

Administrative Order



Administrative Order No.: 3-23

Title: Anti-discrimination in Contracting, Procurement, Bonding, and Financial Services Activities

Ordered: 7/8/1997

Effective: 7/8/1997

AUTHORITY:

Section 4.02 of the Dade County Charter; Chapter 11A, Article VII of the Metropolitan Dade County Code; Provisions of Rule 1.080 and Rule 1.090 of the Florida Rules of Civil Procedure; Ordinance 97-67.

POLICY:

It is hereby declared to be the policy of Dade County to eliminate and prevent discrimination in contracting, procurement, bonding, and financial services activities because of race, color, religion, ancestry, national origin, gender, pregnancy, age or disability.

I. DEFINITIONS:

- A. This Administrative Order incorporates completely the definitions listed in Ordinance 97-67. Those definitions, as well as additional terms necessary for the understanding of the Administrative Order, are listed below:
1. *Bid* means a quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letters of interest or offer to perform the contract.
 2. *Bidder* means any person, partnership, corporation or other business entity that submits a bid.
 3. *Complaint* shall mean any written charge alleging an unlawful practice prohibited by this article.
 4. *Complainant* shall mean any person, persons or business entities alleging an unlawful practice prohibited by this article.
 5. *Conciliation* or *settlement* shall mean a written agreement resolving or otherwise disposing of a complaint which is entered into by the parties and the Director prior to final resolution of the complaint.

6. *Construction* means the building, maintaining, painting, altering, or repairing of a public or private improvement.
7. *Contract* means an agreement that may include, but is not limited to those proposed by the County or Public Health Trust staff, or approved by the County Commission or Public Health Trust in any of the following classes:
 - a. procurement of goods and services not included in the subsections 2, 3, and 4 below;
 - b. construction of a public or private improvement;
 - c. professionals subject to Section 287.055, Florida Statutes and Section 2-10.4 of the Code of Metropolitan Dade County; or
 - d. other professional services including but not limited to accounting, legal, health care, consulting and management services.
8. *Determination* shall mean a final investigative report issued by the Director of DBD or his or her designee.
9. *Director of DBD*, as used in this Article, shall mean the Director of the Metropolitan Dade County Department of Business Development (hereinafter known as DBD) or his or her designee.
10. *Discrimination* shall mean any difference, distinction or preference in treatment, access or impact because of race, color, religion, ancestry, national origin, gender, pregnancy, age, or disability which is prohibited by this article. Discrimination also includes sexual harassment of any sort.
 - (a) *Disparate treatment* means intentional treatment of a person or business in a discriminatory manner which is prohibited by this article or by State or Federal law.
 - (b) *Disparate impact* means intentional or unintentional activities or practices which have a discriminatory impact on a group protected under this article.
11. *Financial institution* shall include any bank, insurance company, bonding company, savings and loan association, credit union, mortgage company or any other person or organization engaged in the business of lending money, guaranteeing loans, or extending credit.
12. *Good* means any tangible product, material or supply that is not a service.
13. *Hearing officer* is the person designated to hold hearings on complaints of discriminatory activities.
14. *Labor organization* shall include any union, association, joint committee, board or other combination, or any agent thereof, which bargains or deals with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment.
15. *Respondent* shall mean person, persons or business entities alleged to have engaged in an unlawful practice prohibited by this article or by State or Federal law.
16. *"Right to sue" letter* is a letter that would allow the charging party to initiate

a civil action in a court of appropriate jurisdiction.

II. DUTIES AND RESPONSIBILITIES OF THE DIRECTOR OF DBD (AS THEY RELATE TO DISCRIMINATION IN CONTRACTING, PROCUREMENT, BONDING, AND FINANCIAL SERVICES ACTIVITIES):

