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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM Agenda Item No. 11(A)(5)

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

DATE: January 21, 2010

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

SUBJECT: Resolution rescinding Administrative Order 3-24, Responsible Wages and Benefits for County construction contracts, and approving Implementing Order 3-24 to clarify terms requiring the use of the higher wage rates between Davis-Bacon and the County's Prevailing Wage Rate Structure

Resolution No. R-54-10

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Natacha Seijas.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

RESO\2078

MEMORANDUM

(Revised)

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

DATE: January 21, 2010

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

SUBJECT: Agenda Item No. 11(A)(5)

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. 11(A)(5)
1-21-10

RESOLUTION NO. **R-54-10**

RESOLUTION RESCINDING ADMINISTRATIVE ORDER 3-24, RESPONSIBLE WAGES AND BENEFITS FOR COUNTY CONSTRUCTION CONTRACTS, AND APPROVING IMPLEMENTING ORDER 3-24 TO CLARIFY TERMS REQUIRING THE USE OF THE HIGHER WAGE RATES BETWEEN DAVIS-BACON AND THE COUNTY'S PREVAILING WAGE RATE STRUCTURE UNLESS PROHIBITED BY STATE OR FEDERAL LAW OR DISALLOWED BY A GOVERNMENTAL FUNDING SOURCE

WHEREAS, the Board desires to make clear its intent to require the higher wage rate between the Davis-Bacon Act or the County's Prevailing Wage rates on Miami-Dade County construction projects,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby rescinds Administrative Order 3-24, Responsible Wages and Benefits for County Construction Contracts, and approves Implementing Order 3-24 to clarify the requirement that the higher wage between the Davis-Bacon Act or the County's Prevailing Wage Structure be utilized on County construction contracts, unless prohibited by federal or state law or disallowed by a governmental funding source.

The Prime Sponsor of the foregoing resolution is Commissioner Natacha Seijas. It was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Dennis C. Moss** and upon being put to a vote, the vote was as follows:

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of January, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

~~Administrative Order~~ Implementing Order

~~Administrative Order~~ Implementing Order No.: 3-24
Title: Responsible Wages and Benefits for County Construction Contracts
Ordered: ~~7/06/2006~~
Effective: ~~7/16/2006~~

AUTHORITY:

Section 4.02 of the Miami-Dade County Home Rule Amendment and Charter and Section 2-11.16 of the Code of Miami-Dade County.

SUPERSEDES:

This ~~Administrative Order (AO)~~ Implementing Order (IO) supersedes AO 3-24, ordered ~~July 25, 2000~~ July 6, 2006 and effective ~~August 4, 2000~~ July 16, 2006.

POLICY:

It is the policy of Miami-Dade County that in order to be a responsible bidder for a competitively bid construction contract in excess of one hundred thousand dollars ($100,000) a bidder must pay laborers and mechanics performing work on the project no less than the hourly rates specified in accordance with Section 2-11.16 of the Code of Miami-Dade County. It is also the policy of Miami-Dade County that in all leases of County-owned land which provide for privately funded construction improvements thereon whose construction costs are greater than or equal to $1 million dollars, any portion of which are financed by any federal, state or local governmental entity or by bonds issued by such entities, including the Industrial Development Authority (IDA), shall include the requirements of this ~~AO~~ IO, including requiring the lessee to require any contractor constructing such improvements to pay responsible wages as provided under Sec. 2-11.16 to the same extent as if such improvements were County construction. A lessee must pay the County the monitoring fee(s) for the project.

In those cases where the lessee(s) and their contractor(s) agree to pay responsible wages throughout the construction phase of the agreement, an irrevocable letter of credit or escrow amount equal to 20% of the construction cost will not be required, rather the processes noted herein for County construction projects will be applicable, including payment of monitoring fees by the lessee.

PURPOSE:

This ~~AO~~ IO implements the responsible bidder ordinance and establishes an administrative procedure for resolution of complaints regarding underpayment of required hourly wages, as well as failure to comply with requirements of lessees on County-owned land involving privately funded construction. The ~~Department of Business Development (DBD)~~ department of Small Business Development (SBD) is responsible for implementing this ~~AO~~ IO.

