

MEMORANDUM

Agenda Item No. 7(A)

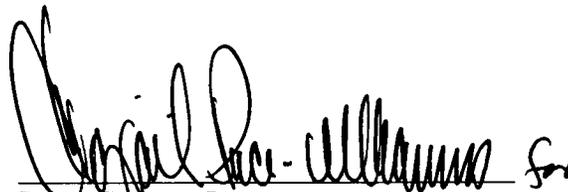
TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: (Second Reading 7-8-10)
May 4, 2010

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

SUBJECT: Ordinance relating to contractor responsibility, administrative suspension and debarment of contractors from County work; establishing criteria to determine contractor responsibility; creating procedure for administrative suspension not to exceed one year for non-responsible contractors and amending procedure for debarment of contractors; creating Section 2-8.4.2 and deleting Section 10-38 of the Code

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



R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum



Date: July 8, 2010
To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners
From: George M. Burgess
County Manager
Subject: Ordinance relating to contractor responsibility, administrative suspension and
debarment of contractors from county work

As contemplated in the proposed ordinance, the Administrative Suspension is a new process for Miami-Dade County. At this time it is difficult to assess the number of appeals of administrative suspensions that will be received annually. Therefore there may be a negative fiscal impact dependent on the number of appeals of administrative suspensions received annually. However, amendments to IO 3-21 will be forthcoming to establish a fee for contractors to submit at the time of filing their appeal of an administrative suspension recommendation. The filing fee will be used to offset the costs in the Clerk of the Board associated with engaging a hearing examiner and conducting the hearing. This process mirrors the process for bid protests.

Debarments are presently handled by staff from Small Business Development (SBD) through a Debarment Committee. The proposed ordinance will require an Administrative Hearing Officer which would be paid for by the department requesting the debarment. SBD will continue to act as staff to the Hearing Officer, except in the case where SBD is requesting the debarment. Therefore there will not be a fiscal impact to the County.



Howard Piper,
Special Assistant

Fis05610

Memorandum



Date: July 8, 2010

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

From: George M. Burgess
County Manager 

Subject: Ordinance Establishing Standards for Contractor Responsibility, Establishing
Procedures for Administrative Suspension of Contractors and Amending Procedures
for Debarment of Contractors

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached ordinance deleting section 10-38 of the Code of Miami-Dade County and creating section 2-8.4.2 of the Code of Miami-Dade County to establish standards for contractor responsibility, establish procedures for administrative suspension of contractors and amend procedures for debarment of contractors.

Scope

The impact of the proposed ordinance is countywide in nature.

Fiscal Impact/Funding Source

The accompanying ordinance will not have a fiscal impact on Miami-Dade County.

Track Record/Monitor

As detailed below, determinations of contractor responsibility shall be made by the director of the department which issued the solicitation. The County Mayor or designee shall have the authority to administratively suspend or debar a contractor.

Background

Section 10-38 (a)(1) of the Code of Miami-Dade County states, "The County shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only." To ensure compliance with this requirement, over the past six years, County staff, in discussions with the Board, has recommended the establishment of a contractor responsibility policy. Recent discussions at Board meetings have re-emphasized the need for the establishment of such a policy.

To enable the County to make fair and consistent vendor responsibility determinations, the proposed ordinance creates a progressive approach governing contractor responsibility determinations, administrative suspension and debarment. The proposed ordinance applies to all County contracts, including contracts for public improvements, purchases of all supplies, materials and services, including professional services, professional architectural and engineering, and other vendor-provided services subject to Section 2-10.4 of the Code, and grant agreements with for-profit and not-for-profit entities.

Responsibility determinations are made daily by County staff. Each contract award is an affirmative determination of a contractor's responsibility, meaning that the contractor being awarded has the integrity and capacity to perform under the terms of the contract. Current procurement procedures

provide guidance to departments in making responsibility determinations. The proposed ordinance codifies current guidelines and offers detailed, uniform procedures for consistent implementations countywide.

Contractor Responsibility

A responsible vendor is a vendor that has the capacity, in all respects, to fully perform the contract requirements, and has the integrity and reliability to assure good faith performance. As delineated in the accompanying ordinance, standards for determining responsibility include the review and consideration of:

- The vendor's capacity, ability and skill necessary to perform the requirements of the contract. This includes the review of the vendor's financial capacity, workforce capacity, qualifications, appropriate licenses and certifications necessary to carry out the contract, among other factors.
- The vendor's record of past performance on County contracts. This includes performance on County and/or other jurisdiction contracts, failures to comply with contractual requirements, payment history to employees, compliance with County Ordinances, Resolutions, or Implementing Orders, among other considerations.
- The vendor's integrity and business ethics. This includes the pendency of criminal charges, debarment(s) in other jurisdictions, audit or investigation findings related to theft, fraud or illegal business practices, among other considerations.

Vendor responsibility determinations are made on a contract by contract basis by the Director of the department that issues a solicitation. It should be noted that County Procurement Guidelines provide procedures for making responsibility determinations. The procedures currently in effect are incorporated into the proposed ordinance. Codifying these procedures is recommended to allow for consistent application countywide.

Administrative Suspension

The second tier of the proposed ordinance establishes an Administrative Suspension component that allows the administration the ability to address repetitive or substantial issues of non-responsibility. In instances where a contractor is found non-responsible, and the offense is of such severity that to protect the County's interests, the County Mayor or designee may administratively suspend a vendor for up to one year. Department Directors may recommend the administrative suspension of a contractor to the County Mayor.

The contractor may appeal the recommended administrative suspension by filing a notice of appeal with the Clerk of the Board, accompanied by a filing fee. Appeals shall be referred to a hearing examiner. Within 30 days of the Hearing Examiner's findings (or if no appeal is filed), the filing of the recommendation of administrative suspension, the County Mayor or designee shall determine whether to suspend the contractor, and the terms of the suspension.

Depending on the severity of the offense, a suspended contractor will be excluded from receiving all or some contracts and the County shall not solicit offers from, award contracts to or consent to subcontracts with suspended contractors. Departments will not renew or extend current contracts, or consent to subcontracts with suspended contractors, unless the County Mayor or designee determines that the renewal or extension is justified due to an emergency. Such action will require approval by the Board.

As part of the progressive approach detailed in the proposed ordinance, a contractor who has been suspended on two occasions within a five year period shall be evaluated for debarment.

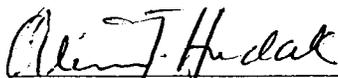
Debarment

The proposed ordinance moves the debarment section of the Code to a new section, Section 2-8.4.2. Debarment is appropriate when the protection of the County requires that the contractor not perform County work for more than one year and, generally, up to five years. Debarment is intended as a remedy in addition to, and not in substitution of, the Administrative Suspension of contractors, the evaluation of the responsibility of contractors, and the rejection or termination of contractors based on findings of non-responsibility. The serious nature of debarment requires that this sanction be imposed only when it is in the public interest, and not for purposes of punishment.

