

MEMORANDUM

Agenda Item No. 4(A)

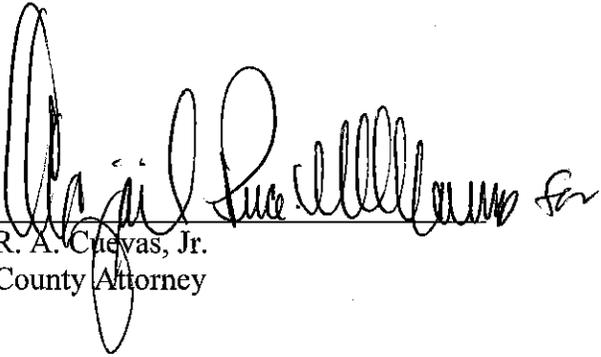
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 30, 2015

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

SUBJECT: Ordinance amending Section 2-11.16 of the Code, clarifying that where not precluded by federal or state law or funding source, hourly wages to be paid on federally or state funded County construction contracts shall be the higher of Davis-Bacon Act rates or the rates under Section 2-11.16 of the Code

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava.



R. A. Cuevas, Jr.
County Attorney

RAC/smm

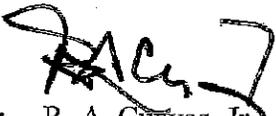


MEMORANDUM

(Revised)

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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 Mayor'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. 4(A)
6-30-15

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 2-11.16 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, CLARIFYING THAT WHERE NOT PRECLUDED BY FEDERAL OR STATE LAW OR FUNDING SOURCE, HOURLY WAGES TO BE PAID ON FEDERALLY OR STATE FUNDED COUNTY CONSTRUCTION CONTRACTS SHALL BE THE HIGHER OF DAVIS-BACON ACT RATES OR THE RATES UNDER SECTION 2-11.16 OF THE CODE; 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 2-11.16 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-11.16. County construction contracts.

- (a) In addition to the other elements of the term "responsible bidder" in law or in the discretion of the Board of Commissioners of Miami-Dade County, as applies to competitively bid County contracts in excess of one hundred thousand dollars (\$100,000.00) for the construction, alteration, and/or repair, including painting or decorating, of public buildings or public works, shall mean a bidder who provides documented proof in its bid that the various classes of laborers and mechanics will be paid no less than the specified overall hourly rates as set forth in the contract specifications. All leases and contracts entered into after the effective date of this ordinance which provide for privately funded construction, alteration or repair of

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

buildings or improvements located on County-owned land shall require laborers and mechanics performing such work be paid no less than the overall hourly rates required on competitively bid County construction contracts under this Section unless specifically exempted below. Fees for monitoring compliance with this Section shall be charged as provided in the most current County-wide Budget as follows: for County construction contracts, the Department of Business Development shall charge the using department therefor; for leases and contracts which provide for privately funded construction, alteration or repair of buildings or improvements on County owned land, the party contracting with the County shall be charged therefor.

(b)

* * *

[[The foregoing and the provisions of Section 2-11.16(e) notwithstanding, —where]] >>Where<< not otherwise precluded by state or federal law, the overall per hour rate shall be the higher rate under this Section 2-11.16 or the rate of wages to be paid under the requirements of the Davis-Bacon Act; provided, further, that the overall per hour rate shall not be the higher rate if the federal government requires the County as a condition of receiving federal funds for a project to pay no more than the wages as determined by the U.S. Department of Labor under the Davis-Bacon Act on project contracts.

* * *

(d)

The County [[Manager]] >>Mayor<< shall establish an administrative procedure for monitoring compliance with and enforcement of the requirements of this Section. Such procedure shall provide that:

- (i) DBD may conduct investigations of compliance with the requirements of this Section and issue written notices to a contractor (or subcontractor under the contractor) when it determines based on such investigation that the contractor (or subcontractor) has not complied herewith;
- (ii) The contractor or subcontractor shall respond in writing to the notice of noncompliance;

- (iii) Based on the response, DBD may determine to rescind the notice of noncompliance or to conduct a Compliance Meeting with the affected contractor or subcontractor at which any additional evidence may be presented;
- (iv) DBD shall make a written compliance determination following any Compliance Meeting. A determination that the contractor or subcontractor has not complied with the requirements of this Section shall state the basis therefore and shall advise the contractor or subcontractor of its right to file a written request with the County ~~[[Manager]]~~ >>Mayor<< within 30 calendar days to schedule an administrative hearing before a hearing officer to appeal the determination as provided below; and
- (v) A contractor or subcontractor who fails to respond to a notice of noncompliance, fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by DBD after a Compliance Meeting shall be deemed not to have complied with the requirements of this ordinance as stated in the notice or determination of non-compliance and, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the employee and the contractor or subcontractor shall be fined the applicable penalty for such underpayment as provided in this subsection (d). A contractor or subcontractor who does not make the required payment of the underpaid wages or who does not pay any fine imposed hereunder shall not be deemed responsible to perform subsequent County construction contracts and shall be ineligible to be awarded such contracts for so long as the identified underpayment or any penalties imposed therefor remain outstanding, not to exceed three years.