EXCEPTION:

This ~~AO~~ IO does not apply to County construction contracts less than or equal to one hundred thousand dollars ($100,000) or blanket County contracts designed to consolidate an indeterminate number of individual smaller construction contracts, repair or alteration activities which may be needed over a fixed period of time, provided the overall blanket contract ceiling does not exceed five hundred thousand dollars ($500,000) and further provided that no individual work order issued under such blanket contract shall exceed twenty five thousand dollars ($25,000) per craft~~., nor does it apply to County construction contracts which are federally funded or otherwise subject to the Davis-Bacon Act (40 U.S.C. 276 (a)~~. Furthermore, this ~~AO~~ IO shall not apply to those privately funded projects on County-owned land for construction or alteration of public buildings or public works which are financed solely through private sources, without one dollar ($1) or more of financing provided through any federal, state, county or local government entity or bond sources including IDA bonds or similar type bond funding.

The foregoing notwithstanding, those leases of County-owned land providing for privately funded construction or alteration of public buildings or public works whose construction costs are greater than or equal to $1 million dollars, any portion of which are financed with the use of IDA and have also received other State and/or local financed incentives based on job creation shall not be required to provide for payment of responsible wages for such construction. The lease shall however provide that in the event such a lessee does not fulfill the job creation requirements of the public financing or incentive, such lessee shall pay the County an additional lease payment of up to 20% of the construction cost of the improvements. The amount of such additional lease payment will depend on the percentage of the job creation requirements met as noted in the lease agreement with Miami-Dade County. Said additional lease payment shall be paid to Miami-Dade County for deposit in ~~DBD's~~ SBD's Compliance Trust Fund to support monitoring services for enforcement of this Ordinance (99-158).

DEFINITIONS:

The following definitions, as well as additional terms necessary for the understanding of this ~~AO~~ IO, shall apply:

A. Administrative hearing officer means a person designated by the County Manager to hold administrative hearings on complaints of practices prohibited by this ~~AO~~ IO.

B. Complaint means any written charge alleging a practice prohibited by this ~~AO~~ IO.

C. Compliance officer means the Director of ~~DBD~~ SBD or his or her designee to review compliance with Ordinances 90-143, 99-158 and this ~~AO~~ IO.

D. Contract means an agreement covered by this ~~AO~~ IO proposed by the County or Public Health Trust staff, or approved by the County Commission or Public Health Trust for construction, or proposed by the tenant or lessee for construction of privately funded improvements on County-owned land.

E. Contractor means any individual, corporation, partnership or other legal entity that directly or indirectly (e.g.; through an affiliate) submits offer for or is awarded, or reasonably may be expected to submit offers for or be awarded, a County contract or contracts with a lessee of County-owned land, for privately funded construction of improvements under such lease which is subject to the requirements of this ~~AO~~ IO.

F. Contracting officer means the person assigned under a County construction contract, usually a department director or the department director of the department administering a lease of County-owned land, or his or her designee, who has primary responsibility to manage and enforce same.

G. Construction means the building, maintaining, renovating, retrofitting, rehabilitation, painting, and decorating, altering, or repairing of a public improvement or a privately funded improvement on County-owned land. Additionally, the construction of privately and publicly funded projects on County-owned land shall include the initial installation of certain types of construction related services such as landscaping, demolition, hauling, rental and operation of heavy construction equipment, etc.

H. Debar means to exclude a contractor, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses from County contracting and subcontracting for a specified period of time, not to exceed three (3) years.

I. Lessee in this ~~AO~~ IO means a lessee of County-owned land under a lease which provides for privately funded construction of improvements on such land which are subject to the requirements of this ~~AO~~ IO.

J. Negotiated contract means a local area non-discriminatory written agreement between labor union organizations, which represent employees, and contractors.

K. Responsible bidder means a bidder who provides documented proof in its bid that for each classification, craft or type of employee necessary to perform the County construction work will be paid no less than the overall hourly rates set forth in the contract specifications.

L. Wages and benefits schedule means the basic hourly wage rate of pay and benefits contained in the local area non-discriminatory negotiated contracts between organizations which represent employees and contractors.