- A. The duties, functions, powers and responsibilities of the Director of DBD include but are not limited, to the following:
- (1) Enforcing the provisions of this article and any rules and regulations promulgated thereunder.
 - (2) Receiving, initiating, investigating, and determining charges of violations of this article.
 - (3) Facilitating settlement or conciliation of alleged violations of this article or State or Federal laws.
 - (4) Issuing final investigative reports which shall include findings, and conclusions of the Director of DBD as the result of investigations of complaints of discriminatory activities in contracting, procurement, bonding, and financial services.
 - (5) Providing assistance and direction in all matters relating to discrimination in contracting, procurement, bonding, and financial services activities.
 - (6) Publishing and disseminating information and educational materials relating to discrimination in contracting, procurement, bonding, and financial services activities.
 - (7) Issuing notice of a complainant's private right to sue under this article upon a written request from complainant received not sooner than one hundred eighty (180) days after the filing of a charge or amended charge of a violation of this article.
 - (8) Performing such other administrative duties as may be assigned by the County Manager relating to discrimination in contracting, procurement, bonding or financial services activities.
- B. When necessary to vindicate the public interest, the Director of DBD may, with the approval of the County Attorney, be designated a party in any proceeding under this article, and in connection therewith, shall be governed by the same procedures applicable to any other party to a charge of violations of this article. In any proceeding in which the Director participates as a party, the Director, with the approval of the County Attorney, may hire special counsel.
- C. Metropolitan Dade County shall be named a party to any judicial proceeding involving a challenge to the validity of this article. Services of process upon Metropolitan Dade County shall be accomplished as provided by Section 48.111, Florida Statutes.
- D. If at any time after a complaint has been filed, the Director of DBD or the hearing officer believes that appropriate civil action to preserve the status quo or to prevent irreparable harm appears advisable, the Director of DBD or the

hearing officer shall refer the complaint to the County Attorney, and request that the County Attorney take appropriate civil action to preserve the status quo or to prevent irreparable harm. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Florida Rules of Civil Procedure. The commencement of a civil action under this article shall be in addition to all remedies otherwise available under federal and state law, municipal ordinances and this article.

- E. Subject to the approval of the County Manager, the Director of DBD shall have the authority to adopt, promulgate, amend and rescind rules and regulations necessary to effectuate the purposes and provisions of this article following a public hearing and subject to approval by the County Commission.
- F. The Director of DBD shall certify the final order of the hearing officer. Such an adjudicative final order may review and uphold, modify or reverse recommended orders issued by the Director of DBD or his or her designated representative in accordance with the provisions of this article.
- G. The Director of DBD shall have the authority to administer oaths
- H. The Director of DBD shall have the authority to compel, by subpoena, the attendance of witnesses and the production of evidence for discovery, investigation, hearing or deposition for the preservation of testimony.
- I. The Director of DBD shall have the authority to issue remedial orders requiring cessation of violations of this article.
- J. The Director of DBD shall have the authority to issue such other orders as, in the judgment of the hearing officer, will carry out the purposes of this article, including but not limited to:
 - (1) Taking affirmative action and making corrections; and
 - (2) Requiring penalties and/or sanctions and to award quantifiable relief to a prevailing complainant for injuries incurred as a proximate result of an act prohibited by this article or to apply to the appropriate court for such an award, provided that such damages are not prohibited by state or federal law;
 - (3) To issue final orders dismissing the complaint.

III. QUALIFICATIONS OF HEARING OFFICERS AND REMOVAL; ORGANIZATION

- A. Hearing officers shall be residents of 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 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 Circuit Court or State Bar Associations. 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 hearing examiners.

- B. The County Manager or his or her designee shall appoint as many hearing officers as are deemed necessary. Appointments shall be made for a term of one (1) year. Any hearing officer may be reappointed at the discretion of the County Manager, 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 hearing officer; provided, however, that a determination as to reappointment must be made for each hearing officer at the end of each of his or her one-year term. The County Manager shall have authority to remove hearing officers at any time. Appointments to fill a vacancy shall be for the remainder of the unexpired term.
- C. Hearing officers shall not be County employees but shall be compensated at a rate to be determined by the County Manager or his or her designee.
- D. The Dade County Attorney's Office shall serve as general counsel to the hearing officers.

