



MEMORANDUM

Agenda Item No. 7(O)(1)(A)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: July 8, 2003

FROM: George M. Burgess
County Manager

SUBJECT: Resolution Approving an
Administrative Order for
Contractor Responsibility

RECOMMENDATION

It is recommended that the Board adopt the attached Administrative Order implementing the provisions of Sections 2-8.1 (j) and 10-38 of the Code of Miami-Dade County governing contractor responsibility.

BACKGROUND

In 1999, an informal, interdepartmental Contractor Performance Committee was established to address issues related to contractor performance. The Committee was chaired by the County Manager's Office and comprised of staff from the Department of Procurement Management, Department of Business Development, Audit and Management Services, the County Attorney's Office, the Ethics Commission, the Inspector General and major construction contracting departments. Among other things, the Contractor Performance Committee was charged with the task of developing policies and procedures for the evaluation of contractor performance. The Committee proposed a comprehensive ordinance and administrative ordinance governing contractor responsibility, administrative suspension and debarment. That recommended legislation was deferred by the Board in May 2002, with the instruction to draft revisions that include checks and balances to ensure that the legislation would not be onerous to vendors that do business with the County.

This Administrative Order delineates the roles and responsibilities of the County departments for making responsibility determinations for contracting with Miami-Dade County. Evaluation of contractor responsibility includes the consideration of factors relating to the contractor's capability to perform the contract and the firm's record of integrity.

This item is the companion to the ordinance on today's agenda for public hearing amending Section 2-8.1 of the Miami-Dade County Code implementing the responsibility determination provisions.

Attachment



MEMORANDUM

(Revised)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: July 8, 2003

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(O)(1)(A)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(0)(1)(A)
7-8-03

RESOLUTION NO. _____

**RESOLUTION ESTABLISHING AN ADMINISTRATIVE
ORDER FOR CONTRACTOR RESPONSIBILITY IN
COUNTY CONTRACTING**

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the of establishment of an Administrative Order governing contractor responsibility, in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to exercise same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson
Katy Sorenson, Vice Chairperson

Bruno A. Barreiro
Betty T. Ferguson
Joe A. Martinez
Dennis C. Moss
Natacha Seijas
Sen. Javier D. Souto

Jose "Pepe" Diaz
Sally A. Heyman
Jimmy L. Morales
Dorin D. Rolle
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of July, 2003. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. H.B.
Hugo Benitez

By: _____
Deputy Clerk

Administrative Order
Contractor Responsibility

A.O. No.:
Ordered:
Effective:

AUTHORITY

Section 4.02 and 4.03D of the Miami-Dade County Home Rule Amendment and Charter; and Sections 2-8.1 (j) and 10-38 of the Code of Miami-Dade County.

SCOPE

This Administrative Order prescribes standards and procedures pertaining to determinations of contractor responsibility for all County contracting.

POLICY

It is the policy of Miami-Dade County to award contracts to responsible contractors only. The determination of contractor responsibility shall be made in accordance with the procedures contained in this administrative order.

SECTION I

DEFINITIONS:

This Administrative Order incorporates completely the definitions listed in Section 10-38 of the Code of Miami-Dade County.

SECTION II

DETERMINING CONTRACTOR RESPONSIBILITY /NONRESPONSIBILITY:

- (1) The County shall award contracts to responsible contractors only. A responsible contractor is a contractor who the County affirmatively determines:
 - (i) has the capability to perform the contract; and
 - (ii) has a satisfactory record of integrity and business ethics.
- (2) In making the affirmative determination of whether the contractor has the capability to perform the contract the County may consider factors including but not limited to the following:

