

ORANGE COUNTY BUSINESS DEVELOPMENT DIVISION
SMALL BUSINESS ENTERPRISE PROGRAM
POLICIES AND PROCEDURES MANUAL

DRAFT

**ORANGE COUNTY BUSINESS DEVELOPMENT DIVISION
SMALL BUSINESS ENTERPRISE CERTIFICATION
POLICIES AND PROCEDURES**

I. INTRODUCTION

Certification is a process through which a business enterprise is verified to be a small business that meets the requirements of the Orange County Small Business Enterprise Program.

A. Certification

The certification procedures are to ensure that companies applying for certification are in compliance with the definitions for small business enterprises as outlined in the Small Business Enterprise Ordinance, codified as Division 6 of Article III of Chapter 17 of the Orange County Code of Ordinances (hereinafter the "SBE Ordinance") and with the qualifications set forth in this Policies and Procedures document. This is done by review and analysis of the completed application and with interviews if required.

The Business Development Division ("BDD") shall review all applications and certify small business ownership, as well as economic eligibility in accordance with the criteria contained herein.

B. Qualifications

1. A corporation, partnership, sole proprietorship or other legal entity certified by Orange County ("County") or by another entity provided that the County enters into an Agreement with that entity wherein the County agrees to recognize the entity's certification;
2. For which the owner is a lawful permanent resident of the State of Florida;
3. The business is domiciled in the Orlando Metropolitan Statistical Area;
4. That operates separately from another firm in such areas as personnel, facilities, equipment, financial and/or bonding support and other resources;
5. That provides a commercially useful business function according to customs and practice of the industry;
6. That has no more than 100 employees; and
7. That has business annual gross receipts, averaged over the past three (3) years no greater than the threshold provided below:

- a. Construction services, the annual gross receipts shall not exceed Thirteen million one hundred thousand dollars (\$13,100,000.00) averaged over the previous three (3) most recent calendar years, or if in business for less than three (3) years, averaged over the duration of the provider's existence).
- b. Professional services procured pursuant to Section 287.055, Florida Statutes, the average annual gross receipts shall not exceed Seven million dollars (\$7,000,000.00) (averaged over the previous three (3) most recent calendar years, or if in business for less than three (3) years, averaged over the duration of the provider's existence).
- c. Goods, the annual gross receipts shall not exceed Seven million dollars (\$7,000,000.00) (averaged over the previous three (3) most recent calendar years, or if in business for less than three (3) years, averaged over the duration of the provider's existence).
- d. Services, the average annual gross receipts shall not exceed Five million seven hundred thousand (\$5,700,000.00) (averaged over the previous three (3) most recent calendar years, or if in business for less than three (3) years, averaged over the duration of the provider's existence).

The amounts listed herein will be adjusted every five years by a percentage equal to the percentage changes in the Consumer Price Index (CPI) for urban consumers rounded to the nearest one hundred thousand.

II. APPLICATIONS FOR CERTIFICATION & LOCATION REQUIREMENT

A. All applications for certification must meet the following requirements:

- 1. Company must be located and managed in the Orlando Metropolitan Statistical Area (MSA) and have gross receipts which are less than the amount set forth in the SBE Ordinance at the time of application to become certified.
 - a. Firms must be located in the Orlando Metropolitan Statistical Area, which consists of Orange, Osceola, Seminole, and Lake Counties.
 - b. "Local Office" means an established business location, which exists in the Orlando MSA. Required local and state business licenses and on-going business activities (including invoicing and local marketing efforts) must indicate an office located in the Orlando MSA.

