

MEMORANDUM

Agenda Item No. 10(A)(13)

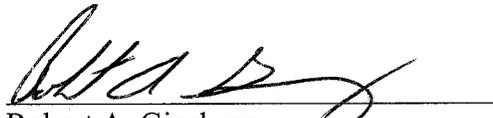
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 20, 2005

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Resolution proposing an
Administrative Order to
provide standard process
for evaluation of
construction contractors

The accompanying resolution was prepared and placed on the agenda at the request of Commissioner Rebeca Sosa.


Robert A. Ginsburg
County Attorney

RAG/bw

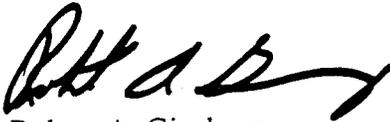


MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 20, 2005

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 10(A)(13)

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. 10(A) (13)

01-20-05

RESOLUTION NO. _____

RESOLUTION PROPOSING AN ADMINISTRATIVE ORDER
TO PROVIDE A STANDARD PROCESS FOR THE
EVALUATION OF CONSTRUCTION CONTRACTORS AND
CONSULTANTS DURING AND IMMEDIATELY
SUBSEQUENT TO COMPLETION OF A MIAMI-DADE
COUNTY PROJECT

WHEREAS, this Board desires a comprehensive means of evaluating contractor and consultant performance to ensure that the County is receiving quality construction services; and

WHEREAS, tracking the performance of contractors and consultants will provide incentives to work more efficiently and improve performance; and

WHEREAS, the County has developed a centralized means to capture and report information regarding the past performance of contractors and consultants,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board recognizes the need to establish a standard process for evaluation and suspension of contractors and consultants based on past performance as detailed in the attached Proposed Administrative Order and directs the County Manager to take the necessary steps to review this process and to initiate an appropriate Administrative Order.

The foregoing resolution was sponsored by Commissioner Rebeca Sosa and 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:

Joe A. Martinez, Chairman
Dennis C. Moss, Vice-Chairman

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Dorrian D. Rolle
Katy Sorenson
Sen. Javier D. Souto

Dr. Barbara Carey-Shuler
Carlos A. Gimenez
Barbara J. Jordan
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of January, 2005. 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

PROPOSED

Administrative Order Contractor Evaluations and Suspension

A.O. No.:
Ordered:
Effective:

AUTHORITY

Sections 4.02 and 4.03D of the Miami-Dade County Home Rule Amendment and Charter; and Sections 2-8.1, 2-10.4 and 10-38 of the Code of Miami-Dade County

SCOPE

This Administrative Order prescribes evaluation and determination standards and procedures pertaining to responsible past performance for construction Contractors, Engineering, Architecture, Landscape Architecture, Land Surveying, and Mapping Firms (A&E), Design-Build and Construction Manager at Risk companies, herein referred to as Firm. This Administrative Order establishes a method predicated on past performance to restrict access to County contracts when a Firm has not performed up to expectations on some types of contracts while maintaining good performance on others. This Administrative Order does not supercede any other determination of Firm responsibility as established by the Code of Miami-Dade County.

POLICY

The County shall solicit offers from, award contracts to, and consent to subcontracts only with responsible Firms. When circumstances dictate, to effectuate this policy, staff shall initiate debarment procedures to prohibit a Firm from future County work. As an alternative to the debarment process, which eliminates the Firm from all County work, this Firm evaluation process provides a mechanism to suspend a Firm from specific segments of County work where it has been determined that the Firm has performed inadequately. This determination shall be made when it is in the best interest of the County to discontinue doing business with the Firm on specific types of contracts. Placing a Firm on Watch or Suspended status is intended to protect the County from Firms who perform inadequately and not for the purpose of punishment. This Administrative Order shall govern the procedure for documenting Firm performance and providing notice to a Firm of poor performance which can result in placing the Firm in a Watch status or result in the Suspension of the Firm. Any Firm, who has been suspended from a particular segment of County work, shall not be allowed to bid on work within the segment or submit a proposal for consideration of professional services until such time as the Suspension has been lifted. Suspensions are for an indefinite period of time and will only be lifted when the Firm has provided written evidence that all appropriate corrective measures have been taken to resolve the noted performance issues.

