilization and disparity within an industry as
1435 compared to other gender and Minority Group Member categories of M/WBEs. (For
1436 example, if an overall M/WBE subcontracting goal is set at forty-six (46) percent on
1437 a given contract, the segmented subcontracting goal may require that at least ten (10)
1438 percent of that forty-six (46) percent shall be satisfied through the utilization of
1439 African-American subcontractors.) The application of Segmented M/WBE
1440 Subcontracting Goals is intended to ensure that those segments of M/WBEs that have
1441 been most significantly and persistently underutilized receive a fair measure of
1442 remedial assistance. In all other respects, M/WBE Segmented Subcontracting Goals
1443 shall operate in the same manner as the M/WBE Subcontracting Goals set forth in this
1444 EBO Ordinance.

1445 e. *M/WBE Vendor Rotation.* Under this API, there are two options for the selective use
1446 of a prequalified panel of M/WBE vendors by the County:

1447 Option 1

1448 For smaller non-CCNA County professional services contracts valued at less than one
1449 hundred fifty thousand dollars (\$150,000), a prequalified panel of M/WBE
1450 professional services firms may be assigned work tasks on a rotating basis.
1451 Periodically, the M/WBE Vendor Rotation list shall be re-ordered according to the
1452 firm with the least amount of dollars received to the most dollars received from the
1453 County based upon the cumulative dollars received within the past year.

1454 Option 2

1455 When the County requires price competition in its Solicitations, and when quotations
1456 from several firms are required before award of contracts valued at less than one
1457 hundred fifty thousand dollars (\$150,000), Solicitations for price quotations shall be
1458 affirmatively and directly sought from the next three (3) firms appearing in the
1459 M/WBE Vendor Rotation list of prequalified firms for that type of professional
1460 service prior to contract award. With each successive solicitation of quotations of this
1461 type, the list shall be rotated to the next group of three (3) M/WBE vendors appearing
1462 in the rotation. In selecting this API, the GSC shall consider the extent to which the
1463 County has been unsuccessful in obtaining bids from available M/WBE professional
1464 services firms.

1465 f. *M/WBE Required Quotations for Contracts Up to ten thousand dollars (\$10,000) and*
1466 *Required M/WBE Solicitations for non-CCNA Professional Services Contracts*
1467 *Valued Under one hundred fifty thousand dollars (\$150,000).* Under this API, the
1468 GSC may require direct affirmative Solicitation of quotations from up to three (3)
1469 M/WBE firms for certain categories of small DPO professional services contracts
1470 valued at less than ten thousand dollars (\$10,000). For larger non-CCNA professional
1471 services contracts valued below one hundred fifty thousand dollars (\$150,000), the
1472 GSC shall require the County to directly and affirmatively solicit at least two (2) to
1473 three (3) quotations or proposals from M/WBE professional services firms before the
1474 County may make an award. In selecting the use of this API, the GSC shall consider
1475 whether the County has had difficulty in obtaining prime contract bids or proposals
1476 from available M/WBE firms for that type of non-CCNA professional services
1477 contracts.

1478 (5) *Goods and Other Services (Race- and Gender-Neutral Remedies).*

1479 a. *SBE Vendor Rotation.* Under this API, there are two (2) options for the selective use
1480 of a prequalified panel of SBE vendors by the County:

1481 Option 1

1482 For smaller County Goods and Other Services contracts valued at less than one
1483 hundred fifty thousand dollars (\$150,000), a prequalified panel of SBE Goods and
1484 Other Services firms may be assigned work tasks on a rotating basis. Periodically, the
1485 SBE Vendor Rotation list shall be re-ordered according to the firm with the least
1486 amount of dollars received to the most dollars received from the County based upon
1487 the cumulative dollars received within the past year.

1488 Option 2

1489 When the County requires price competition in its Solicitations, and when quotations
1490 from several firms are required before award of contracts valued at less than one
1491 hundred fifty thousand dollars (\$150,000), Solicitations for price quotations shall be
1492 affirmatively and directly sought from the next three (3) firms appearing in the SBE
1493 Vendor Rotation list of prequalified firms for that type of professional service prior
1494 to contract award. With each successive solicitation of quotations of this type, the list
1495 shall be rotated to the next group of three SBE vendors appearing in the rotation.

1496 b. *SBE Reserve for Contracts below Ten Thousand Dollars (\$10,000) and Required SBE*
1497 *Quotations on Informal Solicitations below One Hundred Fifty Thousand Dollars*
1498 *(\$150,000).* Under this API, the GSC may reserve certain categories of small Goods
1499 and Other Services contracts valued at less than ten thousand dollars (\$10,000)
1500 exclusively for competition among SBE Goods and Other firms. For larger Goods and
1501 Other Services contracts valued below one hundred fifty thousand dollars (\$150,000),
1502 the GSC shall require at least two to three quotations or proposals be affirmatively
1503 solicited directly from SBE Goods and Other Services firms before the County may
1504 make an award. In selecting the use of this API, the GSC shall consider whether the
1505 County has had difficulty in obtaining prime contract bids or proposals from available
1506 SBE firms for that type of Good or Other Service contract.

1507 c. *SBE Evaluation Preference for Prime Respondents or Bidders.* Under this API, there
1508 are two (2) options available for the GSC to enhance contract opportunities for SBE

1509 Prime respondents or bidders on "best value" Other Services contracts where low bid
1510 price is not the only consideration in contract award:

1511 Option 1

1512 An SBE evaluation preference of up to fifteen (15) percent of the total number of
1513 available evaluation points for scoring of proposals shall be reserved for all SBE
1514 prime respondents or bidders on County Other Services contracts valued at less than
1515 five hundred thousand dollars (\$500,000.00). SBE Prime respondents must perform
1516 the majority of the associated work under this API.

1517 Option 2

1518 Evaluation preference points shall be awarded on a sliding scale from zero up to
1519 fifteen (15) percent of the total available evaluation points for scoring of proposals to
1520 those firms bidding on Other Services contracts valued at five hundred thousand
1521 dollars (\$500,000.00) or greater. The sliding scale shall be based upon the relative
1522 level of SBE dollar participation that has been committed to on the prime respondent's
1523 or bidder's team (e.g., zero SBE participation on a prime respondent's or bidder's team
1524 shall yield zero evaluation points, whereas the maximum SBE participation among all
1525 prime respondents or bidders, at the prime contract and subcontract levels combined,
1526 shall yield award of fifteen (15) evaluation preference points out of one hundred
1527 (100); and a prime respondent's or bidder's team that achieves only half as many
1528 dollars in SBE participation as the firm with the greatest SBE dollar participation at
1529 the prime contract and subcontract levels combined shall be awarded seven and one-
1530 half (7.5) evaluation points out of one hundred (100).

- 1531 d. *SBE Joint Venture Incentive for Other Services Contracts.* Under this API, the GSC
1532 may establish joint venture incentives for joint ventures between larger established
1533 firms and local SBE firms on Other Services contracts valued at greater than five
1534 million dollars (\$5,000,000.00). Such joint venture incentives may include: (1)
1535 additional option years for contracts; and/or (2) access to mobilization funds; and/or
1536 (3) evaluation preferences of up to fifteen (15) percent of all evaluation points to be

1537 assigned for joint ventures between two (2) or more certified SBE firms, or between
1538 SBE and non-SBE joint venture partners that have an overall minimum percentage
1539 (e.g., twenty (20) percent) SBE participation in ownership and management of the
1540 joint venture. The GSC should consider use of this API in circumstance when the
1541 County has a priority for promoting the growth of S/M/WBE capacity in a given
1542 industry segment.

1543 e. *SBE Subcontracting Goals for Other Services Contracts Valued at Greater Than Five*
1544 *Million Dollars (\$5,000,000.00)*. For larger Other Services contracts valued at greater
1545 than five million dollars (\$5,000,000.00) wherein there are adequate numbers of
1546 commercially useful functions available for subcontracting purposes, the GSC may
1547 consider applying a mandatory subcontracting goal for the participation of SBE
1548 subcontractors. The Board has established a minimum mandatory goal of twenty (20)
1549 percent SBE participation for County contracts, provided that the Office of EBO shall
1550 agree to a reasonable reduction or waiver of this goal in instances where it can be
1551 factually demonstrated that there is inadequate availability of SBE prime and/or
1552 subcontractor firms qualified to perform Commercially Useful Functions that are
1553 valued at twenty (20) percent of the total estimated dollar value of the County contract.
1554 Prospective respondents or bidders shall be provided an adequate opportunity to
1555 formally request such waivers prior to bid opening based upon submission of adequate
1556 Good Faith Efforts documentation as specified by the Office of EBO and as stated in
1557 Solicitation language.

1558 Under this API, a prospective respondent or bidder to a County Solicitation shall
1559 submit at the time as required in the solicitation such documentation as required by
1560 the Office of EBO that provides:

- 1561 1. The name(s) of the SBE Subcontractor(s) it intends to use on the project;
- 1562 2. The percentage of prime contract dollars and the absolute dollar value of
1563 subcontracting services to be provided by each SBE;
- 1564 3. A description of the work that each SBE Subcontractor shall perform; and

1565 4. Documentation confirming the Subcontractor's commitment to perform the
1566 work at the stated price.