The debarment section created by the proposed ordinance provides the following amendments to current debarment procedures:

The proposed ordinance amends procedures to authorize all County Department Directors, including the Director of Small Business Development, to recommend the debarment of a contractor. Additionally, in lieu of the Debarment Committee composed of County staff, debarment proceedings shall be conducted by a Hearing Examiner. This is consistent with the policy for conducting bid protest hearings. The costs of the hearing will be borne by the department requesting debarment. Additionally, the proposed time frame for the Hearing Examiner to issue findings is 30 calendar days, changing current debarment procedures which allow for a final determination within 20 working days. Upon receipt of the Hearing Examiner's findings, the County Mayor or designee shall make the final determination of debarment, and delineate the terms of the debarment, if applicable. The terms of the debarment shall outline the requirements that may be imposed on the contractor to resume County contracting.

It is anticipated that these enhancements will provide a consistent tool for all county departments to use. These proposed changes detail a clear path to effectively address contractor responsibility, non-compliance with county rules and ordinances, and any other issues that may impede adequate performance on County contracts.


Assistant County Manager



MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss **DATE:** July 8, 2010
and Members, Board of County Commissioners

FROM: R. A. Cuevas, Jr. **SUBJECT:** Agenda Item No. 7(A)
County Attorney

Please note any items checked.

- "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
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(A)
7-8-10

ORDINANCE NO. _____

ORDINANCE RELATING TO CONTRACTOR RESPONSIBILITY, ADMINISTRATIVE SUSPENSION AND DEBARMENT OF CONTRACTORS FROM COUNTY WORK; ESTABLISHING CRITERIA TO DETERMINE CONTRACTOR RESPONSIBILITY; CREATING PROCEDURE FOR ADMINISTRATIVE SUSPENSION NOT TO EXCEED ONE YEAR FOR NON-RESPONSIBLE CONTRACTORS AND AMENDING PROCEDURE FOR DEBARMENT OF CONTRACTORS; CREATING SECTION 2-8.4.2 AND DELETING SECTION 10-38 OF THE CODE OF MIAMI-DADE COUNTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-8.4.2 of the Code of Miami-Dade County, Florida is hereby created as follows:¹

>>Sec. 2-8.4.2. Contractor Responsibility; Administrative Suspension and Debarment.

(a) Statement of Policy

The Board of County Commissioners of Miami-Dade County (the "Board") finds that it is in the public's best interest and necessary for the County's protection to solicit offers from, award contracts to, and consent to subcontracts only with responsible Contractors. It shall be the responsibility of the Contractor to demonstrate, at all times, the responsibility to be awarded and perform County contracts. The Board further finds that the serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the County's protection, and

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< shall constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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not for purposes of punishment. To effectuate these policies, the County shall only contract in accordance with the provisions of this Section, which shall apply to all County contracts, including but not limited to contracts for public improvements, purchases of all supplies, materials and services, including professional services and services subject to Section 2-10.4 of this Code, and grant agreements.

(b) Definitions

- (1) Administrative Suspension: action taken by the Mayor, upon the recommendation of a Department Director, to exclude a Contractor from County contracting and County-approved subcontracting for a time period not to exceed one (1) year as provided in subsection (e) below.
- (2) Affiliates: business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (i) either one (1) controls or has the power to control the other, or (ii) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees. An affiliate shall also include a successor company formed by a debarred or suspended individual or entity for the express purpose of succeeding in the business opportunity of the suspended or debarred individual or entity.
- (3) Award: the process by which a contract is reviewed and executed between a contractor and Miami-Dade County.
- (4) Civil judgment: a judgment or finding of a civil offense by any court of competent jurisdiction.
- (5) Contract any contract awarded by Miami-Dade County. The term shall also apply to any instance where the County may be authorized to select or approve the selection of a Contractor in its sole discretion.

- (6) Contractor: any individual or legal entity who:
- (i) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a County contract for construction or for procurement of goods or services; or
 - (ii) Conducts business, or reasonably may be expected to conduct business, with the County as an agent, surety, representative or subcontractor of another Contractor.
 - (iii) For the purposes of this section, the terms “vendor,” “developer” and “consultant” have the same meaning as “Contractor.” “Subconsultant” has the same meaning as “subcontractor.”
- (7) Conviction: a judgment or conviction of a criminal offense, be it a felony or misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- (8) County: Miami-Dade County.
- (9) DPM: the County’s Department of Procurement Management.
- (10) Debarment: action taken by the Mayor to exclude a Contractor from County contracting and County-approved subcontracting for a reasonable, specified period of time as provided in subsection (f) below; a Contractor so excluded is debarred.
- (11) Indictment: indictment for a criminal offense. Any information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.
- (12) Legal proceeding: any civil judicial proceeding to which the County is a party or any criminal

proceeding. The term includes appeals from such proceedings.

- (13) List: a list compiled, maintained and distributed by SBD, containing the names of Contractors debarred under the procedures of this ordinance.
- (14) Mayor: the County Mayor and, for all purposes under this Section, the County Mayor's designee.
- (15) OCI: the County's Office of Capital Improvements.
- (16) Preponderance of the evidence: proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- (17) Responsible Contractor : a Contractor who the County affirmatively determines: (i) has the ability, capacity and skill to perform under the terms of the contract; (ii) does not have an unsatisfactory record of past performance in County contracting, including abiding by applicable ordinances, resolutions, and other policies of the County; and (iii) has a satisfactory record of integrity and business ethics.
- (18) SBD: the County's Department of Small Business Development.
- (19) Solicitation Documents: The documents utilized to solicit a contract for the services of the Contractor which includes, but is not limited to, invitation to bid (ITB), request for proposals (RFP), request for price quotation (RPO), request for qualifications (RFQ), invitation to negotiate (ITN) and notice to professional consultants (NTPC).

(c) **Criteria to Determine Contractor Responsibility**

- (1) The Contractor bears the burden to demonstrate to the County, to the County's reasonable satisfaction, that the Contractor is a Responsible Contractor.
- (2) To determine whether a Contractor has the ability, capacity and skill to perform under the terms of a

proposed solicitation as set forth in subsection (b)(17)(i) above, the County shall consider factors, including but not limited to the following:

- (i) The date the Contractor was formed, the state under whose laws the Contractor was formed, the type of organization of the Contractor, the annual gross revenues of the Contractor, and the Contractor's principal places of business;
- (ii) Financial performance and capability of the Contractor and any Affiliates of the Contractor which the Solicitation Documents allow to provide or demonstrate guarantees of performance;
- (iii) Qualifications, experience and past performance of the personnel who will have supervisory responsibility of the contract;
- (iv) Licensing, certifications and other permits of the Contractor and its personnel;
- (v) Material changes in the Contractor's financial position or business organization;
- (vi) Judgment(s), injunction(s), or lien(s) imposed against the Contractor, its supervisory personnel, its principals or any of its Affiliates which may affect the performance of the Contract;
- (vii) Contractor's payment history to employees, subcontractors and material suppliers on non-County contracts;
- (viii) Efforts by the Contractor to redress any breach of prior non-County contract(s) and compliance with settlement agreement(s) to redress any non-County contract deficiency; and
- (ix) Any other factor established by Implementing Order.