2. All application forms must be complete and the application must be signed by the applicant on the form supplied by Orange County. Applicant will be required to submit the following documents as part of the application process:
 - a. Information from the Florida Division of Corporations that shows the business is in good standing and indicates the address for the business. If the business is a sole proprietorship or some other entity that is not required to register with the Division of Corporations, the business may provide materials that show the business address including business tax receipts, business cards, advertising materials, etc.
 - b. Copies of financial records or tax records that demonstrate gross receipts for the business that, averaged over the past three years, are below the threshold provided in herein.
 - c. Documents demonstrating the number of employees of the business.
- B. Applications will be reviewed by the BDD to ensure they meet all requirements for certification.
 1. If the application is incomplete, it will be returned for required information. If an applicant has submitted an application with minor omissions, the applicant will be notified and encouraged to submit requested documentation within five (5) days of the initial request.
- C. The BDD may discuss the information contained in the application or request clarification with regard to information contained in the application with an applicant or applicant's representative, as part of the review process to assist the applicant in fulfilling application requirements.
- D. The BDD will be authorized to review all applications and render a decision to either grant or deny SBE certification.
- E. If the applicant fails to meet the criteria for SBE Certification and the BDD has recommended denying certification status, the applicant will be notified in writing of the reasons for denial, their right to a hearing, and other available courses of action.
- F. Certification shall be for a period of two (2) years.

III. DENIAL OF CERTIFICATION

- A. The BDD shall deny certification as a small business enterprise to any business entity that fails to meet the requirements as set forth in the Small Business Enterprise Ordinance and contained herein.
- B. The BDD may base denial of certification on any of the following grounds:
 - 1. Failure to qualify as a small business enterprise under the eligibility requirements of the Small Business Enterprise Ordinance or contained herein, or prevailing state and federal statutes.
 - 2. Failure to provide requested information by which a determination of eligibility can be based.
 - 3. The business is not located in the Orlando MSA.
- C. Firms denied certification will not be able to apply for Orange County Certification for a period of one (1) year from the date of their final denial date. If the firm was denied and reapplies for certification after the one (1) year period, they must submit with their application detailed explanations of how they now meet the criteria for the areas in which they were previously denied.

IV. RENEWAL OF CERTIFICATION (RE-CERTIFICATION)

- A. Application for renewal of certification should be submitted at least thirty- (30) calendar days before the date of expiration of the existing certification.
- B. The applicant will receive one notice via the County provided compliance monitoring system sixty (60) days prior to the expiration of the current certification. Applicant may receive additional notifications, but no such additional notifications are required and will be considered a courtesy
- C. Applications for renewal of certification shall meet all of the requirements set forth in the SBE Ordinance and contained herein, with all information and those documents required as referenced in the initial application section above updated to a date reasonably near the date of the application for renewal.
- D. Applicants that are presently certified may be eligible for renewal of certification for up to two years.
- E. If the application is incomplete, it will be returned for required information.
- F. Applications submitted with minor omissions may be accepted pending receipt of remaining documentation required for acceptance. The applicant will be notified and encouraged to submit requested documentation within five (5) days of the initial request.

- G. A decision to deny recertification may be appealed by the applicant for a final decision as provided in Article VIII, below.

V. RE-APPLICATION

- A. A previously certified company that has been removed for MSA jurisdictional reasons may re-apply for certification at any time.
 - 1. Companies that were denied certification for failure to meet the requirements in the SBE ordinance, or whose certification has been revoked, or de-certified for poor performance or non-compliance must submit a full application for certification no earlier than six (6) months from the original date of revocation or de-certification.
 - 2. Corporate records on file with the Florida Division of Corporations must all be associated directly with an established business location that exists in the Orlando MSA. If the business is a sole proprietorship or some other entity that is not required to register with the Division of Corporations, the business may provide materials that show the business address including business tax receipts, business cards, advertising materials, etc.
- B. A company that is denied certification after re-application may use the hearing and appeal processes provided for regular certification denial.

VI. COMPLIANCE REVIEW

- A. The County shall periodically review the practices and status of a certified SBE to determine whether they continue to meet the eligibility requirements for certification and are conducting their business activities in accordance with these requirements.
- B. Informal compliance review shall consist of monitoring reports and information submitted by citizens, County staff, agencies, SBE's, or interviews and discussions conducted by the Compliance Officer.
- C. If the Compliance Officer discovers correctable and minor non-compliance issues as a result of a compliance review, they may seek compliance from the SBE company prior to instituting further proceedings. In such cases, the Compliance Officer shall issue an order of non-compliance and recommend steps to be taken to correct the stated deficiencies. The Compliance Officer may enter into discussions with the SBE in an attempt to resolve the compliance problem(s) informally.
- D. Upon receipt of a written complaint, the Compliance Officer may conduct compliance reviews to include requests for submission of information,

- E. Upon completion of the compliance review process, the Business Development Division shall prepare a report setting forth findings and render a decision. The Business Development Division's decision may be appealed by the applicant, in accordance with Article VIII, below.

