Implementing Order

Implementing Order No.: IO 3-61

Title: RESIDENTS FIRST TRAINING AND EMPLOYMENT PROGRAM

Ordered: 7/14/2015 **Effective:** 7/24/2015

AUTHORITY:
Section 5.02 of the Miami-Dade County Home Rule Amendment and Charter; Chapter 2, Article I, Section 2-11.17 of the Code of Miami-Dade County Florida and Ordinance 14-26.

POLICY:
It is the policy of Miami-Dade County that except where federal or state laws or regulations mandate to the contrary, all contractors and subcontractors of any tier performing on a County Construction Contract, shall satisfy the requirements of the Miami-Dade County Residents First Training and Employment Program, which requires that: (i) all persons employed by the contractor to perform construction shall have completed the 10-Hour Construction Training course established by the Occupational Safety & Health Administration ("OSHA") of the United States Department of Labor; and (ii) the contractor will make its best reasonable efforts to promote employment opportunities for local residents and seek to achieve a project goal of having fifty-one percent (51%) of all construction labor hours performed by Miami-Dade County residents.

The provisions of this Implementing Order ("IO") shall apply to (i) the construction, demolition, alteration and/or repair of public buildings or public works projects valued in excess of $1,000,000, funded completely or partially by Miami-Dade County, and (ii) privately-funded projects or leases valued in excess of $1,000,000 for the construction, demolition, alteration or repair of buildings or improvements on County-owned land, and which are subject to Section 2-11.16 of the Code of Miami-Dade County.

PURPOSE:
This IO implements the Residents First Training and Employment Program. The overall goal of the program is to promote employment and skill training opportunities for County residents, which, in turn, are expected to promote the successful execution and delivery of construction contracts throughout the County. The IO establishes: the procedures for determining compliance with the program; the review and investigation of allegations of noncompliance; appropriate sanctions for failure to comply with the program; and the mandate that all solicitations for construction contracts include the requirements of the program in the form of documents/affidavits to be developed and made available by the County, and which must be completed by potential firms/businesses doing business with the County on applicable contracts.

I. DEFINITIONS:

A. Code means the Code of Miami-Dade County, Florida.

B. Compliance Officer means the Director of the Small Business Development Division of the Internal Services Department, or his or her designee, or the Director of Miami-Dade Aviation Department, Office of Minority Affairs, or his or

her designee, who reviews a contract(s), lease(s), and associated documents to determine compliance with Section 2-11.17 of the Code and this IO.

C. Contracting Officer means the County staff person assigned under a contract (i.e., a department director or his or her designee), with the primary responsibility to manage and enforce contract requirements.
D. Contractor means any general contractor, construction manager, other contractor, individual, corporation, partnership, or other legal entity that directly or indirectly (e.g., through an affiliate) submits an offer(s) for, or is awarded, or reasonably may be expected to submit an offer(s) for or be awarded, a County contract for projects subject to the requirements of Section 2-11.17 of the Code and this IO.
E. County means Miami-Dade County.
F. County Construction Contract means (i) a County contract valued in excess of $1,000,000 for the construction, demolition, alteration and/or repair of public buildings or public works, or (ii) a contract or lease valued in excess of $1,000,000 which provides for privately-funded construction, demolition, alteration or repair of buildings or improvements located on County-owned land which is also subject to Section 2-11.16 of the Code (Responsible Wages and Benefits on County Construction Contracts).
G. Department means the department, agency or other party responsible for awarding a County Construction Contract as designated by the County.
H. Implementing Order ("IO") means the implementing order developed by the Mayor or Mayor's designee and approved by the Board of County Commissioners (the "Board") to give effect to the provisions of Section 2-11.17 of the Code.
I. Lessee means a lessee of County-owned land under a lease on such land subject to the requirements of Section 2-11.17 of the Code and this IO.
J. Resident means a person who has resided in Miami-Dade County in the past twelve (12) months.
K. Responsible Contractor Affidavit (Form RFTE 1) means the affidavit executed by a Contractor on the standard form prepared by the County, which verifies the information required by Section 2-11.17(5)(a) of the Code
L. Responsible Subcontractor Affidavit (Form RFTE 5) means the affidavit executed by a subcontractor on the standard form prepared by the County, which verifies the information required by Section 2-11.17(5)(b) of the Code. Responsible Subcontractor Affidavits must be executed by all subcontractors listed by the relevant contractor to be used on the project.
M. Workforce Performance Report – (Form RFTE 4) means the report forms provided by the County, and submitted by a Contractor that includes information on the workforce employed by the Contractor and subcontractors in the execution of the County Construction Contract pursuant to Section 2-11.17(6) of the Code.