- (3) The County shall consider the following factors in determining whether a Contractor has an unsatisfactory record of past performance in County contracting as set forth in subsection (b)(17)(ii) above:
- (i) Material breach(es) and failure(s) to comply with contractual requirements under prior County Contract(s);
 - (ii) Material failure(s) to comply with County ordinance(s), resolution(s), or Implementing and Administrative Order(s) in the performance of prior County Contract(s);
 - (iii) Past performance of the Contractor, its principals, its Affiliates, or its supervisory personnel in the execution of prior County Contract(s);
 - (iv) Contractor's payment history to employees, subcontractors and material suppliers on prior County Contract(s);
 - (v) Efforts by the Contractor to redress any breach of prior County Contract(s) and compliance with agreement(s) to redress any County Contract deficiency; and
 - (vi) Any other factor established by Implementing Order.
- (4) To determine whether a Contractor has a satisfactory record of integrity and business ethics as set forth in subsection (b)(17)(iii) above, the County shall consider factors, including but not limited to the following:
- (i) Pendency of criminal charges against the Contractor, its principals, its Affiliates, or its supervisory personnel;
 - (ii) Commission of a criminal offense that would constitute a felony by the Contractor, its principals, its Affiliates, or its supervisory personnel;

- (iii) Commission of fraud, a violation of federal or State antitrust statutes relating to the submission of a bid, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or any other crime of dishonesty or theft;
- (iv) A Civil Judgment making the County the prevailing party where the court determines that the claim or defense offered by the Contractor was frivolous or filed in bad faith;
- (v) Debarment of the Contractor, its principals, its Affiliates, or its supervisory personnel in another jurisdiction;
- (vi) Pendency of disciplinary proceedings against the Contractor, its principals, its Affiliates, or its supervisory personnel;
- (vii) Pendency of enforcement cases, Civil Judgments, 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, and the health and safety of employees;
- (viii) Compliance with County ordinances and regulations relating to the honesty and ethics of the Contractor;
- (ix) Pendency of an investigation related to, or arising from, allegations of dishonesty, theft, or illegal or fraudulent business practices of the Contractor, its principals, its Affiliates, or its supervisory personnel;
- (x) Inaccurate, incomplete, or fraudulent accounting practices;
- (xi) Findings by the County Auditor, Commission Auditor, Inspector General or

law enforcement officers of fraud, dishonesty, illegality or material misrepresentation in the performance of a County contract by the Contractor, its principals, its Affiliates, or its supervisory personnel;

(xii) 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 or settlement;

(xiii) The Preponderance of the evidence, nature and credibility of any and all facts underlying any of the above-cited investigations, allegations, charges, accusations, proceedings, findings or indictments;

(xiv) Any other cause of so serious or compelling a nature that it affects the responsibility of a County Contractor or subcontractor in performing County work; and

(xv) Any other factor established by Implementing Order.

(d) Contract Recommendation and Award

(1) The Mayor shall only recommend award, and the County shall only award a contract, to a Contractor determined to be a Responsible Contractor. The determination that a Contractor is not a Responsible Contractor shall be documented in writing and executed by the Department Director of the department issuing the Solicitation Documents. If the determination that a Contractor is not a Responsible Contractor is based in whole or in part upon violation(s) related to the County's Small Business and Community Workforce Ordinances, the determination shall also be executed by the Director of SBD.

(2) The determination of Contractor responsibility shall be made on a contract by contract basis. Award of a

Contract shall not preclude a subsequent finding that the awarded Contractor is not responsible for other County Contracts.

- (3) The Board shall not award a Contract to a Contractor determined by the Board to be not responsible. The Mayor shall not award a Contract pursuant to delegated authority to a Contractor determined by the Mayor to be not responsible. The Board shall consider, but shall not be bound by, determinations of responsibility made by the Mayor. If the Board determines that a Contractor is not responsible for a particular contract, then the Mayor shall not award a subsequent contract for the same type of work to that Contractor without first obtaining Board approval.
- (4) A Contractor who has been found not responsible on two (2) contracts within a twelve (12) month period for failure to meet the definition of responsibility set forth in subsections (b)(17)(ii) and (b)(17)(iii) herein shall be evaluated for Administrative Suspension as set forth in subsection (e) herein or Debarment as set forth in subsection (f) herein.

(e) *Administrative Suspension*

- (1) The Mayor may suspend a Contractor in accordance with the provisions of this subsection for failure to meet the definition of responsibility set forth in subsections (b)(17)(ii) and (b)(17)(iii) herein and the offense is of such severity or nature that the protection of the County requires that the Contractor not perform County work for a period not to exceed one year in duration.
- (2) A Department Director shall execute a written statement to the Mayor recommending the Administrative Suspension of a Contractor.
- (3) The written statement shall set forth the causes of the recommended Administrative Suspension in terms sufficient to put the Contractor on notice of the conduct or transaction upon which the recommended suspension is based, shall state the

length of the recommended suspension, that the Contractor shall have the right to appeal the recommendation in the manner set forth in this Section and that failure to appeal the recommendation shall result in Administrative Suspension. The written recommendation shall be filed with the Clerk of the Board and mailed to the Contractor by certified mail at the address provided in the Contractor's vendor registration form.

- (4) The Contractor shall be entitled to appeal the recommended Administrative Suspension by filing a notice of appeal with the Clerk of the Board not later than ten (10) business days following the date of filing of the recommendation with the Clerk of the Board. The Contractor's appeal shall be accompanied by a filing fee in the amount set forth pursuant to Section 2-8.4 of this Code and any corresponding Implementing Order. The notice of appeal shall state with particularity the specific facts and grounds on which the appeal is based and shall be accompanied by all pertinent documentary evidence. The Contractor may not raise arguments or raise evidence not disclosed in the notice of appeal.
- (5) Notices of appeal filed in accordance with this Section shall be referred to a Hearing Examiner, who shall be appointed by the Clerk of the Board not later than five (5) working days after the filing of the notice of appeal. The Hearing Examiner shall conduct a hearing in accordance with the procedures set forth in Section 2-8.4 of this Code for bid protests and the appeal shall be completed within ten (10) working days following his or her appointment. The hearing examiner shall, within five (5) working days of the hearing, file written findings of fact and recommendations with the Clerk of the Board. The Hearing Examiner shall consider the written recommendation for Administrative Suspension, the notice of appeal and all supporting documentation and all evidence presented at the hearing in reaching his or her written findings and recommendations. 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 (2) hours for the appellant's presentation and a maximum of two (2) hours for the County's response. The burden of proof shall be on the appellant to demonstrate that the appellant is a Responsible Contractor.

- (6) Hearing Examiners shall be selected and compensated in the manner set forth in Section 2-8.4 of this Code and the applicable Implementing Order.
- (7) The Hearing Examiner's written findings of fact and recommendation shall upon issuance be transmitted to the Mayor, together with all supporting documentation presented at the hearing, and a transcript of the proceedings. Within thirty (30) days of the filing of the Hearing Examiner's recommendation, or, if no appeal is filed, of the filing of the recommendation of Administrative Suspension, the Mayor shall determine whether to suspend the Contractor, and the terms and conditions of the Administrative Suspension. The Mayor shall not be bound by the factual findings of the Hearing Examiner, except that those findings shall be upheld unless the Mayor establishes in writing that the factual findings are contrary to the manifest weight of the evidence. The Hearing Examiner's ultimate recommendation for suspension is merely advisory. The duration of the suspension shall in no event exceed one year.
- (8) The Administrative Suspension of a Contractor, or the pendency of proceedings to review a recommendation to suspend pursuant to this subsection, shall not prevent the commencement or otherwise affect Debarment proceedings under this Section. A Contractor who has been suspended on two (2) occasions within a five (5) year period shall be evaluated for Debarment as set forth in subsection (f) herein.

