MEMORANDUM

Agenda Item No. 7(D)

TO:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners	**DATE:**	October 7, 2008
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Ordinance amending Sections 2-8.1.1 and 10-33.1 the Code of Miami-Dade County relating to bids from related parties

This Ordinance was amended at the Budget and Finance Committee at the request of the sponsor to clarify that the proposed ordinance would also address collusion in license agreements and that any bidder who violates this ordinance will be referred for prosecution.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Joe A. Martinez and Co-Sponsor Commissioner Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: October 7, 2008

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

From: George M. Burgess
County Manager

Subject: Ordinance amending Sections 2-8.1.1 and 10-33.1 of the Code of Miami-Dade County relating to bids from related parties

---

The Ordinance relating to bids from related parties will not have a fiscal impact to Miami-Dade County.

Susanne M. Torriente
Chief Assistant County Manager

fis06108

MEMORANDUM

(Revised)

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

DATE: October 7, 2008

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

SUBJECT: Agenda Item No. 7(D)

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(D)
10-7-08

ORDINANCE NO. _____

ORDINANCE AMENDING SECTIONS 2-8.1.1 AND 10-33.1 OF THE CODE OF MIAMI-DADE COUNTY RELATING TO BIDS FROM RELATED PARTIES TO INCLUDE A PROHIBITION ON COLLUSIVE BIDDING, REQUIRING THAT RECOMMENDED BIDDERS SUBMIT AN AFFIDAVIT REGARDING THEIR RELATION TO OTHER BIDDERS, AND EXPAND THE PROHIBITIONS TO INCLUDE THE PURCHASE OF GOODS OR SERVICES; 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 2-8.1.1 of the Code of Miami-Dade County, Florida, is amended as follows:[1]

Sec. 2-8.1.1. Bids from related parties >>and bid collusion<< for the purchase of >>goods and services,<< leases, permits, concessions and management agreements.

>>(a)<< Notwithstanding any other provision of this Code, where two (2) or more related parties each submit a bid or proposal for any County >>purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Fla Stats.),<< lease, permit, >>licensing agreement,<< concession or management agreement, such bids or proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers or the principals >>, corporate officers, and managers<< thereof which have a direct or indirect ownership interest in

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

another bidder or proposer for the same agreement or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same agreement. Bids or proposals found to be collusive shall be rejected.

>>(b) All bids or proposals submitted for any County purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Fla Stats.), lease, permit, concession or management agreement must be genuine and not sham or collusive, or made in the interest or on behalf of any person not therein named, and the contractor may not have, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. Any bid or proposal submitted in violation of this subsection shall be rejected and the proposer shall be subject to debarment and >>referred for prosecution.

(c) A contractor recommended for award as the result of a competitive solicitation for any County purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Fla Stats.), purchase, lease, permit, concession or management agreement shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the County: stating either that the contractor is not related to any of the other parties bidding in the competitive solicitation or identifying all related parties, as defined in this Section, which bid in the solicitation; and attesting that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted in accordance with the provisions of this Section. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.<<

Section 2. That Section 10-33.1 of the Code of Miami-Dade County, Florida, is amended as follows:

Sec. 10-33.1. Bids precluded from related parties >>and colluding bidders<<.

>>(a)<< Notwithstanding any other provision of this Code, when two (2) or more related parties each submit a bid or proposal for any construction contract subject to this article, such bid or proposal shall be presumed collusive. The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers, or principals>>, corporate officers, and managers<< thereof which have a direct or indirect ownership interest in another bidder or proposer for the same contract or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership in another bidder or proposer for the same contract. Bids or proposals found to be collusive shall be rejected.

>>(b) All bids or proposals submitted for any for any construction contract must be genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. Any bid or proposal submitted in violation of this subsection shall be rejected and the proposer shall be subject to debarment.

(c) A contractor recommended for award as the result of a competitive solicitation for any County construction contract shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the County: stating either that the contractor is not related to any of the other parties bidding in the competitive solicitation or identifying all related parties, as defined in this Section, which bid in the solicitation; and attesting that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted in accordance with the provisions of this Section. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.<<

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, 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 5. 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 Oren Rosenthal

Prime Sponsor: Commissioner Joe A. Martinez
Co-Sponsor: Commissioner Rebeca Sosa