



MEMORANDUM

PMPS

Agenda Item No. 3(A)

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**TO:** Honorable Chairperson Barbara Carey-Shuler, Ed.D. and Members, Board of County Commissioners      **DATE:** June 18, 2004

**FROM:** George M. Burgess, County Manager       **SUBJECT:** Resolution Approving an Administrative Order for Contractor Responsibility

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This item is amended at Section II (7), to provide that, for contracts for goods and services, the County Manager, in consultation with the director of the department responsible for issuing the solicitation and administering the particular procurement process, and the director of the user department(s), shall make the determination of contractor responsibility.

**RECOMMENDATION**

It is recommended that the Board adopt the attached Resolution establishing an 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 developing policies and procedures for the evaluation of contractor performance. The Committee proposed a comprehensive ordinance and administrative order governing contractor responsibility, administrative suspension and debarment. When that legislation was presented in May 2002, it was deferred by the Board with instructions to prepare revisions that include greater checks and balances to ensure that the legislation is not onerous or unfair to vendors that do business with the County.

This Administrative Order establishes criteria governing responsibility determinations as well as the internal process for making determinations. It also provides the necessary oversight to ensure level and evenhanded application and centralized accountability. Determination of contractor responsibility includes consideration of factors relating to the contractor's capability to perform the contract and the firm's record of integrity. The evaluation extends to the

firm's principals and supervisory personnel. Determinations of nonresponsibility for contracts over twenty-five thousand dollars (\$25,000) may be challenged by the vendor via the County's bid protest provisions contained in Section 28.4 and A.O. 3-21.

The Capital Improvements Coordinator will review the responsibility determinations of County department directors for construction contracts and architectural and engineering services. In the event that the Capital Improvements Coordinator disagrees with the determination of the director of an issuing department, the Capital Improvements Coordinator shall submit a written report to the County Manager for a final determination.

The County Manager, in consultation with the Department of Procurement Management Director and the director of the user department(s) will make the determination of contractor responsibility for contracts for goods and services established by DPM. The department uses several tools to make the determination. A "competency survey," or pre-evaluation of the contractor based upon experience, financial support and the proper facility to conduct business, is conducted for all prospective awardees that have not previously performed work for the County. References may be requested on a contract-by-contract basis. DPM also utilizes its Pre-Award Vendor Information Intranet site to verify that recommended vendors are eligible for contract award and are compliant with County requirements. The PreAward Vendor Information site contains links to the following information:

- ◆ Debarment List of Contractors
  - Compiled by DBD
  - List includes
    - Names and contact information of debarred vendors
    - cause for debarment, effect of debarment and termination dates
- ◆ Registry of Delinquent Contractors
  - Compiled by the Finance Department
  - Lists contractors who are in arrears to the County
- ◆ Compliance/Minority Reports-History of Violations
  - Compiled by DBD
  - List policy, as well as violations for CSBE goals, Responsible Wages, Living Wages and QNIBP
- ◆ Suspended Contractors and Contractors with Complaints and Restrictions
  - Compiled by the Building Department
  - Used to determine if contractors are in compliance with building codes
- ◆ Convicted Vendor List
  - Compiled by the State of Florida
- ◆ Suspended Vendor List
  - Compiled by the State of Florida

- Lists vendors that have failed to comply with the terms and conditions of their contracts and have been suspended or removed from contracting with the State of Florida

DPM also relies on the Vendor Registration process that requires vendors to attest to nine affidavits including, but not limited to debarment, disclosure and current status of obligations to the County. Finally, DPM consults with the Inspector General, Audit and Management Services, the Office of Public Corruption and the County Attorney's Office in matters of alleged vendor impropriety or criminal negligence.

This item is the companion to the ordinance on today's agenda for public hearing amending Sections 2-8.1 and 10-38 of the Miami-Dade County Code concerning contractor responsibility.

Attachment



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Alex Muñoz  
Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Hon. Chairperson Barbara Carey-Shuler, Ed.D.  
and Members, Board of County Commissioners

**DATE:** May 11, 2004

**FROM:** Robert A. Ginsburg  
County Attorney

**SUBJECT:** Agenda Item No. 7(O)(1)(F)

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(O)(1)(F)  
5-11-04

**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 amendment 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  
Dorrin D. Rolle  
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 11th day of May, 2004. 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.   
Hugo Benitez

By: \_\_\_\_\_  
Deputy Clerk

Administrative Order  
Contractor Responsibility

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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, its principals or supervisory personnel in the execution of prior County contracts,

- (ii) any information which the County may obtain relating to the performance of the contractor, its principals or supervisory personnel 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 and past performance 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 County Manager, in consultation with the director of the department responsible for issuing the solicitation and administering the particular procurement process (the "department director") and the director of the user department(s), 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) For construction of capital improvements, acquisition of professional services and construction contracting, the Capital Improvement Coordinator from the Office of Capital Improvements Construction Coordination shall be responsible for reviewing the responsibility determination of the director of the issuing department. In the event that the Capital Improvement Coordinator disagrees with the determination of the director of the issuing department, the Capital Improvements Coordinator shall submit a written report to the County Manager for a final determination.
- (9) 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.
- (10) 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.
- (11) 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