

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: February 27, 2024 Consent Regular
 Ordinance Public Hearing

Department: Administration
Submitted By: Office of Equal Business Opportunity (OEBO)

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: On preliminary reading and permission to advertise for public hearing on March 12, 2024 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 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 AND EFFECTIVE DATE.

Summary: The OEBO seeks to amend Chapter 2, Article III, Division 2, Part C of the Palm Beach County Code of Ordinances pertaining to the Equal Business Opportunity Program providing for the 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 Ordinance; providing for captions; and providing for an effective date as follows:

1) Modify the definition of the current gross annual revenue size standards for small businesses under the EBO Program to align size standards with the current Consumer Price Index (CPI) criteria, the U.S. Small Business Administration and the current North American Industrial Classification System (NAICS) codes as follows: From \$9 million to \$13 million for Construction; from \$5 million to \$7 million for Professional Services (Consultants' Competitive Negotiation Act (CCNA) Required); from \$5 million to \$7 million for Goods; and from \$4 million to \$5.7 million for Professional Services (CCNA Not Required) and Other Services; and

2) Modify Program administration, Exceptions and Waivers to permit small and minority, women-owned business enterprise (S/M/WBEs) performing on contracts with minimum mandatory SBE goals to remain on contracts after the SBE graduates from the EBO Program. **Countywide (RS)**

Background and Policy Issues:

On January 30, 2024, the Board of County Commissioners (BCC) directed staff to modify the definition of the current gross annual revenue size standards for small businesses under the EBO Program to align size standards with the current Consumer Price Index (CPI) criteria, the U.S. Small Business Administration and the current North American Industrial Classification System (NAICS). The BCC also directed staff to modify the Program Administration to permit small and minority, women-owned business enterprise (S/M/WBEs) performing on contracts with minimum mandatory SBE goals to remain on contracts after the SBE graduates from the EBO Program.

Attachments:

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

Recommended by: _____

[Signature]
Department Director

2/15/24

Date

Approved By: _____

[Signature]
Assistant County Administrator

2/20/2024
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
Net Fiscal Impact	<u>0</u>	_____	_____	_____	_____

ADDITIONAL FTE POSITIONS (Cumulative) 0 0 0 0 0

Is Item Included In Current Budget? Yes _____ No _____

Budget Account Exp No: Fund _____ Department _____ Unit _____ Object _____
 Rev No: Fund _____ Department _____ Unit _____ RevSc _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:
 There is no fiscal impact associated with this agenda item.

Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

ASD/DA 2/15/24
 OFMB JA 2/15 CB 2/15

Theresa Machis 2/16/24
 Contract Administration
 Feb 2/16/24

B. Legal Sufficiency:

[Signature] 2/20/24
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

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 AND 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
10 ~~Exhibit Q~~ to the PPM; and (3) also is domiciled in Palm Beach County and satisfies the Significant
11 Business Presence and other eligibility requirements for participation in the EBO Program as defined
12 herein. The ~~initial~~ size standards for SBE firms are as follows, and may be periodically revised by
13 the Director of the Office of EBO as necessary to satisfy and better serve the purposes and objectives
14 of this EBO Ordinance, and shall thereafter be reflected in ~~Exhibit Q~~ of the PPM:

15 (1) For a provider of Construction Services, the annual gross revenue shall not exceed ~~nine~~
16 thirteen million dollars (~~\$9,000,000.00~~\$13,000,000.00) (averaged over the previous
17 three (3) most recent years, or if in business less than three (3) years, averaged over
18 the duration of 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 ~~(1)~~(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 ~~(2)~~(4) For a provider of Goods, the annual gross revenue shall not exceed ~~five~~seven million
28 dollars (~~\$5,000,000.00~~\$7,000,000.00) (averaged over the previous three (3) most

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

3 ~~(3) For a provider of Professional Services procured pursuant to the CCNA statute, the~~
4 ~~average annual gross revenues shall not exceed five seven million dollars~~
5 ~~(\$5,000,000.00\$7,000,000.00) (averaged over the previous three (3) most recent years,~~
6 ~~or if in business less than three (3) years, averaged over the duration of provider's~~
7 ~~existence).~~

8 ~~(4) For a provider of other Non-CCNA Professional Services, the average annual gross~~
9 ~~revenue shall not exceed four million five million, seven hundred thousand dollars~~
10 ~~(\$4,000,000.00\$5,700,000.00) (averaged over the previous three (3) most recent years,~~
11 ~~or if in business less than three (3) years, averaged over the duration of the provider's~~
12 ~~existence).~~

13 (5) For a provider of Other Services, the average annual gross revenue shall not exceed ~~four~~
14 ~~million~~ five million, seven hundred thousand dollars (\$4,000,000.00\$5,700,000.00)
15 (averaged over the previous three (3) most recent years, or if in business less than three
16 years, averaged over the duration of the provider's existence).

17 In addition, the Director of the Office of EBO is authorized to establish a second tier size
18 standard for Emerging SBEs that are eligible for small sheltered market contracts; and whose size
19 standards are 50% or less than the size standards for SBEs. If, and when, established, the size
20 standards for Emerging SBEs and Emerging M/WBEs shall be 50% or less of the sizes of SBE size
21 standards, and shall also be ~~the posted~~ reflected in the PPM in ~~Exhibit Q~~.

22 [...]

