

ORDINANCE NO. 2024-

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 DEFINITIONS; 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.

WHEREAS, on October 16, 2018, the Palm Beach County Board of County Commissioners adopted Ordinance No. 2018-021 (Equal Opportunity Ordinance) establishing the Equal Business Opportunity Program (Program) and the Office of Equal Business Opportunity; and

WHEREAS, the Program seeks to ensure that all segments of Palm Beach County's (County) 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

WHEREAS, on January 30, 2024, the Board of County Commissioners (BCC) moved to amend the Program to (1) increase the gross annual revenue size standards (minimum size standards) of a small business enterprises (SBEs) and (2) permit small and minority- and women-owned business enterprises (S/M/WBEs) performing on contracts with S/B/WBE participation goals to count towards the participation goals when they graduate from the Equal Business Opportunity Program; and

WHEREAS, section 2-80.21 of the Palm Beach County Code defines Small Business Enterprise (SBE) and states that the Director of the Office of EBO may periodically revise the initial size standards "as necessary to satisfy and better serve the purposes and objectives of this EBO Ordinance;" and

WHEREAS, the current minimum size standards to qualify as an SBE under the Program are not to exceed \$9,000,000.00 for construction services; \$5,000,000.00 for providing goods; \$5,000,000.00 for professional services procured pursuant the Consultants' Competitive Negotiation

Act (CCNA); \$4,000,000.00 for non-CCNA professional services; and \$4,000,000.00 for other services; and

WHEREAS, in order to keep up with the current Consumer Price Index (CPI), the United States Small Business Administration best practices, and the current North American Industry Classification System (NAICS), the annual gross revenue not exceeding amounts must be increased, and

WHEREAS, County contracts requiring S/M/WBE participation currently do not account for the participation of firms graduating (i.e. exceeding the gross annual revenue size standards) from the Program during the life of the contract; and

WHEREAS, in order to promote greater availability, capacity development, and contract participation by S/M/WBEs in County contracts, S/M/WBEs counting toward SBE participation goals on County contracts must be allowed to continue to count toward S/B/WBE participation goals on County contracts when the S/M/WBE graduates from the Program and until the contract ends; and

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

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

1 **SECTION 1. DEFINITIONS.** Section 2-80.21 of the Palm Beach County Code, defining “Small
2 Business Enterprise,” is hereby amended to read as follows:

3 [...]

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

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

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

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

27 (4) For a provider of Goods, the annual gross revenue shall not exceed seven million
28 dollars \$7,000,000.00) (averaged over the previous three (3) most recent years, or if

1 in business less than three (3) years, averaged over the duration of the provider's
2 existence).

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

7 In addition, the Director of the Office of EBO is authorized to establish a second tier size
8 standard for Emerging SBEs that are eligible for small sheltered market contracts; and whose size
9 standards are 50% or less than the size standards for SBEs. If, and when, established, the size
10 standards for Emerging SBEs and Emerging M/WBEs shall be 50% or less of the sizes of SBE size
11 standards, and shall also be reflected in the PPM.

12 [...]

13 **SECTION 2. PROGRAM ADMINISTRATION.** Section 2-80.28(d) of the Palm Beach County
14 Code is hereby amended to read as follows:

15 (d) *Exceptions and Waivers.*

- 16 (1) If a respondent or bidder is unable to comply with the API requirements imposed by GSC
17 under the terms of this EBO Ordinance, such respondent or bidder shall submit, as required
18 in the Solicitation, a request for a waiver or partial waiver at the time as required in the
19 Solicitation. Such waiver request shall include specified documentation that demonstrates
20 satisfactory Good Faith Efforts were undertaken by respondent or bidder to comply with
21 the requirements as described under the selected API. The Good Faith Effort waiver request
22 shall be submitted to the County at least seven (7) days prior to the bid closing date as
23 stated in the Solicitation, and shall be reviewed, evaluated, and scored in the first instance
24 by the Office of EBO within seven (7) days of receipt. If the Office of EBO determines
25 that adequate Good Faith Efforts have been demonstrated by the respondent or bidder to
26 warrant a partial or total waiver of the applied API, then the Solicitation shall be amended
27 accordingly to reflect the partial or total waiver, and any bids received by the County in
28 the interim shall be returned unopened. The amended solicitation shall then be advertised

