

# MEMORANDUM

Agenda Item No. 11(A)(6)

**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** July 6, 2023

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Resolution amending Implementing Order 3-34, formation and performance of competitive selection committees, and Implementing Order 2-13, guidelines and procedures regarding legal opinions with respect to County competitive processes; requiring selection committees to be composed of five voting members, including an assistant or deputy director from the relevant user department, for contract awards for professional services or with an estimated value equal to or exceeding 10,000,000.00 and composed of three voting members for all other contract awards below \$10,000,000.00; providing applicable deadlines and timeframes for relevant events in the process of forming selection committees and evaluating proposals; providing that composition of selection committees shall be primarily determined based on the appropriate expertise required for each procurement; providing that selection committees shall include three alternate members; providing that County employees shall only be entitled to receive any applicable administrative leave for service as a voting member of a selection committee upon completion of all selection committee responsibilities; and authorizing County Mayor to exercise any and all rights conferred therein

**This item was amended at the 6-15-23 County Infrastructure, Operations and Innovations Committee to include the following language in the amendments to Implementing Order 2-13 and Implementing Order 3-34:**

**>>In addition, if any of the deadlines established in this Implementing Order are missed, then the County Mayor shall disclose the missed deadlines and the department that missed the relevant deadline in the County Mayor's memorandum contained in the agenda package where the related matter is presented to the Board for consideration.<<**

The accompanying resolution was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Kevin Marino Cabrera and Commissioner Danielle Cohen Higgins.

  
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Geri Bonzon-Keenan  
County Attorney

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MDC001



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** July 6, 2023

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

**SUBJECT:** Agenda Item No. 11(A)(6)

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. 11(A)(6)  
7-6-23

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AMENDING IMPLEMENTING ORDER 3-34, FORMATION AND PERFORMANCE OF COMPETITIVE SELECTION COMMITTEES, AND IMPLEMENTING ORDER 2-13, GUIDELINES AND PROCEDURES REGARDING LEGAL OPINIONS WITH RESPECT TO COUNTY COMPETITIVE PROCESSES; REQUIRING SELECTION COMMITTEES TO BE COMPOSED OF FIVE VOTING MEMBERS, INCLUDING AN ASSISTANT OR DEPUTY DIRECTOR FROM THE RELEVANT USER DEPARTMENT, FOR CONTRACT AWARDS FOR PROFESSIONAL SERVICES OR WITH AN ESTIMATED VALUE EQUAL TO OR EXCEEDING 10,000,000.00 AND COMPOSED OF THREE VOTING MEMBERS FOR ALL OTHER CONTRACT AWARDS BELOW \$10,000,000.00; PROVIDING APPLICABLE DEADLINES AND TIMEFRAMES FOR RELEVANT EVENTS IN THE PROCESS OF FORMING SELECTION COMMITTEES AND EVALUATING PROPOSALS; PROVIDING THAT COMPOSITION OF SELECTION COMMITTEES SHALL BE PRIMARILY DETERMINED BASED ON THE APPROPRIATE EXPERTISE REQUIRED FOR EACH PROCUREMENT; PROVIDING THAT SELECTION COMMITTEES SHALL INCLUDE THREE ALTERNATE MEMBERS; PROVIDING THAT COUNTY EMPLOYEES SHALL ONLY BE ENTITLED TO RECEIVE ANY APPLICABLE ADMINISTRATIVE LEAVE FOR SERVICE AS A VOTING MEMBER OF A SELECTION COMMITTEE UPON COMPLETION OF ALL SELECTION COMMITTEE RESPONSIBILITIES; AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL RIGHTS CONFERRED THEREIN

**WHEREAS**, Miami-Dade County utilizes selection committees in its competitive procurement processes to evaluate and rank proposers and provide recommendations to the County Mayor and to this Board; and

**WHEREAS**, in furtherance of that policy, this Board has approved Implementing Order (“IO”) 3-34 establishing directions for the formation and performance of competitive selection committees and IO 2-13 establishing procedures for administrative requests for and opinions rendered by the County Attorney’s Office in connection with any competitive process of the County, its agencies, and administrative boards; and

**WHEREAS**, IO 3-34 specifically directs how the County Mayor shall establish the composition of a competitive selection committee; and

