Memorandum

MIAMI-DADE COUNTY

Date: May 6, 2008

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

Agenda Item No. 8(O)(1)(A)

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Implementing Order 3-21: Bid Protest Procedures and Rescinding Administrative Order 3-21

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing Implementing Order 3-21: Bid Protest Procedures. This Implementing Order has been revised to align the Bid Protest procedures with County Code. It is also recommended that the Board rescind Administrative Order 3-21.

Scope

The impact of the attached resolution is countywide in nature.

Fiscal Impact/Funding Source

There is no fiscal impact of the proposed agenda item.

Track Record/Monitor

Not applicable.

Background

On September 12, 2006 the Board approved Ordinance 06-124 which amended the Miami-Dade Code (Code) to shorten the period allowed for a vendor to file a bid protest from 10 work days to three work days. This amendment was consistent with the Procurement Process Improvements submitted to the Board on February 1, 2006 to continue improving procurement efficiency and reduce cycle times. The amendments to Implementing Order (I.O.) 3-21 will align the Bid Protest procedures with the current code requirement of three work days for filing of intent to protest.

Additionally, the I.O. updates the informal solicitation threshold value from $100,000 to $250,000 as directed by Resolution R-830-06, adopted by the Board on July 6, 2006. The I.O. also corrects outdated language and simplifies procedures.

Section 2-8.4 of the Code governs protests made by participants in competitive processes for the selection of vendors to construct public improvements, to provide supplies, materials or services, or to lease County property. In accordance with the Code, the proposed I.O. amendments revise current bid protest procedures to require the filing of a written bid protest, along with the pertinent documents and supporting evidence, within three working days after filing of the written intent to protest. The protest period includes three days to file the intent to protest, with applicable filing fee, and an additional three days to file supporting documentation and finalize the protest. This procedure allows for expedited contract awards and also provides a reasonable time for vendors to file their protest.

Susanne M. Torriente
Chief Assistant County Manager

cmo12608

MEMORANDUM

(Revised)

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

DATE: May 6, 2008

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

SUBJECT: Agenda Item No. 8(O)(1)(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. 8(O)(1)(A)

5-6-08

RESOLUTION NO. _____

RESOLUTION APPROVING IMPLEMENTING ORDER 3-21: BID PROTEST PROCEDURES; AND RESCINDING ADMINISTRATIVE ORDER 3-21

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 Implementing Order 3-21, Bid Protest Procedures, as attached hereto; rescinds Administrative Order 3-21; and authorizes the County Mayor or his designee to exercise any and all rights contained therein.

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:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of May, 2008. 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

By: _____
Deputy Clerk

Approved by the County Attorney as
to form and legal sufficiency. OR

Oren Rosenthal

~~A.O.~~ I.O. No.: 3-21
Ordered:
Effective:

MIAMI-DADE COUNTY
~~ADMINISTRATIVE~~ IMPLEMENTING ORDER

BID PROTEST PROCEDURES

~~**Administrative Order**~~
~~**Administrative Order No.:** 3-21~~

~~**Title:** Bid Protest Procedures~~

~~**Ordered:** 1/20/2005 **Effective: 1/30/2005**~~

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~~Implementing Order supersedes previous Administrative Order No. 3-21, ~~effective May 7, 2004~~ ordered January 20, 2005 and effective January 30, 2005.

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~~Implementing Order (~~AO~~IO) 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~~IO covers those professional services selections funded by the Federal Transit Administration.

Under this ~~Administrative Order~~Implementing 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~~$250,000. 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~~ $250,000.

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~~Implementing Order shall file the protest in accordance with the procedures and requirements described herein.~~below as well as those established in Sections II and III of this Administrative Order.~~

No provision of this ~~administrative order~~Implementing 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) work~~ing~~ 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~~Implementing 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-$250~~100~~,000	**$ 500**
$250~~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 this Implementing Order. Protests must be submitted to the Clerk of the Board during the operating hours of 8:00 AM through 4:30 PM, Mondays through Fridays. ~~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 this Implementing Order~~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 work~~ing~~ 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~~ This allows the issuing department the opportunity to consider, and to resolve or clarify in a timely fashion, through the issuance of an addendum, ~~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 "work~~ing~~ days" herein exclude Saturdays, Sundays and legal holidays.~~; provided however, that i~~ 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 work 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~~Implementing 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 Mayor, 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~~Implementing Order concerning the presentation and administration of bid protests.