PROPOSED

The Office of Capital Improvements Construction Coordination (CICC) shall develop and maintain a list of Firms determined to be in Watch status or Suspended status and the area of Suspension. This list shall be available online in the Capital Improvements Information System (CIIS) database. All Departments must verify that a Firm is not in a Suspended status for the work type prior to evaluating bid documents or proposals for professional services.

SECTION 1: DEFINITIONS

Award means the process by which a construction contract or Professional Services Agreement (PSA) is reviewed and executed between the Firm and Miami-Dade County. The County will award the Contract to the lowest responsive / responsible bidder/proposer whose proposal complies with all the Contract Document requirements or, in the case of an Architect and Engineering (A&E) solicitation, the execution of a PSA with the most qualified consultant subject to the successful completion of negotiations.

Capital Improvement Information System (CIIS) means an interactive data base for use in tracking and documenting the Capital construction process from the request to advertise to the completion of the construction project, linking all data to one electronic source which is available for all Miami-Dade County users.

Firm means a legal entity that received an award of a contract, either directly or indirectly, from Miami-Dade County, which includes but is not limited to Construction Contractors, Subcontractors, Consultants, Sub-consultants, Architects, Engineers, Landscape Architecture, Land Surveying, and mapping firms (A&E), Design-Build and Construction Manager at Risk companies, herein referred to as Firm.

Firm Evaluation means the form provided in the CIIS to be completed by the participating County personnel assigned to work in direct contact with the Firm for the purpose of collecting data associated with the proficiency of the Firm's overall performance during and at the end of the project.

Responsibility means meeting all the requirements of the Contract that the Firm agreed to perform by virtue of the execution of the Contract.

County means Miami-Dade County, Florida

Corrective Action means action taken in order to correct any deficiencies found contrary to the Contract Documents executed by the Firm.

PROPOSED

Correction Oversight means the review and interpretation of the detailed Corrective Action Plan submitted by the Firm and the determination as to whether it is sufficient to lift a Suspension.

Deficiency means any work, including but not limited to, design, scheduling, management, materials, purchased equipment, workmanship, improperly stored materials, condition of the construction work site, punch list completion, or any portion thereof, that the County's designated representative finds is not in compliance with the contract documents. The Department shall not be responsible for the removal, correction or repair of such deficiencies.

Firm Performance Review Committee means the independent review panel chaired by the Capital Improvements Coordinator or his/her designated representative and shall be made up of one Construction Manager and one Professional Engineer or Licensed Architect who shall recommend to the County Manager what actions are necessary to ensure that the County is provided with quality Firms during the bidding and award process.

Overall rating means the rating scale used in the Firm Evaluation to show the average level of performance of the Firm to either stand alone as an individual evaluation or for use in comparison with other Evaluations of similar scope and nature.

Corrective Action Plan means the written plan from the Firm to the County's designee in response to a failing evaluation or due to a borderline evaluation if required. The Corrective Action Plan will show the Firm's suggested means to correct and prevent future occurrences of any deficiencies noted in the Firm's evaluation.

Rating means the quality grade provided within the evaluation for differing categories of work as identified within the CIIS Firm Evaluation form.

Responsible Firm means a Firm who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. The County may refer to past performance in determining if a Firm is "Responsible".

Responsive bid, responsive proposal, or responsive reply means a bid, or proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation.

Responsive Firm/Proposer means a firm that has submitted a bid, proposal, or reply that conforms in all material respects to the contract documents or solicitation.

Scope of Project (Scope of the Work) means the outline of the work to be accomplished as required by the contract documents executed between the Firm and the County.

PROPOSED

Segment of Work means a class of construction contracts or Professional Service Agreements which may be defined by the size of the project, the value, the duration, the type of work, or any other criteria which may logically represent a grouping of one or more contracts by similar characteristic.

Suspension means to place a Firm in a status which would prevent them from participating on certain County projects based on the documentation of poor past performance. Suspension results from action taken by the County towards the Firm for an indefinite period of time and shall be lifted only at such time as the Firm can substantiate that they have taken whatever action is necessary to ensure that deficiencies of a similar nature to those for which the Firm was originally Suspended will not occur on future Contracts.