VII. REVOCATION OF CERTIFICATION

- A. A certification of a SBE company may be revoked on any of the following grounds:
1. Fraud, deceit and/or misinformation in obtaining/maintaining certification including the furnishing of substantially inaccurate documentation, or other materially false information.
 2. Failure to report subsequent changes in the status or activities of the business entity that affect the SBE company's eligibility for continued certification.
 3. Gross negligence, incompetence, financial irresponsibility or misconduct in the performance of contractual obligations or services.
 4. Violation of any provisions of the SBE Ordinance, applicable state or federal statutes or these policies and procedures.
 5. Making any false statement or using deceit for the purpose of influencing in any way any action of the County.
 6. When an SBE company conspires with a non-SBE company for the purposes of listing and/or subcontracting with the SBE and giving the SBE something of value for listing and/or subcontracting with the SBE, but utilizing instead a non-SBE firm for the same scope that should be accomplished by that SBE; the SBE will be in violation of the policies of Orange County and the Prime Contractor will be sanctioned according to provisions of the contract.
 7. Procuring or entering into a contract agreement as an SBE in order to perform work for which the SBE is not properly licensed.
 8. The SBE contractor fails to show that it attempted in good faith to comply with the terms of the contract, the ordinance, rules, policies and/or procedures. The actions of the contractor resulted in serious impairment of the policies, procedures, contracts, etc., of the County, or another contractor.
- B. The Compliance Officer shall give written notice of the charges to the SBE company. The notice shall list the grounds and reasons for the revocation.

- C. A firm whose certification has been revoked shall not be able to resubmit an application for certification for a period of two (2) years from the date of revocation.
- D. Hearings shall be conducted in accordance with the procedures set forth in Article VIII, below.

VIII. HEARING PROCEDURES

- A. A hearing will be held by the Director of Administrative Services (Director), conducted in accordance with the procedures outlined in this section.
- B. After receipt of a request for an appeal, the Compliance Officer shall obtain a date for the hearing. The appealing entity shall receive written notice of the date and time set for the hearing at least fifteen (15) calendar days in advance.
- C. The Applicant may request in writing that the hearing be rescheduled once within forty eight business hours prior to the scheduled hearing. Subsequent requests to reschedule may be denied by the compliance officer.
- D. The applicant cannot communicate directly with the Director after requesting an appeal hearing.
- E. Any applicant or company that takes an appeal to the Director is entitled to have a legal representative present. The applicants may also ask/answer questions and introduce witnesses. If the applicant desires to appeal a decision with respect to any matter considered at these meetings, he/she may require a record of the proceedings. For this purpose, the applicant may need to ensure that a record of the hearing is made which includes the testimony and evidence on which the appeal is to be based, at applicant's sole expense.
- F. Any person may be excluded from the hearing for conduct that interferes with the hearing process.
- G. The Director shall have the power to exclude irrelevant or repetitive evidence or testimony.
- H. The Director's decision shall be based upon the record of the hearing, the file and reports, and must be supported by a preponderance of the evidence. The Director shall not hear evidence regarding restructuring of the firm which occurred after the date of denial. The decision of the Director is final.
- I. The applicant will be advised of the final decision within ten (10) business days of the hearing.

- J. The Director may only consider information/documents made available to staff at the time of its decision. Applicants may not introduce information not previously made available to staff, particularly if the new information/documentation constitutes a material change which occurred after staff's review and decision.
- K. The Director may abstain from voting for conflict of interest, in which case a Director of another department within the County will hear the appeal.
- L. The appeal hearing will be conducted as follows:
 - (1) Opening remarks & comments by Compliance Officer or designee. (15 minutes)
 - (2) Opening remarks & comments by applicant/or SBE. (15 min)
 - (3) Additional comments by Compliance Officer or his designee. (5 minutes)
 - (4) Additional comments by firm seeking SBE certification. (5 min)
 - (5) Questions by the Director.
 - (6) Closing remarks and comments by the applicant/or SBE seeking additional scope of services. (10 min)
 - (7) Closing remarks and comments by Compliance Officer or designee. (10 mins)

IX. RELEVANT MARKET AREA

- A. Companies applying for certification with Orange County that maintain offices headquartered outside the Orlando MSA must maintain a local branch office in the Orlando MSA. Refer to Section XXIII for the specific branch office characteristics.