II. PROGRAM COMPONENTS

A. RESPONSIBILITY OF ISSUING DEPARTMENT/CONTRACTING OFFICER:

1. INCLUDE REQUIREMENTS AND CONTRACTOR RESPONSIBILITIES IN SOLICITATION AND CONTRACT DOCUMENTS

   a. The issuing Department/Contracting Officer shall include the requirements of the Residents First Training and Employment Program in solicitation and contract documents for County Construction Contracts which are subject to Section 2-11.16 of the Code, except where state or federal laws or regulations mandate to the contrary. The solicitation and contract documents shall include the following contract language:

      "All Contractors and subcontractors of any tier performing on a County Construction Contract shall satisfy the requirements of Section 2-11.17 of the Code of Miami-Dade County and IO 3-61."

   b. The issuing Department/Contracting Officer shall include for use by bidders/proposers on County Construction Contracts the various Residents First Training and Employment Program affidavits and forms as part of the applicable solicitation and contract documents.

   c. The issuing Department/Contracting Officer shall ensure, upon receipt of bids or proposals, that the bidder or proposer has submitted a Responsible Contractor Affidavit – Form RTFE 1, in order to verify the following:
      i) Prior to working on the project, all persons employed by the Contractor to perform construction shall have completed, or will have completed, the 10-Hour Construction Training course established by OSHA prior to the date persons are employed on the project. **Employees that have completed the OSHA 30-Hour Construction Training course will be considered as compliant with this requirement.**
      ii) The Contractor will make its best reasonable efforts to promote employment opportunities for local residents and seek to achieve a project goal of having fifty-one percent (51%) of all construction labor hours performed by Miami-Dade County residents. To verify workers' residency, Contractor shall require each worker to produce a valid driver's license or other form of government-issued identification.

   d. The Contracting Officer shall provide to any Contractor who fails to submit a Responsible Contractor Affidavit with its bid or proposal, a notice stating that said Contractor has forty-eight (48) hours from the time of notification to submit a Responsible Contractor Affidavit or its bid or proposal will be deemed nonresponsive and disqualified.

      The Contracting Officer shall review prior work performed by proposed Contractors and subcontractors, including their compliance with the terms of the Responsible Contractor Affidavit. Bidders/proposers will be deemed non-responsible and their bids/proposals rejected if the Contractor or any of its subcontractors has been found in violation of the Residents First Training and Employment Program on two (2) or more

projects in the last three (3) years. The proposed subcontractor(s) must be in compliance with all applicable requirements. If a subcontractor has been found in violation of the requirements in this IO on two (2) previous projects in the last three (3) years, then the issuing department shall notify the proposed Contractor that the subcontractor has been found in violation on two (2) previous projects in the last three (3) years and must be replaced. The proposed Contractor shall have five (5) business days to replace the subcontractor and provide a new Responsible Contractor Affidavit - Form RFTE 1.

The Contracting Officer shall not execute a County Construction Contract until all requirements of Section II.A.1 of this IO have been fulfilled.

2. AFTER NOTICE OF AWARD BUT PRIOR TO ISSUANCE OF NOTICE TO PROCEED

   a. After the Notice of Award, but prior to the issuance of a Notice to Proceed, the issuing department/Contracting Officer must verify that the Contractor has submitted and complied with the following:
      i) Provided Responsible Contractor Affidavit(s) – Form RFTE 1 and Responsible Subcontractors Affidavit(s) – Form RFTE 5 for all Contractors and subcontractors.
      ii) Provided a Construction Workforce Plan – Form RFTE 2 and supporting documentation. The Construction Workforce Plan shall:
         1. Specify the total number of persons that will be used by the Contractor (as well as by all subcontractors) to perform all of the construction trades and labor work of the contract, broken down by (a) trade and labor category, (b) minimum qualifications for each category, and (c) the number of persons to be utilized in each category.
         2. Identify by name, address and trade category of all persons proposed to perform work under the contract currently on the Contractor's (or on any proposed subcontractor's) payroll who reside in Miami-Dade County.
         3. Indicate the number of positions to be hired by the Contractor (or by any proposed subcontractor) to perform the construction trades and labor work under the contract for (a) each trade category and (b) the minimum qualifications for each position. If the proposed workforce will not achieve the project goal of 51% construction labor hours performed by Miami-Dade County residents, include a statement on how Miami-Dade County residents will be recruited to fill the needed positions and meet the goal.
         4. Include a list of all subcontractors that will be used on the project.
         5. Include a list of all employees currently employed by the Contractor and each subcontractor at the time of award that includes the last four digits of each employee’s social security number.

