



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

Legislative Analysis

Transit, Infrastructure & Roads
Committee

April 14, 2010
2:00 P.M.
Commission Chamber

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

**Legislative Notes
Transit, Infrastructure & Roads Committee
Meeting Agenda**

April 14, 2010

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

Item Number(s)

2(A)
3(E) & Supplement
3(F)
3(G)
3(I)
3(N)

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, Senior Legislative Analyst
Jason T. Smith, Senior Legislative Analyst

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



Legislative Notes

Agenda Item: 2(A)

File Number: 100474

**Committee(s)
of Reference:** Transit, Infrastructure & Roads

Date of Analysis: April 12, 2010

Type of Item: Ordinance Amending the Code of Miami-Dade County

Summary

This item amends the process of appointing new CITT members. A new five-person nominating committee will review applicants to the CITT and forward them to the District Commissioner responsible for the replacement. The Commissioner can then appoint someone from the slate of nominees, or the Commissioner can request a new slate of nominees.

Furthermore, this item mandates that the CITT create a Five-Year plan with is to include all transportation-related projects for a five-year span.

Citizens' Independent Transportation Trust		
	Current CITT Disposition	Proposed Changes
Membership	15 members	15 members
Membership Composition	13 members (each representing a Commission District); 1 member appointed by the Mayor; 1 appointed by the Miami-Dade League of Cities.	Same makeup as original.
Vacancies	Vacancies are filled either by the Commissioners of the district in which the vacancy occurs. The League of Cities appoints a replacement for its vacant seat; and the Mayor appoints a replacement for his/her vacant seat.	A Nominating Committee will forward a slate of names to the full Board of County Commissioners for ratification. The entire slate of nominees could be approved or rejected by a majority vote. The BCC could not change the slate of nominees. The nominating committee will consist of the Chair of the County's Transit, Infrastructure & Roads Committee; the Chair of the Chamber of Commerce Transportation Committee; the Chair of the County's Commission on Ethics; and the Chair of the County's Commission on Disability Issues. Vacancies of seats reserved for the Mayor; the

Citizens' Independent Transportation Trust		
	Current CITT Disposition	Proposed Changes
		League of Cities; MDX; FDOT; MPO; and the SFRTA can be filled by direct appointments from their respective offices/organizations.
PTP Project List	The BCC may not delete or materially change any County project listed in Exhibit 1 to the PTP enabling ordinance.	The BCC may not delete or materially change any project approved in the Five-year Implementation Plan.
Contracts	No surtax funds may be used on contracts awarded by the County Commission until the Trust has approved the item, and if the Trust disapproves the item then the County Commission must reaffirm its award by a 2/3 vote. Awards of contracts for services in support of the administration of the CITT does not require County Commission or Trust approval, so long as the individual contract amount does not exceed \$1,000.	No contracts will be awarded using PTP funds unless the CITT has issued a recommendation. The BCC may award the contract, if it agrees with the CITT, by a majority vote. A contract modification or rejection will take a 2/3 vote of the BCC. The BCC may act on a contract award recommendation if the CITT does not take action within 45 days of the filing of the contract award recommendation. The County Mayor or his designee will be authorized to award contracts funded with Charter County Transit System Surtax funds consistent with the authority granted in Section 2-8.1 of the Code of Miami-Dade County. Section 2-8.1 states: "The County Manager is delegated the authority to award and reject bids or proposals for contracts for public improvements (construction), and purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Section 2-10.4 and Section 287.055, Florida Statutes) costing one million dollars (\$1,000,000.00) or less, or in the case of miscellaneous construction contracts designed to provide opportunities for Community Small Business Enterprises specifically authorized by Board resolution two and one-half million dollars (\$2,500,000.00) or less, without the need for action by the County Commission. The delegation to award and reject bids or proposals for contracts up to two and one-half million dollars (\$2,500,000) set forth in the preceding sentence shall expire on July 1, 2010."
Five-year Plan	There is currently no requirement for the CITT to develop a five-year plan. The Metropolitan Planning Organization currently develops a region-wide Long Range Transportation Plan which is updated every five years.	The CITT will be tasked with developing a five-year plan in consultation with the Mayor. The plan would be <i>recommended</i> to the County Commission, and approved by the County Commission. The plan will include a detailed scope of work, schedule, budget for each project included in Exhibit 1 of the PTP, which is expected to be completed

