

## Administrative Order



**Administrative Order No.:** 3-29

**Title:** Prohibiting County Contracting with Individuals and Entities Who are in Arrears to the County

**Ordered:** 5/23/2000

**Effective:** 6/2/2000

### **AUTHORITY:**

Sections 4.02 and 4.03 of the Miami-Dade County Home Rule Amendment and Charter, and Ordinance 99-162, as amended.

### **EXCEPTION:**

Except where pre-empted by state or federal law, this Administrative Order governs and applies to all County contracts.

### **DEFINITIONS:**

The following terms shall have the meanings ascribed to them for the purposes of this Administrative Order.

"Arrears or arrearage," as used in this Administrative Order, shall mean any delinquent amounts owed by a contractor under any contract, final non-appealable judgment or lien with Miami-Dade County.

"Approved payment plan," shall mean a written agreement between the County and the contractor setting forth a repayment schedule that, by the end of the term of the approved payment plan, satisfies all of the contractor's arrearage to the County. Such a plan may include principal and interest payments, abatements, discounts, or any other financial terms and conditions available to the parties under the appropriate contracting authority.

"Contract(s)" shall include, but is not limited to, an agreement to (i) provide public improvements; (ii) purchase goods and commodities, supplies, materials, equipment and services, including professional services; (iii) provide for the repayment of a loan by a contractor; (iv) lease real or personal property; or (v) receive or expend grant funds.

"Contractor(s)" shall mean any individual contractor, or principal of any firm with a controlling financial interest in said entity which has entered into a contract with Miami-Dade County.

"Controlling financial interest," shall mean ownership, directly or indirectly, of ten (10) percent or more of the outstanding capital stock in any corporation, or a direct or an

indirect interest of ten (10) percent or more in a firm.

"Enforcement threshold," shall mean any arrearage under any individual contract, final non-appealable judgment or lien with Miami-Dade County that exceeds \$25,000 and has been delinquent for greater than 180 days.

"Firm(s)" shall mean a corporation, partnership, business trust or legal entity other than a natural person.

"Individual contractor" shall mean any individual who enters into a contract with the County in his or her individual capacity.

"Loan," shall mean the lending of funds by the County to a contractor as evidenced by a promissory note and/or any other loan documents.

"Miami-Dade County" or "County" shall include any department, agency, authority or instrumentality of Miami-Dade County, including the Public Health Trust.

"Promissory note," shall mean a written promise made by a contractor to pay to the County a specified sum of money on demand or at a specified date.

"Registry of Delinquent Contractors," shall mean the centralized listing, maintained by the Finance Department, of contractors that are in arrears to the County, without an approved payment plan, in excess of the enforcement threshold.

## **POLICY:**

The purpose of this Administrative Order is to promote efficient and effective financial administration, while ensuring fair and equitable contracting practices. This Administrative Order prohibits contractors that are in arrears to the County in excess of the enforcement threshold from obtaining new County contracts, extensions of contracts or new purchase orders, until such time as the arrearage has been paid in full or the County has agreed in writing to an approved payment plan.

## **RESPONSIBILITY:**

The responsibility for maintaining the Registry of Delinquent Contractors rests with the Finance Department. All County agencies that administer contracts shall be responsible for identifying any contractors that are in arrears on County contracts, final non-appealable judgments or liens in excess of the enforcement threshold, and for providing that information to the Finance Department on a timely basis. All County departments, agencies, authorities, instrumentalities and the County Manager shall be further responsible for ensuring that no contract be awarded to any contractors that are in arrears to the County in excess of the enforcement threshold until the arrears are paid in full or the County has agreed to an approved payment plan.

## **PROCEDURES:**

No later than the 15<sup>th</sup> day of each month, departments, agencies, authorities and instrumentalities shall submit to the Finance Director, an electronic file of accounts which identify contractors that are in arrears to the County in excess of the enforcement threshold. Said file shall be in a format compatible with the requirements for posting this information on the Metronet. Each account will include minimum required information in a form and format acceptable to the Finance Department. This information shall be added to the Registry of Delinquent Contractors.

Prior to award or recommendation for award of any contract, extension of any contract, or issuance of a purchase order, the awarding department, agency, authority or instrumentality shall determine, e.g. via inquiry on the Metronet, whether the contractor recommended for award is in arrears in excess of the enforcement threshold. Any such contractor that is determined to be in arrears shall have fifteen (15) days, after written notice from the County, to either pay the arrears in full or enter into an approved payment plan. Failure to do so shall deem the contractor ineligible for the contract award. The County Manager or designee shall not award or recommend for award any new contracts, extensions of contracts or issuance of new purchase orders to contractors that are listed on the Registry of Delinquent Contractors.

The directors of departments, agencies, authorities and instrumentalities shall advise the Accounts Payable Unit of the Finance Department in writing to flag a contractor listed on the Registry of Delinquent Contractors, and to investigate whether future payments under other contracts with such delinquent contractors can be legally offset against the arrears until the arrearage is paid in full, or an approved payment plan for such arrears is entered into with the contractor.

## **APPROVED PAYMENT PLAN:**

Approved payment plans shall be negotiated by the affected department, with assistance from the County Attorney's Office, as necessary. All approved payment plans shall be subject to approval by the County Manager, or his or her designee, without further action by the Board of County Commissioners. No approved payment plan entered into by County administration shall be reported to the Board of County Commissioners. Should a contractor default on an approved payment plan, such default shall constitute a default of the subject contract and may constitute a default of other existing contracts with the County, and the contractor shall be returned to the Registry of Delinquent Contractors, until such time as the contractor resumes compliance with the approved payment plan. On an annual basis, the County Manager shall report to the Board on the results of this Administrative Order.

## **CONE OF SILENCE:**

The provisions of the "Cone of Silence", as set forth in Subsection 2-11.1(t)(a) of the Code of Miami-Dade County, as it pertains to the prohibition of any communications with the Mayor, County Commissioners or their respective staffs, shall apply to this Administrative Order.

## **REQUIRED LANGUAGE IN CONTRACTS, PROMISSORY NOTES AND LOAN DOCUMENTS:**

The County Manager shall include language in the specifications of all contracts to which this subsection applies that the failure to meet the terms and conditions of an approved payment plan shall constitute a default of the subject contract and may be cause for suspension, termination and debarment, in accordance with the terms of the contract and the debarment procedures of the County.

The County Manager shall include language in all promissory notes and loan documents that requires the borrower to assign to the County, in order to secure the repayment of the loan, the proceeds of any contract with the County or any of its agencies or instrumentalities to which the borrower, or any firm, corporation, partnership or joint venture in which the borrower has a controlling financial interest is a party.

## **WAIVER:**

The County Manager shall be authorized to enter into or extend a contract or business transaction with individuals or entities who are not current in their obligations to the County, when such action shall be deemed by the County Manager to be in the best interest of the County, subject to ratification of the Board of County Commissioners.

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

M. R. Stierheim  
County Manager