

Memorandum



Date: July 17, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Economic Stimulus Plan: Accelerating the County's Capital Program – Economic Stimulus Ordinance Procedures

Agenda Item No. 7(A)

This ordinance, listed as Agenda Item No. 2W on the July 8, 2008 Governmental Operations and Environment Committee agenda, was amended by the committee as follows:

- **Sec. 2-8.2.7 (4) (c) adds that standing selection and negotiation committees shall contain, whenever possible, representation from the user department**
- **(d) (2) authority to award contracts exceeding estimated base bid reduced from 20 percent to 10 percent over estimate**
- **(d) (4) requires any protested award to be considered by the Board**
- **(d) (5) clarifies that items must be presented for ratification by the Board at the next available meeting**
- **(e) (1) provides that Manager may settle change order and contractor claims only when they do not increase contract amount including contingencies**
- **Deletes the portion of (e) (2) and former (e) (3) to correspond to change in (e) (1)**
- **Deletes former (e) (5) and Manager's authority to waive liquidated damages contained therein**
- **Renumbers (e) subsections**
- **Section 7 adds a sunset provision of one year**

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached ordinance, amending the various procurement processes for the design and construction to permit expedited implementation of certain capital projects, as part of an Economic Stimulus Plan which will be presented to the Board in a separate resolution.

Background

The impact of the national economic slowdown and declining housing market has had a significantly adverse impact on the local labor market. With the local unemployment rate now approaching five percent, it is estimated that there are nearly 56,000 County residents without a job and actively seeking employment. Among the various labor sectors experiencing a decline in jobs, the construction industry has been among the hardest hit with employment down approximately 15 percent in April 2008, when compared to the same period last year. The value of future construction contracts has decreased more than 30 percent during the same period.

These difficult economic conditions necessitate taking aggressive action to accelerate Miami-Dade's Capital Improvement Program. The County's ability to move funded projects through the contracting process at a quicker pace provides an opportunity for our government to cushion the negative impact of current economic conditions on the building professions and trades. In May 2008, more than 500 industry representatives attended a meeting with the Office of Capital Improvements, the Directors of the

County's 16 capital departments, and the Departments of Procurement and Small Business Development to discuss how the County can accelerate its capital projects. The hundreds of architects, engineers and contractors that attended this meeting speaks volumes to the urgency of the current situation in one of the County's most important employment sectors.

Ideas were put forth on strategic actions that could be taken by the County to put work on the street in a more expedient manner, similar to what we accomplished in the wake of September 11, 2001. The Office of Capital Improvements, working with our capital departments, has committed to an aggressive program that identifies \$700 million in County projects that could be accelerated over the next 18 months if a combination of administrative actions and new legislative policies were adopted. It is anticipated that these actions would reduce at least six months from the current contracting timeline to get funded projects underway. A series of legislative changes are being presented to you as part of an Economic Stimulus Package aimed at accomplishing this goal. The items on today's agenda are the first of these requested actions. It is important to note that the recommended authorization to accelerate projects is limited to those that will be presented to the Board by separate resolution.

The key elements to the Economic Stimulus Plan included in this ordinance are:

- Creates a process to accelerate certain capital projects to spur economic development
- Delegates authority to the Mayor or his designee to advertise and award construction contracts and professional service agreements and approve change orders and amendments, within certain limitations, subject to Board ratification
- Authorizes and directs the Mayor or his designee to prepare Implementing Orders that expedite the procedures related to the Community Business Enterprise and the Community Small Business Enterprise programs
- Authorizes the Mayor or his designee to establish standing selection and negotiation committees

I must emphasize that we are cognizant of the need to balance economic stimulus initiatives with budget constraints. The attached projects recommended for acceleration have been reviewed with respect to operational impact.

Finally, it is important to recognize the potential cost factors associated with this acceleration effort. Today's highly competitive marketplace for construction contracts is impacting the bidding process with more bids, and in some cases, lower costs for labor. The timing is right to take advantage of favorable market condition and stimulate the local economy.



Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: July 17, 2008

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 7(A)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(A)
7-17-08

ORDINANCE NO. _____

ORDINANCE ESTABLISHING MEASURES TO STIMULATE THE LOCAL ECONOMY; CREATING A PROCESS TO EXPEDITE CERTAIN CAPITAL DEVELOPMENT PROJECTS IDENTIFIED BY THE BOARD OF COUNTY COMMISSIONERS THROUGH RESOLUTION; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ADVERTISE FOR BIDS, RECEIVE AND AWARD BIDS, APPOINT PROFESSIONAL SELECTION COMMITTEES AND AWARD CONTRACTS SUBJECT TO RATIFICATION BY THE BOARD OF COUNTY COMMISSIONERS; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ISSUE CHANGE ORDERS WHICH DO NOT EXCEED SPECIFIED AMOUNTS; AMENDING PROCESS FOR IMPLEMENTING CBE, SBE AND CSBE MEASURES IN CONNECTION WITH THOSE CONTRACTS INCLUDING REVIEW COMMITTEE PROCESS AND APPEALS PROCESS; PROVIDING FOR INCLUSION OF WORK ORDER BASED CONTRACTS; ESTABLISHING PROCEDURES AND LIMITATIONS FOR AWARD; PROVIDING EXCEPTIONS; CREATING SECTION 2-8.2.7 OF THE CODE; AMENDING SECTIONS 2-10.4, 2-10.4.01 AND 10-33.02 OF THE CODE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE

WHEREAS, the construction industry has been severely affected by the downturn in the housing and credit markets, and the County has lost a substantial number of construction-related jobs in recent months; and

WHEREAS, the Board of County Commissioners of Miami-Dade County finds it necessary and appropriate and in the best interest of the County to take steps to stimulate the economy; and

WHEREAS, this Board desires to institute procedures to expedite certain capital construction projects as part of an overall economic stimulus package and will be presented to the Board in a separate resolution; and

WHEREAS, this Board desires to re-establish, limited to the described economic stimulus package, the authority previously contained in Sections 2-8.2.6 and 2-8.2.7, which has expired with the intent to expedite the implementation of various budgeted capital improvement

projects so as to expedite the contracting process to spur economic growth, while reflecting at all times this Board's policy decisions relating to procurement practices for the County and the Board's sensitivity to community and local business enterprise contracting goals as expressed from time to time by the Board,

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

Section 1. The Code of Miami-Dade County is hereby amended by adding the following new section thereto as Section 2-8.2.7¹

>>Sec. 2-8.2.7 Economic Stimulus Ordinance

- (1) Policy: This ordinance, to be known as the Economic Stimulus Ordinance, is intended to provide an expedited process to award contracts related to certain capital development projects with the express purpose of stimulating the local economy.
- (2) Scope: This Section, and the expedited processes set forth herein, shall be applicable to the processing, design, and construction of the capital improvement projects specifically identified by resolution of the Board of County Commissioners (the "Economic Stimulus Projects"). The Board of County Commissioners may from time to time, by subsequent resolution add or delete projects from the list of Economic Stimulus Projects to which this Section applies. All Economic Stimulus Projects must have been approved as part of the Annual Proposed Resource Allocation and Multi-year Capital Plan.
- (3) All actions taken under this ordinance shall be subject to review by the Office of Strategic Business Management to ensure adequate funding for each project and that appropriate operational and maintenance funding is in place for the foreseeable future and review by the Office of Capital Improvements to ensure compliance with contract documents and all applicable resolutions, ordinances, and statutes.
- (4) Notwithstanding any other provision of the Code of Miami-Dade County to the contrary, the Mayor or his/her designee shall have the following authority with respect to Economic Stimulus Projects:
 - (a) to issue bid and proposal documents including addenda thereto;

