

MEMORANDUM

Agenda Item No. 7(E)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: May 5, 2020

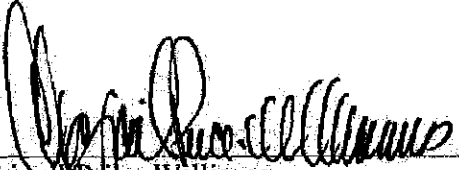
FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to the bid protest process; amending section 2-8.4 of the Code; requiring resolicitation of procurement upon a finding by a hearing examiner that the County Mayor acted fraudulently, arbitrarily, illegally, or dishonestly; prohibiting protests of recommendations to reject all proposals; making technical changes; directing the County Mayor to prepare conforming amendments to Implementing Order 3-21 and provide a report

This item was amended at the 4-20-20 Chairwoman's Policy Council to provide that, instead of requiring the County Mayor to resolicit the procurement without further Commission action upon a finding by a hearing examiner that the County Mayor or County Mayor's designee acted fraudulently, arbitrarily, illegally, or dishonestly in a procurement, the protested recommendation and the hearing examiner's report and recommendation must be placed on the next available Commission agenda. The Commission may then take further action upon either a hearing examiner reaching such an adverse finding or upon a finding that there was a violation of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance in the procurement. Amendments adopted in committee to an ordinance or a resolution requiring a public hearing are reflected in the body of the item, but not in the title.

Rule 5.06(i) of the Board's Rules of Procedure provides that differences between an original item and an amended item should be uniquely identified in the amendment by double underlining and double strike-through, or where such approach would not clearly show the difference or are not practical, by providing footnotes or comments on the item. Based on Rule 5.06(i), the preceding description of the differences between the original item and the amended item is provided in lieu of double underlining and double strike-through.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Chairwoman Audrey M. Edmonson and Co-Sponsor Vice Chairwoman Rebeca Sosa.


Abigail Price-Williams
County Attorney

APW/smm

Memorandum



Date: May 5, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez".

Subject: Fiscal Impact Statement for Ordinance Relating to the Bid Protest Process

The fiscal impact of the implementation of this ordinance cannot be determined at this time. This ordinance would lengthen the solicitation process in the case of a bid protest. Potential costs include the cost of the time delays associated with the re-solicitation and changes in project costs that may result from rebidding.

A handwritten signature in black ink, appearing to read "Edward Marquez".

Edward Marquez
Deputy Mayor

FIS04520 200517

Memorandum



Date: May 5, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

Subject: Social Equity Statement for Ordinance Relating to the Bid Protest Process and
Amending Section 2-8.4 of the Code of Miami-Dade County

The proposed ordinance relating to the Bid Protest process amends Section 2-8.4 of the Code of Miami-Dade County.

The proposed ordinance could place a burden on the County via limitations on its ability to correct deficiencies identified by a hearing examiner as well as the ability to take the necessary corrective actions. Additionally, it could place unnecessary burden on proposers/bidders should the County have to rebid.

A handwritten signature in black ink, appearing to read "Edward Marquez", written over a horizontal line.

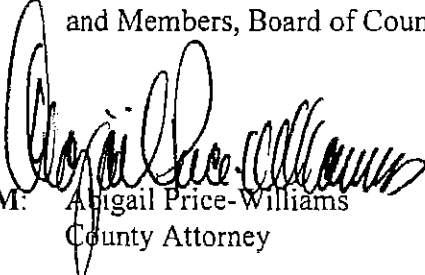
Edward Marquez
Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: May 5, 2020

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(E)

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
- Statement of social equity 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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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(E)
5-5-20

ORDINANCE NO. _____

ORDINANCE RELATING TO THE BID PROTEST PROCESS; AMENDING SECTION 2-8.4 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REQUIRING RESOLICITATION OF PROCUREMENT UPON A FINDING BY A HEARING EXAMINER THAT THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE ACTED FRAUDULENTLY, ARBITRARILY, ILLEGALLY, OR DISHONESTLY; PROHIBITING PROTESTS OF RECOMMENDATIONS TO REJECT ALL PROPOSALS; MAKING TECHNICAL CHANGES; DIRECTING THE COUNTY MAYOR TO PREPARE CONFORMING AMENDMENTS TO IMPLEMENTING ORDER 3-21 AND PROVIDE A REPORT; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, section 2-8.4 of the Code of Miami-Dade County creates a bid protest procedure to hear administrative complaints regarding most competitive processes utilized by the County to purchase goods, supplies or services; and

