



Frank Mena  
Vice President Southern US, Latin  
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JNQ 04-49

Mr. Robert Meyers  
Executive Director  
Miami-Dade County Commission on Ethics and Public Trust  
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May 6, 2004

VIA CERTIFIED MAIL

**Conflict of Interest Opinion**  
**RFP No. MDAD-0004**  
**Non-Exclusive Permits to Provide General Aeronautical**  
**Services to Commercial Aircraft Operators and Airlines**  
**at Miami International Airport**

Dear Mr. Meyers

My name is Frank Mena, and I am currently the Divisional Vice President, of Swissport USA Inc., a company presently providing General Aeronautical Services at Miami International Airport for the last 26 years, and a company that intends to submit a proposal in accordance with the Request for Proposal No. MDAD-004, to continue providing General Aeronautical Services at Miami International Airport in accordance with said RFP.

Although we do not believe that, we are in conflict with section 1.21 "CONFLICT OF INTEREST AND CODE OF ETHICS", OF RFP MDAD-004. We respectfully request an opinion from the commission regarding the following:

Since, February 2000, I have been an appointed member of the Miami Dade County Living Wage Advisory Board, representing District 11, as an effected employer, and in full compliance with all of the terms of Ordinance 99-44. Additionally, during the last three years I have served as Vice Chair.

Although my service during these years I believe has helped many employees affected by Ordinance 99-44, I will resign my position with immediate effect, if it in any way will jeopardize our company's position in the upcoming process.

**Thank you sincerely for your time and consideration of this matter. I am fully prepared to abide by your decision whichever it may be.**

**Kind regards**



**Frank Mena  
Vice President Southern US, Latin  
America & the Caribbean**

**CC: Mrs. Dawn Oakley Esq.**



**ETHICS COMMISSIONERS**

**Kerry E. Rosenthal, Chairman**  
**Robert H. Newman, Vice Chairman**  
**Gail Dotson**  
**Dawn Addy**  
**Elizabeth M. Iglesias**

**ROBERT A. MEYERS**  
EXECUTIVE DIRECTOR

**MICHAEL P. MURAWSKI**  
ADVOCATE

**ARDYTH WALKER**  
STAFF GENERAL COUNSEL

May 18, 2004

Frank Mena  
Swissport USA, Inc.  
Divisional Administration  
255 Alhambra Circle, Suite 630  
Coral Gables, FL 33134

Dear Mr. Mena:

You requested an opinion regarding any conflicts of interest as they relate to your service on the Miami-Dade County Living Wage Commission ["Commission"].

According to your letter, you have served as the Vice Chair of the Commission during the last three years. Presently, you are the Divisional Vice President, of Swissport USA, Inc. ["Swissport"], a company which currently provides General Aeronautical Services at Miami International Airport. Your company intends to submit a proposal to continue providing General Aeronautical Services at the airport, in accordance with Request for Proposal No. MDAD-004. The Contract directs you to seek an ethics opinion regarding the applicability of the Conflict of Interest and Code of Ethics to your service on the Commission.

The Commission evaluates the effectiveness of the Living Wage Ordinance, reviews certifications submitted by County service contractors and makes recommendations to the Board of County Commissioners on said Ordinance. The living wage requirement applies to all companies providing General Aeronautical Services, which include Swissport.

The Conflict of Interest and Code of Ethics Ordinance permits you to serve on the Commission while employed as a Divisional Vice President for Swissport, a company which contracts with the County.

Section 2-11.1 (c)(3) provides,

Limited exclusion from prohibition on autonomous personnel, advisory personnel and quasi-judicial personnel contracting with county. Notwithstanding any provision to the contrary herein, subsections (c) and (d) shall not be construed to prohibit any person defined in subsection (b)(2), (b)(3) and (b)(4) from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the board member or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County. However, any person defined in subsection (b)(2), (b)(3) and (b)(4) is prohibited from contracting with any agency or department of Miami-Dade County subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the board of which the person is a member.

