

201136
Memorandum



Date: APR 16 2009

To: Department Directors

From: George M. Burgess
County Manager

Subject: Collusion Affidavit Requirement in County Contracting

On October 7, 2008, the Board of County Commissioners (Board) adopted Ordinance No. 08-113 which prohibits collusive bidding and requires certain contractors recommended for award on county contracts, leases, permits, concessions or management agreements to submit an affidavit on a form created by the Department of Procurement Management within five (5) days of the filing of the recommendation for award. A copy of the Collusion Affidavit form is attached.

On February 18, 2009, the County Attorney's Office issued the attached legal opinion clarifying that the ordinance only requires an affidavit from a recommended contractor when county ordinances, rules or contracts require that an award recommendation be filed with the Clerk of the Board.

To determine if an award recommendation for a specific solicitation must be filed with the Clerk of the Board, staff is directed to review Section 2-8.3 of the Code of Miami Dade County, Implementing Order 3-21, as well any additional requirements of specific solicitations to see if the award is subject to the filing requirements. If an award recommendation is not required to be filed (e.g. those that result in a Small Purchase Order or from Work Order Quotes from a pre-qualified pool of vendors), then the Collusion Affidavit is not necessary from the recommended vendor(s). Even if an affidavit is not required, the anti-collusion provisions of the Ordinance still apply and consideration of those factors should be given prior to award.

In addition to meeting these requirements, and to ensure that the Collusion Affidavit is not used as a vehicle for vendors to withdraw their bid and secure their bid or proposal bond, user departments must include the following language in all future solicitations requiring bid or proposal bonds:

"Failure to provide a Collusion Affidavit within 5 business days after the recommendation to award has been filed with the Clerk of the Board shall be cause for the contractor to forfeit their bid/proposal bond."

Should you have any questions or require clarification, please do not hesitate to contact Johnny Martinez, PE, Director, Office of Capital Improvements (for construction contracts), or Miriam Singer, Director, Department of Procurement Management.

All county staff must comply with the Ordinance.

Attachment

c: Honorable Carlos Alvarez, Mayor
Denis Morales, Chief of Staff, Office of the Mayor
Oren Rosenthal, Assistant County Attorney
Assistant County Managers
Assistants to the County Manager
Deputy and Assistant Directors
Procurement Liaisons

COLLUSION AFFIDAVIT

(Code of Miami-Dade County Section 2-8.1.1 and 10-33.1) (Ordinance No. 08-113)

BEFORE ME, A NOTARY PUBLIC, personally appeared _____
who being duly sworn states: (insert name of affiant)

I am over 18 years of age, have personal knowledge of the facts stated in this affidavit and I am an owner, officer, director, principal shareholder and/or I am otherwise authorized to bind the bidder of this contract.

I state that the bidder of this contract:

is not related to any of the other parties bidding in the competitive solicitation, and that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer.

OR

is related to the following parties who bid in the solicitation which are identified and listed below:

_____	_____
_____	_____
_____	_____

Note: Any person or entity that fails to submit this executed affidavit shall be ineligible for contract award. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers or the principals, corporate officers, and managers thereof which have a direct or indirect ownership interest in another bidder or proposer for the same agreement or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same agreement. Bids or proposals found to be collusive shall be rejected.

By: _____ 20 ____
Signature of Affiant Date

Printed Name of Affiant and Title Federal Employer Identification Number

Printed Name of Firm

Address of Firm

BID NO.:
BID TITLE:

SUBSCRIBED AND SWORN TO (or affirmed) before me this _____ day of _____,
20____

He/She is personally known to me or has presented _____
as identification. Type of identification

Signature of Notary

Serial Number

Print or Stamp Name of Notary

Expiration Date

Notary Public – State of _____

Notary Seal

Memorandum



Date: February 18, 2009
To: Miriam Singer, CPPO
Director
Department of Procurement Management
From: Oren Rosenthal
Assistant County Attorney
Subject: Request for Legal Opinion: Collusion Affidavit

You have requested a legal opinion to identify which contracts are subject to the collusion affidavit requirement of Section 2-8.1.1 of the Miami-Dade County Code as amended by Ordinance No. 08-113.

The prohibition against collusive bidding contained in Section 2-8.1.1 of the Code applies to all bids or proposals submitted for any County purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to section 2-10.4 and Section 287.055 Florida Statutes), lease, permit, concession or management agreements regardless of the value of the contract being solicited. The requirement that a contractor recommended for award must file a collusion affidavit is limited to those contracts where the Code or other rule or regulation requires that a recommendation be filed with the Clerk of the Board. Such affidavit must be submitted within five (5) business days of the filing of the recommendation.

A handwritten signature in black ink, appearing to read "Oren Rosenthal", written over a horizontal line.