1 to all prospective respondents or bidders, including, but not limited to the respondent or
2 bidder that requested the waiver. However, if the Office of EBO determines that the
3 respondent or bidder failed to submit documentation sufficient to demonstrate that Good
4 Faith Efforts were undertaken by respondent or bidder to support its waiver or partial
5 waiver request, the request for waiver or partial waiver shall be denied, and the Solicitation
6 shall remain unchanged. Any bid that fails to comply with API requirements stated in the
7 Solicitation after the period allowed for waiver requests has lapsed shall be deemed non-
8 responsive. In the event of an adverse waiver or partial waiver request decision, the
9 respondent or bidder shall have the right to request reconsideration of the adverse decision
10 by the Director of the EBO Office, and if still aggrieved, shall be subsequently entitled to
11 the process for an appeal to a Special Master as referenced in EBO Ordinance Section 2.-
12 80.28 (b). The contract award process shall only be upheld until the EBO Director
13 reconsideration and Special Master appeal processes have concluded.

14 (2) If, after solicitation due date, a contractor is unable, through no fault of its own, to meet
15 the participation requirements for S/M/WBEs specified at response submittal, the
16 contractor must immediately seek substitute S/M/WBEs to fulfill the requirements; the
17 requested substitution must be approved by the Director of the Office of EBO or designee
18 and the Originating Department Director or designee. If, after reasonable Good Faith
19 Efforts, the contractor is unable to find an acceptable substitute S/M/WBE, a post-bid
20 opening waiver may be requested. The request shall document the reasons for the
21 contractor's inability to meet the goal requirement. In the event the contractor is found not
22 to have performed Good Faith Efforts in its attempt to find a suitable a substitute for the
23 initial S/M/WBE proposed utilization, one (1) or more of the penalties and sanctions of the
24 EBO ordinance may be imposed. No waiver is required if an S/M/WBE counting toward
25 the participation requirements for S/M/WBEs specified at response submittal exceeds the
26 SBE size standards stated in the EBO Ordinance or PPM, as amended, and graduates from
27 the EBO Ordinance during the course of the resulting contract. In such cases, an S/M/WBE
28 counting toward a participation goal will count toward the goal for the life of the contract
29 and until the contract ends.

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

- 9 a. The extraordinary and necessary requirements of the contract render application of
10 the APIs infeasible or impractical;
- 11 b. The nature of the goods or services being procured are excluded from the scope of
12 this EBO Ordinance; or
- 13 c. Sufficient qualified S/M/WBEs providing the goods or services required by the
14 contract are unavailable in Palm Beach County despite every reasonable attempt to
15 locate them.

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

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

- 24 a. The Originating Department or Purchasing certifies to the Director of the Office of
25 EBO and County Administrator or designee:
- 26 b. That an emergency exists which requires goods or supplies to be provided with such
27 immediacy that it is unable to comply with the requirements of this Part;
- 28 c. That the prospective contractor is an S/M/WBE or, if not, that the prospective
29 contractor will make a Good Faith Effort to utilize S/M/WBEs; and

1 d. That the conditions imposed by law, or the external source of funding for the contract
2 or grant effectively prohibits the application of the EBO Ordinance.

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

5 **SECTION 3. REPEAL OF LAWS IN CONFLICT.**

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

8 **SECTION 4. SAVINGS CLAUSE.**

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

12 **SECTION 5. SEVERABILITY CLAUSE.**

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

20 **SECTION 6. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

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

25 **SECTION 7. CAPTIONS.**

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

28 **SECTION 8. EFFECTIVE DATE.**

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

3
4

5 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this
6 the _____ day of _____, 2024.

7 **JOSEPH ABRUZZO,**
8 **CLERK OF THE CIRCUIT**
9 **COURT & COMPTROLLER**

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

10
11

12 By: _____
13 Deputy Clerk

By: _____
Mayor

14

15 **APPROVED AS TO FORM AND**
16 **LEGAL SUFFICIENCY**

17

18 By: _____
19 County Attorney

20

21 **EFFECTIVE DATE: Filed with the Department of State of the _____ day of _____,**
22 **2024.**

PROPOSED