(9) A Contractor suspended under this Section may be excluded from receiving all or some Contracts and the County shall not solicit offers from, award Contracts to or consent to subcontracts with these Contractors if such action by the County would be in violation of the Administrative Suspension, including continuing or miscellaneous construction Contract, or a continuing or miscellaneous Contract for goods or services, including professional services, or similar Contract, where the work is divided into separate discrete groups and the County's refusal or denial of further work under the Contract will not result in a breach of such Contract. Suspended Contractors shall also be excluded from conducting business with the County as agents, representatives or partners of other Contractors, including through a joint venture, and are excluded from acting as individual sureties with the County.

(10) Departments may not renew or otherwise extend the duration of current Contracts, or consent to subcontracts with suspended Contractors in violation of the Administrative Suspension, unless the Mayor determines that an emergency exists justifying the renewal or extension or where failure to approve the extension would constitute a County breach of the contract.

(f) Debarment of Contractors from County work.

(1) Debarment is appropriate when a Contractor is not a Responsible Contractor because it fails to meet the requirements of subsections (b)(17)(ii) and (b)(17)(iii) herein and the offense is of such severity or nature that the protection of the County requires that the Contractor not perform County work for more than one (1) year and up to five (5) years or such longer period as more specifically set forth in this subsection. Debarment is intended as a remedy in addition to, and not in substitution of, the Administrative Suspension of Contractors, and the evaluation of the responsibility of County bidders and Contractors on a contract by contract basis.

- (2) The Mayor may, in the public interest, debar a Contractor, using the procedures outlined below, for a conviction or civil judgment:
- (i) For commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, performing, or making a claim upon a public contract or subcontract, or a contract or subcontract funded in whole or in part with public funds;
 - (ii) For violation of federal or State antitrust statutes relating to the submission of offers;
 - (iii) For commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or any other crime involving dishonesty or theft;
 - (iv) For commission of any other payment or performance related offense that seriously and directly affects the completion of one (1) or more contracts or the performance of the completed building, or project, or goods and services; or
 - (v) Which makes the County the prevailing party in a legal proceeding between the Contractor, its principals, its Affiliates, or its supervisory personnel and the County, and a court determines that the claim or defense offered by the Contractor was frivolous or filed in bad faith.
- (3) The Mayor may, in the public interest, debar a Contractor, using the procedures outlined below and based upon a preponderance of the evidence, for:
- (i) Violation of the terms of a County contract or subcontract, or a contract or subcontract funded in whole or in part by County funds, such as willful failure to perform in accordance with the terms of one (1) or more contracts; or the failure to perform, or

- unsatisfactory performance of one (1) or more contracts;
- (ii) Violation of a County ordinance or administrative order which lists debarment as a potential penalty;
 - (iii) Findings by the County Auditor, Commission Auditor, Inspector General or law enforcement officers of fraud, dishonesty, illegality or material misrepresentation in the performance of a County contract by the Contractor; and/or
 - (iv) Any other cause of so serious or compelling a nature that it affects the responsibility of a county contractor or subcontractor in performing County work.
- (4) The Mayor may, in the public interest, debar a Community Small Business Enterprise (“CSBE”) Contractor, Community Business Enterprise (“CBE”) Contractor, or a Small Business Enterprise (“SBE”) Contractor, and their principals, Affiliates, and supervisory personnel, based upon a preponderance of evidence that the CSBE, CBE or SBE Contractor has forfeited a bond or has defaulted on financial assistance, either of which was provided under the CSBE, CBE or SBE program; or if any individual or corporation, partnership or other entity, or any individual officer, shareholder with a significant interests, director or partner of such entity, or affiliated business of such entity attempts to comply with the provisions of the CSBE, CBE or SBE ordinances through fraud, misrepresentation, or material misstatement.
- (5) The existence of a cause for Debarment, however, does not necessarily require that the Contractor be debarred; the seriousness of the Contractor’s acts or omissions and any mitigating factors should be considered in making any Debarment decision.
- (6) Debarment constitutes debarment of all officers, principals, directors, shareholders owning or

controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of the debarred Contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The Mayor's decision includes any existing Affiliates of the Contractor, if they are (i) specifically named and (ii) given written notice of the proposed Debarment and an opportunity to respond. Future Affiliates of the Contractor are subject to the Mayor's decision.

(7) A Contractor's Debarment shall be effective throughout County government.

(8) Debarment procedures:

(i) Investigation and referral. County departments shall promptly investigate and prepare written reports concerning a proposed Debarment, the recommended length of Debarment, and prepare written requests to SBD for the Debarment of Contractors the requesting department believes is subject to any of the causes listed in this Section. All County departments and offices are eligible to request Debarment, including but not limited to, user departments, DPM and SBD. Written requests for Debarment shall specify the conduct or transactions(s) of the Contractor relied upon in support of the request for Debarment.

(ii) Notice of proposal to debar. Upon receipt of a written request for Debarment in conformance with the requirements of subsection f(8)(i) herein, SBD shall issue a notice of proposed Debarment advising the Contractor(s) and any specifically named Affiliates, by certified mail, return receipt requested, or personal service:

(A) That Debarment is being considered;

- (B) Of the reasons and causes for the proposed Debarment in terms sufficient to put the Contractor on notice of the conduct or transaction(s) upon which it is based;
 - (C) Of the recommended length of time for Debarment;
 - (D) That a hearing shall be conducted before a Hearing Examiner on a date and time not less than ninety (90) calendar days after service of the notice. The notice shall also advise the Contractor(s) that it may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine evidence and testimony presented against it;
 - (E) Of the effect of the issuance of the notice of proposed Debarment, and of the potential effect of an actual Debarment.
- (iii) The notice of proposed Debarment shall be filed promptly with the Clerk of the Board of County Commissioners and shall request that the Clerk of the Board of County Commissioners appoint a Hearing Examiner. The Clerk of the Board of County Commissioners shall select such Hearing Examiner within no more than ten (10) calendar days from the filing of the notice of proposed Debarment. SBD shall act as staff to the Hearing Examiner, except that if SBD is the department requesting Debarment, then the Mayor shall appoint another department to act as staff to the Hearing Examiner. The department requesting Debarment shall present evidence and argument to the Hearing Examiner in support of the Debarment. The cost of the Debarment hearing shall be borne by the department requesting Debarment. The

County Attorney, upon request, shall furnish legal representation to the Department seeking the Debarment.

