MEMORANDUM

B & F
Agenda Item No. 2(B)

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

DATE: June 10, 2008

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

SUBJECT: Ordinance establishing procedures for County evaluation, development and publication of unsolicited proposals for County contracts

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The accompanying ordinance was prepared and placed on the agenda at the request of Commissioner Jose "Pepe" Diaz.

R. A. Cuevas, Jr.
County Attorney

RAC/bw

Memorandum

MIAMI-DADE COUNTY

Date:

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

From: George M. Burgess
County Manager

Subject: Ordinance establishing procedures for County evaluation, development and publication of unsolicited proposals for County contracts

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The ordinance establishing procedures for unsolicited proposals provides for fees to cover the cost of processing and reviewing these proposals, therefore, the ordinance will be revenue neutral.

Wendi Norris, Director
General Services Administration

fis04608

MEMORANDUM

(Revised)

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

DATE: July 1, 2008

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

SUBJECT: Agenda Item No.

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. 4(G)
5-20-08

ORDINANCE NO. _____

ORDINANCE ESTABLISHING PROCEDURES FOR COUNTY EVALUATION, DEVELOPMENT AND PUBLICATION OF UNSOLICITED PROPOSALS FOR COUNTY CONTRACTS FOR THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE; ESTABLISHING PROCESSING FEE; AMENDING SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, 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 2-8.1 of the Code of Miami-Dade County, Florida, is hereby amended by the addition of the following new subsection to read as follows:[1]

Sec. 2-8.1. Contracts and purchases generally.

* * *

>>(k) Unsolicited Proposals.

(1) Any person or legal entity may submit an unsolicited proposal to the County to contract for the construction of public infrastructure which unsolicited proposal shall be governed by the provisions of this section.

(2) The County shall charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal, including a fee to cover the costs of attorneys, engineers, consultants, and financial advisors. The fee charged for the review of the proposal shall be based on the

[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.

level of expertise deemed necessary by the County and required to review the proposal, and will not be greater than the direct costs associated with evaluating the unsolicited proposal. "Direct costs" may include, but are not limited to, (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the costs of attorneys, engineers, financial advisors and other consultants. Should the project proceed beyond the initial review, and be published for competition, additional fees for review and evaluation may be charged as agreed to by the parties.

(3) The County shall require the initial processing fee established by Implementing Order to be approved by this Board to be applied to the cost of evaluation. Additional fees may be charged based on the nature of the proposal and the complexity of the review required. All requested fees shall be paid prior to the County's further evaluation of the proposal. The County shall refund any portion of the initial processing fee paid in excess of its direct costs associated with evaluating the proposal.

(4) Upon receipt of an unsolicited proposal or group of proposals and payment of any required fees by the proposer or proposers, the County shall note the date and time of receipt of such proposal and shall determine within 90 days whether to accept the unsolicited proposal solely for the purpose of proceeding to publication as described below. Final determination of whether to publish a proposal shall be made by the Board of County Commissioners. Following such determination, the County shall respond to the proposer in writing as to the acceptance or rejection of the unsolicited proposal. The initial review time may be extended by mutual agreement of the County and the proposer.

(5) In its sole and absolute discretion, the County may reject or return an unsolicited proposal. The decision to reject an unsolicited proposal which is complete and accompanied by the applicable fee, and which otherwise complies with the submission requirements of this subsection, shall only be made by the Board of County Commissioners. It is not

the intention or obligation of the County to correct and/or assist in the preparation of an unsolicited proposal in any manner.

(6) In determining whether to accept the unsolicited proposal for publication, the County shall take into consideration such factors as: whether the proposed project is in the public's best interest; the costs of the proposed project and its funding sources; whether the proposed project may be accomplished through the use of County resources; the need for the proposed project; the scientific, technical or socio-economic merits of the proposal; the contribution of the proposal to the County's goals and objectives; the qualifications, technical and management capabilities and experience of the proposer considered as a whole and considered in terms of the legal entities who may comprise the proposer or who may be serving as subcontractors to the proposer; the general reputation and financial condition of the proposer and its team members; the proposer's financial capacity to perform its obligations in the proposed contract; the financial viability and feasibility of the submitted proposal; the cost, if any, to the County to proceed with implementation of the proposal; and any other information the County deems appropriate for such initial evaluation.

(7) Any unsolicited proposal shall include sufficient detail and information for the County to evaluate the proposal in an objective and timely manner and to determine if the proposal meets the above criteria and benefits the County. If such proposal is not deemed by the County to be complete or in sufficient detail, it may be rejected at the sole discretion of the County. The proposer shall be informed that the County determined that the proposal is not sufficiently complete for evaluation. It is not the intent or obligation of the County to assist the proposer in completing the proposal and the County shall bear no responsibility to itemize or advise the proposer of the incomplete items or terms of the proposal.