1567 A respondent or bidder may request a full or partial waiver of this mandatory
1568 subcontracting requirement for good cause by submitting the appropriate form(s) and
1569 documentation at the time as required in the Solicitation. Under no circumstances
1570 shall a waiver of a mandatory subcontracting requirement be granted without
1571 submission of adequate documentation of Good Faith Efforts by the respondent or
1572 bidder and careful review by the Office of EBO. The Office of EBO shall base its
1573 determination of a waiver request on criteria such as, but not limited to:

- 1574 1. Whether the requestor of the waiver has made Good Faith Efforts to
1575 subcontract with qualified and available SBEs;
- 1576 2. Whether subcontracting would be inappropriate and/or not provide a
1577 "Commercially Useful Function" under the scope of the contract; and
- 1578 3. Whether there are no certified SBE firms that are qualified and available to
1579 provide the goods or services required.

1580 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor
1581 to commit as required in the solicitation to satisfying the SBE subcontracting goal
1582 shall render its response non-responsive. Provided, however, that on any prime
1583 contract valued under \$10 million, if the Prime Contractor is a certified SBE firm,
1584 then the Prime Contractor is allowed to self-perform up to the entire SBE
1585 subcontracting goal amount with its own forces. To the extent that the certified SBE
1586 Prime Contractor does not self-perform a portion of the SBE subcontracting goal, it
1587 shall be responsible for complying with all other requirements of this API for that
1588 portion of work that is subcontracted. This self-performance option for certified SBE
1589 Prime Contractors may be suspended at the discretion of the Director of the Office of
1590 EBO or designee in the event he or she determines that the adverse cumulative effect
1591 of the use of this self-performance option upon subcontractor opportunities is too
1592 great.

1593 In the absence of a waiver granted by the Office of EBO or the self-performance of a
1594 portion or all of the SBE subcontracting goal by a certified SBE Prime Contractor, the
1595 failure of a Prime Contractor to attain a subcontracting goal for SBE participation in
1596 the performance of its contract or otherwise comply with the provisions of this API
1597 shall be considered a material breach of contract, grounds for termination of that
1598 contract with the County, and shall be subject to any penalties and sanctions available
1599 under the terms of the EBO Ordinance, its contract terms with the County, or by law.

1600 A Prime Contractor is only permitted to substitute another subcontractor for a
1601 designated SBE subcontractor that is unwilling and unable to perform. Substitutions
1602 shall be done with like certified S/M/WBEs in order to maintain the participation
1603 percentages submitted with the bid or proposal. The Prime is required to notify and
1604 obtain prior written approval from the Office of EBO in advance of any such
1605 substitution of a designated SBE subcontractor, or reduction in subcontract scope,
1606 unless such reduction in scope is the direct and immediate result of a County-
1607 mandated change order or contract amendment, or the County has mandated the
1608 decertification, suspension, debarment, or termination of a designated SBE
1609 Subcontractor. However, under such circumstances, the Prime Contractor shall
1610 undertake Good Faith Efforts to replace the expired, decertified, suspended, debarred,
1611 or terminated SBE with one (1) or more other certified SBE Subcontractors and shall
1612 submit a waiver request to the Office of EBO in the event such Good Faith Efforts are
1613 unsuccessful.

1614 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
1615 shall be required to submit accurate progress payment information with each invoice
1616 regarding each of its Subcontractors, including SBE Subcontractors. The Originating
1617 Department shall audit the reported payments to SBE and non-SBE Subcontractors to
1618 ensure that the Prime Contractor's reported subcontract participation is accurate.
1619 County contracts with Prime Contractors shall include clauses requiring Prime
1620 Contractors to pay Subcontractors in compliance with Florida prompt payment laws,

1621 and such clauses shall mandate that in the event of a Prime Contractor's non-
1622 compliance regarding such payments, the Prime Contractor shall be subject to any
1623 penalties and sanctions available under the terms of the EBO Ordinance, its contract
1624 terms with the County, or by law.

1625 f. *SBE Price Preference*. Under this API, the GSC may apply certain purchasing
1626 procedures to increase SBE participation, including, but not limited to, purchases
1627 valued below the Formal Solicitation threshold amount set forth in the Procurement
1628 Code, and purchases made by decentralized purchase orders (DPOs) for Goods and
1629 Other Services valued under ten thousand dollars (\$10,000). The purchasing
1630 procedures shall include a provision that every effort will be made by buyers to contact
1631 all registered certified SBEs that are available within a particular commodity area for
1632 such purchases. The purchasing procedures shall also include a process so as to allow
1633 as many vendors as possible to compete in providing goods and services to Palm
1634 Beach County. The purchasing procedures shall also include a provision requiring
1635 awards of purchases to be made to the lowest responsive, responsible respondent or
1636 bidder unless a certified SBE's bid is within ten (10) percent of the lowest non-small
1637 business bid, in which case the award shall be made to the certified small business
1638 respondent or bidder submitting the lowest responsive, responsible bid at the price
1639 that it bid. This section shall not apply to procurement of Construction Services. SBE
1640 Prime respondents must perform the majority of the associated work under this API.

1641 (6) *Goods and Other Services (Race- and Gender-Conscious Remedies)*. The GSC shall
1642 consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with
1643 subsection 'a' below and, in addition, shall review each prospective County Goods and
1644 Other Services Formal Solicitation in advance of its public release and advertisement, and
1645 shall make a determination whether to apply any of the other Race- and Gender-Conscious
1646 APIs to those Good and Other Services Solicitations based upon the following criteria:

1647 1. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious
1648 APIs indicate that Goods and Other Services contracts of this type have exhibited

1649 significant disparities in the utilization of available M/WBE Subcontractors and/or
1650 M/WBE Prime Contractors;

1651 2. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any
1652 such disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime
1653 Contractors based upon past contract Award and Payment data;

1654 3. Whether a particular API is the least burdensome available remedy to non-M/WBE
1655 respondents or bidders that is narrowly-tailored and that can effectively eliminate the
1656 disparities in the utilization of M/WBEs in Goods and Other Services contracts; and

1657 4. Whether the particular API is appropriate for the specific type of Goods and Other
1658 Services contract being procured.

1659 Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs
1660 to Goods and Other Services Solicitations, it shall provide an explanation in the Solicitation
1661 documents of its reasons for doing so based upon its determinations pursuant to these
1662 criteria. In making such determinations, the GSC may also take into consideration the
1663 experiences of other jurisdictions within Palm Beach County for Goods and Other Services.

1664 a. *Annual Aspirational M/WBE Goals.* For each fiscal year, the GSC shall establish non-
1665 mandatory annual aspirational percentage goals for overall M/WBE prime and
1666 subcontract participation on County Goods and Other Services contracts.

1667 The Annual Aspirational Goals for M/WBE prime contract participation in County
1668 Goods and Other Services contracts have initially been established at sixteen (16)
1669 percent MBE and seventeen (17) percent WBE respectively of the total cumulative
1670 Goods and Other Services contract dollars to be awarded and spent on an annual basis.

1671 These annual aspirational goals are based upon the M/WBE availability estimates by
1672 industry set forth in accordance with the County's 2017 Disparity Study findings.

1673 Each Annual Aspirational Goal is to be reviewed on an annual basis for potential
1674 adjustment by the GSC based upon the M/WBE availability by industry segment in
1675 accordance with the County's 2017 Disparity Study findings, along with relative

1676 M/WBE availability data to be collected by the County through eCMS and the actual
1677 utilization of M/WBEs reflected therein.

1678 Annual Aspirational Goals shall not be routinely applied to individual solicitations,
1679 but are intended to serve as a benchmark against which to measure the overall
1680 effectiveness of the EBO Program on an annual basis in addressing identified
1681 disparities, and to gauge the need for future adjustments to the mix and aggressiveness
1682 of remedies and APIs being applied pursuant to this EBO Ordinance.

1683 Annual Aspirational Goals may be stated only in those County Solicitations that do
1684 not contain contract-specific S/M/WBE goals, and when provided, shall be advisory
1685 only, and must also be accompanied by the full definition of the term as stated in this
1686 EBO Ordinance.

1687 b. *M/WBE Vendor Rotation.* Under this API, there are two options for the selective use
1688 of a prequalified panel of M/WBE vendors by the County:

1689 Option 1

1690 For smaller Goods and Other Services contracts valued at less than one hundred fifty
1691 thousand (\$150,000), a prequalified panel of M/WBE Goods or Other Services firms
1692 may be assigned work tasks or supply orders on a rotating basis. Periodically, the
1693 M/WBE Vendor Rotation list shall be re-ordered according to the firm with the least
1694 amount of dollars received to the most dollars received from the County based upon
1695 the cumulative dollars received within the past year.

1696 Option 2

1697 When the County requires price competition in its Solicitations, and when quotations
1698 from several firms are required before award of contracts valued at less than one
1699 hundred fifty thousand (\$150,000), solicitations for price quotations shall be
1700 affirmatively and directly sought from the next three firms appearing in the M/WBE
1701 Vendor Rotation list of prequalified firms for that type of Good or Other Service prior
1702 to contract award. With each successive solicitation of quotations of this type, the list

1703 shall be rotated to the next group of three M/WBE vendors appearing in the rotation.
1704 In selecting this API, the GSC shall consider the extent to which the County has been
1705 unsuccessful in obtaining bids from available M/WBE Goods and Other Services
1706 firms.