Citizens' Independent Transportation Trust		
	Current CITT Disposition	Proposed Changes
		within five years. The first five-year plan is to be approved no later than Nov. 1, 2010. The CITT must also produce an annual report detailing the progress of each project included in the five-year plan.

Background and Relevant Legislation

In 2002, Miami-Dade voters approved the levy of a half-penny sales tax to fund the People's Transportation Plan (PTP). Along with levying the tax, voters also approved the creation of the CITT to oversee the PTP. The CITT is currently comprised of 15 members appointed by the Board of County Commissioners (13), and the County Mayor (1), and the Miami-Dade League of Cities (1).

The Office of the Citizens' Independent Transportation Trust (OCITT) provides staff support for the CITT and "coordinates public outreach efforts to inform the community regarding the improvements that have been implemented using surtax funds," according to the OCITT website. The OCITT is fully funded with proceeds from the PTP surtax.

The most recent amendments to the CITT's enabling legislation is as follows:

Ordinance 08-97: (Passed on 9/2/2008) This ordinance required that the County Attorney serve as legal counsel to the CITT. This amendment made the County Attorney and his office the only county employees required to staff the CITT. The amendment eliminated the requirement for the County Manager's office to provide staff and support services to the CITT.

The ordinance also amended the Code to allow the CITT to hire its own executive director through a simple majority vote. The executive director is now empowered to hire and fire staff and support services for the CITT. This ordinance also gave the CITT the power to remove the executive director with a 2/3s vote of the members present at any CITT meeting.

Ordinance 08-98: (Passed on 9/2/2008) This ordinance added new subsection to the Code to give the CITT the explicit authority to hire consultants, so long as the CITT does not exceed its approved budget in the hiring of consultants.

The powers and responsibilities of the CITT include the following:

1. To monitor, oversee, review, audit, and investigate implementation of the transportation and transit projects listed in any levied by the County under authority of Florida Statute 212.055:
2. To assure compliance with any limitations imposed in the levy on the expenditure of surtax proceeds, including but not limited to:
 - a. any limitation that surtax proceeds only be expended for the transportation and transit purposes specified in Florida Statute 212.055(1)(d)1-3;
 - b. any limitation that no more than 5% of surtax proceeds be expended on administrative costs,

exclusive of project management and oversight for projects funded by the surtax; and

c. the limitation that the County Commission may not delete or materially change any County project listed in Exhibit 1 attached to the ordinance levying the surtax nor add any project thereto except as provided by this subsection. A proposed deletion, material change or addition of such a County project shall be initially reviewed by the CITT, which shall forward a recommendation thereon to the County Commission. The County Commission may either accept or reject the CITT's recommendation. If the County Commission rejects the recommendation, the matter shall be referred back to the CITT for its reconsideration and issuance of a reconsidered recommendation to the County Commission. The County Commission may approve, change or reject the CITT reconsidered recommendation. A two-thirds vote of the Commission membership shall be required to take action other than as contained in the reconsidered recommendation of the CITT. The foregoing notwithstanding, the list of County projects contained in Exhibit 1 may be changed as a result of the Metropolitan Planning Organization (MPO) process as mandated by federal and state law.

d. any requirement with regard to maintenance of effort of general fund support for Miami-Dade Transit

3. To assure compliance with any applicable federal and state requirements;
4. To require monthly reports from the Manager, County agencies and instrumentalities regarding the implementation of the projects funded by surtax proceeds (which reports shall be posted on-line, i.e., made publicly accessible on the Internet);
5. To file a report, including any recommendations, with the Mayor and the County Commission on a quarterly basis regarding the implementation of the projects funded by surtax proceeds; and
6. To monitor, oversee and periodically report to the County Commission on the level of CSBEs and CBEs in contracts funded in whole or in part with surtax proceeds, and to recommend ways to increase such participation.

