

Memorandum



Date: January 20, 2005

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Amending Bid Protest Administrative Order (A.O. 3-21) pertaining to Federal Transit Administration (FTA) funding

Agenda Item No. 7(J)(1)(Q)

RECOMMENDATION

It is recommended that the Board approve this resolution amending the Bid Protest Administrative Order 3-21 to fully comply with Federal Transit Administration (FTA) Third Party Contracting Requirements, as established by FTA Circular 4220.1E. The County Attorney's Office advised that an amendment to the Bid Protest Administrative Order (A.O. 3-21) is required. Accordingly, the Bid Protest A.O. is being amended to provide that, for Miami-Dade Transit federally funded procurements: no protest-filing fee is required; protests are allowed for procurements less than \$25,000; and proposers may file a protest letter with the County Manager for Architectural/Engineering Consultant selections.

BACKGROUND

Chapter 49 of the U. S. Code, Section 5307, requires that the FTA perform reviews and evaluations of grant programs and perform a full review and evaluation of the performance of grantees in carrying out grant programs with specific reference to their compliance with statutory and administrative requirements. Accordingly, the FTA, through its consultant, Business Management Research Associates, Inc., completed a Procurement System Review (PSR) of Miami-Dade Transit in July 2002.

Contracts Less Than \$25,000 and Filing Fees

The Final Report of the Procurement System Review of Miami-Dade Transit found the County process deficient under FTA standards with respect to the "Written Protest Procedures," Section 7(l) of FTA Circular 4220.1E, Third Party Contracting Requirements. The County's Bid Protest Administrative Order No. 3-21 does not include a protest procedure to handle and resolve disputes for procurement actions less than \$25,000 in value. The Corrective Action and Schedule of the Final Report states in part:

"The grantee should expand its written protest procedures to allow protests of procurements of less than \$25,000. In addition, the grantee should modify its protest procedures to allow for an interested party to protest without incurring potentially substantial cost on FTA-funded requirements."¹

¹ Final Report of the Procurement System Review of Miami-Dade Transit, Management Review Team from Business Management Research Associates, Inc., Fairfax, VA., January 2003.

A/E Procurements

In addition, staff has been advised by the FTA consultant that MDT procedures should abide by FTA Circular 4220 and ALL third party contracting including A & E should have written protest procedures. This determination was based upon previous experiences and the language of FTA Circular 4220.1D, Section 4 "Applicability" which provides in pertinent part:²

"This circular applies to all FTA grantees and subgrantees that contract with outside sources under FTA assistance programs. FTA grant recipients who utilize FTA formula funds for operating assistance are required to follow the requirements of this circular for all operating contracts. These requirements do not apply to procurements undertaken in support of capital projects completely accomplished without FTA funds or to those operating and planning contracts awarded by grantees that do not receive FTA operating planning assistance."

Failure to amend the County's procedure for bid protests for FTA funded transit contracts would result in loss of federal funding. The United States Department of Transportation Federal Transit Administration Master Agreement (Master Agreement) provides in part:

"...the Recipient understands and agrees that it must comply with all applicable laws, regulations, and requirements. Any violation of a Federal requirement applicable to the Recipient or its Project may result in penalties to the violating party; requirements that do not apply will not be enforced."³

The FTA requires these changes to conform to the federal standards:

1. The County should expand its written protest procedures to allow protests of procurements of less than \$25,000.
2. The grantee (Miami-Dade County) should modify its protest procedures to allow for an interested party to protest without incurring potentially substantial financial cost on FTA-funded procurements.

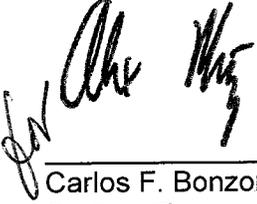
2 Superseded by FTA circular Number C4420.1E, 06-19-03

3 FTA Master Agreement MA(10), 10-1-2003

Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners
Page No. 3

3. To fully comply with FTA requirements, for all Architectural/Engineering Consultant selections funded in whole or in part or where it has been determined by the MDT Director that FTA requirements apply, any proposer must be able to file a protest letter with the County Manager with a copy to the Clerk of the Board, within ten (10) business days of the County Manager's filing authorization to negotiate. The decision of the County Manager shall be final and conclusive on these matters.