1707 c. *Voluntary M/WBE Distributorship Development Program.* The GSC may apply this
1708 API to any solicitation and subsequent award for Goods contracts that have a base
1709 term with contract extensions for the County's purchase of Goods and related services
1710 when each of the following conditions has been met:

- 1711 1. Manufacturers often sell such goods or supplies to the County indirectly
1712 through authorized distributorships or authorized dealers;
- 1713 2. One or more such manufacturers indirectly competing for such County supply
1714 requirements contracts have no such authorized distributorships or authorized
1715 dealers that are also certified as M/WBE firms, that are headquartered or have
1716 a Significant Business Presence within Palm Beach County, and are available
1717 to sell such goods and supplies to the County;
- 1718 3. At least one manufacturer of such goods and supplies has established, or has
1719 agreed to establish, an authorized distributorship or authorized dealer that is
1720 certified as an M/WBE, is headquartered or has a Significant Business
1721 Presence in Palm Beach County through which the manufacturer has agreed
1722 to sell the goods or supplies to the County for the duration of the contract,
1723 including all of the contract's option years;
- 1724 4. The Office of EBO has examined the terms of the authorized distributorship or
1725 authorized dealer agreement entered into between the manufacturer and its
1726 certified M/WBE authorized distributorship or authorized dealer and determined
1727 that the M/WBE distributor or dealer is headquartered or has a Significant
1728 Business Presence in Palm Beach County, and determined that such terms are
1729 non-discriminatory in that the certified M/WBE's agreement is no different from
1730 that of non-M/WBE authorized distributorships and authorized dealers for the

1731 manufacturer regarding such matters as scope of geographical territory
1732 allocation, scope of potential public and private sector customers, scope of
1733 product line, price lists for goods and supplies, volume discounts in pricing,
1734 rebates, credit terms, delivery terms, marketing and technical support from
1735 manufacturer, and any other material terms that may affect the competitive
1736 viability of the authorized distributorship or authorized dealer.

1737 Provided the manufacturer and its certified M/WBE authorized distributorship
1738 or authorized dealer meets conditions 3. and 4. above, and provided further that
1739 the certified M/WBE authorized distributorship or authorized dealer has won a
1740 bid for the supply of such Goods and/or related services to the County, under this
1741 API, notwithstanding any provision in this EBO Ordinance to the contrary, the
1742 Director of the Office of EBO may extend the length of the supply contract by
1743 additional option years without rebidding the contract, and/or the County may
1744 accelerate payment of invoices. The Office of EBO and Originating Department
1745 shall carefully monitor the contract to ensure that the certified M/WBE
1746 authorized distributorship or authorized dealer is performing a Commercially
1747 Useful Function under the contract, and that it is being treated in accordance with
1748 the terms of its agreement with the manufacturer. This assessment shall be made
1749 by the Office of EBO prior to the County's exercise of any option year on the
1750 supply contract. In the event the Office of EBO determines that these conditions
1751 have not been met, the County shall decline to exercise the next option year on
1752 the supply contract and shall instead re-bid the contract.

1753 d. *Mandatory M/WBE Distributorship Development Program.* In instances wherein
1754 manufacturers have violated the County's Commercial Nondiscrimination Policy set
1755 forth in Resolution R2017-1770 as amended by excluding or discriminating against
1756 M/WBE suppliers that seek to become authorized dealers/distributors, this API
1757 requires the manufacturer to establish such an authorized dealership with an M/WBE

1758 supplier under the terms of API subsection 2-80.27(6)c. as a condition for being
1759 eligible to sell commodities to the County.

1760 e. *M/WBE Evaluation Preferences.* Under this API, evaluation preference points shall
1761 be awarded on a sliding scale from zero up to fifteen (15) percent of the total available
1762 evaluation points for scoring of proposals to those firms bidding on "best value" Other
1763 Services contracts valued at less than five hundred thousand (\$500,000.00) The
1764 sliding scale shall be based upon the relative level of M/WBE dollar participation that
1765 has been committed to on the prime respondent's or bidder's team (e.g., zero M/WBE
1766 participation on a prime respondent's or bidder's team shall yield zero M/WBE
1767 evaluation preference points, whereas the proposal from the prime respondent or
1768 bidder that proposes achieving the maximum M/WBE participation among all prime
1769 respondents or bidders, at the prime contract and subcontract levels combined, shall
1770 yield award of all fifteen (15) M/WBE evaluation preference points to that respondent
1771 or bidder out of the total overall one hundred (100) available evaluation points; and a
1772 prime respondent's or bidder's team that achieves only half as many dollars in M/WBE
1773 participation as the firm with the greatest M/WBE dollar participation at the prime
1774 contract and subcontract levels combined shall be awarded seven and one-half (7.5)
1775 evaluation points out of the fifteen M/WBE evaluation preference points).
1776 Alternatively, the GSC may restrict award of the fifteen (15) percent evaluation
1777 preference to those M/WBE Other Services firms that have not previously been
1778 awarded a contract by the County. In such instances, the M/WBE firms shall remain
1779 eligible for such fifteen (15) percent evaluation preferences for up to one (1) year from
1780 date of their first contract award, or until cumulative total payments on County
1781 contracts (prime contract and subcontract dollars) to that new entrant firm have
1782 reached one million dollars (\$1,000,000.00), whichever period of time is longer.

1783 f. *M/WBE Joint Venture Incentives.* Under this API, for contracts valued at greater than
1784 five million dollars (\$5,000,000.00), the GSC may establish incentives to promote
1785 joint ventures between larger established firms and M/WBE firms, or between and

1786 among SBE and M/WBE firms. For "best value" contracts wherein low price is not
1787 the only criterion for award, the incentive may be for up to fifteen (15) percent of one
1788 hundred (100) evaluation points to be reserved for qualifying S/M/WBE joint ventures
1789 wherein the certified M/WBE joint venture partner owns fifty (50) percent or greater,
1790 and performs fifty (50) percent or greater of the work, of the overall joint venture.
1791 Proportionately fewer evaluation preference points would be awarded to the joint
1792 venture based upon lesser percentages of ownership by the M/WBE partner.
1793 Alternatively, incentives may include bonding waivers, assignment of multiple task
1794 orders on job order contracts totaling up to one million dollars (\$1,000,000.00) in
1795 value, and accelerated payments or mobilization payments to be afforded to qualifying
1796 S/M/WBE joint ventures. This API should be reserved for those occasions wherein
1797 there are sufficient numbers of qualified M/WBE firms available of sufficient size to
1798 meaningfully joint venture for purposes of performing larger contracts. Another
1799 consideration for application of this API is whether there are larger non-local
1800 S/M/WBE firms, or larger S/M/WBE firms that may have graduated from eligibility
1801 for the program, that are available and willing to joint venture with certified smaller
1802 local M/WBEs for purposes of enhancing local capacity at the prime contract level.

1803 g. *M/WBE Subcontracting Goals of Other Services Contracts Valued at Greater than*
1804 *Five Million Dollars (\$5,000,000.00)*. The GSC may, on a contract-by-contract basis,
1805 require that a predetermined percentage up to forty (40) percent of a specific Other
1806 Services contract that is valued at greater than five million dollars (\$5,000,000.00)
1807 shall be subcontracted to eligible M/WBEs (i.e., certified M/WBE firms owned by
1808 African-American, Hispanic, and Caucasian female persons). Factors to be considered
1809 by the GSC in making this determination shall include the relative availability of
1810 M/WBE firms to perform Commercially Useful Functions on the specific contract
1811 weighted according to the relative dollar value of the construction sub-specialties
1812 available for subcontracting.

1813 A prospective respondent or bidder on a County solicitation, for which price and scope
1814 are defined, shall submit at the time as required in the solicitation such documentation
1815 as required by the County that provides:

- 1816 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- 1817 2. The percentage of prime contract dollars and the absolute dollar value of
1818 subcontracting services to be provided by each M/WBE;
- 1819 3. A description of the work that each M/WBE Subcontractor shall perform; and
- 1820 4. Documentation confirming the Subcontractor's commitment to perform the
1821 work at the stated price.

1822 A prospective respondent or bidder to a County solicitation, for which respondents or
1823 bidders are not initially evaluated based on price, or for which project scope is not
1824 predefined, shall submit at the time as required in the solicitation such documentation
1825 as required by the County to affirm its intent to meet the subcontracting requirements
1826 indicated in the solicitation. In the absence of a waiver request granted by the Office
1827 of EBO, failure of a respondent or bidder to commit as required in the solicitation to
1828 satisfying the M/WBE subcontracting goal shall render its response non-responsive.

1829 During the price proposal negotiation phase, respondents or bidders shall be required
1830 to submit:

- 1831 1. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- 1832 2. The percentage of prime contract dollars and the absolute dollar value of
1833 subcontracting services to be provided by each M/WBE; and
- 1834 3. A description of the work that each M/WBE Subcontractor shall perform.