RESPONSIBILITY OF DEPARTMENTS LEASING COUNTY-OWNED LAND FOR CONSTRUCTION OF PRIVATELY FUNDED IMPROVEMENTS THEREON

A. Any department that negotiates the lease of County-owned land on which privately funded improvements (subject to the requirements of this ~~AO~~ IO will be constructed shall include provisions in such lease requiring all workers and mechanics performing such construction be paid responsible wages to the same extent as if the construction were being performed under contract with the County under Sec. 2-11.16, providing for the lessee to pay County ~~DBD~~ SBD monitoring fees and any additional lease payments for failure to fulfill any job creation requirements provided herein. Such lease shall further provide that the lessee shall include the requirements of Sec. 2-11.16 and this ~~AO~~ IO in the contract for construction of such improvements, including the right of the compliance monitor and contracting officer to access the contractor's records to monitor payment of responsible wages and enforce same, and shall provide that the lessee shall be responsible to the County for payment of all fines, penalties and backwages found due. Lessees of County-owned land of privately funded development projects subject to the requirements of Sec. 2-11.16 of the Code and this ~~AO~~ IO, shall:

1. Provide that laborers and mechanics performing work on such construction, shall be paid no less than the overall hourly rates that would be required of responsible bidders under Sec. 2-11.16 of the Miami-Dade County Code as if such construction were being competitively bid and funded by the County. Specifications for all such construction shall be furnished to the County prior to the issuance of notice to proceed for privately funded projects in order that the County may specify the hourly rates applicable thereto in accordance with the procedures provided in Section 2-11.16. All negotiated contracts (and subcontracts) entered into for construction of improvements hereunder shall contain the requirements of this Article, the provisions provided in subsections (i) through (viii) of subsection (b) of Section 2-11.16, and shall provide such negotiated contracts (and subcontracts) are subject to monitoring and enforcement of the obligation to pay no less than the specified overall per hour wage rates by the County as provided in Section 2-11.16. The wage rates shall be determined by the applicable calendar year in effect at the time the construction contract is entered into. Thereafter, the specifications shall provide that the overall per hour rate to be paid for work performed under the contract during each subsequent calendar year shall be the overall per hour rate in effect as of January 1st, of the year in which the work is performed.

2. Provide for payment to the County of monitoring fees for monitoring payment of responsible wages on such construction. These fees will be based on the schedule of fees approved by the BCC at the annual budget hearing for County construction projects. Said fees will be paid to ~~DBD~~ SBD on a quarterly basis.

B. Any department that negotiates the lease of County-owned land which provides for construction of improvements thereon whose construction costs are equal to or greater than $1 million, any portion of which are financed with the use of IDA financing and have also received other State and /or local incentives based on job creation does not have to provide for payment of responsible wages for such construction. Such leases however, shall provide that the lessee will either:

a. Maintain in escrow an initial amount equal to 20% of the construction costs of the privately funded improvements; or

b. Maintain an irrevocable letter of credit equal initially to 20% of said construction costs. The lessee under such lease will provide the County with the irrevocable letter of credit or escrow amount prior to receiving the notice to proceed for construction of such improvements and shall be kept in place as provided herein until all jobs required to be created in return for public financing or other incentives received by the lessee have been satisfied. The escrow funds or

irrevocable letter of credit will be returned to the lessee after all of the required jobs have been created to the County's satisfaction. In the event jobs are not created by the time designated in the lease agreement between the lessee and Miami-Dade County, the escrow funds shall revert to Miami-Dade County, for deposit in ~~DBD's~~ SBD's Compliance Trust Fund to support monitoring services required by Sec. 2-11.16 of the Code. In the case of an irrevocable letter of credit, the County shall draw on such letter of credit if the incentives are not met in an amount equal to the penalty imposed. The penalty of up to 20% will be assessed based on the percentage of the job creation requirement met. The job creation commitment will be monitored by the Office of Community and Economic Development (OCED). OCED will require a yearly status report from the lessee as to compliance with the job creation requirement and will conduct a yearly site visit to confirm the lessee's report. This yearly status report will be provided to the BCC by OCED. The amount in the escrow account or that is covered by the irrevocable letter of credit may be reduced as the jobs are phased in. Penalties for non-compliance for those leases that include job creation requirements will be deposited in ~~DBD's~~ SBD's Compliance Trust Fund. The proceeds from penalties will be used to defray compliance monitoring costs.

