MEMORANDUM

Agenda Item No. 7(B)

TO:	Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners	**DATE:**	April 6, 2010
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Ordinance amending processes for acquisition of Professional Architectural, Engineering, Landscape, Land Surveying and Mapping Services

This substitute differs from the original in that the fiscal impact statement has been amended to indicate that while there is no impact in FY 2009-10, if implemented, the proposed legislation will result in a fiscal impact for FY 2010-11 which will be absorbed by existing resources.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: April 6, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess,
County Manager

Subject: Ordinance Amending Processes for Acquisition of Professional Architectural, Engineering, Landscape, Land Surveying and Mapping Services

---

This substitute differs from the original in that the fiscal impact statement has been amended to indicate that while there is no impact in FY 2009-10, if implemented, the proposed legislation will result in a fiscal impact for FY 2010-11 which will be absorbed by existing resources.

Recommendation

It is recommended that the Board of County Commissioners (BCC) adopt the attached ordinance pertaining to the process for acquisition of professional architectural and engineering services (A&E), amending Sections 2-10.4 and reflecting charter amendments to the Miami-Dade County Code.

Scope

This item pertains to the procurement process for the acquisition of professional architectural, engineering, landscape architectural, land surveying and mapping services (defined as A& E services) for Miami-Dade County. These services are required countywide.

Fiscal Impact/Funding Source

The fiscal impact is primarily costs associated with modifications to the existing A&E database. Enterprise Technology Services Department (ETSD) has estimated a fee of $25,000 for the programming necessary to make the database changes. These costs would be charged to the Office of Capital Improvements (OCI). This expense is not budgeted in FY 2009-10, however the proposed legislation, if implemented, will not be effective until FY 2010-11 at which time it will be absorbed by existing resources.

Track Record/Monitor(s)

Johnny Martinez, P.E., Director, of the Office of Capital Improvements manages the architectural and engineering solicitation process.

Background

This ordinance amends existing legislation relating to the solicitation and procurement process for Architecture and Engineering (A&E) services. The changes address industry concerns regarding having a more objective and equitable method of selecting A&E

service providers. In addition, amendments reflect the 2006 Miami-Dade County Charter amendments. The major changes to the current legislation are:

- The role and responsibilities of the Certification Committee are being more appropriately defined. This is a committee comprised of County professionals appointed by the County Mayor or Mayor's designee who are responsible for reviewing "Statements of Qualification" submitted by each A&E professional requesting certification in the various technical categories and for ascertaining whether the professional is fully qualified to render the required services according to Florida law and County regulations.

- The ranking process for firms is modified so that the final recommended firm ranking shall be determined by first converting the total qualitative points for each Selection Committee member into ordinal points. The firms shall be ranked in order of lowest total ordinal score. This mitigates the influence of any one individual selection committee members.
- The application of Local Preference for A&E services is amended as part of this ordinance so that, if two firms - one local and one non-local, are within five percent (5%) of each other's Qualitative Scores or Adjusted Low Bid for design-build solicitations, the local firm shall be ranked higher than the non-local firm in the final ranking.

- The Equitable Distribution Program (EDP) will be one of the methods available to County departments for accessing professional continuous services.

Staff surveyed the Florida Department of Transportation (FDOT), Palm Beach County, Broward County and Hillsborough County to collect information on their professional services evaluation process. The information gathered revealed that while all of the jurisdictions surveyed followed the requirements of Florida Statutes 287.055 for the selection of professional A&E services, all varied slightly in their rating and ranking approach. For example, the FDOT utilizes qualitative points in the evaluation process for the short-listing process and for the final ranking of the short-listed firms. The selection committee however, has the option of utilizing the ordinal ranking when the qualitative scores are within a few points of one another. In Palm Beach County the firms are evaluated qualitatively based on a set of criteria, which is then translated into an ordinal ranking, and the firm with the lowest ordinal score is ranked as the most qualified. In Hillsborough County the methodology utilized to short-list and rank firms is strictly qualitative based on a set criteria. We found that both the FDOT and Palm Beach County's model utilize both the qualitative and ordinal ranking to evaluate and select their professional A&E services, which is in line with Miami-Dade County's proposed model and respective legislative amendments.