Upon timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of non-compliance, the County ~~[[Manager]]~~ >>Mayor<< shall appoint a hearing officer and fix a time for an

administrative hearing thereon. A notice of hearing (together with a copy of DBD's determination of non-compliance) shall be served upon the contractor (or subcontractor). Upon completion of the hearing, the hearing officer shall submit proposed written findings and recommendations together with a transcript of the hearing to the County ~~[[Manager]]~~ >>Mayor<< within a reasonable time. The County ~~[[Manager]]~~ >>Mayor<< shall determine whether the contractor (or subcontractor) failed to comply with the requirements of this ordinance. If the ~~[[Manager's]]~~ >>Mayor's<< determination is that the contractor (or subcontractor) failed to comply, and that such failure was pervasive, the ~~[[Manager]]~~ >>Mayor<< may order that the contract work be suspended or terminated, and that the noncomplying contractor (or subcontractor) and the principal owners thereof be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration and/or repair, including painting or decorating of public buildings or public works for a period of up to three (3) years. In addition, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the affected employees and the contractor or subcontractor shall be fined the penalties provided below. If the ~~[[Manager's]]~~ >>Mayor's<< determination is that the contractor (or subcontractor) failed to comply and that such failure was limited to isolated instances and was not pervasive, the County ~~[[Manager]]~~ >>Mayor<< may, in the case of underpayment of the required overall per hour rate, order an amount equal to the amount of such underpayment be withheld from the contractor and remitted to the employee, and may also fine the contractor or subcontractor for such noncompliance as follows: for the first underpayment, a penalty in an amount equal to 10% of the amount thereof; for the second underpayment, a penalty in an amount equal to 20% thereof; for the third and successive underpayments, a penalty in an amount equal to 30% thereof. A fourth violation, shall constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray DBD's costs of

administering this ordinance. If the required payment is not made within a reasonable period of time, the noncomplying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration, and/or repair, including painting or decorating of public buildings or public works for a period of three (3) years.

~~[(e)] This section shall not apply to County contracts for construction or alteration which are federally funded or which are otherwise subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)).~~

~~[(f)]~~>>(e)<< This section shall not apply to any contract for which authority to advertise for bids has been obtained prior to the effective date of this section [Ordinance No. 90-90].

~~[(g)]~~>>(f)<< This ordinance shall not apply to blanket contracts designed to consolidate an indeterminate number of individual smaller construction, repair or alteration activities which may be needed over a fixed period of time, provided the overall contract ceiling does not exceed five hundred thousand dollars (\$500,000.00) and further provided that no individual work order issued under such contract shall exceed twenty-five thousand dollars (\$25,000.00) per craft.

~~[(h)]~~>>(g)<< As used in the construction of this section, references to the masculine shall include the feminine and neuter and references to the singular shall include the plural, and vice-versa.

~~[(i)]~~>>(h)<< Exemption for certain privately funded construction. This Section shall not apply to leases and contracts entered into after the effective date of this ordinance which provide for privately funded construction, alteration or repair of buildings or improvements located on County-owned land whose estimated cost is equal to or less than five million dollars (\$5,000,000.00) which are financed:

- (1) Solely through private sources, without one dollar (\$1.00) or more of financing provided through any federal, state, county or local governmental entity or bond sources including Industrial Development

Authority (IDA) bonds or similar type of bond funding; or

- (2) by entities which meet all of three (3) of the following conditions: exemption from Federal Income Taxes under section 501(c)(3), not-for-profit and community-based.

[(+)]>>(i)<< The foregoing notwithstanding, any lease or contract entered into after the effective date of this ordinance which provides for privately funded construction, alteration or repair of buildings or improvements located on County-owned land whose estimated cost is equal to or less than five million dollars (\$5,000,000.00), receives IDA bond financing and also receives State and/or local development incentives (including but not limited to: waiver of or reduced impact or permit fees and reduced property or other taxes) based on job creation shall not require payment of the overall hourly rates provided by this Section. Such lease or contract shall provide that in the event the job creation requirements on which the foregoing development incentives were conditioned are not fulfilled, the lessee shall be required to pay a penalty of up to twenty (20) percent of the cost of such construction, alteration or repair. Said penalty shall be in addition to any rental or other payments required in each lease or contract to which this subsection applies. Said penalty shall be paid to Miami-Dade County for deposit in the Department of Business Development Compliance Trust Fund and used to cover the costs of monitoring compliance with this Section.

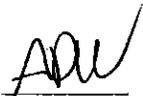
Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a 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 4. This ordinance shall become effective ten (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:



Prepared by:



Bruce Libhaber

Prime Sponsor: Daniella Levine Cava