- (i) past performance of the contractor in the execution of prior County contracts,
 - (ii) any information which the County may obtain relating to the performance of the contractor of contracts with third parties, including, without limitation, contracts with other governmental entities.
 - (iii) financial ability, including, without limitation, pending and unsatisfied claims,
 - (iv) qualifications of the personnel who will have supervisory responsibility for the performance of the contract,
 - (v) licensing, and
 - (vi) any significant changes in the bidder's or offeror's financial position or business organization.
- (3) In making the affirmative determination of whether the contractor has a satisfactory record of integrity and business ethics, the County may consider factors including but not limited to the following:
- (i) pendency of criminal charges against the contractor, subcontractor, their principals or supervisory personnel,
 - (ii) criminal conviction of the contractor, its principals or supervisory personnel,
 - (iii) debarment of the contractor, its principals or supervisory personnel in any other jurisdiction,
 - (iv) pendency of disciplinary proceedings against the contractor, its principals or supervisory personnel,
 - (v) pendency of enforcement cases, citations, or notices of violation of regulatory authorities with jurisdiction over the goods or services to be rendered, or any adverse determination resulting therefrom, including but not limited to those related to environmental protection, the health and safety of labor, and the Department of Business Development,
 - (vi) compliance with County ordinances and regulations, including those which relate to the honesty and ethics of the contractor,
 - (vii) pendency of an investigation related to or arising from allegations of dishonesty, illegality or fraudulent business practices,
 - (viii) efforts by the contractor to redress any breach of prior contracts, and compliance with settlement agreements to redress any contract deficiency,

- (ix) inaccurate, incomplete, or fraudulent accounting practices
 - (x) efforts by the contractor to remediate any of the adverse conditions established in this subsection, including compliance with the terms and conditions of any compliance agreement.
 - (xi) the nature and credibility of any and all facts underlying any of the above cited investigations, allegations, charges, accusations or proceedings.
- (4) In evaluating the factors above, the County shall give priority to acts or proceedings occurring in the past five (5) years, and any violation or deficiency that is continuous or uncured.
- (5) As a condition of a finding of contractor responsibility, the County may require, at any time, that the contractor submit to the County such documentary evidence and other proof as the County may reasonably require to evaluate the factors identified above. If the contractor or subcontractor is unable to furnish such documentary evidence or other proof, or if the County is otherwise unable to make the affirmative finding that the contractor is responsible to perform County work, the contractor shall be determined nonresponsible.
- (6) In making the determination of responsibility, the County shall be entitled to rely on information of the type reasonable persons rely on in the conduct of business affairs, and the County's findings shall not be overturned absent fraud, illegality, or abuse of discretion. Insufficiency of evidence, the pendency of parallel proceedings bearing on contractor responsibility or assertions of constitutional privileges against self-incrimination shall constitute sufficient grounds for a determination of nonresponsibility.
- (7) The director of the department responsible for issuing the solicitation and administering the particular procurement process (the "department director") shall make the determination of contractor responsibility pursuant to this Administrative Order. In the event that the County has any knowledge of facts which may exist which would render a prospective contractor nonresponsible, the department director shall make such investigation and inquiry as may be reasonably required to make the affirmative finding of responsibility as a condition of recommending a contractor for award. User departments shall timely advise the department director of its knowledge of any facts which may render a prospective contractor nonresponsible. The County's investigative resources shall be available to the department director to help perform the corresponding investigation and inquiry. In the event that the contractor is uncooperative or any circumstances exist which impair or prevent the conduct of the necessary inquiry, the department director shall make a determination of nonresponsibility. The department director's award or recommendation for award constitutes a determination

that the prospective contractor is responsible with respect to that contract. When a bid or offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the department director shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination. All documents and reports supporting a determination of nonresponsibility shall be included in the contract file. In the event the department director determines a contractor nonresponsible for a particular contract, the department director shall recommend whether debarment of the contractor should be undertaken.

- (8) Nothing in this Administrative Order shall abrogate or impair the rights of the County Manager to recommend a contractor for award or the rights of the Board of County Commissioners to make determinations of responsibility in connection with the award of contracts. The evaluation of the responsibility of the prospective contractor shall be made on a contract-by-contract basis. In the event of a determination of nonresponsibility, the County shall notify the contractor in writing, whereupon such person shall have those rights prescribed in the bid protest provisions of the Code of Miami-Dade County, if applicable.
- (9) A determination of non-responsibility shall be in addition to, and not in derogation of, the other provisions set forth in the Code of Miami-Dade County for debarment. The evaluation of a contractor's responsibility shall be in addition to, and not in derogation of, the evaluation of the qualifications of a contractor to perform the work as may be set forth in the invitation to bid (ITB), request for qualifications (RFQ), request for proposals (RFP) or other instrument issued by the County to solicit offers to perform County work.
- (10) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. Determinations of prospective subcontractor responsibility may affect the County's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility. When it is in the County's interest to do so, the County may directly determine a prospective subcontractor's responsibility. In this case, the same standards used to determine a prime contractor's responsibility shall be used by the County to determine subcontractor responsibility.

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

George M. Burgess
County Manager