Staff research revealed that unlike the National Institute of Governmental Purchasing (NIGP) which establishes best practices for procurement of goods and services, other than professional architectural and engineering (A&E) services, such an organization was not found for best practices for the procurement of A&E services. However, the American Consulting Engineers Council published "A guide to the Procurement of Engineering &

Architectural Services" which provides evidence supporting qualifications-based selections. Other research institutes such as the Transportation Research Board (TRB) in conjunction with its National Cooperative Highway Research Program (NCHRP) utilize the qualifications based selection process for the procurement of research consultants. All of the jurisdictions researched utilize the qualifications based (experience and performance) selection process for the acquisition of professional A&E services.

It is important to note that the modifications being recommended are as result of an ongoing dialogue with the professional A&E industry as to how the County can continue to improve the procurement process for the selection of A&E services. The main focus of the discussions dealt with the possible reduction of the subjective factors in the current evaluation criteria, primarily, the dollars awarded category. The existing process allows for the points to be assigned based on the individual evaluator's assessment. The revisions provide a specific formula which will generate a true point value specific to the individual firm's dollars awarded by Miami-Dade County. Together with the ordinal ranking, it is anticipated that these modifications to the professional services selection process contained in this ordinance will have a positive impact on the County's capital improvement program as well as, mitigate the concerns expressed by industry representatives by creating more opportunities to qualified firms and increasing the quality of A&E services for the County's capital projects.

We recognize that there is no established "standard" or perfect methodology for the selection process however, through meaningful dialogue with the local industry representatives the modifications proposed are intended to mitigate the concerns expressed by the local professionals.

A new corresponding Implementing Order (IO) which repeals the existing Sections I (D), II and III (C) of Administrative Order 3-39 is being developed which will outline in detail the modified A&E selection process. That IO will be presented to the Board for consideration under separate cover.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: April 6, 2010

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

SUBJECT: Agenda Item No. 7(B)

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

_____ Ordinance creating a new board requires detailed County Manager'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

5

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(B)
4-6-10

ORDINANCE AMENDING PROCESSES FOR PURCHASE OF PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, AND LAND SURVEYING AND MAPPING SERVICES; ESTABLISHING PROCEDURES FOR ADMINISTERING THE SELECTION PROCESS; CONFORMING PROVISIONS TO REFLECT CHARTER AMENDMENTS; AMENDING SECTION 2-10.4 OF THE CODE; 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 2-10.4 of the Code of Miami-Dade County, Florida, is hereby amended as follows: [1]

Sec. 2-10.4. Acquisition of professional architectural, engineering, landscape architectural or land surveying and mapping services.

(1) *Definitions.*

(a) "Professional services" shall mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, registered land surveying and mapping, as defined by the laws of the state, or those performed by any registered architect, professional engineer, registered landscape architect or registered land surveyor in connection with his professional employment or practice.

(b) The term "firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, landscape architectural or land surveying services.

---

[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.

* * *

(e) The term "project" shall mean that fixed capital outlay study or planning activity described in the public notice of Miami-Dade County pursuant to Section 2-10.4(2). The County [[~~Manager~~]] >> Mayor or County Mayor's designee<<shall prescribe by [[~~administrative rule~~]]>>Implementing Order<, subject to approval of the Board of County Commissioners, procedures for the determination of a project under its jurisdiction. Such procedures may include:

1. Determination of a project which constitutes a grouping of minor construction, rehabilitation or renovation activities;

2. Determination of a project which constitutes a grouping of substantially similar construction, rehabilitation or renovation activities.