Attachments



Carlos F. Bonzon, Ph.D., P.E.
Surface Transportation Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 20, 2005

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(J)(1)(Q)

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(J)(1)(Q)
01-20-05

RESOLUTION NO. _____

**RESOLUTION AMENDING BID PROTEST
ADMINISTRATIVE ORDER (AO 3-21); PERTAINING TO
FEDERAL TRANSIT ADMINISTRATION (FTA) FUNDING
REQUIREMENTS**

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the amendment of the Bid Protest Procedures Administrative Order (AO 3-21), in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to exercise same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of January, 2005. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency 

Bruce Libhaber

By: _____
Deputy Clerk

MIAMI-DADE COUNTY
ADMINISTRATIVE ORDER

BID PROTEST PROCEDURES

AUTHORITY:

Section 4.02 of the Miami-Dade County Home Rule Amendment and Charter and Section 2-8.4 of the Code of Miami-Dade County.

SUPERSEDES:

This Administrative Order supersedes previous Administrative Order No. 3-21, effective [[6/15/2004]].

POLICY:

It is the policy of Miami-Dade County (the County) to provide a participant in any competitive process the opportunity to protest an award recommendation with respect to County contracts and purchases involving the expenditure of over \$25,000.

SCOPE:

This Administrative Order (AO) establishes the requirements and procedures governing a bid protest brought by a participant in any competitive process utilized for selection of a person or other entity to construct any public improvement, to provide any supplies, materials or services (including professional or management services other than professional services whose acquisition procedure is governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes), or to lease any County property. >>This AO covers those professional services selections funded by the Federal Transit Administration.<<

Under this Administrative Order, a "formal" bid protest, with the corresponding procedures established herein, is a bid protest with respect to the recommended award of a County contract or purchase involving the expenditure of over \$100,000. An "informal" bid protest, with the corresponding procedures established herein, is a bid protest with respect to the recommended award of a

County contract or purchase involving the expenditure of over \$25,000 up to and including \$100,000.

**SECTION I
GENERAL PROVISIONS**

A participant in any competitive process wishing to file a "formal" or "informal" bid protest within the scope of this Administrative Order shall file the protest in accordance with the procedures and requirements described below as well as those established in Sections II and III of this Administrative Order.

No provision of this administrative order shall preclude the Director of Procurement Management, the Director of the issuing department, or the County Manager from changing his or her recommendation. In cases of either "formal" or "informal" protests, if the award recommendation is changed in favor of the protester not later than five (5) working days following the filing of the bid protest, the filing fee shall be refunded to the protester.

BID PROTEST FEE

As a condition of initiating any bid protest within the scope of this Administrative Order, the protester shall present to the Clerk of the Board a nonrefundable filing fee payable to the Clerk of the Board in accordance with the schedule provided below.

Contract Award Amount	Filing Fee
\$25,001-\$100,000	\$ 500
\$100,001-\$500,000	\$1,000
\$500,001-\$5 million	\$3,000
Over \$5 million	\$5,000

Filing fees, or any other monies received as payment of protest costs, shall be deposited in a special account administered by the Clerk of the Board and shall be used by the Clerk solely for the purpose of defraying the cost of the hearing examiner and the Clerk's costs of administering the bid protest program. If, at any given time, there are insufficient funds available in said special account to pay said costs the requesting department shall be responsible for reimbursement of any shortage to the Clerk of the Board. In the event that there is more than one requesting department, the department with the largest allocation shall bear the cost of any shortage. For formal bid protests, the requesting department, or the department with the largest allocation, shall bear the cost of the court reporter and any transcript of the bid protest hearing.

>>Notwithstanding the foregoing, filing fees shall not be required for projects when such filing fee requirement may jeopardize federal and/or state funding.<<

PROCEDURE

All bid protests shall be filed with the Clerk of the Board within the applicable time periods established in Sections II and III of this Administrative Order. Within two (2) working days of that filing, the protester shall supply the County Attorney and each bidder or proposer in the competitive process with a true copy of each document that was filed with the protest.

