

MEMORANDUM

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Agenda Item No. 1(E)3

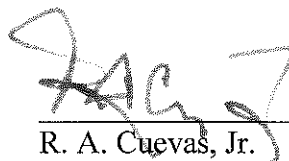
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: October 26, 2011

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

SUBJECT: Ordinance relating to the collection of data for a disparity study in connection with race, gender and ethnic based contracting programs; requiring County contractors to report the race, gender and ethnic makeup of the ownership of subcontractors performing the work; requiring County contractors to report payments made to all subcontractors under the contract; amending Sections 2-8.1, 2-8.8 and 10-34 of the Code

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan and Co-Sponsor Commissioner Jean Monestime.



R. A. Cuevas, Jr.
County Attorney

RAC/jls



MEMORANDUM

(Revised)

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

DATE: September 20, 2011

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

SUBJECT: Agenda Item No. 4(C)

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(C)
9-20-11

ORDINANCE NO. _____

ORDINANCE RELATING TO THE COLLECTION OF DATA FOR A DISPARITY STUDY IN CONNECTION WITH RACE, GENDER AND ETHNIC BASED CONTRACTING PROGRAMS; REQUIRING COUNTY CONTRACTORS TO REPORT THE RACE, GENDER AND ETHNIC MAKEUP OF THE OWNERSHIP OF SUBCONTRACTORS PERFORMING THE WORK; REQUIRING COUNTY CONTRACTORS TO REPORT PAYMENTS MADE TO ALL SUBCONTRACTORS UNDER THE CONTRACT; AMENDING SECTIONS 2-8.1, 2-8.8 AND 10-34 OF THE CODE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, this Board wishes to assure that all segments of the County have a full, fair and meaningful opportunity to participate in County contracting regardless of race, gender or ethnic origin; and

WHEREAS, in furtherance of that policy, on June 24, 2011, this Board adopted Resolution R-564-11, directing the County Mayor to prepare a feasibility report in connection with a proposal to enact race, ethnic, and gender based programs; and

WHEREAS, under applicable law, a disparity study is the first step to determine whether or not , and to what extent, programs to remedy racial, ethnic or gender discrimination will withstand judicial scrutiny; and

WHEREAS, a predisparity study commissioned by the County identified various deficiencies in the gathering and compilation of the data relevant to conduct a disparity study; and

WHEREAS, the data reporting measures more particularly set forth below will serve to obtain the information in support of a disparity study,

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 is hereby amended as follows:¹

Sec. 2-8.1. - Contracts and purchases generally.

- (a) Scope. Except as provided in subsections (b), (f) and (h), this section shall apply to all contracts for public improvements and purchases of all supplies, materials and services other than professional services.

* * *

- (f) Listing of subcontractors required on certain contracts. The requirements of this subsection shall apply to those county contracts for purchase of supplies, materials or services, including professional services, which involve the expenditure of one hundred thousand dollars (\$100,000.00) or more where the contract specifications do not expressly preclude the use of subcontractors to perform a portion of the work. All such contracts shall require the entity contracting with the County to list all first tier subcontractors who will perform any part of the contract work and all suppliers who will supply materials for the contract work direct to such entity. >>The contracts shall also require the entity contracting with the County to report to the County the race, gender and ethnic origin of the owners of all such first tier subcontractors.<< When a competitive process is utilized to select the entity that will contract with the County, the specifications shall provide that it shall be a condition of award for the successful

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.

bidder to provide such listing >>and report, << if required. ~~[[The foregoing notwithstanding, those contracts subject to this subsection advertised for bid after July 18, 1997 on which bids were opened before January 31, 1998 whose specifications do not include language implementing this subsection, may be awarded as provided in such specifications subject to the awardee supplying the required listing of subcontractors and suppliers required hereby, and agreeing to include the language provided in the last sentence of this subsection]].~~ Section 10-34 of this Code governs the subcontractor listing requirements for contracts for public improvements. The County ~~[[Manager]]~~ >>Mayor or Mayor's designee << shall include language in all contracts >>and specifications << to which this subsection applies to >>implement this subsection and to << provide that the contractor shall not change or substitute subcontractors or suppliers from those listed except upon written approval of the County.

* * *

Section 2. Section 10-34 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 10-34. - Listing of subcontractors required.

The requirements of this section shall apply to those county and Public Health Trust construction contracts in which a bidder may use a subcontractor which involve the expenditure of one hundred thousand dollars (\$100,000.00) or more. Such contracts shall require the entity contracting with the county to list all first tier subcontractors who will perform any part of the contract and all suppliers who will supply materials for the contract work direct to such entity. >>The Contract shall also require the entity contracting with the County to report to the County the race, gender, and ethnic origin of the owners of all such first tier subcontractors. << When a competitive process is utilized to select the entity that will contract with the county, the specifications shall provide that it shall be a condition of award for the successful bidder to provide such listing >>and report <<, if required. ~~[[The foregoing notwithstanding, those contracts otherwise subject to this~~

~~section advertised for bid after July 18, 1997 on which bids were opened before January 31, 1998 whose specifications do not include language implementing this section, may be awarded as provided in such specifications subject to the awardee supplying the listing of subcontractors and suppliers required hereby and agreeing to include the language specified in the last sentence of this section.]]~~ The ~~[[County Manager]]~~ >>Mayor or Mayor's designee<< shall include language in all contracts to which this section applies to >>implement this Section and to<< provide that the contractor shall not change or substitute subcontractors or suppliers from those listed except upon written approval of the county.

Section 3. Section 2-8.8 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 2-8.8. - Fair subcontracting practices.

- (1) Policy. It is the policy of this County to promote diversity in the use of Subcontractors on Miami-Dade County projects and to allow opportunities for subcontracting to as many qualified Subcontractors as possible.

* * *

- (4) Reporting of subcontracting policies>>₂<< ~~[[and]]~~ procedures >>and payments<<. For all contracts in which a bidder may use a Subcontractor, prior to contract award, the bidder shall provide a detailed statement of its policies and procedures for awarding subcontracts. Failure to provide the required statement shall preclude the bidder from receiving the contract. >>As a condition of final payment under a contract, the contractor shall identify all subcontractors used in the work, the amount of each subcontract, and the amount paid and to be paid to each subcontractor. In the event that the contractor intends to pay less than the subcontract amount, the contractor shall deliver to the County a statement explaining the discrepancy or any disputed amount.<< The County ~~[[Manager]]~~ >>Mayor or Mayor's designee<< shall include language in the specifications of applicable County contracts >>to give effect to the intent of this Section.<< ~~[[for the provision of such a statement. The foregoing~~

~~notwithstanding, those contracts otherwise subject to this subsection advertised for bid after July 5, 1997 on which bids were opened before January 31, 1998 whose specifications do not include language implementing this subsection, may be awarded as provided in such specifications subject to the awardee supplying the statement of subcontracting policy required hereby.]]~~

Section 4. 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 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, shall be included in the Code of Miami-Dade County.

Section 6. 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

Prime Sponsor: Commissioner Barbara J. Jordan
Co-Sponsor: Commissioner Jean Monestime