

MEMORANDUM

Agenda Item No. 7(c)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 7, 2014

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

SUBJECT: Ordinance amending Conflict
of Interest and Code of Ethics
Ordinance; amending
Section 2-11.1 (t) of the Code;
amending exception for
negotiation meetings

This item was amended at the 8-27-14 Public Safety and Animal Services Committee to exempt selection committee meetings from the cone of silence and make clear that the recording of selection and negotiation committee meetings include both video and audio components.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Esteban L. Bovo, Jr., and Co-Sponsors Commissioner Audrey M. Edmonson and Commissioner Sally A. Heyman.



R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum



Date: October 7, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Ordinance amending Conflict of Interest and Code of Ethics ordinance; amending Section 2-11.1 (t) of the Code of Miami-Dade county, Florida; amending exception for negotiation meetings

The proposed ordinance amends Section 2-11.1 (T) of the Code of Miami-Dade County exempting competitive contract negotiations in the County from meeting in public as currently set forth in Florida's Sunshine Laws. Implementation of this ordinance will not have a fiscal impact to the County.



Inson Kim
Director of Policy and Legislation

Fis9614



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 7, 2014

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

SUBJECT: Agenda Item No. 7(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 Mayor'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. 7(C)

10-7-14

ORDINANCE NO. _____

ORDINANCE AMENDING CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE; AMENDING SECTION 2-11.1 (t) OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; AMENDING EXCEPTION FOR NEGOTIATION MEETINGS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, in 2011 the Florida Legislature adopted CS/HB 7223 which amended Florida's Sunshine Laws to exempt competitive contract negotiation meeting from the public meeting requirement; and

WHEREAS, for the Sunshine exemption to apply the entire negotiation meeting must be recorded and no portion of the meeting may be held off of the record; and

WHEREAS, such recording is confidential and exempt from public records laws until the contract is awarded or thirty (30) days have passed since the proposals have been opened; and

WHEREAS, CS/HB 7223 provides that "it is a public necessity that a meeting at which a negotiation with a vendor is conducted pursuant to competitive solicitation ... be made exempt from public meeting requirements ... [to] ensure[] that the process of responding to a competitive solicitation remains fair and economical to the vendors..."; and

WHEREAS, this Board finds that exempting competitive contract negotiations in the County from meeting in the public as set forth in the state law exception would benefit the procurement process in the County by placing proposers on equal footing in negotiations and not allowing competitors to view the negotiations with the first proposer before negotiating with the County at a later date; and

WHEREAS, this Board finds that exempting competitive contract negotiations in the County from meeting in the public will allow the County greater flexibility in negotiations; and

WHEREAS, Miami-Dade County’s Cone of Silence requires that negotiation meetings be held “during any duly noticed public meeting”; and

WHEREAS, the Board of County Commissioners, consistent with the 2011 change in State Law and policy, desires to remove this prohibition from the Cone of Silence subject to recording the negotiation meeting to better comply with the public policy of the state and improve the level of competitive negotiations in the County,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-11.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Section 2-11.1. Conflict of Interest and Code of Ethics Ordinance.

* * *

(t) *Cone of Silence.*

* * *

(1) Contracts for the provision of goods and services other than audit and independent private sector inspector general (IPSIG) contracts.

* * *

(c) Exceptions

(1) The provisions of this ordinance shall not apply

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.

to oral communications at pre-bid conferences~~[[;]]~~ >>and<<
 >>recorded<<² oral presentations before selection committees
~~[[during any duly noticed public meeting]],~~ >>recorded<< contract
 negotiations >>and recorded contract negotiation strategy sessions
 all conducted<< >>in compliance with the exemption in Florida
 Statutes Section 286.0113<< >>.<< ~~[[during any duly noticed
 public meeting,]]~~ >>The provisions of this ordinance also shall not
 apply to<< public presentations made to the Board of County
 Commissioners during any duly noticed public meeting or
 communication in writing at any time with any County employee,
 official or member of the Board of County Commissioners unless
 specifically prohibited by the applicable RFP, RFQ or bid
 documents. The bidder or proposer shall file a copy of any written
 communication with the Clerk of the Board. The Clerk of the
 Board shall make copies available to any person upon request.
 >>Any recording made pursuant to this subsection must include
 both audio and video recordings.<<

* * *

2. Audit and IPSIG Contracts

* * *

(2) Nothing contained herein shall prohibit any bidder or proposer : (i) from making public presentations at duly noticed pre-bid conferences or before ~~[[duly noticed]]~~ >>recorded<< selection committee meetings ; (ii) from engaging in >>recorded<< contract negotiations >>in compliance with the exemption in Florida Statutes Section 286.0113<< ~~[[during any duly noticed public meeting]]~~; or (iii) from communicating in writing with any County employee or official for purposes of seeking clarification or additional information from, subject to the provisions of the applicable RFP, RFQ or bid documents. >>Any recordings made pursuant to this section shall be made available, as a public record, upon the conclusion of the selection committee or negotiation meetings notwithstanding the elapsed time from bid or proposal opening.<< The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to the general public upon request.

² Committee amendments are indicated as follows: Words double stricken through and/or [[double bracketed]] are deleted, words double underlined and/or >>double arrowed<< are added.

Section 2. If any section, subsection, sentence, cause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such validity.

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 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 Esteban L. Bovo, Jr.
Co-Sponsors: Commissioner Audrey M. Edmonson
Commissioner Sally A. Heyman