



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

Legislative Analysis

Government Operations
Committee

July 14, 2009
9:30 A.M.
Commission Chamber

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**Miami-Dade County Board of County Commissioners
Office of the Commission Auditor**

**Legislative Notes
Government Operations Committee
Meeting Agenda**

July 14, 2009

Written analyses and notes for the below listed items are attached for your consideration:

Item Number(s)

| |
|------|
| 4(C) |
| 4(E) |
| 4(F) |
| 4(H) |

If you require further analysis of these or any other agenda items, please contact Guillermo Cuadra, Chief Legislative Analyst, at (305) 375-5469.

Acknowledgements--Analyses prepared by:
Michael Amador-Gil, Legislative Analyst
Tiandra Sullivan, Legislative Analyst

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 4(C)
File Number: 091690
Committee(s) of Reference: Government Operations Committee
Date of Analysis: July 10, 2009
Type of Item: Resolution Rescinding Administrative Order 4-100

Summary

This resolution rescinds Administrative Order (AO) 4-100, policies and procedures, departmental responsibilities, fees and fines for parking spaces for persons transporting young children and strollers, and approving Implementing Order (IO) 4-100 to revise the fee and fines structure and departmental responsibilities.

Background and Relevant Legislation

Baby Stroller Permits are currently sold at the following Service Direct offices:

| | |
|--|--|
| Northeast 1658 NE Miami Gardens Drive Miami, FL 33179 | Harry Zubkoff 55 NW 199 Street Miami, FL 33169 |
| Dr. Martin Luther King Jr. Office Plaza 2525 NW 62 Street Suite 1200 Miami, FL 33147 | Miami-Dade Permitting and Inspection Center 11805 SW 26 Street 2nd Floor Miami, FL 33175 |
| South Dade Government Center 10710 SW 211 Street Suite 101 Cutler Bay, FL 33189 | |

Note: According to Government Information Center (GIC), the Northeast location will be moving to the North Dade Justice Center located on 15555 Biscayne Boulevard, Miami, FL 33160 at the end of July.

According to the cover memorandum accompanying the resolution, the Implementing Order provides for the ability to expand the number of available locations and increase convenience for residents to

purchase a Baby Stroller Permit. According to the GIC, the IO will allow the department to expand the program by offering permits in non-County locations, most notably hospitals.

Ordinance 94-104 provides that one-third of fees collected for issuing parking permits for persons transporting young children and strollers shall be distributed to private non-for-profit non-denominational agencies providing services for severely abused or neglected children.

The most recent allocation was made on June 23, 2008. The Board of County Commissioners approved Resolution 677-08 authorizing the expenditure of fees collected for issuing permits for persons transporting young children and stroller to Charlee of Dade County, Inc. in the amount of \$25,000.

Policy Change and Implication

The resolution approves an Implementing Order that allows the GIC to expand the number of available locations where Baby Stroller permits can be bought. It also proposes revisions to the existing fee structure and delegates the authority to GIC to sell Baby Stroller Permits and Gift Certificates.

Budgetary Impact

N/A

Prepared By:

Tiandra D. Sullivan

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
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Legislative Notes

Agenda Item: 4(E)
File Number: 092045
Committee(s) of Reference: Government Operations
Date of Analysis: July 14, 2009
Type of Item: Contract Award

Summary

This resolution waives competitive bidding and approves the award of an Energy Performance contract to Florida Power & Light Services, LLC. (FPL Services) in the amount not to exceed \$6,046,925. The scope of work includes replacement of lighting fixtures at all portions of Terminals A, B, C, E, F, G and H, Concourses E, F, G and H and Satellite E of Miami International Airport .

This item also details several revisions to the resolution introduced during the June 9, 2009, Government Operations (GO) Committee meeting.¹

A total of 18,552 fixtures will either be completely replaced or retrofitted through this contract.