X. LEGALLY ORGANIZED

A company seeking SBE status must be legally organized for profit business in the State of Florida and meet the following requirements:

- 1. Hold all required state/local licenses, certificates of competency, permits, etc., required to perform lines of business in Orange County. If a professional license is required to perform the service, that license may be held by an employee of the company and is not required to be held by the owner.

2. Be legally registered by the appropriate governmental unit, depending on its organizational structure as follows:
 - a. Corporations must be registered by the State of Florida.
 - b. Partnerships must operate under a written Partnership Agreement that specifies contributions of partners, respective duties and authorities, distribution of profits, etc.
 - c. Sole Proprietorships must have filed Fictitious Name Registration.

XI. OPERATES SEPARATELY

- A. The firm must not be affiliated or associated with another firm that does not meet the Small Business definition to a degree which could prevent or inhibit an independent status. Characteristics include, but are not limited to:
 1. Shared facilities, inventory, equipment, labor force, etc., without adequate compensation.
 2. Financial or bonding support provided by a larger firm(s) in a similar line of business, without adequate compensation.

XII. COMMERCIALLY USEFUL FUNCTIONS

- A. A company must provide a commercially useful function within the normal industry practices. A commercially useful function is defined as a function, which results in the provision of materials, supplies, equipment, or services to customers. Acting as a "front," conduit or pass through to transfer funds to a non small business does not constitute a commercially useful function.

XIII. FINANCES

- A. That has gross receipts which are less than provided herein at the time of application to become certified.
- B. The applicant will be requested to provide financial documents to verify the gross receipts of the business.

XIV. BRANCH OFFICE

- A. Companies applying for certification with Orange County that maintain offices

headquartered outside the Orlando Metropolitan Statistical Area (MSA) must maintain a local office in the Orlando MSA. Documents to demonstrate this could include one or more of the following:

1. SBE Certification by a local or state governmental agency in area/location of headquarters.
 2. Office lease agreement, demonstrating a presence in Orlando MSA.
 3. Outdoor signage identifying company.
 4. Required local business license and/or professional licensing.
 5. Business cards, letterhead, etc.
 6. Documentation of work generated out of the local office.
- B. Staff, managers, office space, telephone and fax numbers must all be associated directly with an established business location that exists in the Orlando MSA. Business cards, required local and state business licenses and on-going business activities (including invoicing and local marketing efforts) must indicate an office located in the Orlando MSA.

XV. HOME BASED OFFICE

- A. Companies applying for certification with Orange County that maintain a home based office must comply with the following:
- B. Proof of residence or lease agreement demonstrating a presence in the Orlando MSA, through:
1. Required local business license and/or professional licensing.
 2. Business cards, letterhead, etc.
 3. Documentation of work generated out of the local office.

XVI. RECIPROCITY

The Compliance Officer may grant reciprocal certification for a qualifying company that is certified by an approved jurisdiction. The Compliance Officer can also automatically revoke the certification status of a firm that is revoked by the initial certifying entity. Nothing in this provision shall preclude the Compliance Officer from denying this privilege to firms that have been denied by the County in the past or if the Compliance

Officer has reason to believe the firm does not meet the County's criteria (including gross receipt). The Compliance Officer can require such a firm to submit an application to Orange County as outlined in these procedures.

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**ORANGE COUNTY BUSINESS DEVELOPMENT
DIVISION**

**POLICIES AND PROCEDURES ON CONSTRUCTION/GOODS AND SERVICES
/COMMODITIES CONTRACTS/PROFESSIONAL SERVICES**

I. OBJECTIVE

It is the policy of the Board of County Commissioners (BOCC) that the County use its best efforts to ensure that all segments of its business population are encouraged to do business with the County. To that end, the BOCC has established a program to encourage the use of small businesses in County projects. The small business enterprise program is intended to be a race and gender neutral program.