RESPONSIBILITY OF COMPLIANCE OFFICER:

The County Manager or his or her designee as the compliance officer shall, in cooperation with other agencies of the County government which are affected by the provisions of Section 2-11.16 of the Code of Miami-Dade County, be jointly responsible for implementing this section of the Code. Primary responsibilities of the compliance officer include the following:

A. Prepare, update and disseminate general conditions or other material for supplementing the bid specifications (including wages and benefits schedules) for inclusion with applicable specification and contract documents;

B. Prepare and update contract provisions pertaining to Section 2-11.16 of the Code of Miami-Dade County;

C. Provide an overview of the monitoring process; and

D. Administer investigation of complaints and assessment of penalties.

In addition, the compliance officer will be responsible for performing other appropriate duties and tasks as necessary to assure the proper management of this program and the required coordination with the Office of the County Manager and with other offices, departments and agencies of the County government and the Public Health Trust.

RESPONSIBILITY OF CONTRACTING OFFICER:

The contracting officer for each agency of County government issuing competitively bid County construction contracts or administering a lease of County-owned land on which privately funded construction subject to Section 2-11.16 of the Code and this ~~AO~~ IO, in cooperation with the compliance officer, shall:

A. Insert the appropriate notifications to bidders, lessees and contractors, and the applicable wages and benefits schedule in bid specifications, leases or contracts. The specifications for such contracts shall:

1. Include a sum certain in dollars and cents as an initial overall per hour wage rate for each craft or type of employee in accordance with this ~~AO~~ IO;

2. Mandate the contractor to whom the contract is awarded, and any of its subcontractors performing any of the contract work, pay not less than the specified overall per hour rate adjusted over the term of the contract as provided in subsection (i) of the County Code 2-11.16 or applicable Davis-Bacon Act rate, whichever rate is greater;

3. Provide that the contractor, and any of its subcontractors, may fulfill the obligation to pay such specified overall per hour rate by payment to the employee of the hourly wage rate listed in the negotiated contracts (or, if applicable, under subsection (i) of the County Code 2-11.16, the "basic hourly rate of pay" as defined in 29 CFR 5.24 contained in the Secretary of Labor's wage determination for such crafts or type of employee plus either: (i) payment on the employees

behalf of the cost (on a hourly basis) of the hospitalization, medical, pension and life insurance benefits specified for such crafts or type of employee; or (ii) payment to the employee (in addition to the listed hourly wage rate, or "basic hourly rate of pay if applicable) of an amount equal to the hospitalization, medical, pension and life insurance benefits (on an hourly basis) contractors are required to provide under the negotiated contracts (or, if applicable, under the subsection (i) of the County Code 2-11.16, an amount equal to the fringe benefit payments on an hourly basis for hospitalization, medical, pension and life insurance benefits contained in the Secretary of Labor's wage determination) for such craft or type of employee. Payments to employees shall be counted towards fulfillment of the above obligation only to the extent that such payments are made by check or money order;

4. Provide that the contractor, and any of its subcontractors shall post in a visible place on the site where such contract work is performed (1) the schedule of the specified overall per hour rate and benefits for each applicable classification specified by such negotiated contracts; (2) the amount of liquidated damages for any failure to pay such specified overall per hour rate and benefits, and (3) the name and address of the responsible official in Miami-Dade County to whom complaints should be given;

5. Provide that the County may withhold from the County contractor or require the lessee to withhold from the lessee's contractor so much of accrued payments as may be considered necessary to pay employees of the contractor or any subcontractor under them for the performance of the contract work, the difference between the overall per hour and benefits required to be paid by the contractor to the employees on the work and the amounts received by such employee and where violations have been found, the contractor or their agents shall not be entitled to refunds of the amount withheld;

6. Require the contractor and each subcontractor to keep, or cause to be kept, accurate written records signed under oath as true and correct showing:

a. the names, Social Security numbers, and craft classifications of all employees performing work on said contract;

b. the hours and fractions of hours for every type of work performed by each employee;

c. the combined dollar amount of all wages, any contributions to benefit plans, and payment made to each employee of the overall per hour rate required by this Section and further require the contractor to submit to the County;

d. a list of all subcontractors and the names and social security numbers of all employees thereof who performed work each day on the contract, and further require each subcontractor to also submit to the County; and

e. a list of names and Social Security numbers of its employees who performed work each day on the contract.