* * *

(f) The term "continuing contract" shall mean a contract for professional services entered into in accordance with all the procedures of Chapter 287, Florida Statutes, as amended, and this section, as amended, between Miami-Dade County and a firm whereby the firm provides continuing professional services to Miami-Dade County for separate project assignments in which construction costs do not exceed the limits established by Chapter 287.055, Florida Statutes, as amended, or for separate study activities in which the fee for professional services does not exceed the limits established by Chapter 287.055, Florida Statutes, as amended, work of a specified nature as outlined in the contract required by Miami-Dade County with no time limitation except that the contract shall provide a termination clause. Firms seeking to provide professional services under continuing contracts for separate project assignments projects in which construction costs do not exceed the limits established by Chapter 287.055, Florida Statutes, as amended, or for separate study activities in which the fee for professional services does not exceed the limit established by Chapter 287.055, Florida Statutes, as amended, [[~~shall~~]]>>may<< be engaged and assigned work through means of an Equitable Distribution Pool established as provided in the [[~~Administrative Order~~]]>>Implementing Order<< which implements this Section.

7

* * *

(2) *Public announcement.* The County [[~~Manager~~]]>>Mayor or County Mayor's designee<< shall publicly announce as required by Chapter 287.055, Florida Statutes, as amended, each occasion when professional services are required as specified in the [[~~Administrative Order~~]] >>Implementing Order<< which implements this Section. Such announcement shall be made by publishing the same in a newspaper of general circulation setting forth a general description of the project or projects requiring professional services, the type of services, and prescribing the procedure to be followed by any firm wishing to be employed to perform such services. The public announcement shall be made in the manner provided by law and as specified in the [[~~Administrative Order~~]]>>Implementing Order<<which implements this Section.

(3) *Submission of qualifications.* The County [[~~Manager~~]]>>Mayor or County Mayor's designee<< shall encourage firms engaged in the lawful practice of their profession who desire to provide professional services to the County to submit on or before January 1, 1977, and annually on that date thereafter, a statement of qualifications [[~~and performance data~~]]. Such statements shall be on a form provided by the County [[~~Manager~~]]>>Mayor or County Mayor's designee<< who also may require additional information, and which shall be kept on file with the Clerk of the Board.

(4) *Certification committee; guidelines.*

(a) The County [[~~Manager~~]]>>Mayor or County Mayor's designee<< shall appoint a certification committee consisting of not less than three (3) members, all of whom shall be professionals in the field of endeavor or practice involved. The duty of such certification committee shall be to review the statement of qualifications [[~~and performance data~~]] submitted by each firm requesting certification and to ascertain whether the firm is fully qualified to render the required services according to law and the regulations which the County [[~~Manager~~]]>>Mayor or County Mayor's designee<<shall cause to be prepared. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel,[[~~past performance~~]] >>and<< experience record [[~~and affirmative action plan~~]] of the firm. The committee may accept certification of the firm by the State of Florida Department of Transportation or the State of Florida Department of General Services as prima facie evidence of such qualification; provided, no changes in technical and professional personnel have occurred that may affect the firm's qualifications since the date of State certification.

(b) Certification shall specify the particular category of professional work in which the firm is found qualified. The certification committee

shall evaluate the [[~~performance~~]]>>experience<< of each certified firm that seeks to render professional services and shall make that evaluation part of the permanent record to be considered then and whenever the firm is again in consideration. [[~~The committee, in making an evaluation, shall give consideration to performance in meeting time schedules required by contracts; performance in administration and in cooperation with others whose services will be involved in the project, including the construction contractor; adequacy and capability of personnel; past record and experience; and such other factors as may be determined by the County Manager to be applicable and which factors shall be contained in the regulations which the Manager shall cause to be prepared.~~]]

(c) Amendments to qualification statements and data shall be submitted to the County [[~~Manager~~]] by firms immediately after any changes in technical or professional personnel that may affect the firm's qualifications or capabilities. Upon receipt of any such amendment the certification committee shall again review the qualifications of the firm to ascertain whether the firm is still qualified. If it is found not to be qualified, the committee shall revoke the certification for the particular category of service for which the firm had been previously certified.