Watch status means that a Firm has been put on notice for poor performance and will be scheduled for a review, which may result in being Suspended from the appropriate work segment. Also, any repeat occurrence of poor performance may result in Suspension from some or all County work.

SECTION 2: FIRM EVALUATION PROCESSING

Each Department is responsible for fairly and accurately evaluating Firm performance and reporting this performance in a uniform and consistent manner. The Capital Improvements Information System has been established as the centralized reporting area for all Firm evaluations.

A minimum of one Project Evaluation will be completed for the primary Firm at the end of each project. On those projects where it is anticipated that a Firm will receive a rating of "Unresponsive Performance", at least one interim evaluation must be completed providing the Firm an opportunity to correct their performance before job completion. All evaluations shall be prepared using the CIIS Project Evaluation Form available online at <http://intra.metro-dade.com/ciis>.

Each Category of the evaluation shall be rated based on the following scale:

4. **Noteworthy performance** – Exemplary quality, no intervention required. Project is completed on time or early, at or below budget with no change orders or amendments other than County requested changes.
3. **Satisfactory performance** – Minor errors are noted and addressed with timely corrective action. No serious errors are noted or corrective action needed.
2. **Guarded performance** – Errors and omissions are documented in writing and are responded to with timely corrective action.

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1. Unresponsive performance - Deficiencies and omissions are documented in writing and are not responded to with timely corrective action.

A rating of Unresponsive performance on an interim evaluation shall place the Firm on notice that there are serious problems in the area noted. A copy of the evaluation, signed by the Department Director shall be sent to the Firm with a cover letter stating that the Firm must sign and return the evaluation and prepare a detailed plan of corrective action on the Firm's letterhead and submit to the Department for concurrence and approval within 10 working days of receipt. Failure to submit an acceptable corrective action plan within the specified time will result in the Firm being placed in a watch status. The evaluation will then be forwarded to the Firm Performance Review Committee to determine if the Firm should be suspended from a particular work segment or submitted for debarment proceedings.

The Department will forward a copy of the executed (if possible) evaluation upon transmittal and the Firm's detail Corrective Action Plan upon receipt to CICC for review.

A rating of Unresponsive performance in a Final Evaluation will result in a Firm being placed in a Watch status and will generate a request for an independent review by the Firm Performance Review Committee to determine if the Firm should be suspended from a particular work segment or submitted for debarment proceedings.

The Department shall take the following actions:

1. Complete the Evaluation in the Capital Improvements Information System (CIIS)
2. Identify the issues or problems in the "Comment" section of the CIIS and evaluate the contributing factors to this deficiency, such as, but not limited to:
 - Type of work – lack of experience of Firm or subcontractor
 - Dollar value of project segment – never successfully performed a job of this size; difficulty obtaining insurance or bonding
 - Duration of project – workforce turnover; supply chain shortages
 - Schedule adherence – difficulty meeting deadlines
 - Responsiveness and communication – cooperation with the County
 - Project management – lack of subcontractor/sub-consultant coordination
 - Any and all measures not met without justification
3. Transmit the evaluation to the Firm, either hand-delivered or certified mail and obtain Firm's signature for receipt, if possible.
4. Notify Firm utilizing the "Notice of Evaluation Deficiency" form provided in CIIS, that they have been placed in Watch status for the reported deficiency.
5. Department shall prepare a review package containing all documentation regarding the noted deficiency. Copies of Notices to Cure, Daily Reports,

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Termination notices, and any letters, responses, e-mails, or phone logs pertinent to the deficiency shall be gathered and placed in logical order for review. The Department shall also prepare a summary of events, including dates, in chronological order, referencing the attached documentation.

6. CICC will review the Departmental submittal and schedule the item for presentation to the Firm Performance Review Committee.

Watch Status may impact future contract awards. The County will only award contracts to bidders/proposers who are responsive and responsible. A Firm in Watch status may be deemed non-responsive by a Department reviewing bids and/or proposals for professional services until such time as the Firm Performance Review Committee meets to review the Firm's performance or to review and accept the Firm's Corrective Action Plan. A finding that a Firm who submitted the lowest bid or proposal for professional services is Not Responsible based on Watch Status must be concurred with by the Chair of the Firm Performance Review Committee.