7. Provide that no contractor or subcontractors may terminate an employee performing work on the contract and/or retaliate against an employee for filing a complaint regarding payment of required overall per hour rates.

B. Assure that contractors have provided the required fair wage affidavit certifications and have posted the required wage and complaint information at the job site(s).

C. Perform periodic examinations of contractor and subcontractor payroll records.

D. Perform the necessary worksite inspections and worker interviews to assure that employees are being paid the proper wages according to those classifications. In addition, contracting officers will be responsible for performing other appropriate duties and tasks as necessary to assure the proper administration of this program and the required coordination with lessees, contractors, subcontractors and workers on County construction sites.

RESPONSIBILITY OF BIDDER:

Bidders bidding on competitively bid construction contracts subject to the requirements of Section 2-11.16 of the Code and this ~~AO~~ IO, shall:

Provide documented proof in their bids that the various classes of laborers and mechanics will be paid no less than the specified combined overall hourly wage rates and benefits as set forth in the contract specifications.

RESPONSIBILITY OF SUCCESSFUL AWARDEE:

The successful awardee and any subcontractor(s) under them of a competitively bid construction contract or privately funded contract on County-owned land subject to the requirements of Section 2-11.16 of the Code and this ~~AO~~ IO, shall:

A. Pay their employees not less than the specified combined hourly wage rates and benefits applicable to the employee classification in which such employees are working on the project. Such payment obligations may be fulfilled by payment of wages, contributions to employees' benefit plans, payments made by check or money order, or any combinations thereof;

B. Post in a visible place or the worksite (1) the schedule of the specified combined overall hourly wage rate and benefits for each applicable classification specified by the negotiated contract; (2) the amount of liquidated damages for any failure to pay such rates; (3) the name and address of the responsible County official to whom complaints of practices prohibited by this ~~AO~~ IO should be given; (4) make information available to the County on any and all wage and benefits documentation and information for review by the County including, but not limited to, canceled checks, bank statements and sufficient information to determine the cost of the plan for each employee in terms of actual benefits to the employee;

C. Keep or cause to be kept, accurate written records signed under oath as true and correct showing the names, Social Security numbers, and craft classifications of all employees performing work on the contract, the combined dollar amount of all wages, any cost of contributions to benefits plans and any cash payments paid to each employee;

D. Submit to the County a list of all subcontractors and the names and Social Security numbers of all employees thereof who performed work each day on the contract;

E. Refrain from terminating, or otherwise retaliating, against an employee performing work on the contract even though a complaint of practices prohibited by this ~~AO~~ IO has been filed by the employee; and

F. Allow compliance officer ready access to documents and employees for interviews without interference.

PROCEDURES FOR DETERMINING OVERALL HOURLY WAGE RATES AND CLASSIFICATION OF EMPLOYEES:

The compliance officer will make necessary arrangements to obtain the required data on employee classifications and combined overall hourly wage rates and benefits therefore. This procedure shall include the following steps:

A. Request current and updated copies of local area non-discriminatory negotiated contracts between organizations which represent employees and contractors;

B. The specifications for each competitively bid County contract in excess of one hundred thousand dollars ($100,000) shall specify a combined per hour wage rate and benefits to be paid to each craft or type of employee necessary to perform the contract work. In ascertaining the initial and overall rate to be paid, the minimum standard shall be the base rate dollar amount on an hourly basis of the wages, plus hospitalization, medical, pension and life insurance benefits for such classification under contracts in effect as of January 1st of the calendar year in which the bid is advertised. If a particular classification of employee is not listed in such contracts, in ascertaining the rate to be paid those employees, the minimum standard shall be the combined overall dollar amount on an hourly basis on the "basic hourly rate of pay" (as defined in 29 CFR 5.24) and of the fringe benefits payments for hospitalization, medical, pension and life insurance benefits for such classification under the Secretary of Labor's wage determination (made pursuant to the provisions of the Davis-Bacon Act) in effect for Miami-Dade County, Florida, as of January 1st of the calendar year in which the proposed bid is expected to be advertised;