CITT Selection Process

The ordinance creating the Citizens' Independent Transportation Trust defines the manner by which members are nominated and approved. The Nominating Committee in charge of the CITT selection process is comprised of 18 members, representative of the geographical, ethnic, racial, and gender makeup of Miami-Dade County. The committee is currently composed of the following members:

Richard Friedman Community Councils	Luverne Jones United Way of Miami-Dade
Honorable Horace Feliu Miami-Dade County League of Cities	Bill Isley Underrepresented People's Positive Action Council
Vacant Miami-Dade League of Women Voters	Vacant Alliance for the Aging
Vacant Urban League	Loretta Pieze NAACP, Miami-Dade Chapter William D. Talbert, III Greater Miami Convention & Visitors Bureau
Vacant Coalition of Miami-Dade Chambers of Commerce	Dario Moreno, Ph.D Florida International University

Dawn Addy, Ph.D. Ethics Commission	Judy Schmelzer Miami-Dade College
Lucie Tondreau Haitian American Grassroots Coalition	Naomi Wright Citizens' Transportation Advisory Committee
Robert Weinreb Urban Environment League of Greater Miami	Joyce E. Winebrenner - Vice-Chairperson People Acting for Community Together

According to the proposed resolution, the nominating committee will be reconfigured to five members who shall nominate a slate of 3 individuals to each County Commissioner.

Prepared by: Jason T. Smith

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



Legislative Notes

Agenda Item: 3(E) & 3(E) Supplement, 3(F), 3(G), 3(I), & 3(N)

File Number: 092662, 100826, 100708, 100720, 100727, 100854

Committee(s) of Reference: Transit, Infrastructure & Roads Committee

Date of Analysis: April 12, 2010

Type of Item: Resolution

Summary

TIRC Items	3E & 3E Supp.	3(F)	3(G)	3(I)	3(N)
Project No.	20090106	20070735	20090313	20090314	20070656
Vendor	Budget Construction Co, Inc.	Acosta Tractors, Inc.	Solution Construction, Inc.	Solution Construction, Inc.	Horsepower Electric, Inc.
Contract Award Amount	\$1.155 million Recommended	\$1.202 million Approved	\$1.155 million Recommended	\$1.155 million Recommended	\$2.640 million Approved
Change Order Request	n/a	Extends the contract time by 60 non- compensable calendar days.	n/a	n/a	Increases the original contract amount by 19% or \$500,000; and extends the contract time by 150 calendar days due to vandalism at various work sites. ¹

¹ According to Public Works Department staff, the vandalism that has been taking place since November of 2009, and has impacted the County-owned system through extensive theft of copper wiring. In order to make the system whole, functional repairs are necessary. This is 3rd party damage and is not under the contractor's scope of proactive maintenance. PWD staff indicated they are working to procure and install a locking mechanism to curb the vandalism. Staff anticipates they will need a total of 300 locking mechanisms totaling \$19,500.

TIRC Items	3E & 3E Supp.	3(F)	3(G)	3(I)	3(N)
Violations	Yes, see below	No violations open	One (1) violation totaling \$175,935 for Utilization of Non-Certified CSBE Firm/Set Aside Work		No violations open
Make-Up Plan	Yes, see below	No make-up required	Yes	Yes	No make-up required

Solution Construction Co., Inc. Make-Up Plans

According to Small Business Development (SBD) staff, there is an approved make-up plan on Project No. CGJPA 2008.03 for a dollar value of \$57,025.76 (which they were awarded). There are also two (2) approved make-up plans for **Project No. 20090313** totaling \$99,000 and **Project No. 20090314** totaling \$88,000. If these two (2) projects are awarded and the make-up plans are satisfied, Solution fulfills the make-up requirements. Overall, Solution has three (3) approved make-up plans (one (1) awarded and two (2) pending award).