- (iv) No later than thirty (30) calendar days after service of the notice of proposed Debarment upon a Contractor(s) and/or Affiliates, the Contractor must furnish SBD a list of the defenses, and the documents and records supporting those defenses the Contractor intends to present at the hearing, and, if the Contractor intends to rely on testimony in support of its defenses, a written list identifying the witnesses from whom the Contractor proposes to elicit such testimony, together with a written summary of each such witness' proposed testimony. If the Contractor fails to submit the list of defenses, in writing, and the documents and records supporting those defenses, and the written list identifying the witnesses from whom the Contractor proposes to elicit testimony together with a written summary of each such witness' testimony, within thirty (30) calendar days after service of the notice of proposed Debarment upon a Contractor(s) and/or Affiliates, or fails to seek an extension of time, in writing, at least seven (7) calendar days prior to the deadline, within which to do so imposed herein, the Contractor shall have waived the opportunity to present defenses, documents and testimony on its behalf and to be heard at the hearing. The Hearing Examiner has the right to grant or deny an extension of time in whole or in part so long as the request for an extension of time is filed with the Clerk of the Board and sent to the Hearing Examiner at least seven (7) calendar days prior to the deadline within which to do so imposed herein and for good cause shown.
- (v) At such time as the Contractor against whom Debarment is being sought files its

written list of defenses, documents, witness list and written summary of each listed witness' proposed testimony, the department(s) seeking Debarment shall have thirty (30) calendar days therefrom to submit a list of documents, witnesses and witness' testimony summaries to SBD. The department seeking Debarment may request an extension of time to submit a list of documents, witness list and written summary of witness' proposed testimony provided that such request is filed with the Clerk of the Board and sent seven (7) calendar days before the deadline within which to do so imposed herein. The Hearing Examiner has the right to grant or deny an extension of time in whole or in part so long as the request for an extension of time is made at least seven (7) calendar days prior to the deadline within which to do so imposed herein and for good cause shown.

- (vi) Discovery. The process of discovery, including the subpoenaing of witnesses, the taking of depositions, the submission of interrogatories, and requests for documents, is not permitted. However, any party may make a public records request under Chapter 119 of the Florida Statutes and the County shall make a reasonable attempt to provide any employees requested to serve as witnesses.
- (vii) The Hearing Examiner shall limit the scope of testimony of each witness to that outlined in the witness summary filed as provided herein by the party calling such witness, provided that upon good cause shown, additional testimony may be elicited from such witnesses.
- (viii) Evidence shall be admissible at the hearing to the extent it is (a) listed in the written lists and summaries submitted in accordance with this Section and (b) of the type which

would be considered by reasonable persons in the conduct of serious business affairs. The Rules of Evidence applicable for admissibility in State and Federal courts shall be instructive but not determinative. Hearsay evidence shall not form the sole basis for initiating a Debarment procedure, for a finding of fact of the Hearing Examiner, or for any determination of Debarment. The hearing shall be transcribed, taped or otherwise recorded by use of a court reporter, at the election of the Hearing Examiner and at the expense of the County. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party.

- (9) Hearing Examiner's Report and Recommendation.
- (i) The Hearing Examiner shall prepare and submit to SBD a written report containing factual findings and a recommendation on whether Debarment is warranted and if so, what the recommended term of Debarment should be. In actions based upon a Conviction or Civil judgment, or in which there is no genuine dispute over material facts, the Hearing Examiner shall issue a report and recommendation on the basis of all the undisputed, material information in the record, including any undisputed, material submissions made by the Contractor. Where actions are based on disputed evidence, the Hearing Examiner shall decide what weight to attach to evidence of record, judge the credibility of witnesses, decide what weight to attach to each witness's testimony and base his/her report and recommendation on the Preponderance of the evidence standard. In the event that the Contractor fails to appear at the Debarment hearing or to present competent proof under affirmation or oath through persons with direct knowledge of the Contractor's performance before the

Hearing Examiner, the Contractor shall be presumed to be subject to Debarment.

(ii) The Hearing Examiner's report and recommendation shall be submitted to SBD within thirty (30) calendar days after conclusion of the hearing, unless the Hearing Examiner extends this period for good cause for a reasonable period not to exceed an additional thirty (30) calendar days.

(iii) The Hearing Examiner's report and recommendation shall be in writing and shall include the factual findings, the principal causes of Debarment as enumerated in this Ordinance, identification of the Contractor and all Affiliates affected by the report and recommendation, and the term of the Debarment recommended. The Hearing Examiner's written findings of fact and recommendation shall be transmitted to the Mayor, together with all supporting documentation presented at the hearing, and a transcript of the proceedings. Within thirty (30) days of date of submittal of the Hearing Examiner's report and recommendation, which may be extended in the Mayor's discretion for an additional period not to exceed twenty (20) additional days, the Mayor shall determine whether to debar the Contractor, and the terms and conditions of the debarment. The Mayor shall not be bound by the factual findings of the Hearing Examiner, except that those findings shall be upheld unless the Mayor establishes in writing that the factual findings are contrary to the manifest weight of the evidence. The Hearing Examiner's recommendation for debarment and the recommended duration is merely advisory.

(10) Notice of Mayor's decision.

(i) The Mayor shall give the Contractor and any Affiliates involved written notice of the

decision by certified mail, return receipt requested, or hand delivery, within thirty (30) calendar days. If Debarment is imposed, the notice shall specify the reasons for Debarment and include copy of the Hearing Examiner's written report and recommendation; state the period of Debarment, include effective dates, and advise that the Debarment is effective throughout all the County departments and agencies.

- (ii) All decisions of the Mayor shall be final and shall be effective on the date the notice is signed by the Mayor. Decisions of the Mayor to impose debarment may be appealed to the Appellate Division of the Circuit Court within thirty (30) calendar days of the date the notice is signed by the Mayor. Decisions of the Mayor shall not be overturned absent a finding of abuse of discretion. A debarred Contractor may seek a stay of the Debarment decision in accordance with the Florida Rules of Appellate Procedure.

(11) Period of Debarment:

- (i) The period of Debarment shall be for a period commensurate with the seriousness of the cause(s), and shall not exceed five (5) years except as set forth in subsection (f)(11)(ii) below. The following guidelines in the period of Debarment shall apply, except where mitigating or aggravating circumstances justify deviation:

(A) For commission of an offense as described in subsection (f)(2)(i): five (5) years.

(B) For commission of an offense as described in subsection (f)(2)(ii): five (5) years.

- (C) For commission of an offense as described in subsection (f)(2)(iii): five (5) years.
- (D) For commission of an offense as described in subsection (f)(2)(iv): one (1) to two (2) years.
- (E) For commission of an offense as described in subsection (f)(2)(v): two (2) to five (5) years.
- (F) For commission of an offense as described in subsection (f)(3)(i) or (f)(3)(ii) or (f)(3)(iii): two (2) to five (5) years.
- (G) For commission of an offense as described in subsection (f)(3)(iv): one (1) to two (2) years.
- (H) For commission of an offense as described in subsection (f)(4): two (2) years to five (5) years.
- (ii) In the best interest of the public, the Mayor may, in addition to Debarment and after the review and recommendation of the Hearing Examiner, impose remedial measures on a Contractor and any period of Debarment shall be extended, including an extension beyond five (5) years, until such time as the remedial measures are satisfied.
- (iii) The Mayor may, in his/her sole discretion, reduce the period of Debarment, upon the Contractor's written request, for reasons such as:
 - (A) Newly discovered material evidence;
 - (B) Reversal of the Conviction or Civil judgment upon which the Debarment was based;

(C) Bona fide change in ownership or management;

(D) Elimination of other causes for which the Debarment was imposed; or

(E) Other reasons the Mayor deems appropriate.

(iv) The debarred Contractor's written request shall contain the reasons for requesting a reduction in the Debarment period. The department that requested Debarment shall have thirty (30) calendar days from receipt of such request to submit a written response thereto. The Mayor shall make the decision regarding a request made under this subsection and such decision is final and non-appealable.