Since you do not own a controlling financial interest in Swissport, which the Code of Ethics defines as ten (10) percent or more of outstanding capital stock, you are not prohibited from serving on the Commission. However, Section 2-11.1 (f), "*Compulsory disclosure by employees of firms doing business with the County*" requires that you file a sworn statement with the Clerk of the Board disclosing your employment and interest, given that Swissport has substantial business commitments with the County.

Secondly, Section 2-11.1 (v) "*Voting Conflicts: Members of Advisory and Quasi-Judicial Boards,*" provides,

No person included in the terms defined in subsections (b) (3) (quasi-judicial personnel) and (b) (4) (advisory personnel) shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.

Therefore, while you may serve on the Commission, you may not vote on any matters pertaining to Swissport.

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics should you have any questions regarding possible conflicts under state law.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", followed by a horizontal line extending to the right.

ROBERT MEYERS  
Executive Director

**File Number:** 991160      **File Type:** Ordinance      **Status:** Adopted  
**Version:** 0      **Reference:** 99-44      **Control:** County Commission  
**File Name:** ORDINANCE RELATING TO LIVING WAGE ON COUNTY SERVICE CONTRACT      **Introduced:** 5/4/1999  
**Requester:** NONE      **Cost:**      **Final Action:** 5/11/1999  
**Agenda Date:** 5/11/1999 **Agenda Item Number:** 4BSUBSTITUTE

**Notes:** Title: ORDINANCE CREATING SECTION 2-8.9 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA ESTABLISHING A LIVING WAGE REQUIREMENT FOR COUNTY SERVICE CONTRACTS AND FOR COUNTY EMPLOYEES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**Indexes:** CONTRACTS      **Sponsors:** Natacha Seijas Millan  
LIVING WAGE      Miguel Diaz de la Portilla  
Dorrin D. Rolle  
Javier D. Souto

**Sunset Provision:** No      **Effective Date:**      **Expiration Date:**  
**Registered Lobbyist:** None Listed

### Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
Board of County Commissioners	5/11/1999	4B SUBSTITUTE	Adopted				P
<b>REPORT:</b>	<p>In response to Commissioner Carey-Shuler's inquiry, the Assistant County Attorney advised that State and Federal Agencies that provided services to the county would not be required to comply with the provisions of the foregoing ordinance unless the agency was responding to an RFP for one of the services specified within the ordinance. Commissioner Diaz de la Portilla spoke in support of the foregoing ordinance and addressed concerns raised regarding the impact implementation of the foregoing ordinance would have on the county's budget. He stated the county's budget would best benefit from improvement of oversight, ensuring that the bid process was truly competitive and exposing and correcting fraud, mismanagement and corruption. Commissioner Moss requested the county investigate using any additional resources available for the purpose of hiring the unemployed in the community.</p>						
County Attorney	5/4/1999		Assigned	Eric A. Rodriguez			

### Legislative Text

**TITLE**  
ORDINANCE CREATING SECTION 2-8.9 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA  
<http://www.miamidade.gov/govaction/matter.asp?matter=991160&file=false&yearFolder=Y1999>      5/13/04

**ESTABLISHING A LIVING WAGE REQUIREMENT FOR COUNTY SERVICE CONTRACTS AND FOR COUNTY EMPLOYEES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE**

**BODY**

WHEREAS, the County awards private firms contracts to provide services for the public. The County also provides financial assistance to promote economic development and job growth. Such expenditures of public money also serve the public purpose by creating jobs, expanding the County's economic base, and promoting economic security for all citizens;

WHEREAS, such public expenditure should be spent only with deliberate purpose to promote the creation of full-time, permanent jobs that allow citizens to support themselves and their families with dignity. Sub-poverty level wages do not serve the public purpose. Such wages instead place an undue burden on taxpayers and the community to subsidize employers paying inadequate wages by providing their employees social services such as health care, housing, nutrition, and energy assistance. The County has a responsibility when spending public funds to set a community standard that permits full-time workers to live above the poverty line. Therefore, contractors and subcontractors of County service contracts should pay their employees nothing less than the living wage herein described; and

WHEREAS, in addition to requiring living wages for County services provided by private firms, the County wishes to serve as an example by providing a living wage to County employees to be determined consistent with budgetary, pay plan and bargaining unit considerations.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-8.9 of the Code of Miami-Dade County, Florida, is hereby created as follows:  
 Sec. 2-8.9. Living Wage Ordinance For County Service  
 Contracts and County Employees.

