

## Implementing Order



**Implementing Order No.:** 3-48

**Title:** Miami International Airport North Terminal Development Procurement

**Ordered:** 07/17/2008

**Effective:** 07/27/2008

**AUTHORITY:**

Sections 2-8.1, 2-8.2, 2-285.1, and 2-10.4 of the Code of Miami-Dade County, and Sections 5.02 and 5.03 of the Miami-Dade County Home Rule Amendment & Charter.

**SUPERSEDES:**

Not Applicable

**SCOPE:**

This Implementing Order institutes procedures to expedite administration of contracts for the design, construction, and installation of goods and materials related to the North Terminal Development Program. It also governs the expedited process for the modification of North Terminal Development ("NTD") contracts. Policies and procedures relating to the County's procurement processes not specifically addressed by this Implementing Order shall remain applicable and are detailed in Administrative Orders or other Implementing Orders and the County Code. The powers delegated under this Implementing Order shall only apply to those contracts assumed by the County pursuant to the Fourth Amendment to the Lease, Construction and Financing Agreement between Miami-Dade County and American Airlines, as adopted by the Board of County Commissioners pursuant to Resolution R-735-05, and/or other contracts previously procured by American Airlines and previously assumed by Miami-Dade County via action of the Board of County Commissioners, and/or contracts to finish work begun but left incomplete as of August 1, 2005, and/or contracts related to the construction, design, or construction management of the North Terminal Development which were awarded by the Board of County Commissioners ("BCC") prior to May 1, 2008.

**POLICY:**

For the North Terminal Development Program ("NTD Program") to function efficiently and responsibly, an expedited process to address unforeseen site conditions, owner directed changes, and changes required by authorities having jurisdiction is needed to minimize delays and cost increases in the NTD Program.

The Mayor and the Airport Director ("Director") of the Miami-Dade Aviation Department ("MDAD") shall have the authority to amend any contract for services to be performed, facilities to be constructed, or goods and materials to be incorporated in connection with the NTD Program at Miami International Airport.

The Mayor and the Airport Director shall administer the ratification/expedite process for contracts, change orders, amendments, modifications, and settlement agreements and shall prepare a ratification list and submit it to the BCC on a quarterly basis in January, April, July and October of each year.

The authority delegated in this section is intended to be supplemental to, and shall not limit authority otherwise granted to the Mayor, Manager, or Airport Director by ordinance or by administrative or implementing order.

**EXCEPTION:**

Nothing in this Implementing Order shall affect the requirements of Chapter 2 of the Code of Miami-Dade County or State law for the competitive purchase of goods and services, including those related to public construction work and those contained in the Consultants Competitive Negotiation Act.

**A. CHANGE ORDERS AND AMENDMENTS/MODIFICATIONS**

The Mayor and the Airport Director may extend the contract time and waive liquidated damages for failure to comply therewith before the specified date for completion of the contract provided good cause exists and the contract provides that after the expiration of the contract time the County may extend the contract time or waive liquidated damages; and may otherwise modify the contract terms, may increase or reduce in any amount the scope and compensation payable under any contract, and may grant compensable and non-compensable time extensions. However, the authority granted under this section shall not allow the Mayor or the Airport Director to amend any contract if the value of that amendment is in excess of ten million dollars, without the prior consent of the BCC.

1. MDAD staff shall prepare a draft agenda item including the change order or amendment, staff's recommendation memorandum, and the necessary exhibits. The package shall be submitted to the Airport Director or his designee for review and further processing.
2. The Airport Director or his designee shall review the package and, if acceptable, MDAD staff shall proceed to obtain the remaining required reviews including appropriate approvals from THE Department of Small Business Development ("SBD"), MDAD Finance, Office of Strategic Business Management ("OSBM"), HNTB, and the County Attorney's Office. MDAD staff shall then submit to the Mayor for final review and approval. If the Mayor concurs with the recommendation, he or she will sign the change order, amendment, or modification.
3. Upon approval by the Mayor, MDAD shall file the documents with the Clerk of the Board and distribute the item to the Consultant/Contractor and other parties consistent with MDAD contract administration guidelines.
4. When a change order or amendment which contemplates increased or changed work is processed under this Implementing Order, such work must be considered essential for the base contract project scope to function as intended or the Owners need to address unforeseen site conditions and/or changes required by authorities having jurisdiction over the project.

**B. SETTLEMENT AGREEMENTS**

The Mayor and the Airport Director are delegated authority to negotiate and settle contractor claims for the NTD Project without prior approval by this Board, unless such settlements will result in payment to the contractor of more than ten million dollars.

