Memorandum

MIAMI-DADE COUNTY

Date: June 30, 2009

Agenda Item No. 8(A)(1)(F)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution approving Waiver of Affirmative Action Plan and Procurement Policy Requirements of Section 2-8.1.5 for certain Foreign Air Carriers serving Miami International Airport

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RECOMMENDATION

It is recommended that the Board of County Commissioners waive the Affirmative Action Plan and Procurement Policy requirements of Section 2-8.1.5 of the Code of Miami-Dade County for foreign airlines serving Miami International Airport as being in the best interest of the County and directs the Mayor or designee to provide a quarterly report to the Board indentifying the foreign airlines not required to comply with Section 2-8.1.5.

SCOPE

Miami International Airport is located primarily within Commission District 6. However, the impact of this item is Countywide in nature as Miami International Airport is a regional asset.

FISCAL IMPACT/FUNDING SOURCE

None and not applicable.

TRACK RECORD/MONITOR

Track record information is not applicable to this item. Airline Use Agreements (AUA) are monitored by Greg Owens, Division Director, Real Estate Management and Development.

DELEGATED AUTHORITY

None

COMPLIANCE DATA

Not applicable

BACKGROUND

Section 2-8.1.5 of the Code of Miami-Dade County requires that all entities with annual gross revenues in excess of $5 million seeking to contract with the County must have a written affirmative action plan and a written procurement policy, both of which set forth the procedures the entity uses to assure that the entity does not discriminate against minority-owned and women-owned businesses.

Approximately fifty percent of the passenger and cargo airlines that serve MIA are based in a foreign country. Many of the airlines are owned in whole or in part by the government of that country. For the foreign airlines having few or no employees located here, if such airlines are required to develop and maintain an affirmative action plan to assure non-discrimination in employment practices, the impact of this requirement would be on the bulk of the airlines' employees that live and work abroad. Cargo airlines have similar operational profiles that match the type of airport use for their business requirements.

For many foreign-based airlines at MIA, it is impractical to apply our local affirmative action requirement on such airlines given their close ownership and operational ties to their foreign home countries and to the policies and laws of the countries. Many of the foreign airlines operate under the foreign laws of their home country which do not require affirmative action plans of the sort required by Section 2-8.1.5. It becomes a hardship on a foreign airline to develop an affirmative action plan that would be largely applicable to the bulk of the airlines' employees located outside of the United States, even assuming the governmental owners or the home country policies were amenable to the concept of an affirmative action program in the first place.

The County's affirmative action requirement has prevented MDAD from completing the lease-execution and airport-use-agreement process, because the airlines must first show that they are in compliance with the County's affirmative action plan and procurement policy requirement. Foreign airlines have indicated their willingness to abide by their contractual obligations not to discriminate, but have asked to be relieved from the obligation of separately developing an affirmative action plan and procurement policy program.

Because of the County's over-riding federal obligation to permit these foreign airlines to use MIA pursuant to treaties between the United States and foreign governments, and because of the circumstances applicable to foreign airlines discussed above, it is recommended that the Board waive the Affirmative Action Plan requirement for these foreign airlines. This waiver can be accomplished through Section 2-8.1.5 of the Code which provides in part that:

> "The requirements of [Section 2-8.1.5] may be waived upon written recommendation of the County Manager that it is in the best interests of the County to do so and approval of the County Commission by majority vote of the members present."

In Resolution No. R-857-00, the Board approved a waiver of the affirmative action requirements in the case of Bombardier, Inc.

For foreign airlines utilizing U.S. based ground handling companies such as our GASPs, those U.S.-based companies will continue to be required to meet all the contracting and procurement requirements of the County, including full compliance with the affirmative action plan and procurement policy requirements of Section 2-8.1.5.

The waiver will not affect the County's long-held policy of requiring compliance with the non-discrimination provisions of the County and the federal government. Such compliance, however, will continue to be contained in the various contract documents a foreign airline may sign from time to time, but not in a separate Affirmative Action and Procurement Program developed by the foreign airline.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: June 30, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(A)(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 Mayor'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. 8(A)(1)(F)
6-30-09

RESOLUTION NO. _____

RESOLUTION RELATING TO MIAMI INTERNATIONAL AIRPORT; FINDING AND DETERMINING THAT IT IS IN THE BEST INTERESTS OF THE COUNTY TO WAIVE THE PROVISIONS OF SECTION 2-8.1.5 OF THE CODE OF MIAMI-DADE COUNTY AS IT APPLIES TO AGREEMENTS AND LEASES WITH FOREIGN AIRLINES USING MIAMI INTERNATIONAL AIRPORT; DIRECTING MAYOR OR DESIGNEE TO PROVIDE A QUARTERLY REPORT IDENTIFYING THE FOREIGN AIRLINES NOT REQUIRED TO COMPLY WITH SECTION 2-8.1.5

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 finds and determines that it is in the best interests of the County to waive, and does hereby waive, the affirmative action plan and procurement policy requirements of Section 2-8.1.5 of the Code of Miami-Dade County for foreign airlines using Miami International Airport; and directing the Mayor or designee to provide a quarterly report to this Board identifying the foreign airlines not required to comply with Section 2-8.1.5. of the Code.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2009. 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

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. TPA

Thomas P. Abbott