The contract provides that FPL Services will:

- Furnish a Construction Bond for the full cost of the project until the conservation measures is accepted by the County;
- Provide the County an annual reconciliation of the Cost Savings;
- Be liable for any shortfalls and will pay the County the amount of a shortfall from the time the Annual Reconciliation first revealed a shortfall and the time of repayment. The administration is relying on the guaranteed annual energy and related maintenance savings to make the annual payments;

¹Contract amount was \$6,528,096; (2) installations of a 40KW DC capacity Solar Photovoltaic power system (Solar Panels) was removed in the revised resolution totaling \$437,988; (3) includes the County Mayor or designee authorizing to approve modifications to the scope of work with conditions (See hand written page 3); (4) expected reductions of electricity costs were reduced from \$690,000 to \$680,000 per year; (5) the Energy Warranty Period was reduced by one (1) year (the original contract mentioned a 12 year Energy Warranty Period. This contract award mentions 11 years of savings guaranteed; (6) the contract award date was modified from April 27, 2009, to June 23, 2009; (7) Section 4.1 Installations of CMs includes Section 4.1 (d). This new section authorizes the County to request changes altering or deducting from the work listed in Schedule A; and (8) Section 5.5 Financing includes the Tax-Exempt Municipal Lease-Purchase Agreement. This new section states that unless a more favorable financing vehicle is found once this contract is executed, it is expected that this financing vehicle will be a Tax-Exempt Municipal Lease-Purchase Agreement.

- Remain responsible for the professional and technical accuracy of all services performed throughout the term of the contract;
- Conduct training for building service staff, personnel operating and maintaining the lighting systems, and engineering staff and General Services Administration (GSA) staff; and
- Maintain a minimum warranty of one year in parts and labor that will apply to all the equipment, except that FPL Services agrees to warranty certain specified equipment for longer terms.

The contract provides that the County will:

- Allow draws from a pre-established escrow account to go to the FPL Services as set forth in Schedule D, based on completed milestones previously established; and
- Upon execution of this contract, the County and FPL Services agree to, pursue a separate financing agreement with a third party in order to allow the County to finance this acquisition. This vehicle will constitute the County's source of funding for its obligations under this contract. A rate of 4.6%, based on a preliminary, informal quote, has been used as an estimate for the financial calculations.

Section 4.2 of the contract addresses the Acceptance of the Conservation Measure Groups: Once the CM Group has substantially completed their work, FPL Services will provide the County a written request for a substantial completion inspection. Within 10 business days from receipt of FPL Services' written request, the County will make an inspection to determine whether the CM Group installation is complete.

- **Question: If a total of 18,552 fixtures will either be completely replaced or retrofitted, how will the County conduct inspections?**

According to GSA staff, Building permits are always pulled, which is the primary means by which to ensure that the fixtures are properly installed. In terms of proper counts of fixture types, the project is performed over 18 months. Invoices are submitted on a periodic basis, e.g. monthly or bimonthly, and the County inspections of lighting will be conducted on an incremental basis by County staff as that occurs. Staff looks at all areas that are to be retrofitted, makes sure that the new fixtures and/or lights are installed everywhere they are supposed to, that they are of the pre-agreed type, and that they are lit.

Background and Relevant information

In 1994, the state legislature enacted the Guaranteed Energy Savings Program, later amended to become the Guaranteed Energy Performance Savings Contracting Act. The program permits agencies, defined as "the state, a municipality, or a political subdivision," to enter into a guaranteed energy performance savings contract, under specified circumstances.²

The purpose of a guaranteed energy savings contract is to allow a properly-licensed contractor to create or install energy conservation measures that will reduce the energy or operating costs of an agency facility. The Act contains a number of contract requirements to ensure that the measures will

²Ch. 94-112, L.O.F., codified at s. 489.145, F.S.

result in a savings to the agency over time, and to ensure that the contractor is financially liable for any failure to achieve such savings. An “energy conservation measure” is a training program, facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or operating costs. Examples of such measures include insulation, storm windows and doors, automatic energy control systems, and cogeneration systems.³