All bid protests shall be submitted in writing to the Clerk of the Board and shall state with particularity the specific facts and grounds on which they are based, include all pertinent documents and evidence and be accompanied by the corresponding filing fee. This shall form the basis for review of the protest and no other facts, grounds, documentation or evidence not contained in the protester's submission to the Clerk of the Board at the time of filing the protest shall be permitted in the consideration of the protest, except for such additional evidence as is allowed during the course of the protest proceedings.

Failure to file the written protest within the required time limits established in Sections II and III of this Administrative Order shall constitute a waiver of the right to protest the award recommendation.

Any question, issue, objection or disagreement concerning, generated by, or arising from the published requirements, terms, conditions or processes contained or described in the solicitation document shall be deemed waived by the protester and shall be rejected as a basis for a bid protest administered under this Administrative Order, unless it was brought by that bidder or proposer to the attention, in writing, of the procurement agent, buyer, contracting officer or other contact person of the County department that issued the solicitation document, at least two working days (not less than 48 hours) prior to the hour of bid opening or proposal submission. The purpose of this requirement is to expedite the procurement process by allowing the issuing department the opportunity to consider, and to resolve or clarify in a timely fashion, through the issuance of a remedial solicitation addendum, if appropriate, any such matter that is apparent on the face of the solicitation document, including but not limited to ambiguities or inconsistencies within the document.

The foregoing notwithstanding, a bid protest may not challenge the relative weight of the evaluation criteria or the formula specified for assigning points therefore contained in the bid, request for proposals ("RFP") or request for qualifications ("RFQ") specifications.

All references to "working days" herein exclude Saturdays, Sundays and legal holidays; provided however, that if the last day of the filing period is a Saturday, Sunday or legal holiday, the period shall run through the end of the next day which is neither a Saturday, Sunday nor legal holiday. As used in this rule, "legal

holiday" shall mean those days designated by Miami-Dade County as such. No time will be added to the above time limits for mail service.

Upon receipt of any properly filed bid protest under this Administrative Order, the Clerk of the Board shall promptly distribute a brief written notice of the protest to the following individuals: the Director of the issuing department, each member of the Board of County Commissioners, the County Manager, and the Director of the Department of Procurement Management.

The County's solicitation documents for contracts or purchases involving the expenditure of over \$25,000 shall contain provisions advising bidders and proposers of their rights and responsibilities established under Section 2-8.4 of the Code of Miami-Dade County and this Administrative Order concerning the presentation and administration of bid protests.

SECTION II
"FORMAL" BID PROTESTS: CONTRACTS AND PURCHASES INVOLVING
THE EXPENDITURE OF OVER \$100,000

FILING OF PROTESTS

For the recommended award of a contract or purchase involving the expenditure of over \$100,000, an award recommendation letter shall be dated and mailed by the issuing department to each competing bidder or proposer announcing the proposed award, and a copy thereof shall be deposited with the Clerk of the Board on the same day it is mailed.

"Formal" bid protests under this section must be filed by a protester with the Clerk of the Board within ten (10) working days of the date of the award recommendation letter, together with the appropriate filing fee.

Protests filed in accordance herewith shall be referred to a hearing examiner. A hearing examiner shall be appointed by the Clerk of the Board no later than five (5) working days following the filing of a bid protest. The hearing examiner shall conduct a hearing in connection with the bid protest, which shall be completed within ten (10) working days following his or her appointment. The hearing examiner may extend the deadline for completion of the hearing upon the written petition for good cause shown, but in no event shall the total, cumulative time extension exceed five (5) working days for completion of the hearing, regardless of the number of requests or requests from multiple parties. The hearing examiner, shall within five (5) working days of the hearing, file written findings and recommendations with the Clerk of the Board and shall submit or mail a copy of same to all participants in the competitive process and to the County Attorney.