C. The foregoing and the provision of Section 2-11.16(e) notwithstanding, 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 County construction contracts;

D. Request an affidavit for each agreement in (A) above that specifies the overall hourly wage rate and benefits contribution (medical, hospitalization, life insurance and pension payments) for each classification, craft or type of employee necessary to perform the County construction work, such affidavit to be sworn to and subscribed before a Notary Public by an authorized representative of the employee's organization;

E. Maintain and make accessible files of these agreements and affidavits to the compliance and contract officers;

F. Organize and reproduce this data to provide a sum certain (minimum standard) of the combined overall dollar amount on an hourly basis of the wages and of the medical, hospitalization, life insurance and pension benefit contribution rates for such classifications under contracts; and

G. Distribute copies of the wages and benefits schedules to County departments and the Public Health Trust.

PROCEDURES FOR UPDATING FORM CONTRACT PROVISIONS:

The compliance officer will draft general contract provisions, as necessary, to supplement the contracts prepared by the County departments and the Public Health Trust. This procedure shall include the following steps:

A. Define clearly the reason for the proposed general contract provision in writing;

B. Draft the proposed general contract provisions for review by interested and affected parties;

C. Submit proposed general contract provisions to the Office of the County Attorney for review and approval as to form and legal sufficiency; and

D. Distribute copies of approved general contract provisions for insertion into County contracts.

PROCEDURES FOR COORDINATION OF MONITORING PROCESS:

The compliance officer will oversee the monitoring process. This procedure shall include the following steps:

A. Define clearly the problems or issues related to the monitoring process in writing based on experience with the implementation of Section 2-11.16 of the Code of Miami-Dade County;

B. Draft the document to include the ~~AO~~ IO provisions which appropriately address the problem or issue;

C. Submit the proposed material (guides, forms, policies, procedures or regulations) to interested and affected parties involved;

D. Distribute copies of this material for implementation purposes;

E. Require that the lessee provide an irrevocable letter of credit submitted to the County Finance Department, or a deposit into a County escrow account equal to 20% of the construction costs of improvements and/or alterations prior to issuance of notice to proceed and impose sanctions on contractors and/or subcontractors in the event of non-compliance with the incentive requirements of the agreement between the lessee and the County;

F. Impose sanctions on contractors and/or subcontractors in the event of non-compliance with Section 2-11.16 of the Code of Miami-Dade County.; and

G. Impose sanctions as noted in the lease agreement with Miami-Dade County on lessees and their contractor(s) in the event of non-compliance with Section 2-11.16 of the Code of Miami-Dade County and the requirements of the agreement with Miami-Dade County by seizing the funds held in escrow or collecting upon the letter of credit.

PROCEDURES FOR NOTIFICATION AND DOCUMENTS:

The contracting officer responsible for the construction contracts will insert appropriate notices of applicable standard wages and benefits schedules in bid specifications, contracts, or leases (U.S. Department of Labor, Memorandum 130). This procedure shall include the following steps:

A. Notify the compliance officer of approved construction projects subject to the provisions of Section 2-11.16 of the Code of Miami-Dade County and this ~~AO~~ IO prior to advertising for bids and provide the compliance officer with a copy of the specifications and contract documents (Project Manual);
B. Send copy of advertisement for bids to the compliance officer when the project is to be advertised;
C. Notify the compliance officer of scheduled Prebid, PreWork or Pre-Construction Conferences;
D. Notify the compliance officer when contracts have been awarded;
E. Provide the compliance officer with notices to proceed; and
F. Consult the compliance officer where there is a discrepancy as to a trade classification to determine the actual classification as to the scope of work required.