**WHEREAS**, in competitive contract awards, the County Mayor and the Board typically follow the recommendations and rankings of competitive selection committees; and

**WHEREAS**, especially in large contract awards, it is crucial that a competitive selection committee is comprised of members who have a thorough understanding of the needs of the County departments that are the primary subject and user of the contract; and

**WHEREAS**, it is also imperative that selection committees are able to be formed quickly and that the evaluation of proposals not be unduly delayed; and

**WHEREAS**, smaller contract awards may not have the same need for large selection committees as larger contract awards; and

**WHEREAS**, the current version of IO 3-34 provides that: (a) the composition of selection committees may be based on the appropriate expertise requires for each procurement; (b) selection committees should be balanced in its representation of the Miami-Dade County community with regard to ethnicity and gender; and (c) selection committees shall have two alternate members; and

**WHEREAS**, this Board wishes to amend IO 3-34 to now require that selection committees for contract awards for professional services or with an estimated value equal to or exceeding \$10,000,000.00 be composed of five voting members, and that selection committees for all other contract awards with an estimated value under \$10,000,000.00 be composed of three voting members; and

**WHEREAS**, this Board wishes to further amend IO 3-34 to now require that: (a) the composition of competitive selection committees shall be based on appointing members with appropriate experience and knowledge; (b) the balancing of representation on selection committees with regard to ethnicity and gender shall only be to the maximum extent practicable among those who hold the appropriate experience and knowledge; and (c) selection committees include three alternate members; and

**WHEREAS**, this Board also wishes to amend IO 3-34 and IO 2-13 to now provide relevant deadlines and time frames for events in the process of forming selection committees and evaluating proposals and to specify that County employees shall only be entitled to any applicable administrative leave for their work on a selection committee if they serve as a scoring member and have completed all committee-related duties,

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

**Section 1.** Implementing Order 3-34, entitled “Formation and Performance of Competitive Selection Committees,” is hereby amended in substantially the form attached hereto and incorporated herein as Attachment 1.

**Section 2.** Implementing Order 2-13, entitled “Guidelines and Procedures Regarding Legal Opinions with Respect to County Competitive Processes,” is hereby amended in substantially the form attached hereto and incorporated herein as Attachment 2.

**Section 3.** The County Mayor or County Mayor’s designee is authorized to exercise any and all rights conferred therein.

The Co-Prime Sponsors of the foregoing resolution are Commissioner Kevin Marino Cabrera and Commissioner Danielle Cohen Higgins. It was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	
Anthony Rodríguez, Vice Chairman	
Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	

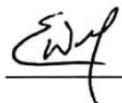
The Chairperson thereupon declared this resolution duly passed and adopted this 6<sup>th</sup> day of July, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

JUAN FERNANDEZ-BARQUIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Eduardo W. Gonzalez  
Michael B. Valdes

## Implementing Order

**Implementing Order No.:** 3-34**Title:** FORMATION AND PERFORMANCE OF COMPETITIVE SELECTION COMMITTEES**Ordered:** ~~[[4/4/2023]]~~ >> <<<sup>1</sup> **Effective:** ~~[[4/14/2023]]~~ >> <<**AUTHORITY:**

Section 1.01 of the Miami-Dade County Home Rule Amendment and Charter and Section 1.01 of the Code of Miami-Dade County.

**SUPERSEDES:**

This Implementing Order (I.O.) supersedes and replaces previous I.O. 3-34 ordered ~~[[January 19, 2022]]~~ >> April 4, 2023<< and effective ~~[[January 29, 2022]]~~ >> April 14, 2023<<.

**SCOPE:**

Notwithstanding any contrary provision of any other Administrative Order (A.O.) or Implementing Order, this Implementing Order establishes procedures for the formation and performance of competitive selection committees (Committees or Committee) in Miami-Dade County's competitive procurement process, including Committees utilized in the acquisition of architectural and engineering (A&E) professional services under Section 287.055 of the Florida Statutes.

**POLICY:**

The County shall utilize Committees that are comprised of fair, impartial, objective and qualified individuals capable of evaluating the subject matter area in a competitive procurement process for the evaluation of offers, proposals, and qualifications submitted by individuals and firms seeking contract award. The provisions of this Implementing Order address the County's internal administrative processes and are not intended to serve as a basis to challenge the ultimate selection or contract award recommendation in any particular procurement action >> or to create any rights for any participant in a bid contest or other proceeding<<. This Implementing Order governs all County procurement processes involving such Committees.