IV. BURDEN OF PROOF IN DISPARATE IMPACT CASES

- A. 1) An unlawful contracting, procurement, bonding, and/or financial services practice based on disparate impact is established under this subchapter only if--
 - (a) a complaining party demonstrates that a respondent uses a particular contracting, procurement, bonding, and/or financial services practice that causes a disparate impact on the basis of race, color, religion, gender, pregnancy, age, disability or national origin and the respondent fails to demonstrate that the challenged practice is consistent with business necessity; or
 - (b) the complaining party demonstrates that there is a non-discriminatory alternative contracting, procurement, bonding or financial services practice and the respondent refuses to adopt such alternative contracting, procurement, bonding, and/or financial services practice.
- 2) (a) With respect to demonstrating that a particular contracting, procurement, bonding, and/or financial services practice causes a disparate impact as described in subparagraph (1) (a), the complaining party shall demonstrate that each particular challenged contracting, procurement, bonding, and/or financial services practice causes a disparate impact, except that if the complaining party can demonstrate that the elements of a respondent's decision-making process are not capable of separation for analysis, the decision-making process may be analyzed as one contracting, procurement, bonding, and/or financial services practice.

- (b) If the respondent demonstrates that a specific contracting, procurement, bonding, and/or financial services practice does not cause a disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.
 - (c) A demonstration that a contracting, procurement, bonding, and/or financial services practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.
- B. The Florida Rules of Evidence shall apply where applicable.
- C. Except as otherwise provided in this subchapter, an unlawful contracting, procurement, bonding, and/or financial services practice is established when the complaining party demonstrates that race, color, religion, gender, pregnancy, age, disability, or national origin was a motivating factor for any contracting, procurement, bonding, and/or financial services practice, even though other factors also motivated the practice.

V. UNLAWFUL PRACTICES EXCEPTION

Nothing contained in this article or any amendments hereto shall require any person to enter into a voidable contract with any person lacking the legal competency to enter into contracts.

VI. UNLAWFUL PRACTICES

- A. It shall be an unlawful practice to retaliate or discriminate in any manner against a person because he or she has opposed a practice declared unlawful by this article, or because he or she has supported a person, persons or business entities protected by this article or because he or she has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference conducted under the authority of this article; or
- B. It shall be an unlawful practice to aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article or obstruct or prevent any person from complying with the provisions of this article.
- C. It shall be an unlawful and discriminatory practice for any person or business (including a financial institution) involved in public or private contracting, procurement, bonding or financial services activities, or any other person or business, because of race, color, religion, gender, national origin, age, pregnancy, disability, or handicap:
 - (1) To refuse to contract with a bona fide prime contractor or subcontractor on a construction contract; or
 - (2) To discriminate against a person or business in the terms, conditions, or privileges or participation in contracting, procurement, bonding or financial services activities; or

- (3) To cause to be made any untrue or intentionally-misleading statements or advertisements regarding availability of contracting, procurement, bonding or financial services activities; or
 - (4) To aid, abet, incite, compel, or coerce any person to engage in any of the practices prohibited by the provisions of this ordinance, or to obstruct or prevent any person from complying with the provisions of this section or any agreement entered into thereunder.
 - (5) To engage in disparate treatment of any person or business in a manner which is prohibited by this article.
 - (6) To engage in actions, or to cause others to engage in actions, which result in, or cause, a disparate impact on persons or businesses in a manner which is prohibited by this article.
 - (7) Sexual harassment of any sort is also considered an unlawful contracting, procurement, bonding or financial services practice under this subchapter.
- D. It shall be an unlawful practice to engage in any of the following acts because of an individual's race, color, religion, ancestry, national origin, age, gender, pregnancy, or disability:
- (1) To refuse, withhold or deny to a person any services, access, advantages, goods, facilities or privileges associated with contracting, procurement, bonding or financial services activities including the extension of credit; or
 - (2) To withhold, deny or make misleading statements in regards to payments on a contract after receipt of approved billing has been made to the contractor on those amounts not in dispute; or
 - (3) To refuse to provide bonding or financial services or to charge amounts for such bonding or financial services which is at a higher rate of cost than charge to other similarly-situated persons or businesses; or
 - (4) To fail or refuse to provide or to otherwise discriminate against any person or business in the providing of necessary information required to properly evaluate or consider any proposed contract or bid on a contracting, procurement, bonding or financial services opportunity. This shall include, but is not limited to, sharing of information unevenly, or not giving the same information to all parties requesting such information. Contractors bidding on county contracts shall be required to keep logs of phone calls to, and from, subcontractors, noting time and date of call, persons contacted, and subject of the call. For phone calls relating to bids, the information required on the log shall include name of person and/or firm, description of work that is being bid (including the description and/or contract number of the prime contract) and the dollar amount of the bid. Such logs shall be made available to Dade County personnel and may serve as evidence as to whether discriminatory activities have occurred in the providing of information; or
 - (5) To refuse to provide price quotations for materials or supplies, or to provide price quotations for such materials or supplies at higher costs than those quoted to other similarly-situated persons or businesses. Suppliers