PROCEDURE FOR INSPECTING CONSTRUCTION WORKSITE(S):

The contracting officer responsible for construction contracts and privately funded construction of improvements on County-owned land, in cooperation with the Compliance Officer, shall inspect the worksite(s) of these projects. This procedure shall include the following steps:
A. Inspect the construction site to determine if the required data (notice/wages and benefits schedules) have been posted by the prime contractor and/or subcontractors, and that the required data are located in a visible place;
B. Prepare an inspection report of the construction worksite and, if discrepancies are noted, notify in writing the prime contractor and/or subcontractor to take appropriate corrective action;
C. Maintain a file of worksite inspection reports and corrective action; and
D. Submit a summary report of worksite inspections to the compliance officer on a monthly basis and provide copies of inspection reports.

PROCEDURES FOR INTERVIEWING WORKERS:

The contracting officer responsible for County construction contracts and privately funded construction of improvements on County-owned land, in cooperation with the compliance officer, will interview workers employed at these projects. This procedure shall include the following steps:
A. Interview workers on the job site to determine if:
1. they are working in appropriate trade or worker classifications; and
2. they are being paid appropriate specified combined overall hourly wage rates and benefits for trade or worker classification.
B. Prepare a report for each worker interviewed on the job site, and, if discrepancies are noted, notify in writing the prime contractor and/or subcontractor to take corrective action;
C. Maintain files of worker interview reports and corrective action measures; and
D. Submit a summary report of worker interviews to the compliance officer on a monthly basis and provide copies of interview reports.
In no instance shall a contractor and/or subcontractor retaliate in any way to employees who file complaints regarding violations of Section 2-11.16 of the Code of Miami-Dade County.

PROCEDURES FOR EXAMINING PAYROLL RECORDS:

The contracting officer responsible for construction contracts and privately funded construction improvements on County-owned land, in cooperation with the compliance officer, shall receive and examine the payroll records for these projects. This procedure shall include the following:
A. Review payroll records of the contractor and/or subcontractor to determine if persons performing work on applicable County construction projects or privately funded projects on County-owned land are being paid specified combined overall hourly wage rates and benefits by the contractor and/or subcontractor as set forth in the specifications and contract documents;
B. Prepare a wage analysis, and, if discrepancies are noted, notify in writing the, lessee, contractor and/or subcontractor to take corrective action;
C. Maintain a file of payroll analyses and corrective action measures; and

D. Submit a summary report for payroll records to the compliance officer on a monthly basis with copies of certified payroll records.

PROCEDURES FOR RESOLUTION OF COMPLAINTS OF PRACTICES PROHIBITED BY THIS ~~AO~~ IO:

The compliance officer will administer the complaint process. This procedure shall include the following steps:

A. Review complaints, supporting material and conduct investigation(s); ~~DBD~~ SBD 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 investigations that the contractor (or subcontractor under the contractor) has not complied herewith;

B. The subcontractor shall respond in writing to the notice of noncompliance;

C. Coordinate the examination of appropriate records and analyze the information obtained from the investigation with the contracting officer responsible for managing the construction contract; Based on the response, ~~DBD~~ SBD 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;

D. Coordinate, mediate and encourage resolution of the complaint between the contracting officer, the contractor and/or subcontractor, and the complainant; ~~DBD~~ SBD 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 within 30 calendar days to reschedule an administrative hearing before a hearing officer to appeal the determination as provided below;

E. Maintain a file of complaints and any resolution thereof; 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~~ SBD after a Compliance Meeting shall be deemed not have complied with the requirements of this ~~AO~~ IO as stated in the notice of determination of noncompliance 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 under Penalties and Sanctions for County Contracts of this ~~AO~~ IO. 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 therefore remain outstanding, not to exceed three years;

F. Request the County Manager or his or her designee to appoint an administrative hearing officer within ten (10) days of the time at which other means to resolve the complaint have been exhausted (See D) and set a time for an administrative hearing; and

G. Coordinate the imposition of any penalties including, but not limited to, withholding of current accrued payments, liquidated damages, and/or debarment which may be imposed by the County Manager or his or her designee.

PROCEDURES FOR ADMINISTRATIVE HEARING:

The procedure for administrative hearings shall include the following steps:

A. Upon timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of non-compliance, Professional Support Services Division will schedule a hearing date.