(5) *Competitive selection committees for publicly announced projects or planning or study activities which are not provided under continuing contracts.*

(a) For each project or planning or study activity required to be publicly announced under subsection (2) of this Section, the County [[~~Manager~~]]>>Mayor or County Mayor's designee<< shall appoint a competitive selection committee as set forth in the Administrative Order which implements this section.

* * *

(c) The competitive selection committee shall report its findings, together with supporting data, to the County [[~~Manager~~]]>>Mayor or County Mayor's designee<<and shall file a copy of its findings with the Clerk of the Board of County Commissioners.

(d) The County Manager shall select no less than three (3) firms, in the order of preference (provided that at least three (3) firms are identified in accordance with subsection (b) above) by the competitive selection committee to be the most highly qualified to perform the required services. >>The competitive selection committee shall rank the firms in the order of their competence and qualification<< after considering such factors as the ability of professional personnel, past performance, willingness to meet

time and budget requirements, locations of the firms, the recent, current, and projected workloads of the firms, [[~~the affirmative action plan of the firm~~]] and the volume of work previously awarded to [[~~each~~]]>>the<< firm by the agency with the object of effecting an equitable distribution of contracts among qualified firms. >>The competitive selection committee shall score the firms based on a qualitative evaluation of the selection criteria (the "Qualitative Score") but shall base its recommended ranking on the aggregate ranking provided by members of the selection committee (the "Ordinal Score") all as more particularly described in the Implementing Order. The competitive selection committee shall report to the County Mayor or the County Mayor's designee the recommended ranking of the firms including both Qualitative Scores and Ordinal Scores. The competitive selection committee shall report no fewer than three (3) firms determined to be the most highly qualified, provided at least three (3) qualified firms have responded to the solicitation.<< [[~~When proposals or letters of participation are received pursuant to Chapter 287, Florida Statutes, or this section which originate from professional or consulting firms within this County, and quality, service, qualifications and criteria dictated by the project are equal, then firms within the County shall be given preference. This local preference and the distribution of work among firms shall not violate the principle of selection of the most qualified firm for each project. For architectural and engineering professional service solicitations, [if two firms, one local and one non-local are within five percent of each other's ranking, the local firm will proceed to negotiations with the County.] In case of a two-tiered evaluation process, the local preference shall also apply at the conclusion of the first tier to allow eligible local proposers within five percent of the points assigned to those recommended to participate in the second tier evaluation~~.]]
>>Following the review of the selection committee's report, the County Mayor or County Mayor's designee shall determine the final ranking of firms in the order of competence and qualification upon application of the criteria set forth in subsection (d) above and the local preference considerations set forth in subsection (e) below. The County Mayor or County Mayor's designee shall at all times abide by the principle of selection of the most highly qualified firms.<< The County [[~~Manager~~]] >>Mayor or County Mayor's designee<< shall file the names of the firms he selects together with his order of preference with the Clerk of the Board of County Commissioners. The County [[~~Manager~~]] shall then negotiate a contract in accordance with the procedures set forth hereafter.

>>(e)<< >>If two firms, one local and one nonlocal are within five percent (5%) of each other's total Qualitative Scores, and for design build solicitations, the adjusted low bid, as defined in the corresponding Implementing Order, the local firm shall be ranked higher than the

nonlocal firm in the final ranking of the County Mayor or Mayor's designee made in accordance with this subsection.<< In case of a two tiered evaluation process, the local preference shall also apply at the conclusion of the first tier to allow eligible local proposers within five percent of the points assigned to those recommended to participate in the second tier evaluation. >>For purposes of this subsection, the term local firm shall have the same meaning as local business in Section 2-8.5 of this Code.<<

[[(e)]]>>(f)<< The provisions of this subsection shall not apply to continuing contracts.<<