The hearing examiner shall consider the written protest and supporting documents and evidence appended thereto, the County Manager's or issuing

Department Director's recommendation, and supporting documentation, and all evidence presented at the hearing. The hearing examiner may also require written summaries, proffers, affidavits and other documents the hearing examiner determines to be necessary in order to conclude the hearing, and shall issue the report and recommendation within the strict time limits set forth herein. No grounds will be considered from the protester that were not contained in the protester's written submission to the Clerk of the Board at the time of filing. The hearing examiner shall be entitled to rely on evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, whether or not such evidence would be admissible in a trial in the courts of Florida.

The hearing examiner shall allow a maximum of two hours for the protester's presentation of its protest and a maximum of two hours for the County's response to each protest. In the event of multiple protests, the hearing examiner shall allocate the time as necessary to ensure that the hearing shall not exceed one day.

The Clerk of the Board is responsible for appointing a hearing examiner within the stipulated time, and advising the hearing examiner of his or her responsibilities established under Section 2-8.4 of the Code of Miami-Dade County and this Administrative Order. Upon making the appointment, the Clerk shall furnish the hearing examiner a copy of all submissions filed by the protester as well as a copy of the County Manager's or issuing department Director's award recommendation memorandum and award recommendation letter. The Clerk is responsible for monitoring the timely advancement and completion of the bid protest process, and shall issue payment to the hearing examiner upon the hearing examiner's submission of his or her completed report and recommendation.

The Clerk of the Board, in coordination with the hearing examiner, is responsible for obtaining an adequate facility for the conduct and completion of the bid protest hearing within the stipulated time period.

The hearing examiner is responsible for performing in accordance with the provisions of Section 2-8.4 of the Code of Miami-Dade County and this Administrative Order, and completing the bid protest hearing and preparing and submitting his or her report and recommendation within the stipulated time periods.

The hearing examiner shall be paid a fee of \$200.00 per hour and in no event to exceed \$2,500.00 per completed hearing.

In the event the hearing examiner fails to abide by the time limitations set forth in Section 2-8.4 of the Code of Miami-Dade County and this Administrative Order, that is, does not submit his or her completed report and recommendation to the Clerk of the Board within fifteen (15) working days of his or her appointment, or

twenty (20) working days in the event five (5) additional working days are allowed by the hearing examiner for completion of the bid protest hearing, a reduction in the hearing examiner's fee shall be assessed by the Clerk of the Board at a rate of \$100 per working day late. In no event, however, shall the hearing examiner's fee be less than \$1,300.00 per completed hearing.

The Clerk of the Board shall render payment of the hearing examiner's fee within ten (10) working days of the Clerk's receipt of the completed report and recommendation, and an itemized hourly invoice, from the hearing examiner.

Prior to the Board of County Commissioners or any committee thereof hearing any protest relating to a competitive bid, request for proposal or request for qualifications, the County Manager shall request the County Attorney to certify whether the bid or proposal in question is responsive. Upon receiving such request, the County Attorney shall, in consultation with the County Manager if necessary, determine whether the bid or proposal is responsive. The Board of County Commissioners and any committee thereof shall be bound by the determination of the County Attorney with regard to the issue of responsiveness.

When a formal protest involves the expenditure of an amount that exceeds the County Manager's delegated authority to award under Section 2-8.1(b) of the Code, as set forth in Section 2-8.4 of the Code of Miami-Dade County, the following shall apply: The hearing examiner's findings and recommendation shall be presented to the Commission by the County Manager together with the recommendation of the County Manager. Notice shall be mailed by the issuing department to all participants in the competitive process at least five (5) days in advance of such presentation. If the hearing examiner concurs in the County Manager's recommendation, the Commission shall not allow presentations by any participants in the competitive process or their representatives at the time the matter is presented to the Commission. A two-thirds (2/3) vote of the Commission members present shall be required to take other than the recommended action. Provided, however, that a two-thirds (2/3) vote shall not be required to reject all bids. If the hearing examiner does not concur in the County Manager's recommendation, the participants in the competitive process and their representatives may make presentations to the Commission and the Commission shall decide the matter by majority vote.