shall be required to maintain logs of phone calls related to requests for price quotations from bidders for County contracts; such logs shall contain information on the time and date of the call, persons calling and contacted, and subject of the call. For phone calls relating to price quotations, the information required on the log shall include name of person and/or firm, description of material that is being quoted (including the description and/or contract number of the prime contract) and the dollar amount of the bid, and the prices quoted. Such logs shall be made available to County personnel and may serve as evidence as to whether discriminatory activities have occurred relating to the providing of price quotations; or

- (6) To cause to be made, aid, abet or engage in any acts that applies unequal evaluation of performance on a contracting or procurement contract.
 - (7) To refuse to provide financial services or to charge amounts for such financial services which is at a higher rate of cost or interest than charged to other similarly-situated persons or businesses.
- E. Exceptions. Contracting, procurement, bonding or financial services activities.
- (1) The provisions of this article may not apply to contractual agreements that have specific requirements such as labor agreements or need for specific qualifications and/or licenses.
 - (2) The provisions of this article shall not limit the applicability of any federal law, state law or county ordinance or other law regarding contracting, procurement, bonding or financial services activities.
- F. Exemption of Business Enterprise Programs.
- Nothing contained in this ordinance shall prohibit Metropolitan Dade County from adopting, implementing or enforcing any program to encourage the involvement of small, minority and women-owned businesses in Metropolitan Dade County contracting, procurement, bonding, and financial services activities to the extent that such programs are otherwise permissible under applicable State and Federal law.

VII. PROCEDURES

A. FILING OF A COMPLAINT

- (1) Any person aggrieved by an unlawful contracting, procurement, bonding or financial services practice prohibited by this article must file a written, signed complaint with the Director of DBD within one hundred eighty (180) days after the alleged unlawful practice occurs.
- (2) The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent. Such complaint may be amended; however, the amended complaint must be filed within the period prescribed by Section 11A-44 (1) of Ordinance 97-67.
 - (a) The complaint shall be delivered in person or by certified mail to:
Director of Department of Business Development

111 NW 1st Street
Suite 1710
Miami, Florida 33128-1975

B. GOVERNMENT IN THE SUNSHINE

All hearings, deliberations and decisions of the Director of DBD, and of the hearing officers, shall be open to the public in accordance with Section 186.011 et seq., Fla. Stat., as amended.

C. DBD RESPONSIBILITIES UPON FILING OF A COMPLAINT

- (1) Upon the filing of such a complaint, the Director of DBD shall serve notice upon the complainant acknowledging such filing and advising the complainant of the time limits provided under this article.
- (2) Upon the filing of a complaint, the Director of DBD shall promptly serve the complaint and a written notice on the respondent or person charged with the commission of a discriminatory practice, setting forth the rights and obligations of the parties including, but not limited to, the right to a fair and full hearing on the matter before a hearing officer. Such service shall be by certified mail.
- (3) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice to such person from the Director of DBD. Notice shall be served upon such additional or substitute respondent within ten (10) days of such joinder or substitution and shall explain the basis for the Director of DBD's belief that the person to whom the notice is addressed is properly joined as a respondent.
- (4) Each respondent may file an answer to the complaint, no later than twenty (20) days after receipt of complaint and notice from the Director of DBD.
- (5) In conducting an investigation of a complaint, the Director of DBD shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence relevant to the complaint and may examine, record, photograph and copy such materials and take and record the testimony or statements of such persons and issue such interrogatories as are reasonably necessary for the furtherance of the investigation. The Director of DBD may enter an order compelling answers to interrogatories. The Director of DBD may issue subpoenas to compel access to or the production of materials, or appearance of persons, to the same extent and subject to the same limitations as all other subpoenas issued by the county court of Dade County, Florida.
- (6) In conducting investigations of discriminatory activities, if the Director of DBD has reason to believe that a "pattern or practice" of discrimination exists, the Director of DBD shall have the ability to initiate complaints and to obtain information and/or evidence from other persons or businesses in the effort to determine whether a "pattern or practice" of discriminatory