1835 A respondent or bidder may request a full or partial waiver of this mandatory
1836 subcontracting requirement for good cause by submitting the appropriate form(s) and
1837 documentation at the time as required in the solicitation. Under no circumstances shall
1838 a waiver of a mandatory subcontracting requirement be granted without submission
1839 of adequate documentation of Good Faith Efforts by the respondent or bidder and

1840 careful review by the Office of EBO. The Office of EBO shall base its determination
1841 on a waiver request on criteria such as, but not limited to:

- 1842 1. Whether the requestor of the waiver has made Good Faith Efforts to
1843 subcontract with qualified and available M/WBEs;
- 1844 2. Whether subcontracting would be inappropriate and/or not provide a
1845 "Commercially Useful Function" under the scope of the contract; and
- 1846 3. Whether there are no certified M/WBE firms that are qualified and available
1847 to provide the goods or services required.

1848 In the absence of a waiver granted by the Office of EBO, failure of a Prime Contractor
1849 to commit as required in the Solicitation to satisfying the M/WBE subcontracting goal
1850 shall render its response non-responsive. Provided, however, that on any prime
1851 contract valued under five million dollars (\$5,000,000.00), if the Prime Contractor is
1852 a certified M/WBE firm, then the Prime Contractor is allowed to self-perform up to
1853 the entire M/WBE subcontracting goal amount with its own forces. To the extent that
1854 the certified M/WBE Prime Contractor does not self-perform a portion of the M/WBE
1855 subcontracting goal, it shall be responsible for complying with all other requirements
1856 of this API for that portion of work that is subcontracted. This self-performance option
1857 for certified M/WBE Prime Contractors may be suspended at the discretion of the
1858 Director of the Office of EBO in the event he or she determines that the adverse
1859 cumulative effect of the use of this self-performance option upon subcontractor
1860 opportunities is too great.

1861 In the absence of a waiver granted by the Office of EBO, or the self-performance of
1862 a portion or all of the M/WBE subcontracting goal by a certified M/WBE Prime
1863 Contractor, the failure of a Prime Contractor to attain a subcontracting goal for
1864 M/WBE participation in the performance of its contract or otherwise comply with the
1865 provisions of this API shall be considered a material breach of contract, grounds for
1866 termination of that contract with the County and shall be subject to any penalties and

1867 sanctions available under the terms of the EBO Ordinance, its contract with the
1868 County, or by law.

1869 A Prime Contractor is only permitted to substitute a certified S/M/WBE that is
1870 unwilling and unable to perform. Substitutions shall be done with like certified
1871 S/M/WBEs in order to maintain the participation percentages submitted with the bid
1872 proposal. The Prime is required to notify and obtain prior written approval from the
1873 Director of the Office of EBO or designee in advance of any reduction in subcontract
1874 scope, unless such reduction in scope is the direct and immediate result of a County-
1875 mandated change order or contract amendment, or the County has mandated the
1876 decertification, suspension, or termination of a designated M/WBE Subcontractor,
1877 However, under such circumstances, the Prime Contractor shall undertake Good Faith
1878 Efforts to replace the expired, decertified, suspended, or terminated M/WBE
1879 Subcontractor(s) with one (1) or more other certified M/WBE Subcontractor(s) and
1880 shall submit a waiver request to the Office of EBO in the event such Good Faith
1881 Efforts are unsuccessful.

1882 Upon award of the prime contract to a respondent or bidder, the Prime Contractor
1883 shall be required to submit accurate progress payment information with each invoice
1884 regarding each of its Subcontractors, including S/M/WBE Subcontractors. The
1885 Originating Department shall audit the reported payments to S/M/WBE and non-
1886 S/M/WBE Subcontractor to ensure that the Prime Contractors' reported subcontract
1887 participation is accurate. Absent a waiver from the Office of EBO, a Prime
1888 Contractor's failure to reach the required level of S/M/WBE subcontracting shall be
1889 considered a material breach of contract. County contracts with Prime Contractors
1890 shall include clauses requiring Prime Contractors to pay Subcontractors in compliance
1891 with Florida Prompt Payment Law, and such clauses shall mandate that in the event
1892 of Prime Contractor non-compliance regarding such payments, the Prime Contractor
1893 shall be subject to any penalties and sanctions available under the terms of the EBO
1894 Ordinance, its contract with the County, or by law.

1895 **SECTION 8. PROGRAM ADMINISTRATION.** Section 2-80.28 of the Palm Beach County Code
1896 is hereby amended to read as follows:

1897 (a) *Originating Departments—Duties and Responsibilities.* It shall be the responsibility of the
1898 Procurement Department to ensure that solicitations emanating from the department adhere to
1899 the procedures and provisions set forth in this EBO Program. The Originating Department
1900 Director or Manager or designee shall assume joint responsibility with the Procurement
1901 Department for assuring vendor and contractor compliance with the policy objectives of this
1902 program (as stated within the material Solicitation and material deliverable requirements). The
1903 Originating Department shall review, on a continuing basis, all aspects of the Program's
1904 operations that it is involved in to any degree, and make adjustments to its efforts, as necessary,
1905 to assure that the EBO Ordinance's purpose is being achieved. The Originating Department, in
1906 collaboration with the Procurement Department and the Office of EBO, shall ensure the
1907 following actions are taken to ensure that S/M/WBEs have the maximum practicable
1908 opportunity to participate on County contracts:

1909 (1) Post all Formal Solicitations on the County's website, for the solicitation period required
1910 by state law for the type of procurement, and then direct targeted e-mail alerts containing
1911 links to the webpage where such County solicitations are posted at least thirty (30) days in
1912 advance of bid or proposal due dates where practical. Such e-mail alerts should be directed
1913 to all respondents or bidders that have registered with the appropriate commodity/industry
1914 codes on the County's VSS system;

1915 (2) Encourage all prospective Prime Contractor respondents or bidders for County solicitations
1916 to post their subcontract opportunities on the County webpage where the solicitation
1917 specifications have been posted by the County.

1918 (3) Ensure that the Commercial Nondiscrimination Policy statement, compliance language,
1919 and any other material requirements specified by the EBO Ordinance are included in all
1920 Solicitation and contract documents;

1921 (4) Preview and evaluate all Formal Solicitations in an effort to de-bundle the total
1922 requirements of a contract into smaller units to promote maximum and reasonable

- 1923 opportunities for S/M/WBE participation, without making separate, sequential or
1924 component purchases in violation of state purchasing laws;
- 1925 (5) Establish procedures to ensure that all contractors submitting correct and undisputed
1926 invoices are paid within thirty (30) days and that Subcontractors are paid within ten (10)
1927 days after the County pays the Prime Contractor. Insert a requirement in all contracts that
1928 Prime Contractors must inform subcontractors of written notice of disputed invoices within
1929 five (5) days of receipt, and clearly state in such notices the reasons for the disputed
1930 invoice;
- 1931 (6) Ensure that a County contract is not executed and that a Notice to Proceed is not issued
1932 until binding agreements between the Prime and subcontracting S/M/WBEs have been
1933 executed by all parties and submitted to the Originating Department;
- 1934 (7) Ensure that all required statistics and documentation regarding bid, contract, invoice, and
1935 payment information are submitted to the Office of EBO as requested;
- 1936 (8) If circumstances prevent the Originating Department from meeting notification
1937 requirements contained herein, the Originating Department shall engage in direct and
1938 extensive outreach to S/M/WBE associations or other relevant organizations to inform
1939 them of the contracting opportunity, unless the circumstances are exigent and an
1940 emergency exists that requires immediate action to protect the public health, safety or
1941 welfare; and
- 1942 (9) Notify the Director of the Office of EBO or designee of all change orders and amendments
1943 to contracts that are subject to this EBO Ordinance and take necessary steps to ensure that
1944 APIs applied to the contract by the GSC are also extended and enforced, to the maximum
1945 practical extent, with regard to any modified scope of work under the terms of such change
1946 orders and contract amendments.
- 1947 (b) *Office of EBO—Duties and Responsibilities.* The following duties and responsibilities of the
1948 Office of EBO are in addition to those set forth in Section 2-80.23:

- 1949 (1) *General Duties.* The EBO Ordinance will be administered and managed by the Director of
1950 the Office of EBO or designee. The Director of the Office of EBO shall attend all Board
1951 agenda meetings to address any S/M/WBE or EBO Program issues. The Office of EBO
1952 shall be responsible for the overall administration of the County's EBO Program. At a
1953 minimum, the Office of EBO shall:
- 1954 a. Report to the County and the public, based on available data, on at least an annual
1955 basis as to the County's progress toward satisfying the EBO Ordinance purposes and
1956 objectives.
 - 1957 b. Formulate, establish, distribute and implement additional forms, rules and procedures
1958 for EBO Program waivers, improvements and adjustments to the goal-setting
1959 methodologies and other EBO Program features;
 - 1960 c. Have advance substantive input in a contract specification review process consistent
1961 with this EBO Ordinance to ensure that contract solicitation specifications are not
1962 unnecessarily restrictive and unduly burdensome to S/M/WBE firms;
 - 1963 d. Receive and analyze external and internal information, including statistical data and
1964 anecdotal testimony regarding the barriers encountered by S/M/WBE firms in
1965 attempting to obtain contract opportunities at the County, and the relative
1966 effectiveness of various APIs in addressing those barriers;
 - 1967 e. Monitor and support the program policies and procedures and propose modifications
1968 to appropriate County officials as necessary to fully achieve the purpose and
1969 objectives of the EBO Program policies and procedures;
 - 1970 f. Provide public education and advocacy internally and externally regarding the
1971 purposes and objectives of the EBO Ordinance;
 - 1972 g. Maintain a directory of certified SBEs and M/WBEs;
 - 1973 h. Provide seminars and technical assistance referrals to S/M/WBE firms to enhance
1974 their ability to effectively compete for County contracts;