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

- (b) to receive, open and review bids and proposals;
- (c) to appoint standing selection committee and negotiation committee members to obtain professional services in accordance with Section 2-10.4 of the Code of Miami-Dade County and Section 287.055 of the Florida Statutes, provided each such committee shall contain, whenever possible, representation from the user department;
- (d) to award or reject bids for contracts including professional service agreements and construction contracts and issue the Notice to Proceed on each where:
 - (1) the award value of the contract and operational considerations have been reviewed and approved by the Office of Strategic Business Management; and
 - (2) the base value of a recommended award does not exceed the base estimate by more than ten (10) percent; and
 - (3) the contractor or consulting firm receiving the award is in good standing with the County including but not limited to: no outstanding debts; demonstrated acceptable past performance; and has submitted required insurance, bonds, affidavits and documentation provided for by the solicitation; and
 - (4) none of the bidders have filed a timely bid protest; and
 - (5) all awards are subject to ratification by the Board of County Commissioners at the next available meeting and contracts approved under this authority must contain a Termination for Convenience clause,
- (e) negotiate and settle contractor claims, and issue change orders for additional work under contracts and amendments for professional services agreements where:
 - (1) the change order or claim does not increase the contract amount, including contingencies; and
 - (2) the contingency allowance established in accordance with Section 2-8.1(h) shall be utilized to ensure minimal disruption in work flow and shall be documented on the appropriate contingency authorization draw. Change orders shall be submitted to replenish the contingency account in a timely manner; and
 - (3) the limitations provided in (4)(e)1 above shall not apply to any change order or amendment related to emergency actions

impacting environmental remediation, public safety, health requirements or recovery from natural disaster; and

- (5) All actions taken by the Mayor or his/her designee under this Section shall not require review by any Committee, but shall be submitted to the next available Board of County Commissioners meeting for ratification. Awards that do not meet the requirements of Section 4(d) above shall not require Committee review but shall be submitted to the next available meeting of the Board of County Commissioners for approval.
- (6) Special exemptions: This process shall be modified to ensure full conformance with any special provisions or review processes established by the Board. As such, any proposed County contract for a project included in the TIP approved by the MPO that is funded in whole or in part by proceeds of the Charter County Transit System Sales Surtax authorized by Article XVI of Chapter 29 of the County Code, the Mayor or his/her designee shall have the authority to advertise and issue bid or proposal documents for such contracts where the bid or proposal documents expressly provide that no award shall be effective and no contractual relationship shall arise with the County unless and until ratified by the County Commission and that ratification is approved by the Citizens' Independent Transportation Trust or re-affirmed by the County Commission as provided in subsection (e) of Section 29-124 of the County Code, and the authority to issue notices to proceed after award for such contracts shall be limited to those instances where the County Commission has ratified the award and the Citizens' Independent Transportation Trust has approved the Commission's action or, if the Trust disapproves such Commission action, the Commission has re-affirmed same as provided in subsection (e) of Section 29-124 of the County Code.<<

Section 2. Section 2-10.4.01 of the Code of Miami-Dade County, Florida, is hereby amended as follows:

Sec. 2-10.4.01. Community Business Enterprise Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services.

* * *

>>(8) Notwithstanding the requirements of this Section, the Mayor or his designee is hereby expressly authorized and directed to establish an expedited process for the creation, review and approval of measures relating to Economic Stimulus Projects subject to Section 2-8.2.7 of this Code. Such process shall be set forth in an implementing order to be approved by the Board of County Commissioners.<<

Section 3. Section 10-33.02, Code of Miami-Dade County, is hereby amended as follows:

Sec. 10-33.02. Community Small Business Enterprise Program.

* * *

>>(8) Notwithstanding the requirements of this Section, the Mayor or his designee is hereby expressly authorized and directed to establish an expedited process for the creation, review and approval of measures relating to Economic Stimulus Projects subject to Section 2-8.2.7 of this Code. Such process shall be set forth in an implementing order to be approved by the Board of County Commissioners.<<

Section 4. If any section, subsection, sentence, or clause of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any Sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 6. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

Section 7. This Ordinance shall sunset one year after its effective date. The County Manager shall prepare an annual report for consideration by the Board prior to renewal.

PASSED AND ADOPTED:

Approved by County Attorney as to form and legal sufficiency:



Prepared by:



Hugo Benitez