WHEREAS, the purpose of a bid protest is to allow a neutral hearing examiner to hear evidence and argument and determine whether a procurement recommendation is free from any fraudulent, arbitrary, illegal, or dishonest conduct; and

WHEREAS, upon hearing a bid protest, the hearing examiner provides a report and recommendation to the Board setting forth the hearing examiner's findings of facts and conclusions of law; and

WHEREAS, a hearing examiner's recommended findings of facts and conclusions of law are not binding on the Board and often result in a time-consuming process of litigating the same issues before the Board; and

WHEREAS, requiring the County Mayor to resolicit a competitive procurement without going to the Board when a hearing examiner has found that the County Mayor or the County Mayor's designee has acted fraudulently, arbitrarily, illegally, or dishonestly will save time and allow for the proper completion of the competitive process without the potential for subsequent legal challenge; and

WHEREAS, in cases where the County Mayor still wishes to present to the Board a competitive process where the hearing examiner has found that the County Mayor has acted fraudulently, arbitrarily, illegally, or dishonestly the County Mayor may recommend a waiver of the bid protest procedures or a competitive bid waiver,

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

Section 1. Section 2-8.4 of the Code of Miami-Dade County is hereby amended as follows:¹

Sec. 2-8.4. - Protest procedures.

This section shall govern any protest made by a participant in any competitive process utilized for selection of a person or other entity to construct any public improvement, to provide any supplies, materials or services (including professional or management services other than professional services whose acquisition procedure is governed by the Consultant's Competitive Negotiation Act, F.S. Section 287.055 et seq.), or to lease any county property.

The foregoing notwithstanding, the protest procedures contained in this section shall not apply to contracts and purchases which the County ~~[[Manager]]~~>>Mayor<< has the delegated authority to award under Section 2-8.1(b) of this Code, and protests thereon shall be governed by procedures established by ~~[[administrative]]~~ >>implementing<< order approved by the Board of County Commissioners.

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.

A protest hereunder may not challenge the relative weight of the evaluation criteria or the formula specified for assigning points therefor contained in bid, request for proposals ("RFP") or request for qualifications ("RFQ") specifications which have been approved by the Commission. >>A protest hereunder may not challenge any recommendation to reject all proposals received for a solicitation.<<

(a) Responsiveness. Prior to this Board or any committee thereof hearing any protests relating to a competitive bid, request for proposal or request for qualifications, the County ~~[[Manager]]~~>>Mayor<< shall request the County Attorney to certify whether the bid or proposal in question is responsive. Upon receiving such request, the County Attorney shall, in consultation with the County ~~[[Manager]]~~>>Mayor<< if necessary, determine whether the bid or proposal is responsive. This Board and any committee thereof shall be bound by the determination of the County Attorney with regard to the issue of responsiveness.

(b) A written intent to protest shall be filed with the Clerk of the Board and mailed to all participants in the competitive process and to the County Attorney within three (3) working days of the filing of the ~~[[Manager's]]~~>>Mayor's<< recommendation. For purposes of calculating this period, the day of filing of the County ~~[[Manager's]]~~>>Mayor's<< recommendation with the Clerk shall not be counted. Such written intent to protest shall state the particular grounds on which it is based and shall be accompanied by a filing fee. The protester shall then file all pertinent documents and supporting evidence with the Clerk of the Board and mail copies to all participants in the competitive process and to the County Attorney within three (3) working days after the filing of a written intent to protest. No bid protest shall be accepted unless it complies with the requirements of this Section. Notwithstanding the above, in the event that a public records request is made within the first three days of the above referenced period, a protester may utilize any public records obtained as evidence or additional grounds for protest, provided that, a) the protester met all the deadlines set forth above, and, b) a supplementary filing is made with the Clerk of the Board within 48 hours of receipt of the records responsive to the request.

(c) Protests filed in accordance herewith shall be referred to a hearing examiner. A hearing examiner shall be appointed not later than five (5) working days following the filing of a bid protest. The hearing examiner shall conduct a hearing in connection with the bid protest which shall be completed within ten (10) working days following his or her appointment. The hearing examiner shall, within five (5) working days of the hearing, file written findings and

recommendations with the Clerk of the Board and shall submit or mail a copy of same to all participants in the competitive process and to the County Attorney. The hearing examiner may extend the deadline for completion of the hearing upon written petition for good cause shown, but such extension shall not exceed an additional five working (5) days. The hearing examiner shall consider the written protest and supporting documents and evidence appended thereto, the County ~~[[Manager's]]~~>>Mayor's<< recommendation, and supporting documentation, and all evidence presented at the hearing. The hearing examiner may also require written summaries, proffers, affidavits and other documents the hearing examiner determines to be necessary in order to conclude the hearing and issue the report and recommendation within the time limits set forth in this ordinance. The hearing examiner shall be entitled to rely on evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, whether or not such evidence would be admissible in a trial in the courts of Florida.