SECTION II
"FORMAL" BID PROTESTS: CONTRACTS AND PURCHASES INVOLVING THE EXPENDITURE OF OVER ~~$100,000~~$250,000

FILING OF PROTESTS

For the recommended award of a contract or purchase involving the expenditure of over ~~$100,000~~$250,000, an award recommendation letter shall be dated and ~~mailed~~ transmitted 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 transmitted.~~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.~~

A written intent to protest a "Formal" bid under this section shall be filed by a protester with the Clerk of the Board and mailed to each bidder or proposer in the competitive process and to the County Attorney within three (3) work days of the filing of the award recommendation with the Clerk of the Board. This three (3) day period is determined by counting work days from the day after the award

recommendation is filed with the Clerk of the Board. The written intent to protest shall state with particularity the specific facts and grounds on which the protest is based, and be accompanied by the corresponding filing fee.

Within three (3) days of the filing of the written intent to protest, the protester shall file the bid protest, including pertinent documents and supporting evidence with the Clerk of the Board and mail copies to each bidder or proposer in the competitive process and to the County Attorney. Further, if the protester makes a public record request within the three-day period in which to file an intent to protest, the protester may use the information obtained from this records request to support the bid protest when the protester has complied with bid protest procedure deadlines established herein and the protester has made a supplementary filing with the Clerk of the Board within 48 hours of receiving the items requested by the public records request.

The intent to protest, bid protest, and any timely filed supplement shall form the basis for review of the protest and no other facts, grounds, documentation or evidence not contained in the protester's submission(s) to the Clerk of the Board shall be permitted in the consideration of the protest, except for such additional rebuttal evidence as is allowed during the course of the protest proceedings.

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) work~~ing~~ 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) work~~ing~~ 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) work~~ing~~ days for completion of the hearing, regardless of the number of requests or requests from multiple parties. The hearing examiner, shall within five (5) work~~ing~~ 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 bid protest. 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~~Implementing 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~~Implementing 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~~Implementing Order, that is, does not submit his or her completed report and recommendation to the Clerk of the Board within fifteen (15) ~~working~~work days of his or her appointment, or twenty (20) ~~working~~work days in the event five (5) additional ~~working~~work 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~~work 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~~work 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 two ~~one~~ hundred fifty thousand dollars (~~$100~~$250,000) 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) work~~ing~~ 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) work~~ing~~ days, or shall submit a written recommendation to the County Manager within five (5) work~~ing~~ 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) work~~ing~~ days, choose either the department's or the hearing examiner's recommendation, provide written findings therefore 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~~ $250,000

POSTING AWARD RECOMMENDATIONS

Award recommendations for contracts and purchases involving the expenditure of over $25,000 up to and including ~~$100~~$250,000 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.~~

A written intent to protest an "Informal" bid under this section must be filed by a protester with the Clerk of the Board and mailed to each bidder or proposer in the competitive process and to the County Attorney within three (3) work days of the posting of the award recommendation. This three (3) day period is determined by counting work days from the day after the award recommendation is posted. The written intent to protest shall state with particularity the specific facts and grounds on which the protest is based and be accompanied by the appropriate filing fee.

Within three (3) days of the filing of the written intent to protest, the protester shall file the bid protest, including pertinent documents and supporting evidence with the Clerk of the Board and mail copies to each bidder or proposer in the competitive process and to the County Attorney. Further, if the protester makes a public record request within the three-day period in which to file an intent to protest, the protester may use the information obtained from this record request to support the protest when the protester has complied with bid protest procedure deadlines established herein and the protester has made a supplementary filing with the Clerk of the Board within 48 hours of receiving the items requested by the public records request.

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 three (3)~~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~~ $250,000, 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) work~~ing~~ 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) work~~ing~~ 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, 701 NW 1st Court, Suite 1700, Miami, FL 33136, ~~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~~Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County Florida.

George M. Burgess
County Manager