- 1975 i. Investigate alleged violations of this EBO Ordinance and provide written
1976 recommendations to appropriate authorities for remedial action and imposition of
1977 sanctions and penalties when necessary;
- 1978 j. Determine Prime Contractor compliance with EBO Ordinance requirements prior to
1979 award and again prior to release of final retainage;
- 1980 k. Oversee the maintenance of an accurate contract performance and compliance
1981 reporting system;
- 1982 l. Provide staff support for the GSC and the EBOAC; and
- 1983 m. Collaborate with County Departments to streamline the invoice and payment
1984 procedures at the County so as to accelerate payments for prime contractors. To the
1985 extent there is an undisputed portion of the invoice that can be paid and to the extent
1986 that payment is required by the Local Government Prompt Payment Act, section
1987 218.70 *et seq.*, Florida Statutes, the County shall proceed with the prompt payment of
1988 that portion of the invoice.
- 1989 (2) *Certification.* Certification of all S/M/WBE firms shall be the ultimate responsibility of the
1990 Office of EBO. The Office of EBO shall be responsible for reviewing all S/M/WBE
1991 Certification and recertification forms used by its selected certifying agent or organization
1992 to ensure that they are sufficient for purposes of gathering information consistent with the
1993 standards, definitions and intent established by this EBO Ordinance. The Office of EBO
1994 shall also maintain an automated and up-to-date web-based registry of all certified
1995 S/M/WBE firms that is readily available to the general public, as well as to County
1996 personnel.
- 1997 a. In executing its responsibility in connection with these Certifications, the Office of
1998 EBO may, at the Director's discretion, contract with a regional governmental or
1999 certification agency/organization for the purpose of issuing Certifications in a manner
2000 that is consistent with the eligibility standards established under this EBO Ordinance.

- 2001 b. A firm eligible for Certification(s) under this EBO Ordinance shall be an
2002 Independently Owned and Operated business. The ownership and Control by Minority
2003 Group Members or Women shall be real and substantial, and shall be indicated by
2004 customary incidents of ownership as demonstrated by an examination of the
2005 substance, rather than the form, of ownership and operating arrangements. In
2006 determining whether a potential firm is an Independently Owned and Operated
2007 business, the certifying agency considers all relevant factors including, but not limited
2008 to:
- 2009 1. The date the business was established;
 - 2010 2. The adequacy of its resources to perform the contracted work;
 - 2011 3. The degree to which financial, equipment leasing, supplier and other
2012 relationships with non-minority businesses vary from industry practice.
- 2013 c. The Minority Group Member or women owners must possess and exercise the power
2014 to direct the management and policies of the firm and to make day-to-day decisions,
2015 as well as any decisions on matters of management policy, and operations. The firm
2016 shall not be subject to any formal or informal restrictions which limit the customary
2017 discretion of the Minority Group Member or women owners. There shall be no
2018 restrictions by partnership agreements, charter requirements, operating agreements or
2019 other arrangements which prevent the Minority Group Member or women owners
2020 from making business decisions for the firm without the cooperation or vote of any
2021 owner that is not minority or female.
- 2022 d. Recognition of the business as a separate entity for tax or corporate purposes is not
2023 necessarily sufficient for recognition as an S/M/WBE. Certification as S/M/WBE
2024 firms will be in accordance with the definitions established in this EBO Ordinance
2025 and the PPM.
- 2026 e. A claim of minority status as a Minority Group Member must be directly related to
2027 the applicant's parents' status. Neither birthplace nor marriage has any bearing on
2028 minority status of the Certification applicant. All Minority Group and women owners

2029 of certified firms must be Individuals that are lawfully residing in, or are citizens of,
2030 the United States or its territories.

2031 f. A firm seeking Certification or Recertification status under this EBO Ordinance shall
2032 cooperate fully with the County (or its designated certification agent) in supplying
2033 additional information and in facilitating a site visit of the enterprise which may be
2034 requested in order to make a determination. Failure or refusal to cooperate shall result
2035 in denial or repeal of Certification.

2036 g. Proof of Certification by another certifying entity may be accepted by the County in
2037 lieu of the County's own Certification process if the certifying entity adheres to the
2038 same or similar policies and standards as those established by the County. To the
2039 extent the County's factual predicate for its EBO Ordinance requires, under applicable
2040 law, a narrower definition of S/M/WBE firm categories (e.g., due to ethnicity/gender
2041 of ownership or relevant geographic market considerations), the County shall limit
2042 the categories of S/M/WBE firms certified by other jurisdictions that shall be eligible
2043 for participation in the County's EBO Program as necessary to ensure that the Race-
2044 Conscious remedial relief provided by the County's Program remains appropriately
2045 narrowly-tailored.

2046 h. Before accepting another jurisdiction's S/M/WBE Certification program, the Office
2047 of EBO shall examine the definitions, standards and Certification practices of the
2048 program to ensure that it adheres to established County Certification guidelines.

2049 i. If the owners of the business who are not Minority Group Members or women are
2050 disproportionately responsible for the operation of the firm, the firm is not controlled
2051 by minorities and/or women and may not be considered to be an M/WBE within the
2052 meaning of this EBO Ordinance. Where the actual management of the business is
2053 contracted out to Individuals other than the owner, those persons who have the
2054 ultimate power to hire and fire the managers may, for the purposes of this EBO
2055 Ordinance, be considered as controlling the business.

- 2056 j. All securities that constitute ownership or Control of a corporation for purposes of
2057 establishing it as an M/WBE under this EBO Ordinance shall be held directly by
2058 Minority Group Members or women. Securities held in trust, or by any guardian for
2059 a minor, may not be considered as being held by Minority Group Members or women
2060 in determining the ownership or Control of a corporation.
- 2061 k. The contributions of capital or expertise by the Minority Group Member or women
2062 owners to acquire their interests in the business shall be real and substantial. Examples
2063 of insufficient capital contributions include:
- 2064 1. A promise to contribute capital;
 - 2065 2. A note payable to the business or its owners who are not socially and
2066 economically disadvantaged, Minority Group Members or Women; and
 - 2067 3. Contributions in labor or expertise that result solely in employee
2068 compensation, without participation in business profits as an owner.
- 2069 l. Special consideration of the following additional circumstances in determining
2070 eligibility:
- 2071 1. Newly-formed businesses and businesses whose ownership or Control has
2072 changed since the date of the advertisement of the contract shall be closely
2073 scrutinized to determine the reasons for the timing of the formation of, or
2074 change in, the businesses;
 - 2075 2. A previous or continuing employer-employee relationship between or among
2076 present owners shall be carefully reviewed to ensure that the employee-owner
2077 has management responsibilities and capabilities discussed in this EBO
2078 Ordinance; and
 - 2079 3. Any relationship between an M/WBE and a business that is not an M/WBE,
2080 but that has an interest in the M/WBE, shall be carefully reviewed to determine
2081 if the interest of the non-minority business conflicts with the ownership and
2082 Control requirements of this EBO Ordinance.
 - 2083 4. Once certified, an S/M/WBE firm shall update its status triennially by

2084 submitting a Certification affidavit. If ownership or control of the firm has
2085 changed, the S/M/WBE firm shall submit a new Certification affidavit to the
2086 Office of EBO (or its contracted Certification agency) within thirty (30) days
2087 of the change.

2088 5. The certifying entity will notify applicants of staff's determinations on
2089 certification and recertification status.

2090 m. Once denied certification, a firm may not reapply for certification until one year has
2091 lapsed since the date of final determination regarding certification denial.

2092 n. A firm shall be decertified when it no longer meets the eligibility requirements for
2093 certification, and such decertified firms shall not be eligible to reapply for one year
2094 from the date of the final adverse decision.

2095 o. Within twenty (20) days of the issuance of letter stating the basis for denial of
2096 certification status, the applicant may seek reconsideration of the decision by
2097 submitting a request for reconsideration in writing to the Director of the Office of the
2098 EBO. The applicant shall state the basis for its request for reconsideration. The
2099 applicant may also seek a conference with the Director for purposes of being heard on
2100 the matter. Upon completion of conference and administrative review of the request
2101 for reconsideration, the Director of the EBO Office shall issue a final written
2102 determination within thirty (30) days of conclusion of the conference. The Director of
2103 the EBO shall take one (1) of the following actions on the request for reconsideration:

2104 1. Reverse the decision. If a determination is made that certification was denied contrary
2105 to the provisions of the code, the director may reverse the decision of certification
2106 denial, and a certification certificate shall be issued.