(6) *Competitive negotiations.*

(a) The County [[~~Manager~~]]>>Mayor or County Mayor's designee<< [[~~or his designee shall attempt to~~]]>>shall appoint a negotiation committee who shall attempt to<<negotiate a professional services contract for each project or planning or study activity required to be publicly announced under subsection (2) of this Section with the firm which he has ranked first for a compensation which [[~~he has~~]]>>the negotiation committee<< has determined to be fair, competitive, and reasonable. In arriving at a compensation figure the [[~~Manager~~]]>>negotiation committee<< shall conduct a detailed analysis of the cost of the professional services required, and shall give full consideration to the extent and complexity of the services required. For all lump sum or cost plus a fixed fee contracts in which the fee will exceed fifty thousand dollars ($50,000.00), the County will require the firm receiving the award to execute a truth-in-negotiation certificate as required by Chapter 287, Florida Statutes.

(b) Should the >>negotiation committee<<[[~~County Manager or his designee~~]] be unable to negotiate a satisfactory contract with the firm that he has ranked first at a price which [[~~he~~]]>>the negotiation committee<< believes to be fair, competitive, and reasonable, negotiations with that firm shall be formally terminated. The [[~~County Manager or his designee~~]]>>negotiation committee<< shall then undertake negotiations with the firm which the [[~~Manager~~]]>>County Mayor or County Mayor's designee<< ranked second. Failing accord with this firm, such negotiations shall terminate, and negotiators shall then undertake negotiations with the firm ranked third by the [[~~Manager~~]]>>County Mayor or County Mayor's designee.<<

(c) Should the [[~~County Manager or designee~~]]>>negotiation committee<< be unable to negotiate a satisfactory contract with any of the selected firms, additional firms shall be selected in accordance with the procedure set forth herein. Negotiations shall continue in accordance with

this section until an agreement is reached. The negotiated agreement shall be presented to the Board of County Commissioners for approval.

* * *

(8) Miscellaneous provisions and exceptions.

* * *

(b) The procedures of this Section shall not apply:

(i) When the County [[~~Manager~~]]>>Mayor<< is of the opinion and certifies that a valid public emergency exists.

* * *

(c) Miami-Dade County agencies and instrumentalities with the independent power to contract, such as the Public Health Trust, shall adopt rules and procedures implementing this Section. For the purposes of such rules and procedures, where this section provides the Board of County Commissioners and implementing authority, the Board of Trustees shall exercise such authority, and where this section provides the [[~~County Manager~~]]>>Mayor<<with authority, the President or Executive Director shall exercise such authority.

(9) *Design-build contracts.* Selection of firms to perform design-build contracts shall be in accordance with the procedures set forth in the [[~~Administrative Order~~]]>>Implementing Order<<which implements this Section.

(10) [[~~Administrative Order~~]]>>*Implementing Order*<<. The provisions of this Section shall be implemented by an [[~~Administrative Order~~]]>>Implementing Order<< approved by the Board of County Commissioners.

(11) *Value analysis.* Whenever the County purchases design services for certain public facilities and improvements which exceed the thresholds set by Administrative Order promulgated by the County [[~~Manager~~]]>>Mayor<< and approved by County Commission, the following value analysis shall be performed by a firm or entity separate from the design firm and shall be included as part of the overall design costs for such facilities or improvements:

* * *

[[~~(12) *Women Business Enterprise Program.* The provisions of this section shall be applied in accordance with the Women Business Enterprise Program.~~]]

[[~~(13) *Hispanic Business Enterprise Program.* The provisions of this section shall be applied in accordance with the Hispanic Business Enterprise Program.~~]]

[[~~(14)*Black Business Enterprise Program.* The provisions of this section shall be applied in accordance with section 2-8.2.~~]]

[[~~(15)*CommunityBusinessProgram*~~]]>>(12)*Community Business Enterprise Program.*<< The provisions of this section shall be applied in accordance with Section 2-10.4.01.

* * *

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be effected 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 provisions, 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 one hundred twenty (120) 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: RAC

Prepared by: HB

Hugo Benitez

Prime Sponsor: Commissioner Rebeca Sosa