All Committee proceedings shall be audiotaped by the County Mayor's designee.

**FORMATION OF COMPETITIVE SELECTION COMMITTEES:***Competitive Selection Committee Pool*


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<sup>1</sup> 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 pool consisting of potential County Committee members shall be established and administered by the Small Business Development (SBD) division of the Internal Services Department or such other County Mayor designee. The pool shall consist of the County's executives, professionals, and subject matter experts within the County or from the private or non-profit sectors, other governmental/quasi-governmental organizations, and retired executives.

Pool members, including members who are not County employees, as well as the non-voting technical advisor shall be required to attend a workshop prior to serving on any Committee facilitated by the ~~[[Internal Services]]~~ >>Strategic Procurement<< Department or a County Mayor designee. The workshop shall train pool members on the Committee's role and responsibilities, the pertinent legislation (including Florida's Government in the Sunshine laws, the County's Conflict of Interest and Code of Ethics Ordinance, and County procurement rules and regulations), and provide a forum for discussion regarding membership on a Committee.

>>For contract awards for the purchase of professional architectural, engineering, landscape architectural, or land surveying and mapping services, or for any other contract awards with an estimated value equal to or exceeding ten-million dollars (\$10,000,000.00), the Committee shall be composed of five voting members and shall include an assistant or deputy director from the affected County user department. For all other contract awards with an estimated value under ten-million dollars (\$10,000,000.00), the Committee shall be composed of three voting members.<< A simple majority of the voting members of a Committee shall constitute a quorum necessary to hold meetings and take any action. Unless an exception is made in writing by the County Mayor or County Mayor's designee, all voting members of a Committee shall attend all meetings at which vendor presentations are made and proposals are evaluated. Attendance at Committee meetings through the use of remote media technology, where otherwise permitted by State and County law, shall be permitted provided a physical quorum of voting members of a Committee are present.

#### *Competitive Selection Committee Formation and Appointment*

Committees shall be formed as follows:

- A. The County Mayor or County Mayor's designee ~~[[may]]~~ >>shall<< determine the composition of each Committee based on the appropriate expertise required for each acquisition. Committee members ~~[[may]]~~ >>shall<< be subject matter experts from within the County or from the private or non-profit sectors, other governmental organizations, or retired executives. In forming a Committee to replace an established contract, the County should, when practicable and in the best interest of the County, appoint the County employee charged with managing the existing contract, as a non-voting technical advisor to the Committee. In forming the Committee<<, primary>> consideration ~~[[should]]~~ >>shall<< be given to appointing County and non-County members with appropriate experience>>.<< [[and]] knowledge>>, and subject matter expertise. To the maximum extent practicable, the appointment of Committee members among those who hold the appropriate experience, knowledge, subject matter expertise should be<< ~~[[and that the Committee membership is]]~~ balanced in its representation of the Miami-Dade County community with regard to ethnicity and



gender. >>Except in the case of an assistant or deputy director serving on a five-member Selection Committee, where<< ~~[[Where]]~~ possible, County employee Committee members should not be appointed who are in the same department and are direct reports to other members of the Committee.

- B. The Selection Committee Coordinator shall be a non-voting procurement professional employee of the department or agency issuing the solicitation. The Selection Committee Coordinator shall administer the process and shall not be a member of the Committee.
- C. The County Mayor or County Mayor's designee may appoint non-voting technical advisors to supplement the technical expertise of selection committees. Technical advisors are official members of the Committee but may not cast a vote and are not counted for purposes of quorum.
- D. The County Mayor or County Mayor's designee shall appoint ~~[[two]]~~ >>three<< alternate voting members at the time the Committee is appointed>>. The Selection Committee Coordinator may convert alternate voting members to<< ~~[[; and will become]]~~ voting members in the event that substitution of a voting member is required. If the alternate voting member has not attended all prior meetings of the Committee, the substitution will only be allowed before any scoring meeting has occurred.

>>Upon notice,<< SBD or such other administrator designated by the County Mayor shall >>consult with the issuing department or agency and<< recommend Committee appointments to the County Mayor or County Mayor's designee >>within seven (7) calendar days<< ~~[[after consulting with the issuing department or agency]]~~.