2107 2. Uphold the certification denial decision. If denied, the applicant has the right to
2108 request an appeal before a special master as follows:

2109 A. The request for a special master hearing shall be in writing to the director of the
2110 EBO, and shall be made within five (5) business days of issuance of the director
2111 of the EBO's determination. The request for a hearing shall be accompanied by an

2112 appeal bond in the amount of: 1) one thousand five hundred dollars (\$1,500) for
2113 solicitations less than one million dollars (\$1,000,000); 2) three thousand dollars
2114 (\$3,000) for solicitations one million dollars (\$1,000,000) to less than five million
2115 dollars (\$5,000,000); or 3) five thousand dollars (\$5,000) for solicitations five
2116 million dollars (\$5,000,000) or greater, which shall be remitted in the form of a
2117 money order, certified check, cashier's check, or a bank check payable to Palm
2118 Beach County.

2119 B. At no time shall the applicant or any other person contact a special master
2120 regarding any issue pertaining to, or involving, the appeal. Contact between the
2121 county and the special master shall be limited to scheduling and other
2122 administrative issues, including the provision and copying of public records
2123 pertinent to the appeal.

2124 C. The Office of EBO shall establish rules and regulations by separate policy and
2125 procedure detailing the selection of special masters, the appeals process, and the
2126 conduct governing appeal hearings. Such rules shall provide that the special
2127 master may not consider any evidence which was not available at the time of the
2128 application or recommendation for decertification or recommendation for denial
2129 of certification or recertification. Such rules shall also provide that the special
2130 master shall render a written decision within ten (10) business days of the hearing.

2131 D. Special Masters shall have the jurisdiction and authority to hear and decide
2132 appeals. The special master shall make a recommendation as to whether the appeal
2133 should be upheld or denied.

2134 i. If the special master upholds the appeal, the special master shall
2135 recommend the director of the EBO issue a certification
2136 certificate. In these instances, the EBO shall return the appeal
2137 bond to the applicant.

2138 ii. If the special master denies the appeal, the special master shall
2139 recommend that the certification be withheld, and in these
2140 instances, the applicant's bond shall be forfeited.

2141 p. Certification, once granted, remains in effect for three (3) years, except in accordance
2142 with the graduation and suspension provisions of this EBO Ordinance.

2143 (3) *Compliance Responsibilities.* The Office of EBO, along with contracting staff of each
2144 County department, shall monitor compliance with these EBO Program requirements
2145 during the term of the contract. If it is determined that there is cause to believe that a Prime
2146 Contractor or Subcontractor has failed (or will likely fail) to comply with any of the
2147 requirements of this EBO Ordinance, or with the contract provisions pertaining to
2148 S/M/WBE utilization, the Director of the Office of EBO or designee shall so notify the
2149 Originating Department and the contractor. The Director of the Office of EBO or designee
2150 may require such reports, information, and documentation from contractors, respondents
2151 or bidders and the head of any County department, division, or office as are reasonably
2152 necessary to determine compliance with the EBO Ordinance requirements, within fifteen
2153 (15) calendar days after the notice of noncompliance is issued. If the requested materials
2154 are not received within fifteen (15) calendar days, then a finding of noncompliance is
2155 determined and appropriate penalties and sanctions will apply as stated in this EBO
2156 Ordinance and the PPM.

2157 Joint responsibility is shared by the Director of the Office of EBO or designee and the
2158 Originating Department or designee to attempt to resolve a contractor's, subcontractor's, or
2159 vendor's noncompliance with the requirements of this EBO Ordinance, including any non-
2160 compliance with contract provisions pertaining to S/M/WBE utilization, within fifteen (15)
2161 calendar days after the apparent noncompliance is discovered. A written notice of the
2162 noncompliance should immediately be sent by the Office of EBO or designee to those
2163 contractors, subcontractors, or vendors that are in noncompliance, and to the Director or
2164 Manager of the Originating Department or designee. If noncompliance cannot be resolved
2165 within fifteen (15) calendar days after notice is sent, the Director of the Office of EBO or

2166 designee and the Director or Manager of the Originating Department or designee shall
2167 submit written recommendations to the County Administrator or designee, and if the
2168 County Administrator or designee concurs with the finding, such sanctions as stated in this
2169 EBO Ordinance and the PPM shall be imposed.

2170 Whenever the Director of the Office of EBO or designee finds, after investigation, that an
2171 Originating Department has failed to comply with the provisions of this EBO Ordinance
2172 or the contract provisions pertaining to S/M/WBE utilization, a written finding specifying
2173 the nature of the noncompliance shall be transmitted to the Originating Department, and
2174 the Director of the Office of EBO or designee shall attempt to resolve any noncompliance
2175 through conference and conciliation. Should such attempt fail to resolve the
2176 noncompliance, the Director of the Office of EBO or designee shall transmit a copy of the
2177 finding of noncompliance, with a statement that conciliation was attempted and failed, to
2178 the County Administrator or designee who shall take appropriate action under this EBO
2179 Ordinance to secure compliance.

2180 The Director of the Office of EBO, or designee, shall submit a written annual report to the
2181 County Administrator and the Board on the progress of the County toward the utilization
2182 goals and objectives established by this EBO Ordinance together with the identification of
2183 any problems and specific recommendations for improving the County's performance.

2184 The Director of the Office of EBO or designee and Originating Departments shall work
2185 closely with the Office of the County Attorney to include language in all County contracts
2186 that ensures compliance with the EBO Ordinance. This language should also include a time
2187 period for the contractor to correct any and all deficiencies no later than fifteen (15)
2188 calendar days after notification of non-compliance.

2189 The Director of the Office of EBO shall also establish certification, recertification, and
2190 graduation procedures for S/M/WBE firms to be certified by an independent third-party
2191 entity as being at least fifty-one (51) percent owned, controlled, and managed in accordance
2192 with eligibility standards and definitions established by this EBO Ordinance, and the size
2193 standards set forth in the PPM. Processing of certification applications shall be at no cost

2194 to the applicants. Director of the Office of EBO shall diligently review the practices and
2195 standards of prospective certifying entities to ensure that they are consistent with best
2196 practices for maintaining economic inclusion program integrity.

2197 (4) *Reporting Requirements—Office of EBO.* The Director of the Office of EBO or designee
2198 shall issue quarterly performance reports on the level of S/M/WBE participation achieved
2199 on completed contracts. Semiannual and annual written reports on the progress of the
2200 program and the various program elements shall be reported to the BCC and County
2201 Administrator. Such reports shall include the achievement of contract participation goals
2202 for S/M/WBEs by ethnicity and gender of ownership, by industry segment, by location,
2203 and by API. The Director of the Office of EBO or designee shall also issue a written report
2204 on an annual basis to the County Administrator and the Board that summarizes contract
2205 payments to Contractors and all Subcontractors for each of these categories. This written
2206 report should also address stated Program objectives including, but not limited to,
2207 enhancement of competition as reflected in solicitation response activity, growth in
2208 availability removal of barriers to S/M/WBE contract participation, reduction or
2209 elimination of disparities in contract awards and contract payments to M/WBE firms in
2210 County contracts. Other specific performance measures by which the success of the EBO
2211 Ordinance might be evaluated (depending upon the availability of data) include: (a) growth
2212 in the numbers of SBE and M/WBE firms winning their first contract awards from the
2213 County; (b) growth in the County's overall SBE and M/WBE Prime Contracting dollar
2214 volume; (c) growth in the numbers of graduated SBE and M/WBE firms that successfully
2215 compete for County contracts; and (d) growth in the size of the largest County contracts
2216 won and successfully performed by SBE and M/WBE firms respectively. The written
2217 report should also contain any recommendations for modifications, suspension, or
2218 termination of any portion of this EBO Program, with justifications for each such
2219 recommendation.

2220 (c) *Contractor/Vendor Responsibilities.* To facilitate the Office of EBO completing its
2221 responsibilities in administering EBO Program elements, a contractor/vendor shall:

- 2222 (1) Ensure that **ALL** proposed subcontractors/subconsultants register in VSS before contract
2223 award. It is the vendor's responsibility to ensure VSS registration includes **ALL**
2224 commodity codes for goods and/or services the vendor provides. If vendor fails to register
2225 commodity codes for the goods and/or services in which vendor provides, vendor **WILL**
2226 **NOT** receive solicitation email alerts.
- 2227 (2) Permit the Office of EBO to inspect any relevant matter, including records and the jobsite,
2228 and to interview Subcontractors and workers (field compliance).
- 2229 (3) Ensure that all proposed subcontractors/subconsultants or suppliers (S/M/WBE and Non-
2230 SBE) are included on properly executed Schedules 1 and 2. When a minimum mandatory
2231 API Goal applies, failure to submit properly executed Schedules 1 and 2 will result in a
2232 determination of non-responsiveness to the solicitation.
- 2233 (4) If performing a County Construction contract, ensure that all Subcontractors are paid any
2234 undisputed amount to which the Subcontractor is entitled within ten (10) calendar days of
2235 receiving a progress or final payment from the County and otherwise comply with the
2236 County's contract terms and conditions which set forth the obligations of the Prime
2237 Contractor and Subcontractors and the remedies for delinquency or nonpayment of
2238 undisputed amounts.
- 2239 (5) Notify the County in writing of any changes to their S/M/WBE utilization and/or
2240 subcontracting plan. All changes (substitutions and/or terminations) must be approved in
2241 advance and in writing by the Office of EBO.
- 2242 (6) Amendment for unforeseen circumstances: If at any time after submission of a solicitation
2243 response and before execution of a contract, the apparent successful respondent or bidder
2244 determines that a certified S/M/WBE listed on the participation schedule has become or
2245 will become unavailable, then the apparent successful respondent or bidder shall
2246 immediately notify the Office of EBO. Any desired change in the S/M/WBE participation
2247 schedule shall be approved in advance by the Office of EBO and shall indicate the Prime
2248 Contractor's Good Faith Efforts to substitute another certified S/M/WBE Subcontractor (as
2249 appropriate) to perform the work. Any desired changes (including substitutions or

2250 termination and self-performance) must be approved in writing in advance by the Office
2251 of EBO.