(8) Any unsolicited proposal shall contain at a minimum the following items, as appropriate to the proposed project:

(a) Information and supporting documentation necessary for the County to evaluate the factors listed in paragraph 6 above.

(b) A site plan indicating the location of the project proposed.

(c) A description of the project, including the conceptual design of the facility.

(d) The proposed schedule for development of the project and/or the proposed term for operation of the project, along with an estimate of the life cycle cost of the proposed proposal.

(e) A statement setting forth a method by which the private entity proposes to secure any property interests required for the proposed project.

(f) A list of all permits and approvals requires for developing, constructing, or operating the improvements comprising the project from local, state, or federal agencies, a schedule for obtaining such permits and approvals and a delineation of responsibilities for obtaining such permits and approvals.

(g) A list of all public utilities, railroad lines, navigable waters and flight paths, if any, that will be crossed or affected by the proposed project and a statement of the plan to accommodate such crossings or effects.

(h) A statement setting forth the proposer's plans for developing, financing, constructing and/or operating and maintaining the project, including identification of any revenue, public or private of proposed debt or equity investment proposed by the

(i) Names and addresses of persons who may be contacted for further information concerning the request.

(j) Information on how the project would benefit small and community based contractors within Miami-Dade County.

(k) A detailed financial plan for the entire time period of the proposed private entity involvement in the project.

(l) Performance guarantees, if any, and any proposed bonding to be provided by the proposer.

(m) The names, addresses, and biographical information of companies that will be principals in the proposal.

(n) A list of all engineering or construction firms to be proposed on the project and their qualifications and a description of their role in the proposal.

(o) A listing of all proposed obligations and requirements of the County and any other governmental agencies, including, but not limited to, contributions to the project financing, staffing and permitting.

(p) A listing of all small business enterprises (as defined in applicable County ordinances) that will participate in the project and the proposed scope of work of each.

(q) Such additional material and information that a responsible public entity may reasonably expect, in order to review and evaluate such proposal.

(9) The County may seek the advice of internal staff our outside advisors, attorneys or consultants, or any combination thereof, with relevant experience in determining whether to accept the unsolicited proposal for publication and/or whether to enter into an agreement with the private entity or any

competing proposer. At its option, the County may seek further clarification of the proposal.

(10) If the County accepts the unsolicited proposal for publication, then the County shall publish a competitive solicitation statement that the County has received a proposal and will accept, for 60 days after the initial date of the publication, other proposals for the same project purpose (the "Response Period"). The County shall identify the procedures that will be used for evaluating the proposals in the notice or in a subsequent publication. Once the County decides to receive competing proposals, it may utilize its existing procedures for evaluating the proposals or may adopt project-specific procedures. The proposer shall be authorized to respond to the competitive solicitation and offer to the County a proposal in terms not less favorable to the County than the original proposal.

(11) Proposal documents submitted by private entities are public records under Chapter 119, Florida Statutes (Florida's Public Records Law), subject to any exemption otherwise provided by law. Any competing proposer may request and receive a copy of such proposal, and the County reserves the right to publish such unsolicited proposal and solicit competing proposals within the Response Period. Proposers are advised to familiarize themselves with the provisions of the Public Records Law and to seek legal advice regarding any proprietary or intellectual property rights which they may have in the proposal. In no event shall the County be liable to a proposer for the disclosure of all or a portion of a proposal submitted under this subsection.

(12) When the private entity requests that the County not disclose information that is exempt from the disclosure requirements of the Public Records Law, the private entity must (i) invoke the exemption when the data or materials are submitted to the County or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary, citing the

specific exemption to Chapter 119, Florida Statutes that the proposer believes applies. The County's determination as to confidentiality shall be final and binding upon the proposer. The proposer shall bear all attorneys' fees and costs associated with litigation for public access to claimed confidential documents. The County's need to maintain certain information confidential may be taken into consideration in the County's decision not to publish a solicitation.

(13) After the Response Period has expired, the County shall within 45 days, or longer, as specified in the advertisement, evaluate all the competing proposals and rank them in order of preference utilizing the criteria published for the specific project.

(14) The County may negotiate with the top-ranked proposers in the order of their ranking, and may, through such negotiations, aim to arrive at a mutually satisfactory agreement.

(15) If only one proposal is received, the County may negotiate in good faith and if it is not satisfied with results, may at its sole discretion terminate negotiations with the proposer.

(16) No proposer is guaranteed the award of a contract as a result of being favorably-ranked for this project. The issuance of an unsolicited proposal shall create no rights in the proposer including rights as a bidder, under contract or intellectual property. The County, in its discretion, reserves the right to reject all proposals at any point in the process prior to the full execution of a contract with a proposer.<<

Section 2. 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 3. 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 relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. 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:

Approved by County Attorney as to form and legal sufficiency: _____

Prepared by: _____

Hugo Benitez

Sponsored by Commissioner Jose "Pepe" Diaz