Oren Rosenthal

**OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**



MEMORANDUM

Agenda Item No. 7(D)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: October 7, 2008

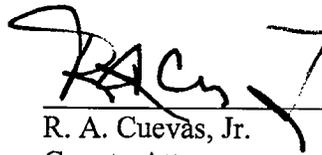
FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance amending
Sections 2-8.1.1 and
10-33.1 the Code of
Miami-Dade County
relating to bids from
related parties

08-113

This Ordinance was amended at the Budget and Finance Committee at the request of the sponsor to clarify that the proposed ordinance would also address collusion in license agreements and that any bidder who violates this ordinance will be referred for prosecution.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Joe A. Martinez and Co-Sponsor Commissioner Rebeca Sosa.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum



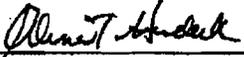
Date: October 7, 2008.

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burjas
County Manager

Subject: Ordinance amending Sections 2-8.1.1 and 10-33.1 of the Code of Miami-Dade County
relating to bids from related parties

The Ordinance relating to bids from related parties will not have a fiscal impact to Miami-Dade County.



Susanne M. Torriente
Chief Assistant County Manager

fis06108

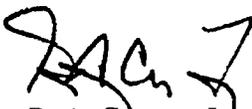


MEMORANDUM

(Revised)

TO: Honorable Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: October 7, 2008

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

SUBJECT: Agenda Item No. 7(D)
08-113

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(D)
10-7-08

ORDINANCE NO. 08-113

ORDINANCE AMENDING SECTIONS 2-8.1.1 AND 10-33.1 OF THE CODE OF MIAMI-DADE COUNTY RELATING TO BIDS FROM RELATED PARTIES TO INCLUDE A PROHIBITION ON COLLUSIVE BIDDING, REQUIRING THAT RECOMMENDED BIDDERS SUBMIT AN AFFIDAVIT REGARDING THEIR RELATION TO OTHER BIDDERS, AND EXPAND THE PROHIBITIONS TO INCLUDE THE PURCHASE OF GOODS OR SERVICES; 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 2-8.1.1 of the Code of Miami-Dade County, Florida, is amended as follows:¹

Sec. 2-8.1.1. Bids from related parties >>and bid collusion<< for the purchase of >>goods and services,<< leases, permits, concessions and management agreements.

>>(a)<< Notwithstanding any other provision of this Code, where two (2) or more related parties each submit a bid or proposal for any County >>purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Fla Stats.),<< lease, permit, >>licensing agreement,<< concession or management agreement, such bids or proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers or the principals >>, corporate officers, and managers<< thereof which have a direct or indirect ownership interest in

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

another bidder or proposer for the same agreement or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same agreement. Bids or proposals found to be collusive shall be rejected.

>>(b) All bids or proposals submitted for any County purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Fla Stats.), lease, permit, concession or management agreement must be genuine and not sham or collusive, or made in the interest or on behalf of any person not therein named, and the contractor may not have, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. Any bid or proposal submitted in violation of this subsection shall be rejected and the proposer shall be subject to debarment and >>referred for prosecution.

(c) A contractor recommended for award as the result of a competitive solicitation for any County purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Fla Stats.), purchase, lease, permit, concession or management agreement shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the County: stating either that the contractor is not related to any of the other parties bidding in the competitive solicitation or identifying all related parties, as defined in this Section, which bid in the solicitation; and attesting that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted in accordance with the provisions of this Section. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.<<

Section 2. That Section 10-33.1 of the Code of Miami-Dade County, Florida, is

amended as follows:

**Sec. 10-33.1. Bids precluded from related parties
>>and colluding bidders<<.**

>>(a)<< Notwithstanding any other provision of this Code, when two (2) or more related parties each submit a bid or proposal for any construction contract subject to this article, such bid or proposal shall be presumed collusive. The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers, or principals>>, corporate officers, and managers<< thereof which have a direct or indirect ownership interest in another bidder or proposer for the same contract or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership in another bidder or proposer for the same contract. Bids or proposals found to be collusive shall be rejected.

>>(b) All bids or proposals submitted for any for any construction contract must be genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. Any bid or proposal submitted in violation of this subsection shall be rejected and the proposer shall be subject to debarment.

(c) A contractor recommended for award as the result of a competitive solicitation for any County construction contract shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the County: stating either that the contractor is not related to any of the other parties bidding in the competitive solicitation or identifying all related parties, as defined in this Section, which bid in the solicitation; and attesting that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted in accordance with the provisions of this Section. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.<<

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 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 5. 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: October 7, 2008

Approved by County Attorney as
to form and legal sufficiency:



Prepared by Oren Rosenthal



Prime Sponsor: Commissioner Joe A. Martinez
Co-Sponsor: Commissioner Rebeca Sosa