activities has, or is, occurring, even though specific complaints have not been filed against those other persons or businesses. Such ability will include all of the powers available to the Director of DBD as provided for in Article VII herein, including subpoena powers.

D. SUBPOENAS

- (1) (a) Upon written application to the Director of DBD, a party shall be entitled to the issuance of a reasonable number of subpoenas to compel the attendance of witnesses and/or the production of documents at a hearing or at a deposition. Subpoenas issued at the request of a party shall show on their face the name and address of such party, shall state that they were issued at the party's request and shall be subject to the same limitations as subpoenas issued by the county court of Dade County, Florida.
- (b) Witnesses summoned by the subpoena of the Director of DBD shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the county court of Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party, or where the party is unable to pay, shall be paid by the Director of DBD.
- (c) Within ten (10) days after service of a subpoena upon any person, such person may petition the Director of DBD to revoke or modify the subpoena. The Director of DBD shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.
- (d) In the case of the contumacy or refusal to obey a subpoena, the Director of DBD or any party may seek enforcement of a subpoena issued under the authority of this article by filing a petition for enforcement in the county court of Dade County, Florida.
- (e) Any party shall have the right to object to a subpoena:
 - (1) The objection must be made with particularity stating the grounds for the objection;
 - (2) The party seeking a subpoena must state with particularity the purpose of the subpoena and the documents or testimony sought.
 - (3) Where there is an issue as to whether to grant or deny a request for a subpoena, and the issue is based on a legal ground the Director of DBD may submit the issue to the County Attorneys' Office for a legal opinion.

E. COURT COSTS; FAILURE TO RESPOND; FINES

- (1) In any enforcement proceeding authorized by this article, the court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedure.

- (2) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in his or her power to do so, shall be fined by the county court of Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.
- (3) Any person who, with the intent thereby to mislead the Director of DBD or the hearing officer, makes or causes to be made any false entry or statement of fact in any report, account, record or other document submitted to the Director of DBD pursuant to its subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, shall be fined by the county court of Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.

F. "PATTERN OR PRACTICE"

- (1) The Director of DBD shall have the ability to initiate complaints and to issue subpoenas as provided for in this section to persons or businesses if there is a belief or evidence that a "pattern or practice" of discrimination appears to exist.

G. RULES OF CIVIL PROCEDURE

- (1) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed or allowed by this article or by rules, regulations, or orders adopted pursuant to this article.
- (2) All papers or pleadings required by this article to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rule of Civil Procedure.

H. FINDING OF "CAUSE" OR "NO CAUSE"

- (1) In the case of a complaint of contracting, procurement, bonding or financial services discrimination, the Director of DBD shall make a determination consisting of a final investigative report and issue a "cause" or "no cause" determination no later than one hundred eighty (180) days from receipt of the complaint or amended complaint. Provided, however, if the Director of DBD is unable to make a determination of the alleged discriminatory contracting, procurement, bonding or financial services practice within one hundred eighty (180) days after the filing of the complaint, the Director shall notify the complainant and the respondent in writing of the reasons for not being able to make a determination of discriminatory practice.
- (2) If the Director of DBD has not issued a finding within one hundred eighty (180) days, the complainant may request a right to sue letter.