**DEFINITIONS**

- (A) "Applicable Department" means the County department using the service contract.  
 (B) "County" means the government of Miami-Dade County or the Public Health Trust.  
 (C) "Covered Employee" means anyone employed by any Service Contractor, as further defined in this Chapter either full or part time, as an employee with or without benefits that is involved in providing service pursuant to the Service Contractor's contract with the County.  
 (D) "Covered Employer" means any and all Service Contractors and subcontractors of Service Contractors.  
 (E) "Service Contractor" is any individual, business entity, corporation (whether for profit or not for profit), partnership, limited liability company, joint venture, or similar business that is conducting business in Miami-Dade County or any immediately adjoining county and meets the following criteria:  
 (1) the Service Contractor is paid in whole or part from one or more of the County's general fund, capital project funds, special revenue funds, or any other funds either directly or indirectly, whether by competitive bid process, informal bids, requests for proposals, some form of solicitation, negotiation, or agreement, or any other decision to enter into a contract;  
 (2) the Service Contractor is engaged in the business of, or part of, a contract to provide, a subcontractor to provide, or similarly situated to provide, Covered Services, either directly or indirectly for the benefit of the County. However, this does not apply to contracts related primarily to the sale of products or goods; or  
 (3) the Service Contractor is a General Aeronautical Service Permittee (GASP) at Miami International Airport.  
 (F) "Covered Services" are the type of services purchased by the County that are subject to the requirements of the Living Wage Ordinance which are one of the following:

(1) County Service Contracts

Such Covered Services are contracts involving the County's expenditure of over \$100,000 per year for the

following types of services:

- (i) food preparation and/or distribution;
- (ii) security services;
- (iii) routine maintenance services such as custodial, cleaning, refuse removal, repair, refinishing, and recycling;
- (iv) clerical or other non-supervisory office work, whether temporary or permanent;
- (v) transportation and parking services including airport and seaport services;
- (vi) printing and reproduction services; and,
- (vii) landscaping, lawn, and/or agricultural services.

**(2) GASP Permittee**

Any service that is provided by a GASP permittee at MIA is a Covered Service without reference to any contract value.

**(3) Services Performed by County Employees**

Should any services that are being performed by County employees at the time this Ordinance is enacted be solicited in the future by the County to be performed by a Service Contractor, such services shall be Covered Services subject to this Ordinance regardless of the value of the Contract.

**LIVING WAGE**

**(A) Living Wage paid.**

**(1) Service Contractors.**

All Service Contractors as defined by this Chapter, including MIA General Aeronautical Service Permittees (subject to restrictions if any applicable to such permit), performing Covered Services with Miami-Dade County shall pay to all of its employees providing Covered Services, a Living Wage of no less than \$8.56 per hour with health benefits as described in this section, or otherwise \$9.81 per hour.

**(2) County Employees**

For County employees under the County pay plan, the County will begin to pay a living wage consistent with the goals of this Ordinance on a phase-in basis beginning in the 2000-2001 County budget year increasing on an annual basis incrementally so that the Living Wage is fully implemented for County employees in the 2002-2003 County budget year as adjusted for inflation pursuant to subsection (C) below. Thereafter, the Living Wage to be paid by the County to its employees shall not be subject to the annual indexing required under subsection (C) below and instead is subject to negotiation within the collective bargaining structure.