Budget Construction Co, Inc. Make-Up Plan

On July 31, 2009, SBD staff approved a make-up plan for Budget Construction Company, Inc. (Budget) valued at \$349,225² under a separate Public Works contract (Project No. 20090106). The make-up plan was presented at the October 14, 2009 Transit, Infrastructure & Roads Committee (TIRC). At that time, Budget's violation report showed two (2) open violations *for failure to meet CSBE subcontractor goals on two (2) Miami-Dade Park and Recreation Department projects*.

- The TIRC committee members tabled the item on October 14, 2009 based on concerns over Budget's compliance with the CSBE requirements. **The make-up-plan would have reduced Budget's overall make-up total from \$993,891 to \$644,666.**

On November 4, 2009, the Board of County Commissioners (BCC), through Resolution 1295-09, approved Change Order No. 1 and Final between Budget and Miami-Dade County for needed additional work totaling \$65,560 located at East Dixie highway from N.E. 93 Street and N.E. 103 Street, Miami Shores Village, Florida. The two (2) *open violations mentioned above for failure to meet CSBE subcontractor goals on two (2) Miami-Dade Park and Recreation Department projects remained*.

Recalculation of Make-Up Plan Requested by Budget

According to SBD staff, the SBD revisited the September 7, 2007, Notice of Violation (40070103006) reviewing additional information submitted by Budget and subsequent information requested from the Parks and Recreation Department. The deficit was recalculated based on the final paid amount reported by the Parks and Recreation Department of \$1,646,173.60 less \$43,588.40 (for permit costs of \$11,040.53 and a contingency item valued at \$32,547.87). The revised goal requirement was \$432,698 in which \$58,412 was achieved. Budget's revised CSBE deficit on this project is \$374,286.00 and the revised make-up is \$748,572.01.

- **Budget's original make-up amount was \$993,891.40 (\$823,316.00 (40070103006) + \$170,575.40 (400701-05-004)), and now is \$919,147.41 (\$748,572.01 + \$170,575.40), a difference of \$74,743.99.**

² SBD provided the date and amount to the Office of the Commission Auditor.

Background and Relevant Information

Currently under § 10-33.02 of the Code of Miami-Dade County, a contractor who is awarded a County contract, determined to be appropriate for CSBE participation, is required to fulfill CSBE goals as established by the County. Failure to achieve the CSBE participation goals may subject the contractor to a variety of sanctions including suspension, work stoppage, termination/cancellation of the contract, and debarment.

In addition, the existing Code states that contractors who fail to fulfill the participation goal may also be ineligible to receive future contracts unless they agree to make up the deficit by having the CSBE perform equal to double the dollar value of the deficiency (the Make-up Goal).

Legislative History

On June 2, 2009, BCC, through Ordinance 09-41³, approved additional parameters for future contracts and the applied penalties for failing to meet an established CSBE goal. Also, failure to include the required Schedule of Intent Affidavit for any future contracts will result in the submittal of a bid or a proposal being deemed nonresponsive.

- At the June 2, 2009, BCC meeting, concerns were raised that firms could continue to violate the CSBE policies and accept another County contract if they agree to an approved make-up plan.

The violations by Budget occurred before the additional parameters above were approved. However, if Budget incurred new violations, the penalties approved would be imposed.

Prepared by: Michael Amador-Gil

³ Contract language will provide that in order to be eligible for future county contracts, a contractor who fails to meet an established CSBE goal will submit a CSBE Make-up Plan for the approval of the Director. A Make-up Plan and a corresponding Schedule of Intent Affidavit must be submitted as part of any bid or proposal submitted for future contracts at the time of bid or proposal submittal.

Any contractor subject to an approved Make-up Plan that fails to comply with any of the material terms of that Make-up plan, without good cause, will be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a six (6) month period. A contractor that fails to comply with any of the material terms of a second Make-up plan, without good cause, will be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a one (1) year period.