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

25 (d) *Exceptions and Waivers.*

26 (1) If a respondent or bidder is unable to comply with the API requirements imposed by GSC
27 under the terms of this EBO Ordinance, such respondent or bidder shall submit, as required
28 in the Solicitation, a request for a waiver or partial waiver at the time as required in the

1 Solicitation. Such waiver request shall include specified documentation that demonstrates
2 satisfactory Good Faith Efforts were undertaken by respondent or bidder to comply with
3 the requirements as described under the selected API. The Good Faith Effort waiver request
4 shall be submitted to the County at least seven (7) days prior to the bid closing date as
5 stated in the Solicitation, and shall be reviewed, evaluated, and scored in the first instance
6 by the Office of EBO within seven (7) days of receipt. If the Office of EBO determines
7 that adequate Good Faith Efforts have been demonstrated by the respondent or bidder to
8 warrant a partial or total waiver of the applied API, then the Solicitation shall be amended
9 accordingly to reflect the partial or total waiver, and the any bids received by the County
10 in the interim shall be returned unopened. The amended solicitation shall then be advertised
11 to all prospective respondents or bidders, including, but not limited to the respondent or
12 bidder that requested the waiver. However, if the Office of EBO determines that the
13 respondent or bidder failed to submit documentation sufficient to demonstrate that Good
14 Faith Efforts were undertaken by respondent or bidder to support its waiver or partial
15 waiver request, the request for waiver or partial waiver shall be denied, and the Solicitation
16 shall remain unchanged. Any bid that fails to comply with API requirements stated in the
17 Solicitation after the period allowed for waiver requests has lapsed shall be deemed non-
18 responsive. In the event of an adverse waiver or partial waiver request decision, the
19 respondent or bidder shall have the right to request reconsideration of the adverse decision
20 by the Director of the EBO Office, and if still aggrieved, shall be subsequently entitled to
21 the process for an appeal to a Special Master as referenced in EBO Ordinance Section 2.-
22 80.28 (b). The contract award process shall only be upheld until the EBO Director
23 reconsideration and Special Master appeal processes have concluded.

- 24 (2) If, after solicitation due date, a contractor is unable, through no fault of its own, to meet
25 the participation requirements for S/M/WBEs specified at response submittal, the
26 contractor must immediately seek substitute S/M/WBEs to fulfill the requirements; the
27 requested substitution must be approved by the Director of the Office of EBO or designee
28 and the Originating Department Director or designee. If, after reasonable Good Faith
29 Efforts, the contractor is unable to find an acceptable substitute S/M/WBE, a post-bid

1 opening waiver may be requested. The request shall document the reasons for the
2 contractor's inability to meet the goal requirement. In the event the contractor is found not
3 to have performed Good Faith Efforts in its attempt to find a suitable a substitute for the
4 initial S/M/WBE proposed utilization, one (1) or more of the penalties and sanctions of the
5 EBO ordinance may be imposed. No waiver is required if an S/M/WBE counting toward
6 the participation requirements for S/M/WBEs specified at response submittal exceeds the
7 SBE size standards stated in the EBO Ordinance or PPM, as amended, and graduates from
8 the EBO Ordinance during the course of the resulting contract. In such cases, an
9 S//WBES/M/WBE counting toward a participation goal will count toward the goal for the
10 life of the contract and until the contract ends.

- 11 (3) Upon submission of a prospective draft Solicitation to the Office of EBO, and prior to the
12 public release of solicitations, an Originating Department or Department of Purchasing
13 may request the Director of the Office of EBO or designee to waive or modify the
14 application of API requirements for S/M/WBE participation by submitting its reasons in
15 writing. In the event consensus cannot be reached regarding the request, the request for
16 exception of the solicitation from the EBO Ordinance shall be resolved by the County
17 Administrator or designee. The County Administrator or designee may grant such an
18 exception or modification of application of an API upon a determination that:
- 19 a. The extraordinary and necessary requirements of the contract render application of
20 the APIs infeasible or impractical;
 - 21 b. The nature of the goods or services being procured are excluded from the scope of
22 this EBO Ordinance; or
 - 23 c. Sufficient qualified S/M/WBEs providing the goods or services required by the
24 contract are unavailable in Palm Beach County despite every reasonable attempt to
25 locate them.

26 Otherwise, such Solicitations shall be forwarded to the Director of the Office of EBO or
27 designee for review and also to the GSC for possible application of APIs. Any further
28 requests from an Originating Department or Purchasing Department for modification of

1 Goal amounts or other APIs as established by the GSC shall be presented to the County
2 Administrator or designee, whose decisions on such requests shall be final.

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

6 a. The Originating Department or Purchasing certifies to the Director of the Office of
7 EBO and County Administrator or designee:

8 b. That an emergency exists which requires goods or supplies to be provided with such
9 immediacy that it is unable to comply with the requirements of this Part;

10 c. That the prospective contractor is an S/M/WBE or, if not, that the prospective
11 contractor will make a Good Faith Effort to utilize S/M/WBEs; and

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

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

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

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

19 **SECTION 4. SAVINGS CLAUSE.**

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

23 **SECTION 5. SEVERABILITY CLAUSE.**

24 If any section, paragraph, sentence, clause, phrase or word of this Equal Business Opportunity
25 Ordinance, Policies, Procedures, or the application thereof, to any person or circumstance is for any
26 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, invalid or void,
27 such holding shall not affect the remainder of this Equal Business Opportunity Ordinance or the
28 application of any other provisions of this Ordinance which can be given effect without the invalid
29 provision or application, and to this end, all the provisions of this Ordinance are hereby declared to

1 be severable.

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

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

7 **SECTION 7. CAPTIONS.**

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

10 **SECTION 8. EFFECTIVE DATE.**

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

13
14

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

17 **JOSEPH ABRUZZO,**
18 **CLERK OF THE CIRCUIT**
19 **COURT & COMPTROLLER**

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

20
21

22 By: _____
23 **Deputy Clerk**

By: _____
Mayor

24
25
26

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

27
28 By:  _____
29 **County Attorney**

30
31

EFFECTIVE DATE: Filed with the Department of State of the _____ day of _____,
32 **2024**