II. IMPLEMENTATION OF SBE CONTRACT GOALS

A. Goals may be met in the following manner:

1. Use of SBE certified entities as subcontractors by the bidder or proposer;
2. A bidder or proposer who is certified as an Orange County SBE may perform a percentage of the work equal to the goal for the project;
3. A bidder or proposer who has historically self-performed the work may self perform the work; or
4. A bidder or proposer may demonstrate good faith effort in accordance with the requirements in this chapter.

B. Goals will not be established for requests for quotes, sole source or emergency purchases and any other contracts for which goals have been waived.

C. Implementation of the Sub-Contracting Program

1. The contractor will be required to submit reports to the BDD on the schedule required by BDD documenting subcontract activity to allow the County to determine compliance by the contractor with the SBE program.

2. The contractor's subcontracting commitment shall apply throughout the life of the specific contract; any changes must have prior approval of the Compliance Officer.
3. SBE subcontractors must seek pre-approval, by the Business Development Division and the user department, for subcontracting any portion of their subcontract work. A two-tier subcontract form must be completed and submitted to the Business Development Division.

D. Contract Pre-award Review for Formal Solicitations

1. The method for achieving Orange County SBE subcontracting goals and the criteria for determining "good faith efforts" shall be included in the instruction section of the bid documents.
2. The Subcontractor/Supplier page shall include all subcontractors' names, scopes or types of work to be performed, material to be supplied and the agreed subcontract amount.
3. Only SBE's certified by Orange County will count toward the participation goals.

E. Direct Award

The County may negotiate a reasonable price directly with a certified SBE provided the procurement is less than the formal solicitation threshold.

III. BID EVALUATION

- A. The Compliance Officer will make a recommendation as to the responsiveness of proposer or bidder(s) to the SBE goals. If the proposer or bidder(s) has not achieved the goals, but has documented good faith efforts to achieve the goals, the Compliance Officer shall recommend to the Procurement Division that the bid be deemed responsive.

IV. GOOD FAITH EFFORT

- A. If a bidder or proposer is unable to meet the goal set in any particular solicitation and the bidder or proposer is not an SBE themselves or has not historically performed the work, prospective respondents or bidders shall be provided an adequate opportunity to formally request a waiver at least ten (10) days prior to due date based upon submission of adequate Good Faith Effort documentation as stated in formal solicitation language. Factors to be considered by the business

development division in making this determination shall include the relative availability of SBE firms to perform on the specific contract.

- B. A respondent or bidder may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation with the waiver request. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Effort by the respondent or bidder and careful review by the business development division. The business development division shall base its determination of a waiver request on criteria such as, but not limited to:
1. Whether the requestor of the waiver has made Good Faith Effort to subcontract with qualified and available SBEs. Good Faith Effort will be demonstrated by producing a log that indicates which SBEs were contacted, the date, time and method of the contact;
 2. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and
 3. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

V. WAIVER

- A. At any time prior to the Board of County Commissioners approval, the Compliance Officer may grant a partial or complete waiver of the SBE requirements for any contract when the following conditions exist:
1. There is demonstrated unavailability of certified SBE firms;
 2. There are no subcontracting opportunities;
 3. There is a determination that SBE's cannot satisfy the contractual requirement.
 4. There is a contractual emergency.
- B. Documentation reflecting the waiver will be submitted to the Procurement Division.

SMALL BUSINESS ENTERPRISE PROGRAM

POLICIES AND PROCEDURES ON OUTREACH EFFORTS AND CONTRACT COMPLIANCE

I. OBJECTIVES

It is the objective of Orange County to provide incentives for the participation of SBEs in County purchasing and contracting and to establish procedures to foster the participation of SBEs in County purchasing and contracting. Also, it is the objective of the County to prescribe regulations to establish and oversee a small business outreach program to ensure inclusion, to the maximum extent possible, of small businesses within Orange County. This part details the procedures that will be followed to ensure the inclusion of small businesses.