(d) The hearing examiner shall allow a maximum of two hours for the protester's presentation of its protest and a maximum of two hours for the County's response to each protest. In the event of multiple protests, the hearing examiner shall allocate the time as necessary to ensure that the hearing shall not exceed one day.

(e) The County ~~[[Manager]]~~>>Mayor<< shall prepare an ~~[[administrative]]~~ >>implementing<< order, to be approved by this Commission, amending ~~[[Administrative]]~~ >>implementing<< Order No. 3-21 and setting forth a fee schedule for filing of bid protests. The fee shall be in the amount necessary to defray the cost of the bid protest process established in this Section. The administrative order shall also establish the amount of compensation to be paid the hearing examiner, and shall provide for a prorated reduction of that compensation in the event the hearing examiner fails to abide by the time limitations set forth in Section 2-8.4(c) above.

(f) Hearing examiners shall be selected from a panel of retired judges who have served ten (10) or more years as Circuit Judges in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. Hearing examiners may be selected from alternate sources where the County Attorney recommends in writing that such action is necessary to achieve greater diversity.

(g) >>Unless the hearing examiner finds that the County Mayor or County Mayor's designee acted fraudulently, arbitrarily, illegally, or dishonestly,<< [F]>>t<<he hearing examiner's findings and recommendation shall be presented to the Commission together with

the recommendation of the County ~~[[Manager]]~~>>Mayor<<. Notice thereof shall be mailed to all participants in the competitive process at least five (5) days in advance of such presentation. Notwithstanding any other provision of this Code or any prior resolution, the matter shall be heard by the Commission without prior presentation to any committee. The matter shall be resolved on the basis of the record before the hearing examiner and no evidence or issue which was not presented or raised at such hearing shall be considered. Presentations to the Commission by any participant in the competitive process or their representatives if authorized by subsection (h) below shall be limited to ten (10) minutes per side. The foregoing time limitation shall be inclusive of all speakers addressing the Commission on behalf of each side.

(h) If the hearing examiner concurs in the County ~~[[Manager's]]~~>>Mayor's<< recommendation, a two-thirds (2/3) vote of the Commission members present shall be required to take other than the recommended action. Provided however, a two-thirds (2/3) vote shall not be required to reject all bids. If the hearing examiner concurs in the County ~~[[Manager's]]~~>>Mayor's<< recommendation, the Commission shall not allow presentations by any participants in the competitive process or their representatives at the time the matter is presented to the Commission. If the hearing examiner does not concur in the County ~~[[Manager's]]~~>>Mayor's<< recommendation >>and finds that the County Mayor or County Mayor's designee acted fraudulently, arbitrarily, illegally, or dishonestly or if the hearing examiner finds that there is a violation of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, including but not limited to the County's Cone of Silence, by any participants in the competitive process, then the protested recommendation and the hearing examiner's report and recommendation shall be placed on the next available Commission agenda. The participants in the competitive process and their representatives may, at the discretion of the Chairperson, make presentations to the Commission and the Commission shall decide by majority vote whether to reject all proposals and resolicit the procurement, disqualify the recommended proposer, direct negotiations or award to the next ranked proposer, award to the recommended proposer or take any other action the Commission deems appropriate.<<[[, the participants in the competitive process and their representatives may make presentations to the Commission and the Commission shall decide the matter by majority vote.]]

(i) The County ~~[[Manager]]~~>>Mayor<< may provide different time periods for the taking of any actions required hereunder when the interest of the County so requires by including appropriate language in the specifications or addenda thereto.

(j) The foregoing notwithstanding, the Commission, by two-thirds (2/3) vote of the members present, may waive the requirements of this section and entertain a bid protest, upon written recommendation of the County ~~[[Manager]]~~>>Mayor<<.

* * *

Section 2. The County Mayor or County Mayor's designee shall prepare an amendment to Implementing Order 3-21, titled "Bid Protest Procedures," to conform Implementing Order to the amendments made in this ordinance and shall place a report on an agenda of the Board of County Commissioners pursuant to Ordinance No. 14-85 within 30 days of the effective date of this ordinance detailing such amendments.

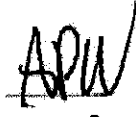
Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

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

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: Chairwoman Audrey M. Edmonson
Co-Sponsor: Vice Chairwoman Rebeca Sosa