#### PERFORMANCE OF COMPETITIVE SELECTION COMMITTEES:

>>Within ten (10) calendar days following the deadline for submitting proposals, the Selection Committee Coordinator shall prepare a list of respondents and subcontractors and transmit that list with an accompanying affidavit to Competitive Selection Committee members for completion.<< Each individual, including any non-voting technical advisors, appointed to a Committee shall sign ~~[[an]]~~ >>the accompanying<< affidavit attesting to his/her neutrality in performing the duties of a Committee member >>("Neutrality Affidavit")<< and acknowledge that his/her service on such committee shall be in compliance with the Conflict of Interest and Code of Ethics Ordinance (Sec. 2-11.1) >>and submit it to the Selection Committee Coordinator within three (3) business days<<. An individual who provides false information may be subject to investigation and prosecution under Florida law. County employees providing false information shall also be subject to disciplinary action up to and including dismissal from County employment. All Committee members shall affirm and acknowledge that service on the Committee is subject to the requirements and prohibitions of the County's Cone of Silence Ordinance and the State of Florida's Government in the Sunshine Law.

Moreover, and in accordance with the Resolution No. R-449-14, individuals appointed to the Committee must submit their updated resume, through the Selection Committee Coordinator, to the Commission Auditor >>at the same time as they submit their Neutrality Affidavit<<. >>Within five (5) business days following receipt of resumes by the Selection Committee Coordinator, the<< ~~[[The]]~~ Commission Auditor shall conduct

background checks for all Committee members verifying no family control, financial interest, and/or employment (past or present), with any vendor or proposed subcontractor under consideration by the Committee.

The Committee Auditor shall submit the results of the background check to the issuing department overseeing the competitive process. The Commission Auditor will also submit the results of the background checks to the Commission on Ethics and Public Trust for further review of the findings. >>The Commission on Ethics and Public Trust shall endeavor to provide any response within fourteen (14) calendar days.<<

Any request by County staff to be excused from Committee service must be in writing, delineating serious and legitimate reasons, and must be signed by the Department/Agency Director and sent to the County Mayor or County Mayor's designee through Small Business Development or other administrator. In the event that a Committee member is excused from service, an identified alternate shall assume the responsibilities of a voting Committee member.

>>SMALL BUSINESS ENTERPRISE COMPLIANCE REVIEW

Within ten (10) calendar days following the deadline for submitting proposals, the County Mayor or County Mayor's designee or such other authorized person shall review all proposals and, if necessary, request SBD or such other County Mayor designee to review any applicable proposal materials for compliance with or applicability of any relevant Small Business Enterprise Program goals, measures, or preferences. SBD or such other County Mayor designee shall conduct its review and provide any applicable response within ten (10) calendar days after receiving a request from the County Mayor or County Mayor's designee.

For the avoidance of doubt, the timelines provided here shall govern in the absence of any applicable deadlines provided elsewhere in the County Code, other County administrative/implementing orders, or other applicable law. In the event of a conflict between this implementing order and any deadlines provided elsewhere for review of Small Business Enterprise Program goals, measures, or preferences, the earlier deadline shall prevail.<<

**SCORING GUIDELINES:**

Except for Committees procuring "Professional Services" as defined by Section 2-10.4 of the Code of Miami-Dade County, Committee members shall be provided written guidelines and shall use the guidelines in preparing their scores for the evaluation of each criteria identified in the solicitation.

The guidelines shall be in substantially the form provided below:

Rating	Score as a Percentage of Total Available Points for Criteria	Guidelines
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Excellent	90-100%	The proposal's response to the criteria is complete and well defined, providing relevant supporting details and examples. The response to this criteria indicates a high prospect for outstanding performance on the resulting contract. All or a majority of the expectations for this criteria are clearly met or exceeded.
Good	70-89%	The proposal's response to the criteria is generally complete and well defined, providing reasonably well developed responses with a good amount of relevant supporting details and examples. The response to this criteria indicates a moderate to high prospect for good performance on the resulting contract. Most of the expectations are met for this criteria.
Fair	50-69%	The proposal's response to the criteria is fairly complete, but lacking some definition or clarity. The response is not well developed to address the criteria and provides limited supporting details and examples. The response to this criteria indicates a prospect of achieving satisfactory performance on the resulting contract, but there may also be some risk. Few of the expectations are demonstrated to be met for this criteria.
Poor	49% or below	The proposal's response to the criteria is not complete or provides minimal information, lacking sufficient details and examples. The response to this criteria indicates a moderate to high risk of not achieving satisfactory performance on the resulting contract. Does not demonstrate ability to meet expectations for this criteria.