NOTE: Generally, Prime Firms are responsible for determining the responsibility of their subcontractors. Determination of subcontractor responsibility may affect the responsibility of the Prime Firm. A suspended or Watch Status may also impact the Firms acceptability as a subcontractor/sub-consultant on County projects

SECTION 3: FIRM PERFORMANCE REVIEW COMMITTEE

The Firm Performance Review Committee shall be chaired by the Capital Improvements Coordinator or his/her designated representative and shall be made up of one Construction Manager and one Professional Engineer or Licensed Architect who shall be designated by the Department of Business Development or, if requested by the Chair, be appointed by the County Manager. This Committee shall consider all facts and forward a recommendation to the County Manager for approval.

The Firm Performance Review Committee will meet at least once a quarter to review issues regarding Firm performance. Meetings shall be open to the public and announced in a manner consistent with public meetings at least two weeks in advance as to time and place of the meeting. Any Firm whose performance is subject to review shall be notified by certified mail, that their performance is scheduled for review with the date and time of the meeting.

Once a Department has placed a Firm in Watch status through the evaluation process, a copy of the evaluation, all pertinent documentation, and the summary of events will be compiled and forwarded to the Committee Chairperson at least two weeks prior to a scheduled Committee meeting.

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SECTION 4 RESULTS OF FIRM PERFORMANCE REVIEW COMMITTEE DETERMINATION

The County will notify the Firm of the recommendation of the Committee in writing by certified mail. The Committee may recommend any of the following actions:

No Fault – After review of all documentation, the Committee may find that the Firm operated in a reasonable manner given the circumstances surrounding the project. This finding will result in removing the Firm from Watch Status.

Watch Status – The Committee may choose to perpetuate Watch Status for the firm for a period not to exceed 36 months from such determination. While in Watch status, a Firm can bid or submit a proposal for professional services on any project; however, the Department issuing the solicitation may consider the Firm's past performance in determining if the Firm is a responsible bidder/proposer for the given project. A finding that a Firm who submitted the lowest bid is Not Responsible based on Watch Status must be reviewed and concurred with by the Chairperson of the Firm Performance Review Committee.

For Professional Service Agreements, Watch status will be considered during the evaluation process and may result in lost points under the criteria for Past Performance of the Firm.

Partial Suspension -The Firm is Suspended from the specific activity or type of project identified in the Suspension notice. The Firm is disallowed from future bids and proposals on this type of project segment until the Firm prepares a detailed Corrective Action Plan intended to correct the deficiency and/or prevent future occurrences. This plan must be submitted to the Firm Performance Review Committee for consideration at their regularly scheduled meeting. Any bids/proposals submitted by a Suspended Firm in the area of Suspension will be rejected.

A Firm who is in Partial Suspension may be determined Not Responsible in other areas. The Department issuing a solicitation may consider the Firm's past performance in determining if the Firm is a responsible bidder/proposer for the given project. A finding that a Firm who submitted a proposal for professional services or the lowest construction bid is Not Responsible based on Partial Suspension from a different project type, must be concurred with by the Chairperson of the Firm Performance Review Committee.

Suspension - In some instances, the nature of the deficiency may warrant Suspension from all County work until the Firm prepares a detailed Corrective Action Plan intended to correct the deficiency and/or prevent future occurrences. This plan must be submitted to the Firm Performance Review Committee for consideration at their regularly

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scheduled meeting. Suspension means that the County will not consider any construction bids or proposals for professional services submitted by the Firm during the period of Suspension.

Suspension with a recommendation for Debarment - In the most grievous circumstances, the Firm Performance Review Committee may place a Firm on Suspension and forward the Committee's finding for Debarment and/or other legal proceedings to the appropriate parties.

SECTION 5 FINAL ACTION

COMMITTEE RECOMMENDATION

Within five (5) working days after the Firm Performance Review Committee meets, the written recommendation of Committee shall be sent to the Firm by U.S. Mail and forwarded to the County Manager's Office for approval. The Firm may Appeal the decision of the Committee within five (5) working days of receipt of the Committee's recommendation or seven (7) working days from the date mailed, whichever occurs later.