I. REQUEST FOR HEARING AND/OR RIGHT TO SUE LETTER

- (1) At the end of any investigation under this article, the Director of DBD

shall prepare a determination consisting of a final investigative report. The complainant has fourteen (14) calendar days to request a hearing before a hearing officer, or to request a right to sue letter. In a case where a right to sue letter has been issued, the complainant has ninety (90) days to pursue legal action in a court of appropriate jurisdiction. If a hearing is requested, the complainant must submit a written request to the Director of DBD within fourteen (14) days of receipt of the final investigative report.

- (a) The request for a hearing, or request for a right to sue letter, shall be delivered in person or by certified mail to:

Director of Department of Business Development
111 NW 1st Street
Suite 1710
Miami, Florida 33128-1975

J. FINAL INVESTIGATIVE REPORT

- (1) Upon receipt of a written request for a hearing, the Director of DBD shall forward the final investigative report to a hearing officer. The Director's investigative report shall contain:
 - (a) The names and dates of contacts with witnesses;
 - (b) A summary and the dates of correspondence and other contacts with the complainant and the respondent;
 - (c) A summary description of other pertinent records;
 - (d) A summary of witness statements;
 - (e) Any responses to requests for discovery; and
 - (f) Recommendations including, but not limited to the issues of liability for a violation of this article, affirmative action, reasonable accommodation, quantifiable damages, costs, attorney's fees, interest, civil fines, and other sanctions or penalties.

K. NOTIFICATION OF ALL PARTIES

- (1) The Director of DBD shall send a complete copy of the final investigative report by certified first class mail to all parties. In addition, the entire investigative file prepared by the Director of DBD or his or her designee shall be forwarded to the hearing officer and shall become part of the record of any hearing pursuant to this ordinance. However, the hearing officer may exclude any portions of the investigative file as deemed appropriate.

L. SCHEDULING AND CONDUCT OF HEARINGS

- (1) (a) Upon receipt of a final investigative report from the Director of DBD wherein the Director of DBD has made a determination of "cause", the hearing officer shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as possible or as mandated herein.

- (b) The hearing officer shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include but not be limited to the following:
 - (1) Name of the hearing officer who issued the notice.
 - (2) Factual description of alleged violation(s).
 - (3) Date(s) of alleged violation(s).
 - (4) Section of this article allegedly violated.
 - (5) Place, date and time of the hearing.
 - (6) Right of violator to be represented by a lawyer.
 - (7) Right of violator to present witnesses and evidence.
 - (8) Notice that failure of violator to attend hearing may result in civil penalty and/or other penalties or sanctions being assessed.
 - (9) Notice that requests for continuances will not be considered if not received by the hearing officer at least ten (10) calendar days prior to the date set for hearing. Each party shall be limited to one continuance.
- (c) The hearing officers shall call hearings on a monthly basis or upon the request of the Clerk of the Board of County Commissioners. No hearing shall be set sooner than twenty (20) calendar days from the date of service of the notice of violation.
- (d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the hearing officer at least ten (10) calendar days prior to the date set for the hearing. Each party shall be limited to one continuance.
- (e) All hearings of the hearing officer shall be open to the public. All testimony shall be under oath. A hearing may proceed in the absence of the named violator provided proper notice has been given.
- (f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.
- (g) The Clerk of the Board of County Commissioners shall provide clerical and administrative personnel as may be reasonably required by each hearing officer for the proper performance of his or her duties.
- (h) Each case before a hearing officer shall be presented by the parties.

M. EVIDENCE

- (1) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the hearing officer finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.
- (2) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the

direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him.

- (3) The hearing officer shall make findings of fact based on the evidence in the record. In order to make a finding upholding the Director of DBD's determination, the hearing officer must find by a preponderance of the evidence that the named violator was responsible for the violation.
- (4) If the named violator is found to have committed the violation, it may be held liable for the reasonable costs of the administrative hearing, at the discretion of the hearing officer.