II. OUTREACH PROGRAMS

A. Staff Outreach - External Contacts

A continuing effort of the County involves identifying SBEs capable of providing goods and services. Staff will network with state and local governments, nonprofit organizations, professional and trade organizations and participate in conventions and seminars sponsored and widely attended by small business owners. Through these activities, the staff will:

1. Determine prospective program participants as well as assist them in understanding regulations, and the certification process;
2. Develop directories of certified small businesses capable of providing services:
3. Assist program participants in understanding and meeting the County's contracting needs:
4. Develop promotional campaigns to inform the business community of the County's needs and its commitment to involve such firms in its contracting activities:
5. Develop special events to meet special needs or concerns including contracting trade fairs, open houses:
6. Coordinate events with other governmental entities and private and

nonprofit organizations.

B. Staff Outreach-Internal Contacts

Outreach activities are designed to increase awareness of the County's contracting process, regulations and special initiatives, as well as to ensure that all County staff that interacts with the contracting community are knowledgeable about and support the program. The coordination with staff may include:

1. Coordination with the user departments on increasing awareness of program policies, directives, program goals, and objectives for County staff;
2. Development of an internal education program to promote the awareness of all staff about SBE firms and the commitment to their full participation in its activities.

C. Role of SBE Program

The SBE program is expected to develop and maintain a direct working relationship with the County staff and contracting community in order to increase the number of contracts awarded to SBEs. The Compliance Officer will:

1. Monitor contracting activities of the County and its contractors for compliance with this program;
2. Implement the SBE certification process;
3. Implement training workshops on contracting to increase access to and award of County contracts;
4. Provide complete and up-to-date information on all contracting activities;
5. Develop networking forums; and
6. Assist in maintaining contract opportunities and relationships for SBEs.

III. CONTRACT COMPLIANCE MONITORING

- A. Compliance monitoring is conducted to determine if prime contractors and/or subcontractors are complying with the requirements of the SBE program. Failure of a contractor to comply with this provision may result in the County imposing penalties pursuant to the SBE Ordinance and/or the Procurement Ordinance.

The County internal project manager, contract administrator and other user department staff shall assist the Compliance Officer in monitoring and ensuring

compliance with the SBE participation levels that were approved by the County.

- B. Contract compliance will encompass monitoring for contract dollar achievement, SBE contractor utilization.

The Compliance Officer will have the authority to audit and monitor all contracts and contract-related documents related to Orange County projects (construction management and design/build contracts are also included). The requirements of the SBE Ordinance are applicable to all general contractors, subcontractors, second tier and third tier subcontractors and any firm doing business related to County contracts.

- C. Prior to the full contract execution between the County and the prime contractor, the prime contractor shall submit an executed subcontract agreement for all SBE subcontractors listed in his/her bid/proposal (signed by both parties) to document the subcontractor participation. The subcontracts will be contingent upon the Prime Contractor's contract being executed with the County.

- D. In the event an SBE subcontractor cannot comply with the County's specifications or the SBE subcontractor desires not to continue with the agreement on the project, the Compliance Officer must be notified promptly. All substitutions of SBE subcontractors must be pre-approved by the Compliance Officer.

- 1. Maintenance of SBE participation includes but is not limited to:

- a. Utilization of another SBE;
 - b. Increasing the scope and amount of other SBE participation in other scopes/areas; and
 - c. Good faith efforts to achieve a and b above.

- 2. Should these methods prove unsuccessful, the Compliance Officer may waive the specific SBE participation.

- E. Awarded contracts and subcontract documents must be made available for review by the County, including but not limited to, contract documents, change orders, purchase orders, certified payroll, personnel records and subcontractor and supplier payment records.

- F. The prime contractors and subcontractors (through the prime contractors) shall submit reports which document SBE utilization.

- G. The Compliance Officer may interview employees of contractors and subcontractors for determination of compliance with bid/proposal requirements and SBE procedures.

- H. The Compliance Officer may review subcontract agreements, change orders and purchase orders to verify that subcontractors are performing work specified therein.
- I. Upon completion of a review, the Compliance Officer will verify all information and documents provided by the contractor and will prepare a written statement indicating the compliance review results.
- J. If a sub-contractor is unable to perform pursuant to such a contract, the contractor shall substitute another certified SBE subcontractor upon prior approval from the Compliance Officer. The contractor shall not substitute an SBE sub-contractor or complete the work with his own forces without the prior approval of the Compliance Officer.