APPEALS

All Appeals shall be submitted in writing to the Clerk of the Board and shall state with particularity the specific facts and grounds on which they are based, including all pertinent documents and evidence. This shall form the basis for review of the Appeal and no other facts, grounds, documentation or evidence not contained in the Appeal submission to the Clerk of the Board, at the time of filing, shall be permitted in the consideration of the Appeal, except for such additional evidence as is allowed during the course of the Appeal proceedings.

Failure to file the written Appeal within the required time limits established shall constitute a waiver of the right to Appeal the Committee's recommendation and the County Manager's approval of said recommendation.

The County Manager shall appoint an independent party to act as the Hearing Examiner to review and provide recommendations on the Appeal no later than five (5) working days following the filing of an Appeal. The Hearing Examiner shall conduct the proceedings in connection with the Appeal, which shall be completed within ten (10) working days following the Hearing Examiner appointment. The Hearing Examiner may extend the deadline for completion of the Appeal proceedings upon the written petition for good cause shown, but in no event shall the total, cumulative time extension exceed five (5) working days for completion of the Appeal proceedings, regardless of the number of requests or requests from multiple parties. The Hearing Examiner shall, within five (5) working days of the Appeal proceedings, file written findings and recommendations with

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the Clerk of the Board and shall notify the County Manager and submit or mail a copy of same to the Firm submitting the Appeal.

The Hearing Examiner shall consider the written Appeal submittal and supporting documents and evidence appended thereto, the Firm Performance Review Committee's recommendation, supporting documentation and all evidence presented at the Appeal proceedings. The Hearing Examiner may also require written summaries, proffers, affidavits and other documents the Hearing Examiner determines to be necessary in order to conclude the Appeal process, and shall issue the report and recommendation within the strict time limits set forth herein. No grounds will be considered from the Appealing Firm that were not contained in the written submission to the Clerk of the Board at the time of filing the Appeal. The Hearing Examiner shall be entitled to rely on evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, whether or not such evidence would be admissible in a trial in the courts of Florida.

The Hearing Examiner shall allow a maximum of two hours for the Appealing Firm's presentation of its Appeal and a maximum of two hours for the response of the Firm Performance Review Committee Chairperson and the Department initiating the Suspension process.

The decision and action authorized by the County Manager based on the recommendation of the Firm Performance Review Committee and, if applicable, after considering the findings of the Hearing Examiner shall be final and not subject to further Appeal.

The Firm impacted by this decision, can resubmit a corrective plan of action to be considered at the next scheduled Firm Performance Review Committee.

SECTION 6 FIRM REINSTATEMENT

REMOVAL FROM WATCH STATUS

A Firm who has successfully completed a project which was awarded subsequent to being placed in the Watch status and received no unresponsive performance ratings may request removal from Watch status. A Firm may submit a Corrective Action Plan addressing the noted deficiencies to the Firm Performance Review Committee, which if approved will remove the Firm from Watch status.

REMOVAL FROM SUSPENSION

The Suspended Firm shall submit a written Corrective Action Plan (the Plan) designed to eliminate a repeat of any and all noted deficiencies to CICC for consideration. CICC shall forward this plan to the Department which initiated the Suspension action for their

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review and comments. Departments shall have two weeks to submit comments to CICC regarding the Firm's Corrective Plan of Action or the Plan shall be considered acceptable to the Department.

Upon receipt of the Department's recommendations, CICC shall place the Firm's Corrective Plan of Action along with the Department's comments on the agenda for the next regularly scheduled Firm Performance Review Committee meeting. Upon review of the Firm's Corrective Plan of Action and Departmental comments, the Firm Performance Review Committee may remove the Firm from Suspension status in one or all areas as appropriate.

If the Firm is removed from Suspension, their bidding/proposer rights shall be restored for that specific activity or type of project segment.

REPEAT OCCURENCES

Once a Firm has been reinstated as the result of a submitted Corrective Plan of Action, if they are subsequently found deficient in the same area within three years of the reinstatement and it is determined that the Firm failed to implement their Corrective Action Plan, the Firm Performance Review Committee may recommend that the Firm be considered for Suspension and/or Debarment under Miami-Dade County Code Section 10-38, Debarment of Firms from County work.

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

George M. Burgess
County Manager