N. PENALTIES, SANCTIONS, ADMINISTRATIVE COSTS

- (1) The fact-finding determination of the hearing officer shall be limited to whether the violation alleged occurred and, if so, whether the person named in the violation can be held responsible for that violation. Based upon this fact-finding determination, the hearing officer shall either affirm or reverse the determination of the Director of DBD as to the responsibility of the named violator for violation of this article. If the hearing officer affirms the determination of the Director of DBD, the hearing officer, pursuant to this article, shall determine civil fine(s) and/or sanctions or penalties as appropriate. If the hearing officer reverses the determination of the Director of DBD and finds the named violator not responsible for the violation alleged in the final investigatory report, the named violator shall not be liable for the payment of any civil penalty or other sanction or penalty or administrative costs, absent reversal of the hearing officer's findings pursuant to this article. If the decision of the hearing officer is to affirm, the following elements shall be included:
 - (a) Amount of civil penalty.
 - (b) Amount, and/or type, of other sanctions or penalties as indicated in Section 11A-52.
 - (c) Administrative costs of hearing.
- (2) The hearing officer shall have the power to:
 - (a) Take testimony under oath.
 - (b) Assess and order the payment of civil penalties as provided herein. Assess and order other penalties and/or sanctions as provided herein.

O. FINAL ORDER

- (1) In the case of a complaint of contracting, procurement, bonding or financial services discrimination, the hearing officer's final order shall become final ten (10) days after issuance. The final investigative report and final order may be amended if additional evidence is discovered within ten (10) days, and if amended, shall become final ten (10) days thereafter.
- (2) In all complaints filed pursuant to this article, the Director of DBD's determination, and the hearing officer's final order, shall be served upon the complainant and the respondent.

- (3) If the Director of DBD determines that no reasonable cause exists to believe that a violation of this article has occurred or is about to occur, the Director of DBD shall promptly dismiss the complaint. The Director of DBD shall publicly disclose each such dismissal.

P. CONCILIATION AGREEMENTS

- (1) It is the policy of the Director of DBD and the hearing officer to encourage conciliation or settlement of charges. If possible, a written settlement agreement resolving the dispute between the aggrieved party and the respondent shall be executed prior to determination and any time until final hearing by the hearing officer; the Director of DBD will work with the parties in an attempt to conciliate the charge.
- (2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the Director of DBD and the hearing officer.
- (3) Whenever the Director of DBD has reasonable cause to believe that a party has breached a conciliation agreement, the Director of DBD or the hearing officer shall refer the matter to the county attorney with a recommendation that a civil action be filed in a court of competent jurisdiction for enforcement of such agreement.
- (4) Nothing said or done in the course of attempting conciliation under this article may be used as evidence in any subsequent proceeding under this article or otherwise without the written consent of the parties to the underlying charge of unlawful conduct.

Q. FINDING OF LACK OF JURISDICTION OR CAUSE

- (1) No hearing may be had where the Director of DBD finds a lack of jurisdiction or cause. However, following receipt of a right to sue letter, the complainant may file a private action with a court of proper jurisdiction.
- (2) If, after the hearing officer issues a determination finding discrimination, the respondent fails to comply with the hearing officer's order and efforts at conciliation have failed and the respondent has not timely requested a hearing before the hearing officer, then the hearing officer or the Director of DBD or the complainant may file a civil action in the appropriate court of Dade County, Florida, seeking enforcement of the order.

R. BURDEN OF PROOF

- (1) In any proceeding, the burden of proof rests upon the complainant.

S. RULES OF PROCEDURE

- (1) Copies of current rules of procedure shall be available at the office of the Director of DBD.
- (2) The Director of DBD, subject to approval by the county commission, and upon written agreement with federal, state or local agencies may accept written, sworn and signed complaints of violation of this article deferred to

the Director of DBD by such agency for investigation or resolution; however, the Director of DBD may waive such deferment.

VIII. ENFORCEMENT OF FINAL ORDER

If the hearing officer determines that any respondent has committed an unlawful act prohibited by this article, and said respondent refuses to comply with or obey the final order of the hearing officer, the Director of DBD or the hearing officer or the complainant may petition the court of appropriate jurisdiction for enforcement of the final order.

IX. APPEALS

- A. The named violator or any aggrieved party may appeal a final order of the hearing officer for all violations by filing a notice of appeal in the Circuit Court in and for Dade County, Florida, in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for the review of administrative action.
- B. Unless the findings of the hearing officer are overturned in a proceeding held pursuant to this section, all findings of the hearing officer shall be admissible in any proceeding to collect unpaid penalties.