IV. NON-COMPLIANCE WITH SBE REQUIREMENTS

- A. If it has been determined that the contractor is in non-compliance with an existing contract, Compliance Officer may issue a notice of non-compliance to the contractor, in writing by certified mail of the deficiencies found, specifying the date by which the deficiencies must be corrected.
- B. To demonstrate a willingness to comply, the contractor must make a specific commitment in writing to correct the deficiencies. The commitment must include the precise action to be taken and specific time frames for compliance.
- C. Upon receipt of written commitment from the contractor, the Compliance Officer will notify the contractor of the acceptability of this commitment. The contractor shall be notified that making such commitments do not preclude future determinations of non-compliance based on a finding that the commitments were not performed.

V. ADMINISTRATIVE ACTIONS

If the non-compliance status of the contractor has not been remedied by the date specified by the Compliance Officer the following actions may be taken:

- A. The Compliance Officer will issue a Notice of Failure to Comply to the contractor in writing outlining the identified deficiencies to the contractor.
- B. The Compliance Officer will schedule a compliance conference and provide written notification of the date and time to the contractor. The compliance conference attendees shall have the authority to settle and resolve the conflict/issues.
- C. The following may attend a County compliance conference (not limited to the

following):

1. The Compliance Officer
 2. Prime Contractor (if applicable);
 3. SBE Contractor (if applicable);
 4. County Project Manager and/or Administrator, User department or delegate;
 5. Procurement Division representatives;
 6. County Attorney or delegate (if applicable).
- D. The outcome of the compliance conference will be reduced to writing with stated agreement to the contractor, and with a specific time frame to come into compliance.
- E. Failure to comply by the stated deadline will result in recommendations to the Procurement Division and/or the County Attorney's office regarding appropriate penalties, in accordance with County ordinance, State and Federal law, or these policies and procedures.

VI. NON-PERFORMANCE AND REMEDIES OF COUNTY: SANCTIONS

- A. Orange County reserves the right to exercise any reasonable, available remedy in the event of a contractor's failure to perform any of its obligations pursuant to the SBE Ordinance, rules, regulations, procedures and contract documents.
- B. Failure to perform under the terms of contract documents with regard to the SBE program may include but is not limited to:
1. Failure to utilize the services of a SBE pursuant to the Subcontractor/Supplier Page, Letters of Intent and/or a subcontract agreement submitted to the County;
 2. Unethical or other serious lack of business integrity in regard to SBE contract performance or utilization; lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a County government contractor;
 3. Failure to pay SBE subcontractors partial/progress payments in a timely manner after satisfactory completion of the scope of work, and failure to pay the SBE subcontractor final payment after completion of the project and pursuant to the subcontract agreement.

- C. The penalties for violation of these SBE policies are provided for in the SBE Ordinance.
- D. Any contractor or firm, who falsely represents to the County, pursuant to a County contract, that it will use the commodities or services of an SBE firm but fails to do so, shall be in breach of contract. Upon determination of a breach, the County shall have all available remedies for breach of contract provided in the contract.
- E. Amounts paid to a contractor or firm under a contract intended for expenditure with an SBE firm and not so expended may be forfeited and recoverable by the County.
- F. Any violations under this section or applicable local, state or federal law or rule shall be referred to the applicable law enforcement or regulatory agency for investigation and/or prosecution.
- G. Any penalties imposed may be appealed as set forth in Orange County Code, Section 17-313 and any amendments thereto.

VII. PROMPT PAYMENT POLICY

It is the intent of the County to ensure prompt payment of all subcontractors and suppliers working on County projects. The contractor shall include a **Prompt Payment Clause** and payment schedule in all subcontracts and purchase orders (including those with non-SBEs) stating that payment will be made to the subcontractor/suppliers within 72 hours days of receipt of payment from the County. The Contractor shall pay each subcontractor and supplier for all work covered under an Application for Payment within the 72 hour timeframe.