**(B) Health Benefits.** For a Covered Employer or the County to comply with the Living Wage provision by choosing to pay the lower wage scale available when a Covered Employer also provides Health Benefits, such Health Benefits shall consist of payment of at least \$1.25 per hour towards the provision of health care benefits for employees and their dependents. If the health benefit plan of a Covered Employer or the County requires an initial period of employment for a new employee to be eligible for Health Benefits (eligibility period) such Covered Employer or the County may qualify to pay the \$8.56 per hour wage scale during a new employee's initial eligibility period provided the new employee will be paid Health Benefits upon completion of the eligibility period. Proof of the provision of Health Benefits must be submitted to the awarding authority to qualify for the wage rate for employees with health benefits.

**(C) Indexing.** The Living Wage will be annually indexed to inflation as defined by the Consumer Price Index calculated by the U.S. Department of Commerce as applied to the County of Miami-Dade. The first indexing adjustment shall occur for the 2001-2002 County budget year using the Consumer Price Index figures provided for the calendar year ended December 31, 2000, and thereafter on an annual basis.

**(D) Certification required before payment.** Any and all contracts for Covered Services shall be void, and no funds may be released, unless prior to entering any agreement with the County for a service contract, the employer certifies to the Applicable Department that it will pay each of its employees no less than the living wage described in (A). A copy of this certificate must be made available to the public upon request. The certificate, at a minimum, must include the following:



- (1) the name, address, and phone number of the employer, a local contact person, and the specific project for which the service contract is sought;
  - (2) the amount of the contract and the Applicable Department the contract will serve;
  - (3) a brief description of the project or service provided;
  - (4) a statement of the wage levels for all employees; and
  - (5) a commitment to pay all employees a living wage, as defined by paragraph (A).
- (E) Observance of other laws. Every employee shall be paid not less than bi-weekly, and without subsequent deduction or rebate on any account (except as such payroll deductions as are directed or permitted by law or by a collective bargaining agreement). The employer shall pay employees wage rates in accordance with federal and all other applicable laws such as overtime and similar wage laws.
- (F) Posting. A copy of the living wage rate shall be kept posted by the employer at the site of the work in a prominent place where it can easily be seen by the employees and shall be supplied to the employee within a reasonable time after a request to do so. In addition, Service Contractors shall forward a copy of the requirements of this Ordinance to any person submitting a bid for a subcontract on any Service Contract covered by this Chapter. Posting requirements will not be required where the employer prints the following statements on the front of the individual's first paycheck and every six months thereafter: "You are required by Miami-Dade County law to be paid at least [insert applicable rate under this Chapter] dollars an hour. If you are not paid this hourly rate, contact your supervisor or a lawyer." All notices will be printed in English, Spanish, and Creole.
- (G) Collective Bargaining. Nothing in this Chapter shall be read to require or authorize any employer to reduce wages set by a collective bargaining agreement or as required under any prevailing wage law.

**IMPLEMENTATION**

- (A) Procurement Specifications. The Living Wage shall be required in the procurement specifications for all County service contracts for Covered Services on which bids or proposals shall be solicited on or after the effective date of this Ordinance. The procurement specifications for applicable contracts shall include a requirement that Service Contractors agree to produce all documents and records relating to payroll and compliance with this Ordinance upon request from the Applicable Department or as otherwise provided by the County Manager by Administrative Order.
- (B) Information distributed. All requests for bids or requests for proposals for service contracts, whether advertised or informally solicited, shall include appropriate information about the requirements of this Ordinance.
- (C) Maintenance of Payroll Records. Each Covered Employer shall maintain payrolls for all Covered Employees and basic records relating thereto and shall preserve them for a period of three (3) years. The records shall contain:
- (1) the name and address of each Covered employee;
  - (2) the job title and classification;
  - (3) the number of hours worked each day;
  - (4) the gross wages earned and deductions made;
  - (5) annual wages paid;
  - (6) a copy of the social security returns and evidence of payment thereof;
  - (7) a record of fringe benefit payments including contributions to approved plans; and
  - (8) any other data or information the Living Wage Commission should require from time to time.
- (D) Reporting payroll. Every six (6) months, the Covered Employer shall file with the Applicable Department a complete payroll showing the employer's payroll records for each Covered Employee working on the contract(s) for Covered Services for one payroll period. Upon request, the Covered Employer shall produce for inspection and copying its payroll records for any or all of its Covered Employees for the prior three (3) year period. It shall be the responsibility of the Applicable Department to examine all payrolls for compliance within sixty (60) days of receipt.
- (E) Reporting employment activity. Every six (6) months, the Covered Employer will file with the Applicable Department reports of employment activities to be made publicly available, including:

