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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 7(C)

(Second Reading 4-5-16)

TO: Honorable Chairman Jean Monestime and Members, Board of County Commissioners

DATE: February 17, 2016

FROM: Abigail Price-Williams County Attorney

SUBJECT: Ordinance creating section 2-8.2.15 of the Code; creating a process to expedite certain capital development projects for the Seaport Department identified by the Board of County Commissioners through resolution; authorizing the Mayor to advertise for bids and/or proposals, receive and award bids, appoint professional selection committees and award contracts subject to ratification by the Board of County Commissioners; authorizing the Mayor to extend contract duration, to execute change orders which do not exceed specified amounts and to settle claims

Ordinance No. 16-38

The accompanying ordinance was prepared by the Port of Miami and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.

Abigail Price-Williams
County Attorney

APW/cp

Memorandum

Date: April 5, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Ordinance Creating a Process to Expedite Certain Capital Development Projects for PortMiami

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Recommendation

The implementation of this proposed ordinance is recommended, as it is intended to accelerate the procurement of a limited number of revenue generating PortMiami (Port) projects that are specifically and periodically approved by the Board of County Commissioners (Board). The primary purpose of the ordinance is to delegate to the County Mayor the power to award approved projects subject to ratification by the Board.

The ordinance specifically prevents the expedite process from exempting the Port from community, small business, or other similar workforce legislative requirements.

Scope

The Port is located within District 5, which is represented by Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide, as PortMiami is a regional asset and generates employment for residents throughout Miami-Dade County.

Fiscal Impact/Funding Source

If approved, this ordinance is not expected to have a negative fiscal impact to Miami-Dade County, as its intent is to expedite the procurement process of projects previously approved by Board Resolution.

Track Record/Monitor

The staff members responsible for monitoring the Capital Development Projects are Juan Kuryla, Port Director, and Kevin Lynskey, Deputy Port Director.

Background

The Port is a proprietary department, as its primary income is derived from producing and leasing infrastructure and facilities. These capital projects frequently require the Port to respond to private sector cruise and cargo business timelines. In addition, the Port often enters into contractual obligations, as approved by the Board, to repair, maintain, and improve Port buildings, roads, utilities, bulkheads, garages, and other Port infrastructure for our stakeholders.

This ordinance delegates award authority to the County Mayor for projects previously approved and specifically authorized by the Board for this expedited process. The Board has previously approved expedite ordinances with similar delegated authorities, including ratification

requirements, for the Water and Sewer Department, Miami International Airport, and the Economic Stimulus program.

Jack Osterholt, Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: April 5, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(C)

Please note any items checked.

_____ "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

_____ Statement of social equity required

_____ Ordinance creating a new board requires detailed County Mayor's report for public hearing

_____ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(C)
4-5-16

ORDINANCE NO. 16-38

ORDINANCE CREATING SECTION 2-8.2.15 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; CREATING A PROCESS TO EXPEDITE CERTAIN CAPITAL DEVELOPMENT PROJECTS FOR THE SEAPORT DEPARTMENT IDENTIFIED BY THE BOARD OF COUNTY COMMISSIONERS THROUGH RESOLUTION; AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO ADVERTISE FOR BIDS AND/OR PROPOSALS, RECEIVE AND AWARD BIDS, APPOINT PROFESSIONAL SELECTION COMMITTEES AND AWARD CONTRACTS SUBJECT TO RATIFICATION BY THE BOARD OF COUNTY COMMISSIONERS; AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXTEND CONTRACT DURATION, TO EXECUTE CHANGE ORDERS WHICH DO NOT EXCEED SPECIFIED AMOUNTS AND TO SETTLE CLAIMS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

Section 1. Section 2-8.2.15 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Sec. 2-8.2.15 Miami-Dade Seaport Department Capital Improvement Programs Expedite and Acceleration Ordinance.

(1) This Section of the Miami-Dade County Code shall be referred to as the Miami-Dade Seaport Department Capital Improvement Program Expedite and Acceleration Ordinance and is intended to provide an expedited process to award certain contracts with the express purpose of accelerating the completion of time sensitive projects at the Port of Miami.

(2) Definitions

(a) The term "Capital Improvements" shall mean the repair, maintenance, improvement and construction of port buildings, roads, utilities, bulkheads, garages, and other Port Facilities as that term is defined in Section 315.02(6), Florida Statutes, and the associated purchases of furniture, fixtures and equipment.

(b) The term "Capital Improvement Projects" shall mean the specific Capital Improvement projects identified by the Board of County Commissioners by resolution as set forth in Subsection 3 below.

(c) The term "Professional Services" shall mean architectural, engineering, design and other services within the scope of Section 287.055, Florida Statutes required or desired for Capital Improvements.

(d) The term "Stakeholders" shall mean users of the Port of Miami including cruise lines and affiliated companies, cargo terminal operators, cargo shipping lines, supporting federal government agencies, and stevedores.