(12) Scope of Debarment:

(i) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, agent, employee, or other individual associated with a Contractor may be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, or with the Contractor's knowledge, approval, or acquiescence. The Contractor's acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval or acquiescence.

(ii) The fraudulent, criminal, or other seriously improper conduct of a Contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the Contractor who participated in, knew of, or had reason to know of the Contractor's conduct.

- (iii) The fraudulent, criminal or other seriously improper conduct of any subcontractor associated with a Contractor may be imputed to the Contractor when the conduct occurred in connection with the subcontractor's performance of duties for or on behalf of the Contractor and the Contractor had knowledge of, approved of, or acquiesced in this conduct. The Contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- (iv) The fraudulent, criminal, or other seriously improper conduct of one (1) Contractor participating in a joint venture or similar arrangement may be imputed to other participating Contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these Contractors. Acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval, or acquiescence.

(13) SBD shall:

- (i) Compile and maintain a current and consolidated List of all Contractors debarred by County departments. The List shall be public record and shall be available for public inspection and dissemination;
- (ii) Periodically revise and distribute the List and issue supplements, if necessary, to all departments, to the office of the Mayor, to the office of the County Manager and to the Board of County Commissioners;
- (iii) Include in the List the name and telephone number of the County official responsible for its maintenance and distribution;

- (iv) In accordance with internal retention procedures, maintain records relating to each debarment;
- (v) Establish procedures to provide for the effective use of the List, including internal distribution thereof, to ensure that departments do not solicit offers from, award Contracts to, or consent to subcontracts with Contractors on the List; and
- (vi) Respond to inquiries concerning listed Contractors and coordinate such responses with the department that recommended the action.

(14) The List shall indicate:

- (i) The names and addresses of all Contractors debarred, in alphabetical order;
- (ii) The name of the department that recommends initiation of the Debarment action;
- (iii) The cause for the Debarment action, as is further described herein, or other statutory or regulatory authority;
- (iv) The effect of the Debarment action;
- (v) The termination date for each listing;
- (vi) The Contractor's certificate of competency or license number, when applicable;
- (vii) The qualifier of the Contractor, when applicable;
- (viii) The name and telephone number of the point of contact in the department recommending the Debarment action.

(15) Effects of Debarment:

- (i) Debarred Contractors are excluded from receiving Contracts, and departments shall not solicit offers from, award Contracts to, or consent to subcontracts with these Contractors, unless the Mayor determines that an emergency exists justifying such action, and obtains approval from the Board of County Commissioners. Debarred Contractors are also excluded from conducting business with the County as agents, representatives, subcontractors or partners of other Contractors.
- (ii) Debarred Contractors are excluded from acting as individual sureties.
- (iii) Continuation of current Contracts:
 - (A) All proposed County Contracts for construction, or for procurement of goods and services, including professional services under 2-10.4 of the Code, shall incorporate this ordinance and specify that Debarment may constitute grounds for termination of any existing County contract.
 - (B) The Debarment shall take effect in accordance with the notice provided by the Mayor, except that if a department continues contracts or subcontracts in existence at the time the Contractor was debarred, the Debarment period shall commence upon the conclusion of the Contract, and in the interim the debarred Contractor shall not enter into any County Contracts.
 - (C) Departments may not renew or otherwise extend the duration of current Contracts, or consent to subcontracts with debarred

Contractors, unless the Mayor determines that an emergency exists justifying the renewal or extension or for an approved extension due to delay or time extension for reasons beyond the Contractor's control, and such action is approved by the Board of County Commissioners.

- (D) No further work shall be awarded to a debarred Contractor in connection with a continuing or miscellaneous construction Contract, or a continuing or miscellaneous Contract for goods or services, including professional services, or similar Contract, where the work is divided into separate discrete groups and the County's refusal or denial of further work under the Contract will not result in a breach of such Contract.

(iv) Restrictions on subcontracting:

- (A) When a debarred Contractor is proposed as a subcontractor for any subcontract subject to County approval, the department shall not consent to subcontracts with such Contractor unless the Mayor determines that an emergency exists justifying such consent, and the Board of County Commissioners approves such decision.
- (B) The County shall not be responsible for any increases in project costs or other expenses incurred by a Contractor as a result of rejection of proposed subcontractors pursuant to subsection (f)(15)(iv)(A) above, provided the subcontractor was debarred prior to bid opening or opening of proposals.<<

Section 2. Section 10-38 of the Code of Miami-Dade County (the "Code") is hereby deleted in its entirety:

~~[[Sec. 10-38. Debarment of contractors from County work.~~

~~(a) Purpose of debarment:~~

- ~~(1) The County shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. To effectuate this policy, the debarment of contractors from County work may be undertaken.~~
- ~~(2) The serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the County's protection, and not for purposes of punishment. Debarment shall be imposed in accordance with the procedures contained in this ordinance.~~
- ~~(3) Debarment is intended as a remedy in addition to, and not in substitution of, the evaluation of the responsibility of County bidders and contractors, and the rejection or termination of County bidders and contractors based on findings of non-responsibility on a case by case basis.~~

~~(b) Definitions:~~

- ~~(1) Affiliates. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (i) either one (1) controls or has the power to control the other, or (ii) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized by a debarred entity, individual, or affiliate following the debarment of a contractor that has the same or similar management, ownership, or principal employees as the contractor that was debarred or suspended.~~

- (2) ~~Civil judgment~~ means a judgment or finding of a civil offense by any court of competent jurisdiction.
- (3) ~~Contractor~~ means any individual or other legal entity that:
 - (i) ~~Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a County contract for construction or for procurement of goods or services, including professional services; or~~
 - (ii) ~~Conducts business, or reasonably may be expected to conduct business, with the County as an agent, surety, representative or subcontractor of another contractor.~~
 - (iii) ~~For the purposes of this section, the terms "vendor" and "consultant" have the same meaning as "contractor." "Subconsultant" has the same meaning as "subcontractor."~~
- (4) ~~Conviction~~ means a judgment or conviction of a criminal offense, be it a felony or misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- (5) ~~Debarment~~ mean action taken by the Debarment Committee to exclude a contractor from County contracting and County-approved subcontracting for a reasonable, specified period as provided in subsection (j) below; a contractor so excluded is debarred.
- (6) ~~Debarment committee~~ means a group of two (2) County department directors or assistant directors and one (1) member from private industry selected by DBD from a Standing Pool of Committee members appointed by the County Manager, to evaluate and, if warranted, to impose debarment. At least one (1) member of the Debarment Committee shall have working knowledge of the affected area. All Debarment Committee members appointed to a

~~specific Debarment Committee shall be subject to restrictions similar to those in the Cone of Silence Ordinance 98-106 in that they are prohibited from having any communication with any of the parties involved in the specific debarment, or their representatives. Violation of this policy could lead to termination.~~

- (7) ~~Indictment means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.~~
- (8) ~~Legal proceeding means any civil judicial proceeding to which the county is a party or any criminal proceeding. The term includes appeals from such proceedings.~~
- (9) ~~List of debarred contractors means a list compiled, maintained and distributed by the Department of Business Development ("DBD") of Miami Dade County, containing the names of contractors debarred under the procedures of this ordinance.~~
- (10) ~~Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.~~