X. COMPLAINTS

It shall be unlawful for any person to initiate any complaint under the provisions of this article for the purpose of harassment. Any person convicted in a court of appropriate jurisdiction for the violation of this provision shall be subject to fine not to exceed five hundred dollars (\$500.00) or imprisonment in the county jail for not more than sixty (60) days or both. Provision of this remedy is cumulative to and not in derogation of any civil action for malicious prosecution. Costs, including a reasonable attorney's fees, may be assessed upon a finding that any complaint was filed for the purpose of harassment. Payment of such costs may be considered in mitigation of the penalties hereinabove provided.

XI. ENFORCEMENT BY PRIVATE PERSONS

- A. If, in a private enforcement proceeding under this article, the court finds that a discriminatory practice has occurred or is about to occur it may issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including temporary or permanent injunctive and other equitable relief, temporary restraining order, actual and punitive damages, reasonable attorney's fees, interest, costs, or other order.
- B. Upon request of the Director of DBD or the hearing officer, the County Attorney may intervene in an action brought under the provisions of this Article, if the Director of DBD or the hearing officer certifies that the case is of public importance to the citizens of Dade County.

XII. CONFLICTING LAWS REPEALED

All county and municipal ordinances and resolutions or any general law which the Board of County Commissioners is authorized by the Constitution of the State of Florida to supersede, nullify or amend, or any part of any such ordinance, resolution or law in conflict with any provision of this article, is hereby repealed.

XIII. ARTICLE'S PROVISIONS; AREAS OF APPLICATION; ADDITIONAL TO OTHER LAWS

- A. This article is applicable in both the incorporated and unincorporated areas of Dade County. All violations shall be prosecuted in the court of appropriate jurisdiction of Dade County, Florida.
- B. The provisions of this article shall be cumulative and additional to and not in derogation of any and all other provisions or laws prohibiting discrimination in contracting, procurement, bonding or financial services activities.

XIV. CIVIL FINES

- A. At the conclusion of a hearing and upon a finding of discrimination in contracting, procurement, bonding or financial services activities in violation of this ordinance, the hearing officer may recommend that the County Attorney commence a civil action for fines. Such civil action shall be commenced within ninety (90) days of the issuance of the final order of the hearing officer. If such civil action is brought by the County Attorney, the court may impose the following fines:
 - (1) Up to three hundred dollars (\$300.00) per instance of identified discriminatory action if the respondent has not previously been found guilty of a violation of this article; or
 - (2) Up to three hundred seventy-five dollars (\$375.00) per instance of identified discriminatory action if the respondent has been found guilty of one prior violation of this article within the preceding five (5) years prior to filing of a complaint; or
 - (3) Up to five hundred dollars (\$500.00) per instance of identified discriminatory action if the respondent has been found guilty of two or more violations of this article within the preceding seven (7) years prior to filing of a complaint.
- B. In imposing a fine under this article, the court shall consider the nature and circumstances of the violation including whether the discriminatory actions constitute disparate treatment or disparate impact, the degree of culpability, the history of prior violations of this article, the financial circumstances of the respondent and the goal of deterring future violations of this article.
- C. All fines imposed pursuant to this article shall be paid to the Board of County Commissioners.

XV. SANCTIONS/PENALTIES

- A. At the conclusion of a hearing and upon a finding of discrimination in contracting, procurement, bonding or financial services activities in violation of this ordinance, the hearing officer may recommend sanctions and/or penalties including, but not limited to, the following:
- (1) Paying the aggrieved party for any profit and/or overhead lost as a result of the discriminatory act; or
 - (2) Exclusion of the person or business including its individual officers, shareholders with significant interests and affiliated businesses from participating in contracting, procurement, bonding or financial services activities with Dade County for a specified period of time, not to exceed five years.

XVI. RETROACTIVE APPLICATION

There shall be no retroactive application of this ordinance.

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

Armando Vidal, P.E.
County Manager