1. Claims settled pursuant to this authorization shall be in accordance with MDAD's established claims resolution process and procedures, as the same may be reviewed and amended by the County Attorney's office as to form and legal sufficiency.
2. The settlement shall be in full compliance with Resolution R-119-06 (the "CSBE Resolution") which provides for the review, resolution and payment of claims of Community Small Business Enterprise ("CSBE") Subcontractors for work performed on the NTD project and R-397-06 ("the Amended Claims Process") which requires that payment of any settlement amount be conditional upon the claimant paying such portion of the pass through of claims of CSBE subcontractors to such subcontractors. These settlements shall be in compliance with the resolutions and shall include, at a minimum, the following provisions to protect payment to CSBE subcontractors: a) a release executed by each CSBE subcontractor whose work is involved in the claim, regardless of tier, specifically identifying the amount payable to such CSBE subcontractor from the settlement proceeds, and b) the express contractual commitment of the prime to the County and to such CSBE subcontractor to pay the amount owed to the CSBE subcontractor. This commitment shall be enforceable by the CSBE subcontractor and/or the County on its behalf.
3. MDAD staff shall prepare a draft agenda item including the settlement agreement documents, staff's recommendation memorandum, and the necessary exhibits. The package shall be submitted to the Airport Director for review and further processing.
4. The Airport Director shall review the package and, if acceptable, MDAD staff shall proceed to obtain the remaining required reviews including appropriate approvals from SBD, MDAD Finance, OMB, HNTB, and the County Attorney's Office. MDAD staff shall then submit the item to the Mayor for final review and approval. If the Mayor concurs with the recommendation, he or she will sign the settlement agreement.
5. Upon approval by the Mayor, MDAD shall file the documents with the Clerk of the Board and distribute the item to the Consultant/Contractor and other parties consistent with MDAD contract administration guidelines.

### **C. NORTH TERMINAL DEVELOPMENT BUDGET**

1. Any exercise of authority to this section shall be subject to the limits of the overall budget approved by the BCC for the NTD Program. Allocation of monies pursuant to this Ordinance may not result in an overall increase in the NTD Program budget.
2. The Mayor and the Airport Director are authorized to shift dollar allocations among different projects that are within the overall North Terminal Development budget, provided however, that such reallocations do not cumulatively exceed the Board approved NTD Program budget.
3. The Mayor or the Airport Director shall report such reallocations among different projects to the BCC at their last meeting in July (of each year).

#### **D. RATIFICATION**

1. MDAD shall administer the ratification process for items processed under this Implementing Order including, change orders and amendments or modifications, as well as settlement agreements and shall prepare a ratification list and submit it to the BCC on a quarterly basis in January, April, July and October of each year.
2. MDAD shall include the following provision in each of the amendments, change orders or other modifications to address the event that the Board of County Commissioners may not ratify the Mayor's actions under this Implementing Order: In the event the BCC does not ratify the approval of the Mayor of this change order, amendment, or modification, the County shall terminate the change order, amendment, or modification by sending written notice to the Contractor, Consultant, or Supplier. The termination date shall be effective the date the notice is received. Such notice may be by electronic means (e.g., email). If electronic means are used, the electronic notice shall be followed by hardcopy. The County shall pay for all services or work completed and approved prior to receipt by the Contractor, Consultant, or Supplier of the notice of termination. Payment for completed work shall be in accordance with its contract/agreement with the County.

#### **E. ASSISTANCE TO SMALL BUSINESSES**

It is the policy of Miami-Dade County to follow sound and prudent business practices, and to promote full and equitable participation of all segments of the community. With this goal in mind, a concerted effort is made to obtain services in accordance with the requirements of A.O. No. 3-22, the Community Small Business Enterprise (CSBE) Program for the Purchase of Construction Services; A.O. Order No. 3-32 the Community Business Enterprise (CBE-A/E) Program for the Purchase of Professional Architectural, Landscape Architectural, Engineering, or Surveying and Mapping Services; A.O. No. 3-41, the implementation of the Small Business Enterprise (SBE) Program for Goods and Services; the Disadvantaged Business Enterprise programs; A.O. No. 3-37, the Community Workforce Program; and, A.O. 3-23 Anti-discrimination in Contracting, Procurement, Bonding and Financial Services Activities. All items processed under the authority of this Implementing Order shall be reviewed by SBD prior to the Mayor's approval of the item.

#### **F. PROCESS REVIEW**

MDAD's Standards and Compliance Division will conduct administrative reviews of internal practices and operations to ensure that the legislative intent of this Implementing Order is achieved. In addition, the County's Audit and Management Services Department, Office of the Commission Auditor, and the Office of the Inspector General may perform random audits of the relevant County Departments to ensure departmental compliance with legislative and contract requirements in the processing of the provisions of this Implementing Order.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

County Manager