(e) ~~List of debarred contractors:~~

- (1) ~~DBD, as the agency charged with the implementation of this ordinance shall:~~
 - (i) ~~Compile and maintain a current, consolidated list ("List") of all contractors debarred by County departments. Such list shall be public record and shall be available for public inspection and dissemination;~~
 - (ii) ~~Periodically revise and distribute the list and issue supplements, if necessary, to all departments, to the office of the County Manager, to the Board of County Commissioners; and~~

~~(iii) Include in the list the name and telephone number of the official responsible for its maintenance and distribution.~~

~~(2) The list shall indicate:~~

~~(i) The names and addresses of all contractors debarred, in alphabetical order;~~

~~(ii) The name of the department that recommends initiation of the debarment action;~~

~~(iii) The cause for the debarment action, as is further described herein, or other statutory or regulatory authority;~~

~~(iv) The effect of the debarment action;~~

~~(v) The termination date for each listing;~~

~~(vi) The contractor's certificate of competency or license number, when applicable;~~

~~(vii) The qualifier of the contractor, when applicable;~~

~~(viii) The name and telephone number of the point of contact in the department recommending the debarment action.~~

~~(3) DBD shall:~~

~~(i) In accordance with internal retention procedures, maintain records relating to each debarment;~~

~~(ii) Establish procedures to provide for the effective use of the list, including internal distribution thereof, to ensure that departments do not solicit offers from, award contracts to, or consent to subcontracts with contractors on the list; and~~

~~(iii) Respond to inquiries concerning listed contractors and coordinate such responses~~

~~with the department that recommended the action.~~

(d) ~~Effects of debarment:~~

- (1) ~~Debarred contractors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the county manager determines that an emergency exists justifying such action, and obtains approval from the Board of County Commissioners. Debarred contractors are also excluded from conducting business with the County as agents, representatives, subcontractors or partners of other contractors.~~
- (2) ~~Debarred contractors are excluded from acting as individual sureties.~~

(e) ~~Continuation of current contracts:~~

- (1) ~~Commencing on the effective date of this ordinance, all proposed County contracts for construction, or for procurement of goods and services, including professional services, shall incorporate this ordinance and specify that debarment may constitute grounds for termination of any existing County contract.~~
- (2) ~~The debarment shall take effect in accordance with the notice provided by the County Manager pursuant to subsection (i)(9) below, except that if a department continues contracts or subcontracts in existence at the time the contractor was debarred, the debarment period shall commence upon the conclusion of the contract, and in the interim the debarred contractor shall not enter into any county contracts.~~
- (3) ~~Departments may not renew or otherwise extend the duration of current contracts, or consent to subcontracts with debarred contractors, unless the County Manager determines that an emergency exists justifying the renewal or extension or for an approved extension due to delay or time extension for reasons beyond the contractors control, and such~~

~~action is approved by the Board of County Commissioners.~~

- ~~(4) No further work shall be awarded to a debarred contractor in connection with a continuing or miscellaneous construction contract, or a continuing or miscellaneous contract for goods or services, including professional services, or similar contract, where the work is divided into separate discrete groups and the county's refusal or denial of further work under the contract will not result in a breach of such contract.~~

~~(f) *Restrictions on subcontracting:*~~

- ~~(1) When a debarred contractor is proposed as a subcontractor for any subcontract subject to County approval, the department shall not consent to subcontracts with such contractors unless the County Manager determines that an emergency exists justifying such consent, and the Board of County Commissioners approves such decision.~~
- ~~(2) The County shall not be responsible for any increases in project costs or other expenses incurred by a contractor as a result of rejection of proposed subcontractors pursuant to subsection (f)(1) above, provided the subcontractor was debarred prior to bid opening or opening of proposals.~~

~~(g) *Debarment:*~~

- ~~(1) The Debarment Committee may, in the public interest, debar a contractor for any of the causes listed in this ordinance, using the procedures outlined below. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.~~
- ~~(2) Debarment constitutes debarment of all officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational~~

~~elements of the debarred contractor, unless the debarred decision is limited by its terms to specific divisions, organizational elements, or commodities. The Debarment Committee's decision includes any existing affiliates of the contractor, if they are (i) specifically named and (ii) given written notice of the proposed debarment and an opportunity to respond. Future affiliates of the contractor are subject to the pre-existing Debarment Committee's decision.~~

~~(3) A contractor's debarment shall be effective throughout county government.~~

~~(h) *Causes for debarment:*~~

~~(1) The Debarment Committee may debar a contractor for a conviction or civil judgment:~~

~~(i) For commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, performing, or making a claim upon a public contract or subcontract, or a contract or subcontract funded in whole or in part with public funds;~~

~~(ii) For violation of federal or State antitrust statutes relating to the submission of offers;~~

~~(iii) For commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;~~

~~(iv) For commission of any other payment or performance related offense that seriously and directly affects the completion of one (1) or more contracts or the performance of the completed building, or project, or goods and services; or~~

~~(v) Which makes the County the prevailing party in a legal proceeding, and a court determines that the lawsuit between the contractor and the County was frivolous or filed in bad faith.~~

- (2) ~~The committee may debar a contractor, based upon a preponderance of the evidence, for:~~
- (i) ~~Violation of the terms of a County contract or subcontract, or a contract or subcontract funded in whole or in part by County funds, such as willful failure to perform in accordance with the terms of one (1) or more contracts; or the failure to perform, or unsatisfactory performance of one (1) or more contracts.~~
 - (ii) ~~Violation of a County ordinance or administrative order which lists debarment as a potential penalty.~~
 - (iii) ~~Any other cause of so serious or compelling a nature that it affects the responsibility of a county contractor or subcontractor in performing County work.~~
- (3) ~~The debarment committee may debar a CSBE based upon a preponderance of evidence that the CSBE has forfeited a bond or has defaulted on financial assistance, either of which was provided under the CSBE program; or if any individual or corporation, partnership or other entity, or any individual officer, shareholder with a significant interests, director or partner of such entity, or affiliated business of such entity attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement.~~
- (i) ~~*Debarment procedures:*~~
- (1) ~~Investigation and referral. Departments shall promptly investigate and prepare written reports concerning a proposed debarment, and prepare written requests to DBD for the debarment of contractors the department believes is subject to any of the causes listed above. The County Manager (or his or her designee), and the Office of the Inspector General, may investigate, prepare written reports on, and prepare written requests for, debarment of contractors or subcontractors.~~

- (2) ~~Upon receipt of a request for debarment, DBD shall create a Debarment Committee, from the Standing Pool of Committee members appointed by the County Manager, none of whose members shall include a representative from the department making the debarment request. DBD shall act as staff to the Debarment Committee. The department requesting debarment shall present evidence and argument to the Debarment Committee. In the event that the requesting department requests the assistance of the County Attorney's Office, the County Attorney's Office shall provide as counsel to the requesting department a representative of the office independent from any designated to advise the Debarment Committee in the proceedings.~~
- (3) ~~Notice of proposal to debar. DBD, on behalf of the Debarment Committee, shall issue a notice of proposed debarment advising the contractor and any specifically named affiliates, by certified mail, return receipt requested, or personal service, that:~~
- ~~(i) Debarment is being considered;~~
 - ~~(ii) Of the reasons and causes for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;~~
 - ~~(iii) That a hearing shall be conducted before the Debarment Committee on a date and time not less than twenty (20) days after service of the notice. The notice shall also advise the contractor that it may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine evidence and testimony presented against it.~~
 - ~~(iv) The notice shall also describe the effect of the issuance of the notice of proposed debarment, and of the potential effect of an actual debarment.~~
- (4) ~~No later than seven (7) calendar days prior to the scheduled hearing date, the contractor must furnish~~