Current law requires that, before the installation of conservation measures, agencies obtain from a qualified provider a report that summarizes the costs of the conservation measures and provides the amount of cost savings. The qualified provider must be selected in compliance with s. 287.055, F.S., which provides for competitive bidding requirements for state agencies wanting to procure professional architectural, engineering or surveying and mapping services.⁴

The following questions were answered by GSA staff:

- Has the County and FPL Services finalized their financing agreements? *The County has not received a final interest rate since, as indicated, the final municipal lease rate is not offered until after the contract is approved. At that time, the Energy Service Company (ESCO) will obtain at least three quotes for rates and terms. If the rate and terms are not to the County’s satisfaction, the contract provides the County with the option of not proceeding with the project.*
- How will the current market conditions affect the interest rate costs and potential savings in this contract? *The rate used in the cash flow indicates market conditions as of June 15th.*
- Are the figures in Schedule D Compensation to Company and Deliverables (handwritten page 86) informal expenditure costs to the County? Please indicate if these are preliminary figures. *The figures are neither informal nor preliminary, but are the actual costs that the County will incur, and which FPL cannot exceed. Those charges will be paid from the money (loan) the bank advances, and which the County will later repay to the Bank through the lease, with interest.*
- What is the estimated debt obligation payment from the County to the lender? *Per the cash flow, and based on the estimated interest rate and terms, the total debt obligation would be \$8,228,492, over the eleven-year term, an average of just over \$748,000 per year. With respect to the phrase “estimated debt obligation payment,” note that a tax-exempt lease-purchase agreement does not constitute a long-term debt obligation because of non-appropriation language that is written into the agreement. This language limits the payment obligation to the organization’s current operating budget period. Therefore, if for some reason future funds are not appropriated, the equipment is returned to the lender, and the repayment obligation is terminated at the end of the current operating period without placing any obligation on future budgets.*
- Does the County anticipate any Annual Excess Savings that exceeds total annual contract payments to FPL Services? *Yes, per the cash flow, and based on the estimated interest rate and terms, the annual excess savings would be \$1,000 per year on years 1 through 10, and \$580,133 in Year 11.*

³ State of Florida Department of Management Services

⁴ Section 489.145(4), F.S.

- Why can't Miami-Dade Aviation staff perform the work based of FPL's audit submitted in September 2008? *Legally, they can do so. In most cases, however, participating departments find it significantly more beneficial to utilize the ESCO's services. Primary reasons include:*
 - *No departmental capital, grant or loaned funds are required in order to perform the work, thus freeing those dollars – if they exist – to be used for other types of projects.*
 - *Operating dollars are generally NOT viable funding sources unless the payback on a particular improvement is less than one year; otherwise, the cost will exceed whatever amount is budgeted for the electricity and maintenance related to the particular improvement.*
 - *The sheer magnitude of this project – over 18,000 fixtures – exceeds the capacity of departmental resources to perform the work.*
 - *The ESCO is guaranteeing the savings. If the County performs the work, there is no such guarantee.*

Additional Notes

During the June 9, 2009, GO Committee meeting, the County Attorney's Office mentioned that the item should reflect Commission District 6; not District 5. Also, the formula for calculating lighting energy and demand savings on handwritten page 77 was not simplified. The Chairman of the GO committee requested that the formula be simplified.

According to GSA staff, the Commission District designation will be corrected on the record.

GSA staff interpreted the Chair's request to mean that the formula needed to be clarified or explained. A sentence was added to the section in that effort. The formula itself is a required contractual provision and a standard reference in the performance contract industry used to define to the parties – in a more precise way than can generally be achieved by narrative text – that the total Kilowatt-Hours saved is measured or determined by the aggregate value of all the differences between the "before" and the "after" energy usage of each group of fixtures in the retrofit. Each fixture group is made up of lamps of the same "before" and "after" lamp type and number of lamps in the fixture, and same number of operating hours. Since there are roughly 60 different fixture groupings, all of which have individual "before" and "after" values, the formula would require about 60 iterations to cover without the Sigma or summation sign (Σ).