B. Professional Support Services Division shall serve upon the contractor (or subcontractor) and/or lessee a notice of hearing together with a copy of ~~DBD's~~ SBD's determination of non-

compliance within five (5) working days of the appointment of the administrative hearing officer. Such notice shall include:

1. A copy of the written complaint, including reasons and causes for the proposed administrative hearing outlining alleged prohibited practices upon which it is based;
2. Which administrative penalties are being considered;
3. That an administrative hearing shall be conducted before an administrative hearing officer on a date and time not to exceed twenty (20) days after service of the notice. The notice shall also advise the contractor that they may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them; and
4. A description of the effect of the issuance of the notice of the proposed administrative hearing and the potential effect(s) of this administrative hearing.

C. The compliance officer shall, with the assistance of the contracting officer, present evidence and arguments to the administrative hearing officer.

D. No later than seven (7) calendar days prior to the scheduled hearing date, the contractor and/or lessee must furnish the compliance officer a list of the defenses the contractor intends to present at the administrative hearing. If the contractor and/or lessee fails to submit the list, in writing, at least forty-eight hours prior to the administrative hearing, or fails to seek an extension of time within which to do so, the contractor and/or lessee shall be deemed to have waived the opportunity to be heard at the administrative hearing. The administrative hearing officer shall have the right to grant or deny an extension of time, and the decision may only be reviewed upon an abuse of discretion.

E. Hearsay evidence shall be admissible at the administrative hearing, but shall not form the sole basis for initiating an administrative hearing procedure or form the sole basis of any determination of penalties. The administrative hearing shall be transcribed, taped or otherwise recorded by a court reporter, at the election of the administrative hearing officer 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.

QUALIFICATIONS OF HEARING OFFICERS:

A. Administrative hearing officers shall be residents of Miami-Dade County who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the County Manager or his or her designee. Qualifications for administrative hearing officers should include retired judges who are licensed and admitted to practice law in the State of Florida, or arbitrators or mediators certified by the Eleventh Judicial Circuit or State Bar Association. Appointees should become acquainted with the relevant ~~Administrative Order~~ Implementing Order and Ordinance governing the particular violation(s) to be heard. Additional qualifications include, but are not limited to, experience in equal opportunity, anti-discrimination, contracting, procurement, bonding or financial services activities. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk. The Clerk shall submit an annual report to the Board on the number of women who have served as administrative hearing officers.

B. The County ~~Manager~~ Mayor or his or her designee shall appoint as many administrative hearing officers as are deemed necessary. Every effort will be made to ensure that the appointment of hearing officers reflect the diversity of the demographics of Miami-Dade County. Appointments shall be made for a term of one (1) year. Any administrative hearing officers may be reappointed at the discretion of the County ~~Manager~~ Mayor, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual administrative hearing officers ; provided, however, that a determination as to reappointment must be made for each administrative hearing officers at the end of his or her one-year term. The County ~~Manager~~ Mayor shall have

the authority to remove administrative hearing officers at any time. Appointments to fill a vacancy shall be for the remainder of the unexpired term.

C. Administrative hearing officers shall not be County employees but shall be compensated at a rate to be determined by ~~AO~~ IO.

D. The Dade County Attorney's Office shall serve as general counsel to the administrative hearing officers.

PENALTIES AND SANCTIONS FOR COUNTY CONTRACTS:

The County Manager or his or her designee will administer the penalty and sanction process. This procedure shall include the following steps:

A. Upon completion of the administrative hearing, the administrative hearing officers shall submit written findings and recommendations together with a transcript of the administrative hearing to the County ~~Manager~~ Mayor or his or her designee within fifteen (15) days. If the determination of the County ~~Manager~~ Mayor or his/her designee 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 non-complying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed 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.

B. If the determination of the County ~~Manager~~ Mayor or his or her designee 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(s) and 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 and finding of noncompliance, 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~~ SBD's costs of administering Section 2-11.16 of the Code of Miami-Dade County.

C. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal there from, the non-complying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.

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

County ~~Manager~~ Mayor