b. The Contracting Officer shall not issue a Notice to Proceed until all documents required in Section II.A.2 of this IO have been fulfilled. Failure to provide the documents as specified will result in rescission of award or termination of the contract.

c. The requirements in 2.a above shall apply to all subcontractors under contract at the time of issuance of the Notice to Proceed. For any subcontractor not under contract with the prime at the time of Notice to Proceed, the Contractor shall submit the documents required under Section II.A.2.a of this IO within ten (10) days of execution of the subcontract.

3. CONTRACT ADMINISTRATION

a. The Contracting Officer shall reject any requisition for payment submitted without the certified payroll and required OSHA Safety Training Affidavit – Form RFTE 3.

b. Within thirty (30) business days of completion of a County Construction Contract, the Contracting Officer shall require the Contractor responsible for the project to submit a Workforce Performance Report – Form RFTE 4 to the County, which shall include the following information on the workforce employed in the execution of the contract:

i. The total number of construction labor work hours performed on the project, and the number and percentage of such work hours performed by Miami-Dade County residents;
ii. Supporting documentation verifying construction labor work hours performed by Miami-Dade County residents;
iii. The total amount of funds the Contractor expended during the course of the project on other related skill and safety training programs; and
iv. Supporting documentation verifying reasonable efforts to promote employment opportunities for local residents, which may include applicable advertisements in local newspapers, web-based advertisements, posting of job opportunities with CareerSource South Florida's Job Clearinghouse, referrals received from CareerSource South Florida, job applications received, candidates interviewed, and number of new hires. Additional efforts may include, but are not limited to, use of job fairs and other community outreach activities, and contacts with state unemployment offices, technical schools and labor organizations.

c. The Contracting Officer shall not authorize issuance of final payment for completion of a County Construction Contract until the County receives a completed Workforce Performance Report.

d. The Contracting Officer shall forward copies of the Responsible Contractor Affidavits, Responsible Subcontractor Affidavits, Construction

Workforce Plan, List of Subcontractors, Employee Lists, and Workforce Performance Report to the Compliance Officer.

B. RESPONSIBILITIES OF THE CONTRACTOR AND SUBCONTRACTORS:

Throughout the performance of the contract, the Contractor and subcontractors shall perform the following in order to demonstrate compliance with the OSHA 10-Hour Construction Training and Residency Requirements:

a. The Contractor and each subcontractor shall submit a notarized OSHA 10-Hour Construction Training Affidavit – Form RFTE 3 with each certified payroll which shall verify that every employee reported on the payroll has completed the OSHA 10-Hour Construction Training course prior to the date persons are employed on the project.
b. The Contractor and each subcontractor shall (i) keep on file a copy of each employee's OSHA 10-Hour Construction Training Student Course Completion Card (the "Card"), (ii) make such records available to the County upon request, and (iii) require employees to carry the Card while on the project site. An OSHA 30-Hour Card is also acceptable.
c. A Contractor will be fined $75 per day for **each employee** that is found to have worked on the job performing construction work that has not met the aforementioned requirements related to OSHA training.
d. The Contractor shall keep on file and make available to the County upon request a copy of each workers valid driver's license or other form of government-issued identification, and keep on file a copy of the identification. Identification records shall be made available to the County upon request.
e. If the Contractor or any subcontractor has a need to hire new employees to work on the project, Contractor will make and document reasonable efforts to hire workers that live in Miami-Dade County which may include, but not be limited to, advertisements in local newspapers, and posting of job opportunities on CareerSource South Florida Job Clearinghouse

C. MONITORING AND COMPLIANCE

1. County staff shall be entitled to perform random audits of documents and/or unannounced visits to the project site to verify compliance with the OSHA training and residency requirements.

2. The Compliance Officer shall review information collected by the Contracting Officer or designee during on site field interviews and investigate compliance with the OSHA 10-Hour Construction Training requirements included in this IO, and issue written notices to Contractor when it determines that a Contractor has not complied.