(3) Scope: This section, and the expedited processes set forth herein, shall, to the extent permitted by law, be applicable to the processing, design, and construction of the Capital Improvement Projects specifically identified by resolution of the Board of County Commissioners. The Board of County Commissioners may, from time to time and by subsequent resolution, add or delete projects from the list of Capital Improvement Projects to which this Section applies. All Capital Improvement Projects must have been either approved as part of the Annual Proposed Resource Allocation and Multi-Year Capital Plan or be Capital Improvement Projects required to be completed by a revenue generating contract, or amendment thereto, previously approved by the Board of County Commissioners. This ordinance shall not exempt the Seaport Department from any requirement of the Code of Miami-Dade County not expressly addressed in this ordinance including but not limited to community, small business, or workforce legislative requirements.

(4) All actions taken under this ordinance shall be subject to review by the Office of Management and Budget (OMB) to ensure adequate funding for each project and that appropriate operational and maintenance funding is in place for the foreseeable future and to review by the Internal Services Department (ISD) to ensure compliance with contract documents and all applicable resolutions, ordinances, and statutes.

(5) Notwithstanding any other provision of the Code of Miami-Dade County to the contrary, the Mayor or the Mayor's designee shall have the following authority with respect to contracts within the scope of this Section;

(a) To issue bid and proposal documents including addenda thereto;

(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 Seaport Department;

(d) To award or reject bids for Capital Improvement Project contracts, including, but not limited to, professional service agreements, construction contracts, design-build contracts and contracts for the purchase furniture, fixtures and equipment for such Capital Improvement Projects and issue Notices to Proceed where:

i. the award value of the contract and operational considerations have been reviewed and approved by OMB; and

ii. the base value of a recommended award does not exceed the Seaport Department's base estimate by more than twenty percent (20%); and

iii. the contractor or consulting firm receiving the award has an average evaluation rating of 2.5 or higher in the Capital Improvement Information System (CIIS) database and has no outstanding debts or goal deficits, and has submitted the required insurance(s), bonds, affidavits and documentation provided for as a condition of award; and

iv. none of the bidders have filed a timely bid protest pursuant to Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County and Implementing Order 3-21.

(e) Amend contracts and extend the time for completion of any contract for construction, materials or Professional Services, including waivers of liquidated damages and other compensable and/or non-compensable time extensions.

(f) Negotiate and settle claims, and issue settlement agreement(s) or change orders for additional work under contracts and amendments where the change order or claim does not exceed ten percent (10%) of the base contract amount, or $1,000,000, whichever is lower. This limitation shall not apply to any change order or amendment related to emergency actions impacting remediation, public safety, health requirements or recovery from natural disaster.

(g) Apply for, execute, and receive any federal or state grant in connection with any project, and execute any ancillary documents required to effectuate such grant.

(h) Apply for, execute and enter into joint participation agreements with any local, state or federal government entity for the completion of a project.

(i) Issue and evaluate Notices to Professional Consultants ("NTPC") and Requests for Qualifications ("RFQ") for Professional Services, if the NTPC or RFQ and the evaluation process of responses is otherwise consistent with Section 2-

10.4 of the Code of Miami-Dade County. In the event that the County Mayor or Mayor's designee is unable to negotiate a contract with the most qualified firm, the County Mayor or Mayor's designee is authorized to negotiate, sequentially, with the remaining firms in order of qualifications. Alternately, the County Mayor or Mayor's designee may at any time reject all qualifications received. Except as noted herein, nothing contained in this Section shall otherwise modify the substantive or procedural requirements of Section 2-10.4 of the Code of Miami-Dade County.

(6) Any contract, change order, settlement, modification, adjustment, or extension awarded, issued or entered into pursuant to the authority set forth in this Ordinance is subject to ratification by the Board of County Commissioners and shall be brought directly to the Board at the next available meeting and will not be subject to the 4-Day Rule. Any contract, change order, settlement, modification, adjustment, or extension granted pursuant to any authority herein shall contain a termination for convenience clause or such other provision as necessary to specify that the action is revocable if not ratified by the Board of County Commissioners. The specification shall also include a sufficient release such that, in the event that the Board of County Commissioners does not ratify such item, the contractor is not entitled to lost profits or other consequential or indirect damages; however, the contractor is eligible for payment for any work done prior to failure of the ratification.

(7) The powers conferred in this Ordinance shall be supplemental to, and not in derogation of, any other powers or authority granted elsewhere in any ordinance, statute or resolution.

Section 2. The County Mayor or the County Mayor's designee is hereby authorized and directed to create solicitation and contract specifications to give effect to the intent of this Section.

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, 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 5. The substantive provisions of this ordinance shall be effective for all Capital Improvement Project contracts identified by the Board of County Commissioners by resolution, to the extent provided in such resolution.

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.

PASSED AND ADOPTED: April 5, 2016

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:
Richard Seavy