

ORDINANCE NO. 2024- 006

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2  
3 AN ORDINANCE OF THE BOARD OF COUNTY  
4 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA,  
5 AMENDING CHAPTER 2, ARTICLE III, DIVISION 2, PART C  
6 OF THE PALM BEACH COUNTY CODE, (ORDINANCE NO.  
7 2018-021), PERTAINING TO THE EQUAL BUSINESS  
8 OPPORTUNITY PROGRAM; PROVIDING FOR  
9 DEFINITIONS; PROVIDING FOR PROGRAM  
10 ADMINISTRATION; PROVIDING FOR REPEAL OF LAWS  
11 IN CONFLICT; PROVIDING FOR SAVINGS CLAUSE;  
12 PROVIDING FOR SEVERABILITY; PROVIDING FOR  
13 INCLUSION IN THE CODE OF LAWS AND ORDINANCES;  
14 PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN  
15 EFFECTIVE DATE.  
16

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

20 WHEREAS, the Program seeks to ensure that all segments of Palm Beach County's (County)  
21 business population, including, but not limited to, small, local, minority, and women-owned  
22 businesses, have an equitable opportunity to participate in the County's procurement process, prime  
23 contract,, and subcontract opportunities; and

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

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

34 WHEREAS, the current minimum size standards to qualify as an SBE under the Program  
35 are not to exceed \$9,000,000.00 for construction services; \$5,000,000.00 for providing goods;  
36 \$5,000,000.00 for professional services procured pursuant the Consultants' Competitive Negotiation  
37 Act (CCNA); \$4,000,000.00 for non-CCNA professional services; and \$4,000,000.00 for other  
38 services; and  
39

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

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

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

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

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

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

19           *Small Business Enterprise (SBE)* means a corporation, partnership, sole proprietorship, or  
20 other legal entity for the purpose of making a profit that: (1) is independently owned and operated  
21 by individuals legally residing in, or that are citizens of, the United States or its territories; and (2) is  
22 currently certified as having annual revenues that satisfy S/M/WBE size standards on an industry-  
23 specific basis (i.e., Construction, CCNA Professional Services including Architectural and  
24 Engineering Design firms, Professional Services, Goods, and Other Services) that are reflected in the  
25 PPM; and (3) also is domiciled in Palm Beach County and satisfies the Significant Business Presence  
26 and other eligibility requirements for participation in the EBO Program as defined herein. The size  
27 standards for SBE firms are as follows, and may be periodically revised by the Director of the Office  
28 of EBO as necessary to satisfy and better serve the purposes and objectives of this EBO Ordinance,  
29 and shall thereafter be reflected in the PPM:  
30

31

- 1 (1) For a provider of Construction Services, the annual gross revenue shall not exceed  
2 thirteen million dollars (\$13,000,000.00) (averaged over the previous three (3) most  
3 recent years, or if in business less than three (3) years, averaged over the duration of  
4 the provider's existence).
- 5 (2) For a provider of Professional Services procured pursuant to the CCNA statute, the  
6 average annual gross revenues shall not exceed seven million dollars (\$7,000,000.00)  
7 (averaged over the previous three (3) most recent years, or if in business less than three  
8 (3) years, averaged over the duration of provider's existence).
- 9 (3) For a provider of other Non-CCNA Professional Services, the average annual gross  
10 revenue shall not exceed five million, seven hundred thousand dollars (\$5,700,000.00)  
11 (averaged over the previous three (3) most recent years, or if in business less than three  
12 (3) years, averaged over the duration of the provider's existence).
- 13 (4) For a provider of Goods, the annual gross revenue shall not exceed seven million  
14 dollars \$7,000,000.00) (averaged over the previous three (3) most recent years, or if  
15 in business less than three (3) years, averaged over the duration of the provider's  
16 existence).
- 17 (5) For a provider of Other Services, the average annual gross revenue shall not exceed five  
18 million, seven hundred thousand dollars (\$5,700,000.00) (averaged over the previous  
19 three (3) most recent years, or if in business less than three years, averaged over the  
20 duration of the provider's existence).

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

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

28 (d) *Exceptions and Waivers.*

- 29 (1) If a respondent or bidder is unable to comply with the API requirements imposed by GSC  
30 under the terms of this EBO Ordinance, such respondent or bidder shall submit, as required

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

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

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

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

- 18 a. The extraordinary and necessary requirements of the contract render application of  
19 the APIs infeasible or impractical;
- 20 b. The nature of the goods or services being procured are excluded from the scope of  
21 this EBO Ordinance; or
- 22 c. Sufficient qualified S/M/WBEs providing the goods or services required by the  
23 contract are unavailable in Palm Beach County despite every reasonable attempt to  
24 locate them.

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

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

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

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

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

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

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

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

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

17 **SECTION 4. SAVINGS CLAUSE.**

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

21 **SECTION 5. SEVERABILITY CLAUSE.**

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

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

30 The provisions of this Ordinance shall become and be made a part of the Code of Laws and  
31 Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or

1 re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or  
2 other appropriate word.

3 **SECTION 7. CAPTIONS.**

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

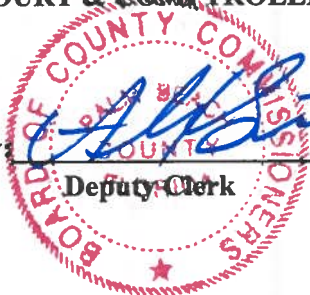
6 **SECTION 8. EFFECTIVE DATE.**

7 The provisions of this Ordinance shall become effective upon filing with the Department of  
8 State.

9 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this  
10 the 12th day of March, 2024.

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12  
13 **JOSEPH ABRUZZO,**  
14 **CLERK OF THE CIRCUIT**  
15 **COURT & COMPTROLLER**

16  
17  
18  
19 By:   
20 **Deputy Clerk**



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

21  
22  
23  
24 By:   
25 **Maria Sachs, Mayor**

26  
27  
28 **APPROVED AS TO FORM AND**  
29 **LEGAL SUFFICIENCY**

30  
31 By:   
32 **County Attorney**

**EFFECTIVE DATE: Filed with the Department of State of the 14th day of March,  
2024**



## FLORIDA DEPARTMENT *of* STATE

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

March 15, 2024

Tracey Powell  
Deputy Clerk of the Circuit Court and Comptroller  
Palm Beach County  
301 North Olive Avenue  
West Palm Beach, Florida 33401

Dear Tracey Powell:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2024-006, which was filed in this office on March 14, 2024.

Sincerely,

Matthew Hargreaves  
Administrative Code and Register Director

MJH/wlh