3. At project completion the Compliance Officer shall review the Workforce Performance Reports and supporting documents for compliance.

4. The Compliance Officer shall report any non-compliance with the requirements with Section 2-11.17 of the Code and this IO to the Contracting Officer, issue sanctions as appropriate and keep records of any violations issued.

III. SANCTIONS FOR CONTRACTUAL VIOLATIONS

A. Final payment will be withheld until the County receives a completed Workforce Performance Report.

B. Contractor shall not be deemed responsible to perform on subsequent County contracts if the Contractor has been found in violation of the Residents First Training and Employment Program on two (2) or more projects in the last three (3) years.

C. In the event the Contractor or subcontractor attempts to comply with the provisions of this IO through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Code, the County shall, whenever practicable, terminate the contract, or require the removal of the subcontractor, from the project on which the acts were committed. In addition, and as a further sanction, the Mayor or Mayor's designee or his or her designee may impose any of the above-stated sanctions on any other contracts or subcontracts the Contractor has on County projects. In each instance, the Contractor shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The Contractor may also be subject to debarment pursuant to Section 10-38 of the Code of Miami-Dade County.

D. A Contractor or subcontractor may be fined $75 per day for **each employee** that is found to have worked on the job performing construction work that has not completed the OSHA 10-Hour Construction Training course. Monies received from payment of penalties imposed hereunder shall be utilized solely to defray the costs of administering this program. A Contractor or subcontractor who does not pay any fine imposed hereunder shall not be deemed responsible to perform on subsequent County Construction Contracts, and shall be ineligible to be awarded such contracts for so long as the penalties imposed therefore remain outstanding.

IV. APPEALS PROCESS

A. Any firm that is determined to be in non-compliance with the requirements of Section 2-11.17 of the Code, or this IO may appeal such determination. Either the ISD or MDAD Compliance Officer, or appropriate designee, shall notify the affected party of the determination of non-compliance, in writing, setting forth the reasons for the determination and advising of the appeals process.

B. The affected party must appeal the determination by filing a written appeal and request for an administrative hearing with the ISD or MDAD Compliance Officer, or appropriate designee, within fifteen (15) business days of receipt of the notice.

C. Procedures for Administrative Hearing:

1. Upon timely receipt of a request for an administrative hearing along with a $250 nonrefundable filing fee to appeal a determination of non-compliance with the requirements of Section 2-11.17 of the Code, or this IO, the County Mayor or designee shall appoint a hearing officer pursuant to Section 8CC-2 of the Code, and fix a time for an administrative hearing thereon.

2. The County shall serve upon the Contractor (or subcontractor), a notice of hearing (the "Notice"), within five (5) business days of the appointment of the administrative hearing officer. The administrative hearing shall be scheduled to be heard within twenty (20) business days after service of the Notice. Such Notice shall include:
   a. A copy of the ISD or MDAD Compliance Officer's, or appropriate designee's, determination of non-compliance, as appropriate, outlining alleged prohibited practices upon which it is based;
   b. a description of the administrative penalties being considered; and
   c. a notice that the Contractor (or subcontractor) may be represented by an attorney, present documentary evidence and verbal testimony, and cross-examine or rebut evidence and testimony presented by the County.

3. Within five (5) business days after completion of the administrative hearing, the administrative hearing officer shall transmit the findings of fact, conclusions, and recommendations together with a transcript of all evidence taken before them and all exhibits received, to the Mayor or designee, who (i) may sustain, reverse or modify the hearing officer's recommendations, and (ii) shall render a final decision, in writing. The determination of the Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

4. The prevailing party is responsible for its own costs associated with the appeal, but shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all direct costs (i.e., additional fees, costs and penalties) associated with the appeal.

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

Any department that prepares a contract or lease of County-owned land on which privately funded improvements subject to the requirements of this IO will be constructed shall include provisions in such lease requiring compliance with Section 2-11.17 and this IO by all Contractors and subcontractors performing construction. Such contract or lease shall further provide that the lessee shall include the requirements of Sec. 2-11.17 and this IO in the contract and subcontracts for construction of such improvements, including the right of the County to access the Contractor's and subcontractors' records to verify compliance, and shall provide that the lessee shall be responsible to the County for payment of compliance monitoring costs and penalties found due.

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