When a formal protest involves the expenditure of over one hundred thousand dollars (\$100,000) up to the County Manager's delegated authority to award under Section 2-8.1(b) of the Code, the following shall apply: If the hearing examiner concurs in the award recommendation of the Department of Procurement Management, or in the case that such department is not the department issuing the solicitation, the recommendation of the issuing department, the department shall be bound thereby and shall implement such recommendation within five (5) working days. If the hearing examiner does not concur in the award recommendation, the Director of the Department of

Procurement Management or of the issuing department shall either accept the hearing examiner's recommendation and implement such recommendation within five (5) working days, or shall submit a written recommendation to the County Manager within five (5) working days with supporting findings and reasons that the Manager should approve the department's recommendation despite the recommendation of the hearing examiner in which event the Manager shall, within five (5) working days, choose either the department's or the hearing examiner's recommendation, provide written findings therefor and instruct the department director to implement said recommendation accordingly.

SECTION III

"INFORMAL" BID PROTESTS: CONTRACTS AND PURCHASES INVOLVING THE EXPENDITURE OF OVER \$25,000 UP TO \$100,000

POSTING AWARD RECOMMENDATIONS

Award recommendations for contracts and purchases involving the expenditure of over \$25,000 up to and including \$100,000 shall be posted by 9:00 a.m., every Monday in the lobby of the Stephen P. Clark Center, 111 NW 1st Street, Miami, FL 33128. Such recommendation shall be in writing and shall identify the bidder or proposer to whom the award is being recommended and the basis therefore. Participants can call the Awards Line phone number provided in the specifications document. This recorded message will provide a listing of the award recommendations and will be updated every Monday to reflect the posted information.

"Informal" bid protests under this section must be filed by a protester with the Clerk of the Board within five (5) working days after the posting of an award recommendation, together with the appropriate filing fee.

The Clerk of the Board shall immediately forward to the Director of the issuing department the letter of protest and any other material presented by the protester.

Contracts for which an informal protest is not received within the five (5) day period referenced above shall be awarded in accordance with the department's recommendation.

For bid protests of contracts or purchases involving the expenditure of over \$25,000 up to and including \$100,000, the department Director or designee shall, after reviewing the written recommendation for award and the written protest, and after consultation with the County Attorney, issue a report stating the department's recommendation and a summary of the factual and contractual grounds for such decision. The department Director's findings shall be forwarded

to the County Manager, or designee, for the County Manager's final determination and disposition of the protest.

When an informal protest is filed, the department shall provide an opportunity to settle the protest by mutual agreement. This should take place within five (5) working days of the filing of the protest. Failing resolution of the protest within said time period, the department Director or designee shall issue a report and recommendation to the County Manager not later than twenty (20) working days from the filing of the protest.

SECTION IV

CONTRACTS AND PURCHASES INVOLVING EXPENDITURES OF \$25,000 OR LESS

Award recommendations for contracts and purchases involving the expenditure of \$25,000 or less are considered final and may not be protested.

>>Bid Award Recommendation of \$25,000.00 or less (Miami-Dade Transit Only)

Bidders may submit a written protest to the Director of Miami-Dade Transit, 111 NW 1 Street, Suite 901, Miami, FL 33128, for any contract with a value of \$25,000.00 or less, with a copy to the Clerk of the Board, within 5 business days of the recommendation for award. No filing fee is required. The protest letter sent to the Director must indicate that a copy has been sent to the Clerk of the Board. The decision by the Director of Miami-Dade Transit shall be final.

SECTION V

ARCHITECTURAL/ENGINEERING CONSULTANT SELECTIONS (MIAMI-DADE TRANSIT ONLY)

For all Architectural/Engineering Consultant Selections funded in whole or in part by the Federal Transit Administration (FTA) or where it has been determined by the MDT Director that FTA requirements apply, any proposer may submit a protest letter to the County Manager, 111 N.W. 1 Street, 29th Floor, Miami, Florida 33128, with a copy to the Clerk of the Board, within 10 business days of County Manager's filing authorization to negotiate. The decision of the County Manager shall be final and conclusive on these matters.<<

This Administrative Order is hereby submitted to the Board of County Commissioners of Miami-Dade County Florida.

George M. Burgess
County Manager