2252 (7) Notify the Originating Department and Office of EBO regarding any transfer or assignment
2253 of a contract with the County.

2254 (8) Retain records of all Subcontractor payments for a minimum of four (4) years following
2255 project termination date.

2256 (d) *Exceptions and Waivers.*

2257 (1) If a respondent or bidder is unable to comply with the API requirements imposed by GSC
2258 under the terms of this EBO Ordinance, such respondent or bidder shall submit, as required
2259 in the Solicitation, a request for a waiver or partial waiver at the time as required in the
2260 Solicitation. Such waiver request shall include specified documentation that demonstrates
2261 satisfactory Good Faith Efforts were undertaken by respondent or bidder to comply with
2262 the requirements as described under the selected API. The Good Faith Effort waiver request
2263 shall be submitted to the County at least seven (7) days prior to the bid closing date as
2264 stated in the Solicitation, and shall be reviewed, evaluated, and scored in the first instance
2265 by the Office of EBO within seven (7) days of receipt. If the Office of EBO determines
2266 that adequate Good Faith Efforts have been demonstrated by the respondent or bidder to
2267 warrant a partial or total waiver of the applied API, then the Solicitation shall be amended
2268 accordingly to reflect the partial or total waiver, and the any bids received by the County
2269 in the interim shall be returned unopened. The amended solicitation shall then be advertised
2270 to all prospective respondents or bidders, including, but not limited to the respondent or
2271 bidder that requested the waiver. However, if the Office of EBO determines that the
2272 respondent or bidder failed to submit documentation sufficient to demonstrate that Good
2273 Faith Efforts were undertaken by respondent or bidder to support its waiver or partial
2274 waiver request, the request for waiver or partial waiver shall be denied, and the Solicitation
2275 shall remain unchanged. Any bid that fails to comply with API requirements stated in the
2276 Solicitation after the period allowed for waiver requests has lapsed shall be deemed non-
2277 responsive. In the event of an adverse waiver or partial waiver request decision, the

2278 respondent or bidder shall have the right to request reconsideration of the adverse decision
2279 by the Director of the EBO Office, and if still aggrieved, shall be subsequently entitled to
2280 the process for an appeal to a Special Master as referenced in EBO Ordinance Section 2.-
2281 80.28 (b). The contract award process shall only be upheld until the EBO Director
2282 reconsideration and Special Master appeal processes have concluded.

2283 (2) If, after bid or proposal due date, a contractor is unable, through no fault of its own, to meet
2284 the participation requirements for S/M/WBEs specified at response submittal, the
2285 contractor must immediately seek substitute S/M/WBEs to fulfill the requirements; the
2286 requested substitution must be approved by the Director of the Office of EBO or designee
2287 and the Originating Department Director or designee. If, after reasonable Good Faith
2288 Efforts, the contractor is unable to find an acceptable substitute S/M/WBE, a post-bid
2289 opening waiver may be requested. The request shall document the reasons for the
2290 contractor's inability to meet the goal requirement. In the event the contractor is found not
2291 to have performed Good Faith Efforts in its attempt to find a suitable a substitute for the
2292 initial S/M/WBE proposed utilization, one (1) or more of the penalties and sanctions of the
2293 EBO ordinance may be imposed. No waiver is required if an S/M/WBE counting toward
2294 the participation requirements for S/M/WBEs specified at response submittal exceeds the
2295 SBE size standards stated in the EBO Ordinance or PPM, as amended, and graduates from
2296 the EBO Ordinance during the course of the resulting contract. In such cases, an S/M/WBE
2297 counting toward a participation goal will count toward the goal for the life of the contract
2298 and until the contract ends.

2299 (3) Upon submission of a prospective draft Solicitation to the Office of EBO, and prior to the
2300 public release of solicitations, an Originating Department or Department of Purchasing
2301 may request the Director of the Office of EBO or designee to waive or modify the
2302 application of API requirements for S/M/WBE participation by submitting its reasons in
2303 writing. In the event consensus cannot be reached regarding the request, the request for
2304 exception of the solicitation from the EBO Ordinance shall be resolved by the County

2305 Administrator or designee. The County Administrator or designee may grant such an
2306 exception or modification of application of an API upon a determination that:

- 2307 a. The extraordinary and necessary requirements of the contract render application of
2308 the APIs infeasible or impractical;
- 2309 b. The nature of the goods or services being procured are excluded from the scope of
2310 this EBO Ordinance; or
- 2311 c. Sufficient qualified S/M/WBEs providing the goods or services required by the
2312 contract are unavailable in Palm Beach County despite every reasonable attempt to
2313 locate them.

2314 Otherwise, such Solicitations shall be forwarded to the Director of the Office of EBO or
2315 designee for review and also to the GSC for possible application of APIs. Any further
2316 requests from an Originating Department or Purchasing Department for modification of
2317 Goal amounts or other APIs as established by the GSC shall be presented to the County
2318 Administrator or designee, whose decisions on such requests shall be final.

2319 (4) The Director of the Office of the EBO may waive the application of APIs to enhance
2320 S/M/WBE utilization for a specific contract in accordance with the procedures set forth in
2321 the EBO Ordinance Section 2-80.22.

- 2322 a. The Originating Department or Purchasing certifies to the Director of the Office of
2323 EBO and County Administrator or designee:
- 2324 b. That an emergency exists which requires goods or supplies to be provided with such
2325 immediacy that it is unable to comply with the requirements of this Part;
- 2326 c. That the prospective contractor is an S/M/WBE or, if not, that the prospective
2327 contractor will make a Good Faith Effort to utilize S/M/WBEs; and
- 2328 d. That the conditions imposed by law, or the external source of funding for the contract
2329 or grant effectively prohibits the application of the EBO Ordinance.

2330 Final approval of all such exceptions and waivers shall be made by the County
2331 Administrator or designee.

2332 (e) *Penalties and Sanctions.*

2333 (1) The Director of EBO or designee in consultation with the Originating Department
2334 regarding the failure of a contractor, vendor, respondent or bidder or other business
2335 representative to comply with any portion of this EBO Ordinance, shall recommend any or
2336 all of the following penalties be imposed upon the non-complying party by the Procurement
2337 Director:

- 2338 a. Suspension of contract.
- 2339 b. Withholding of funds.
- 2340 c. Termination of contract based upon a material breach of contract pertaining to EBO
2341 Program compliance.
- 2342 d. Suspension or Debarment of a respondent or bidder, contractor or other business entity
2343 from eligibility for providing goods or services to the County for a period not to
2344 exceed three (3) years.
- 2345 e. Liquidated damages equal to the difference in dollar value of S/M/WBE participation
2346 as committed to in the contract, and the dollar value of S/M/WBE participation as
2347 actually achieved.

2348 (2) It is a violation of this EBO Ordinance to:

- 2349 a. Fraudulently obtain, retain or attempt to obtain, retain or aid another in fraudulently
2350 obtaining, retaining or attempting to obtain or retain Certification status as an
2351 S/M/WBE for purposes of this EBO Ordinance.
- 2352 b. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or
2353 make any false, fictitious or fraudulent statements or representations, or make use of
2354 any false writing or document, knowing the same to contain any false, fictitious or
2355 fraudulent statement or entry pursuant to the terms of this EBO Ordinance.
- 2356 c. Willfully obstruct, impede or attempt to obstruct impede any authorized official or
2357 employee who is investigating the qualifications of a business entity which has
2358 requested Certification as an S/M/WBE.

- 2359 d. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or
2360 attempting to obtain public monies to which the person is not entitled under the terms
2361 of this EBO Ordinance.
- 2362 e. Make false statements to any entity that any other entity is or is not certified as an
2363 S/M/WBE for purposes of this EBO Ordinance.
- 2364 (3) Any person who violates these provisions shall be subject to penalties and sanctions
2365 established by this EBO Ordinance and related policies and procedures posted in the PPM,
2366 and also to the maximum penalty provided by law.
- 2367 (f) *Equal Business Opportunity Advisory Committee (EBOAC)*. The Director of the Office of EBO
2368 or designee in collaboration with the County Administrator or designee shall nominate a fifteen-
2369 member citizens committee made up of representatives of trade groups and members of the
2370 general business community (as specified below), and subject to formal appointment by the
2371 Board, this advisory group shall serve as the Equal Business Opportunity Advisory Committee
2372 to: (a) assist the Director of the Office of EBO or designee, the County Administrator or
2373 designee, and the Board in reviewing the administration of various programs and policies that
2374 promote S/M/WBE participation in County prime contract and subcontract opportunities; and
2375 (b) make recommendations to the Director of the Office of EBO or designee, the County
2376 Administrator or designee, and Board concerning modifications of such programs, policies, and
2377 procedures established pursuant to this EBO Code. As vacancies become available, they shall
2378 be filled as soon as practicable through the same nomination and appointment process.
- 2379 (1) Membership: The EBOAC shall consist of the following members:
- 2380 a. One (1) African American business owner certified as a small business by the county;
- 2381 b. One (1) Hispanic business owner certified as a small business by the county;
- 2382 c. One (1) women business owner certified as a small business by the county;
- 2383 d. One (1) white male business owner certified as a small business by the county;
- 2384 e. One (1) business owner domiciled in the county;
- 2385 f. One (1) representative of a business incubator program;

- 2386 g. One (1) representative of a Hispanic business organization;
- 2387 h. One (1) representative of the National Association of Women in Construction;
- 2388 i. One (1) representative of a women's business organization;
- 2389 j. One (1) certified minority contractor;
- 2390 k. One (1) representative of the Associated General Contractors Association;
- 2391 l. One (1) representative of the Small Business Development Center;
- 2392 m. One (1) representative of a financial institution that assists small businesses;
- 2393 n. One (1) representative of a Black Chamber of Commerce of Palm Beach County;
- 2394 o. One (1) representative of a professional services organization.