~~DBD a list of the defenses, and the documents and records supporting those defenses, the contractor intends to present at the hearing. If the contractor fails to submit the list of defenses, in writing, and the documents and records supporting those defenses, at least seven (7) calendar days prior to the hearing, or fails to seek an extension of time, in writing, at least seven (7) calendar days prior to the hearing, within which to do so, the contractor shall have waived the opportunity to be heard at the hearing. Failure to request an extension at least seven (7) calendar days prior to the hearing shall constitute an absolute waiver to present defenses and to be heard before the Debarment Committee. The Debarment Committee Chair (or the Director of DBD, or his or her designee) has the right to grant or deny an extension of time so long as the request for an extension of time is made at least seven (7) calendar days prior to the hearing, and [[his or her decision may only be reviewed upon an abuse of discretion standard.~~

- (5) ~~Discovery. The process of discovery, including the subpoenaing of witnesses, the taking of depositions, the submission of interrogatories, and requests for documents, is not permitted under this ordinance. However, any party may make a public records request under Chapter 119 of the Florida Statutes.~~
- (6) ~~Hearsay evidence shall be admissible at the hearing but shall not form the sole basis for initiating a debarment procedure nor the sole basis of any determination of debarment. The hearing shall be transcribed, taped or otherwise recorded by use of a court reporter, at the election of the committee and at the expense of the county. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party.~~
- (7) ~~Debarment Committee's decision. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the Debarment Committee shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed,~~

~~material submissions made by the contractor. Where actions are based on disputed evidence, the Debarment Committee shall decide what weight to attach to evidence of record, judge the credibility of witnesses, and base its decision on the preponderance of the evidence standard. In the event that the contractor fails to appear at the debarment hearing or to present competent proof under affirmation or oath through persons with direct knowledge of the contractor's performance, the contractor shall be presumed to be not responsible and subject to debarment. The Debarment Committee's decision shall be based on a majority of the members of the Committee. The Debarment Committee shall be the sole trier of fact. The committee's decision shall be made within twenty (20) working days after conclusion of the hearing, unless the Debarment Committee extends this period for good cause.~~

- (8) ~~The committee's decision shall be in writing and shall include the committee's factual findings, the principal causes of debarment as enumerated in this Ordinance, identification of the contractor and all affiliates affected by the decision, and the specific term, including duration, of the debarment imposed.~~
- (9) ~~Notice of Debarment Committee's decision.~~
- (i) ~~If the Debarment Committee decides to impose debarment, and the Debarment Committee's decision is not overridden by the County Manager, the county manager shall give the contractor and any affiliates involved written notice by certified mail, return receipt requested, or hand delivery, within twenty (20) working days of the decision, specifying the reasons for debarment and including a copy of the committee's written decision; stating the period of debarment, including effective dates; and advising that the debarment is effective throughout the county departments.~~
- (ii) ~~If debarment is not imposed by the Debarment Committee, and the Debarment~~

~~Committee's decision is not overridden by the County Manager, the county manager shall notify the contractor and any affiliates involved, by certified mail, return receipt requested, or personal service, within twenty (20) working days of the decision.~~

- (10) ~~All decisions of the Debarment Committee shall be final and shall be effective on the date the notice is signed by the county manager unless overridden by the County Manager within twenty (20) working days of the date of the Debarment Committee's written decision. If the County Manager overrides the decision of the Debarment Committee, the County Manager shall state in writing the reasons for his or her override of the Debarment Committee's decision. If the County Manager does not override the Debarment Committee's decision within twenty (20) working days of the date of the Debarment Committee's written decision, and does not sign the notice to the contractor as stated in Section (i)(9) above, the Debarment Committee's decision is final, and becomes effective on the twenty first (21st) working day after the date of the Debarment Committee's written decision. The Director of DBD or his or her designee shall then issue the notice to the contractor as required in Section (i)(9) above. Decisions of the Debarment Committee may be appealed to the Appellate Division of the Circuit Court within thirty (30) calendar days of the date the notice is signed by the County Manager. Decisions of the Debarment Committee shall not be overturned absent a finding of abuse of discretion. A debarred contractor may seek a stay of the debarment decision in accordance with the Florida Rules of Appellate Procedure.~~

(j) *Period of debarment:*

- (1) ~~The period of debarment imposed shall be within the sole discretion of the Debarment Committee. Debarment shall be for a period commensurate with the seriousness of the cause(s), and, where applicable, within the guidelines set forth below, but in no event shall exceed five (5) years.~~

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- (2) ~~The following guidelines in the period of debarment shall apply except where mitigating or aggravating circumstances justify deviation:~~
- (i) ~~For commission of an offense as described in subsection (h)(1)(i): five (5) years.~~
 - (ii) ~~For commission of an offense as described in subsection (h)(1)(ii): five (5) years.~~
 - (iii) ~~For commission of an offense as described in subsection (h)(1)(iii): five (5) years.~~
 - (iv) ~~For commission of an offense as described in subsection (h)(1)(iv): one (1) to two (2) years.~~
 - (v) ~~For commission of an offense as described in subsection (h)(1)(v): two (2) to five (5) years.~~
 - (vi) ~~For commission of an offense as described in subsections (h)(2)(i) or (ii): two (2) to five (5) years.~~
 - (vii) ~~For commission of an offense as described in subsection (h)(2)(iii): one (1) to two (2) years.~~
- (3) ~~The Debarment Committee may, in its sole discretion, reduce the period of debarment, upon the contractor's written request, for reasons such as:~~
- (i) ~~Newly discovered material evidence;~~
 - (ii) ~~Reversal of the conviction or civil judgment upon which the debarment was based;~~
 - (iii) ~~Bona fide change in ownership or management;~~
 - (iv) ~~Elimination of other causes for which the debarment was imposed; or~~
 - (v) ~~Other reasons the Debarment Committee deems appropriate.~~

- (4) ~~The debarred contractor's written request shall contain the reasons for requesting a reduction in the debarment period. DBD, with the assistance of the affected department, shall have thirty (30) days from receipt of such request to submit a written response thereto. The decision of the Department Committee regarding a request made under this subsection is final and non-appealable.~~
- (k) *Scope of debarment:*
- (1) ~~The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, agent, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval or acquiescence.~~
- (2) ~~The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.~~
- (3) ~~The fraudulent, criminal or other seriously improper conduct of any subcontractor associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the subcontractor's performance of duties for or on behalf of the contractor and the contractor had knowledge of, approved of, or acquiesced in this conduct. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.~~
- (4) ~~The fraudulent, criminal, or other seriously improper conduct of one (1) contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint~~

~~venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval, or acquiescence.]]~~

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provisions, shall become and be part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall be effective 10 days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

APW

Prepared by:

HBo

Hugo Benitez

Prime Sponsor: Commissioner Rebeca Sosa