Prepared by: Michael Amador-Gil

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
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Legislative Notes

Agenda Item: 4(F) & 4(H)
File Number: 091846 & 091845
Committee(s) of Reference: Government Operations
Date of Analysis: July 14, 2009
Type of Item: Joint Funding Agreement

Summary

Item 4(F) approves a Joint Funding Agreement (JPA) between Miami-Dade County and the United States Geological Survey (USGS) to complete hydraulic tomography testing at the County's North District Wastewater Treatment Plant as a condition of the operating permit issued by the Florida Department of Environmental Protection (FDEP) to operate the inject wells at the plant.

In August 2008, the FDEP required that Miami-Dade Water Sewer (MDWASD) conduct a study of the injection of treated wastewater in the Boulder Zone, a porous geologic region approximately 900 meters below ground. The USGS is assisting MDWASD with the study. The FDEP agreed to modify the August 2008 permit to indefinitely delay the \$2 million Floridian Aquifer monitoring well if MDWASD collects data and conducts analyses to refine existing knowledge related to the Boulder Zone, Avon Park Permeable Zone and Upper Floridian Aquifer. **MDWASD will fund the testing from operating revenues in the amount of \$437,888.**

Item 4(H) approves a JPA between Miami-Dade County and the USGS to develop a graphical software package that will allow County staff to simulate groundwater flows to optimize water resource management as required by the FDEP for the County's Integrated Water/Wastewater Reuse Master Plan due in 2013. The timeframe is based on 48 months and assumes that the USGS will receive a signed agreement in time to start the project at the beginning of the first quarter of Fiscal Year 2010. The USGS is developing an integrated model of surface and groundwater flow for the County. The USGS proposes to extend the usability of the integrated model by developing a graphical software package that will allow users to build model input data sets. **According to USGS, the software package will be developed for County technical staff, consultants, as well as modelers. MDWASD will fund the development of the graphical software package from operating revenues in the amount of \$565,037.**

Previously approved Joint Funding Agreements between Miami-Dade County and the USGS

| County Department | Resolution No. | Funding Amount | Funding Source | Requirement | Scope of Work |
|--------------------------|-----------------------|--|---|---|--|
| MDWASD & DERM | 169-09 | MDWASD \$431,387 & DERM \$250,650 | Not available | MDWASD Permit Requirements | USGS provide services for continuing equipment maintenance and data collection related to groundwater elevations and saltwater intrusion. |
| MDWASD & DERM | 1046-08 | \$990,000 (Of this amount, \$240,000 was funded by DERM) | Wastewater Connection Chagres and MDWASD operating revenues | Requirement of the County's 20-Year Water Use Permit | USGS analyze organic wastewater compounds, antibiotics, hormones and pharmaceuticals in wastewater, drinking water, canals and groundwater. |
| MDWASD & DERM | 112-08 | \$2,769,512 (Cost split between MDWASD & DERM) | MDWASD's revenues and DERM's proprietary funds | Requirement of the County's 20-Year Water Use Permit | Develop an integrated model of surface and groundwater flow for evaluations the effects of competing water demands. |
| MDWASD & DERM | 15-08 | \$525,244 (Cost split between MDWASD and DERM) | Not available | South Florida Water Management District Consumptive Use permits | Continuing maintenance of equipment and the data collection of groundwater elevations and saltwater intrusion |
| MDWASD | 1321-07 | \$1,825,764 | MDWASD's renewal and replacement funds and water connection charges | Requirement of the County's 20-Year Water Use Permit | USGS main objective is to identify the present location of seawater-freshwater interface be using the County existing monitoring wells and newly installed monitoring wells. |

The Board of County Commissioners has approved several USGS surveys since December 1998. The Office of the Commission Auditor only included the most recent JPAs.

Question: Can MDWASD staff conduct some of these surveys with in-house staff and still fulfill their requirements mandated by the South Florida Water Management District and the FDEP?

Prepared by: Michael Amador-Gil