


Date: SEP 14 2009

To: Department Directors

From: George M. Burgess
County Manager 

Subject: Material Breaches in County Contracting

On June 2, 2009 the Board of County Commissioners (Board) adopted Resolution R-749-09 (attached) which requires that the County Mayor or designee report to the Board instances where the County Mayor or designee waives a material breach of contract or allows a vendor, contractor or consultant more than 30 days to cure a material breach of a contract. The reporting requirement applies to contracts awarded by the Board and reports must be made to the Board within five business days. Department directors must effectively manage the performance of vendors, contractors or consultants on county contracts. Any performance deficiency must be identified and addressed expeditiously so as to avoid any escalation in terms of meeting contractual obligations.

A material breach of contract is a substantial breach of a significant term or terms of a contract that excuses the non-breaching party from further performance under the contract and gives the non-breaching party the right to recover damages. In the event that performance deficits lead to a material breach of contract, departments should contact the Department of Procurement Management for consultation. To date, we are not aware of any authorized waiver of a breach of contract. In addition, in no instance shall a material breach of contract be waived without careful evaluation from the administration. Once reviewed by the administration, any settlement of such breach will be brought to the Board for consideration.

For further information, please feel free to call me at 305-375-1880.

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

MEMORANDUM

Agenda Item No. 11(A)(22)

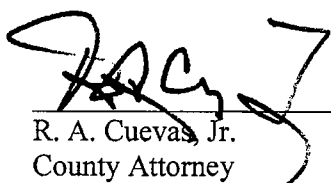
TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: June 2, 2009

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

SUBJECT: Resolution directing the Mayor
to notify the Board of County
Commissioners when the
County waives any material
breach of a contract or extends
a contract cure period beyond
30 days

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



R. A. Cuevas, Jr.
County Attorney

RAC/up



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss DATE: June 2, 2009
and Members, Board of County Commissioners

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

SUBJECT: Agenda Item No. 11(A)(22)

Please note any items checked.

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(22)
6-2-09

RESOLUTION NO. _____

RESOLUTION DIRECTING THE COUNTY MAYOR OR HIS
DESIGNEE TO NOTIFY THE BOARD OF COUNTY
COMMISSIONERS WHEN THE COUNTY WAIVES ANY
MATERIAL BREACH OF A CONTRACT OR EXTENDS A
CONTRACT CURE PERIOD BEYOND 30 DAYS

WHEREAS, the Miami-Dade County Home Rule Charter provides that the Board of
County Commissioners shall approve contracts with the County; and

WHEREAS, the Board of County Commissioners has delegated the administration of
contracts to the County Mayor or his designee; and

WHEREAS, the County Mayor or his designee exercises discretion in resolving material
breaches under the provisions of the contract and the authority of the Board pursuant to such
delegation; and

WHEREAS, timely notice to the Board of County Commissioners of the County Mayor
or his designee's exercise of delegated authority will allow the Board of County Commissioners
to provide further policy directives on contracts on an as needed basis,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, this Board directs the
County Mayor or his designee to provide notice to this Board, within 5 business days, of when
the County Mayor or his designee either waives a material breach of a contract awarded by the
Board or allows a vendor more than thirty (30) days to cure a material breach of a contract
awarded by the Board.

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

Dennis C. Moss, Chairman	
Jose "Pepe" Diaz, Vice-Chairman	
Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of June, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Oren Rosenthal