2395 (2) *Appointment Process/Terms/Vacancies/Reimbursements.* Members shall be appointed at
2396 large by the Board of County Commissioners and shall serve for staggered terms of three
2397 (3) years. Members must be Palm Beach County residents and may only serve for three (3)
2398 consecutive three-year terms. Vacancies shall be filled in the same manner as the original
2399 appointments for the remainder of the vacant term. Each member shall serve without
2400 compensation and may be removed without cause by the Board of County Commissioners
2401 at any time. Travel reimbursement is limited to expenses incurred only for travel outside
2402 the county necessary to fulfill board member responsibilities when sufficient funds are
2403 budgeted and available, and upon approval of the County Administrator or designee.

2404 (3) *Additional Duties and functions.* The committee shall have the following duties and
2405 functions:

- 2406 a. Review and evaluate the effectiveness of small business programs within county
2407 government;
- 2408 b. Monitor and evaluate the effectiveness of the county's small business policies and
2409 procedures, resolutions and ordinances, including their implementation by the various
2410 county departments;

- 2411 c. Study and evaluate the necessity for further county regulations and procedures
2412 regarding small business participation;
- 2413 d. Receive and where necessary, analyze information concerning the presence of
2414 discrimination in the bidding and contracting process and recommend to the Board of
2415 County Commissioners further steps to alleviate such discrimination;
- 2416 e. Prepare, adopt and present an annual report to the Board of County Commissioners;
- 2417 f. Research and review other jurisdictions' small business programs;
- 2418 g. Act as a conduit between the county and the community, industry; organizations, trade
2419 associations, chambers of commerce and small and minority/women businesses;
- 2420 h. Plan and participate in education and training for small businesses; and
- 2421 i. Research and recommend to the Board of County Commissioners race- and gender-
2422 neutral mechanisms which will assist small businesses.
- 2423 j. Monitor and report on level of minority/women business enterprise participation.
- 2424 k. Monitor legislative initiatives and other issues and activities which impact small and
2425 M/WBE businesses and advise the Board of County Commissioners concerning same.
- 2426 (4) *Meetings and organizations.* The committee shall meet on a regular basis (but no less than
2427 four (4) times per year). A majority of members appointed shall constitute a quorum. In
2428 the presence of a quorum, committee business shall be conducted by a vote of a majority
2429 present. The meetings shall be governed by the Robert's Rules of Order. Reasonable public
2430 notice of all committee meetings shall be provided, and all such meetings shall be open to
2431 the public at all times.
- 2432 (5) *Assistance to the committee.* The committee may request information from any department
2433 or agency of the county, local, regional, state, or federal government for information or
2434 advice in the performance of its work. The Office of EBO shall be responsible for providing
2435 staffing and data needs for the EBOAC.

2436 (6) *Chair and Vice-Chair.* A chair and vice-chair shall be initially appointed by the County
2437 Administrator and subsequently elected by a majority of the committee and shall serve for
2438 a term of one (1) year. The duties of the chair shall be to:

2439 a. Call committee meetings and set the agenda for the same;

2440 b. Preside at committee meetings;

2441 c. Establish subcommittees, appoint subcommittee chairs, and charge subcommittees
2442 with specific tasks;

2443 d. Perform other functions as the committee may assign by rule or order.

2444 The vice-chair shall perform the duties of the chair in the chair's absence, and such other
2445 duties as the chair may assign.

2446 If a vacancy occurs in the office of the chair, the vice-chair shall become the chair for the
2447 unexpired term. If a vacancy occurs in the office of the vice-chair, the committee will elect
2448 another member to fill the unexpired term of the vice-chair.

2449 (7) *Attendance.* Members shall be automatically removed for lack of attendance. Lack of
2450 attendance is defined as failure to attend three (3) consecutive meetings or failure to attend
2451 more than two-thirds ($\frac{2}{3}$) of the meetings scheduled during a calendar year. Participation
2452 for less than three-fourths ($\frac{3}{4}$) of a meeting shall constitute lack of attendance. Members
2453 removed under this section shall not continue to serve until a new appointment is made and
2454 removal shall create a vacancy.

2455 (8) *Conflict of interest.* Committee members shall be governed by the applicable provisions of
2456 the Palm Beach County Ethics Resolution R-94-693, as may be amended.

2457 (g) *Goal Setting Committee.* The Goal Setting Committee (GSC) is to be appointed and chaired by
2458 the County Administrator or designee. The GSC shall include, at a minimum, the Director of
2459 the Office of EBO or designee, the Director of the Purchasing Department or designee, the
2460 Director of Contract Development and Control or designee, the Director of FDO or designee,
2461 the Director of Public Safety or designee, the Director or designee of the Originating Department
2462 whose contract(s) are under consideration by the GSC (if the Originating Department is neither

2463 FDO nor Purchasing) all without duplication of designees. The GSC establishes S/M/WBE
2464 goals for the EBO Program (e.g., Annual Aspirational Goals and contract-by-contract
2465 subcontracting goals and determining which M/WBE segments are eligible for Segmented
2466 Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-
2467 specific characteristics, and M/WBE utilization. The GSC also makes determinations about
2468 which APIs are to be applied to specific contracts based upon various criteria. Rather than
2469 review each solicitation the GSC may determine that a particular API is appropriate for a
2470 category of contracts or a group of contracts.

2471 (1) At a minimum, the GSC shall:

2472 a. Meet as often as it deems necessary to accomplish its duties as outlined in this Part,
2473 but not less than once monthly;

2474 b. Formulate, recommend to the County Administrator or designee and implement
2475 additional rules and procedures for EBO Program goal-setting and other aspects of its
2476 duties in selecting and applying specific APIs to County solicitations and contracts in
2477 an efficient and effective manner; and

2478 c. Monitor and support the implementation of the EBO Program.

2479 (h) *Support to Goal Setting Committee and EBO Advisory Committee.* The Office of EBO shall
2480 provide staff support and logistical support for the Goal Setting Committee and the EBOAC as
2481 necessary. Such support shall include, but not be limited to, scheduling, facilitating data
2482 requests, analysis, communications, and meeting logistics.

2483 **SECTION 9. REPEAL OF LAWS IN CONFLICT.**

2484 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
2485 repealed to the extent of such conflict.

2486 **SECTION 10. SAVINGS CLAUSE.**

2487 Notwithstanding Section 3, Repeal of Laws in Conflict, all administrative and county orders,
2488 fines, and pending enforcement issued pursuant to the authority and procedures established by
2489 Ordinance 2018-021 shall remain in full force and effect.

2490 **SECTION 11. SEVERABILITY CLAUSE.**

2491 If any section, paragraph, sentence, clause, phrase or word of this Equal Business Opportunity
2492 Ordinance, Policies, Procedures, or the application thereof, to any person or circumstance is for any
2493 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, invalid or void,
2494 such holding shall not affect the remainder of this Equal Business Opportunity Ordinance or the
2495 application of any other provisions of this Ordinance which can be given effect without the invalid
2496 provision or application, and to this end, all the provisions of this Ordinance are hereby declared to
2497 be severable.

2498 **SECTION 12. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

2499 The provisions of this Ordinance shall become and be made a part of the Code of Laws and
2500 Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or
2501 re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or
2502 other appropriate word.

2503 **SECTION 13. CAPTIONS.**

2504 The captions, section headings, and section designations used in this Ordinance are for
2505 convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

2506 **SECTION 14. EFFECTIVE DATE.**

2507 The provisions of this Ordinance shall become effective upon filing with the Department of
2508 State.

2509 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this
2510 the _____ day of _____, 2025.

2511 **JOSEPH ABRUZZO,**
2512 **CLERK OF THE CIRCUIT**
2513 **COURT & COMPTROLLER**

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

2514
2515 **By: _____**
2516 **Deputy Clerk**

By: _____
Maria G. Marino, Mayor

2517
2518 **APPROVED AS TO FORM AND**
2519 **LEGAL SUFFICIENCY**

2520
2521 **By: _____**
2522 **County Attorney**

2523
2524 **EFFECTIVE DATE: Filed with the Department of State of the _____ day of _____,**
2525 **2025.**