- (1) race and gender of employees hired and terminated; and
- (2) zip code of employees hired and terminated; and
- (3) wage rate of employees hired and terminated.

### COMMISSION ON A LIVING WAGE, ESTABLISHMENT AND RESPONSIBILITY

(A) Establishment. The County Commission shall establish a fifteen (15) person commission entitled the "Living Wage Commission" the purpose of which shall be to review the effectiveness of this Chapter, review certifications submitted by Covered Employers to the County, review complaints filed by employees and to make recommendations to the County Mayor and the County Commission regarding the above listed matters.

(B) Members. The Commission shall be composed of fifteen (15) members provided that no more than six (6) members are representatives of the business community or affected employer groups selected for a term of two (2) years in the following manner:

- (1) Two (2) members of the commission shall be selected by the County Mayor; and
- (2) One (1) member shall be selected by each of the County Commissioners.

(C) Meetings. The Living Wage Commission shall meet quarterly and in special session as required. All meetings of the Living Wage Commission shall be open to the public and will allow for public testimony on policies or conduct relating to this Chapter.

(D) Staff Support. The County Manager as more fully delineated by Administrative Order shall provide staff support for the compliance and enforcement of this Ordinance and as is necessary to support the activities of the Living Wage Commission.

### COMPLIANCE AND ENFORCEMENT

(A) Service Contractor to Cooperate. The Service Contractor shall permit County employees, agents, or representatives to observe work being performed at, in, or on the project or matter for which the Service Contractor has a contract. The County representatives may examine the books and records of the Service Contractor relating to employment and payroll to determine if the Service Contractor is in compliance with the provisions of this Chapter.

(B) Complaint Procedures and Sanctions. An employee who believes that this Chapter applies or applied to him or her and the Service Contractor is or was not complying with the requirements of this Chapter has a right to complain by filing a written complaint. The County Manager shall establish by Administrative Order the procedures and requirements for filing a complaint and for the processing and resolution of complaints under this Ordinance including the sanctions to be imposed for violations of this Ordinance. The County Manager shall also by Administrative Order establish a procedure applicable to complaints by County employees regarding non-compliance with this Ordinance.

(C) Private Right of Action Against Service Contractors. Any Covered Employee of a Service Contractor, or any person who was formerly a Covered Employee of a Service Contractor, may instead of the County administrative procedure set forth in this Ordinance but not in addition to such procedure, bring an action by filing suit against the Covered Employer in any court of competent jurisdiction to enforce the provisions of this Chapter and may be awarded back pay, benefits, attorney's fees, and costs. The applicable statute of limitations for such a claim will be two (2) years as provided in Florida Statutes section 95.11(4)(c) in an action for payment of wages. The court may also impose sanctions on the employer, including those persons or entities aiding or abetting the employer, to include wage restitution to the affected employee and damages payable to the Covered employee in the sum of up to \$500 for each week each employer is found to have violated this Chapter.

(D) Sanctions Against Service Contractors. For violations of this Ordinance as determined pursuant to the procedures set forth by Administrative Order, the County may sanction a Service Contractor for violations of this Ordinance by requiring the Service Contractor to pay wage restitution to the affected employee. The County may also sanction the Service Contractor in at least one of the following additional ways:

- (1) Damages payable to the County in the sum of up to \$500 for each week for each Covered Employee found to have not been paid in accordance with this Chapter;