>>The Selection Committee Coordinator shall schedule an initial scoring meeting to occur within thirty (30) calendar days after completion of all required background checks, SBE compliance reviews, responsiveness opinions in accordance with I.O. 2-13, or other applicable determinations. However, if the Selection Committee Coordinator reasonably determines a solicitation to be complex by virtue of its technical subject matter, contract award amount, or other relevant factors, then the initial scoring meeting shall be scheduled no later than sixty (60) days after completion of all required background checks, SBE compliance reviews, responsiveness opinions in accordance with I.O. 2-13, or other applicable determinations to provide Committee members sufficient time to review all proposal materials. If the Selection Committee determines that any additional meetings are required to, for example, receive oral presentations from prospective bidders or provide additional time to review proposals prior to scoring, then such meetings shall occur no later than fifteen (15) calendar days after the initial scoring meeting of the Selection Committee.<<

During the scoring meeting, the Selection Committee Coordinator shall monitor the points awarded to each vendor by each Committee members. In the event that a Committee members score for a criteria varies in excess of thirty-three percent (33%) of the average score award by all Committee members by criteria, the Selection Committee Coordinator shall request that such Committee member provide a verbal justification in

the meeting for the score. The Selection Committee Coordinator should encourage Committee members to discuss this criteria including the justification provided. The Committee members may change their scores based on the specific discussion. Should the variation remain, the Selection Committee Coordinator shall confirm and state on the record the justification provided by the Committee member. This justification shall be included in the Selection Committee Coordinator's report to the County Mayor or County Mayor's designee. Upon review of the such score and the justification, the County Mayor or County Mayor's designee may accept or reject that selection Committee member's score and a report of such decision shall be provided to the Board of County Commissioners for solicitations requiring approval of the Board. >>In addition, if any of the deadlines established in this Implementing Order are missed, then the County Mayor shall disclose the missed deadlines and the department that missed the relevant deadline in the County Mayor's memorandum contained in the agenda package where the related matter is presented to the Board for consideration.<<

#### SCORING OF SELECTION COMMITTEES FOR PURCHASE OF PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, AND LAND SURVEYING AND MAPPING SERVICES:

For selection committees procuring "Professional Services" as defined in Section 2-10.4 of the Code of Miami-Dade County, the highest and lowest final score for each firm in the first evaluation tier shall be discarded and not used to compute the final total score of such firm.

#### SELECTION COMMITTEE CONSIDERATION OF REPORTS AND FINDINGS OF THE MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL OR MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST:

The County Mayor or County Mayor's Designee shall provide to the Committee all reports and findings of the Miami-Dade Office of the Inspector General ("OIG") or the Miami-Dade County Commission on Ethics and Public Trust ("COE") which find substantiated allegations or adverse findings, conclusions, or recommendations regarding any vendor or proposed subcontractor under consideration by the Committee within seven years of the submittal date of the proposals being evaluated (collectively, "Reports") for consideration in accordance with the evaluation of each applicable criteria identified in the solicitation. In the event the OIG or COE issues a Report after the Committee has scored and ranked the vendors the County Mayor or County Mayor's designee may re-empanel the Committee to consider if such Report would change the previous rankings of the vendors. If the Committee determines that the Report would change the previous rankings of the vendor identified in the Report, then the Committee shall re-score the vendor identified in the Report solely based on the impact the information identified in the Report would have on the scoring of the vendor in accordance with the applicable criteria identified in the solicitation, re-rank the vendors, and submit a written justification for the revised rankings to the County Mayor or County Mayor's designee. Upon review of ~~[[the]]~~ such re-ranking and the justification, the County Mayor or County Mayor's designee may accept or reject the new rankings and a report of such decision shall be provided to the Board of County Commissioners for solicitations requiring approval of the Board. The County Mayor shall, in any recommendation to the Board of County Commissioners, either attach all reports and findings issued by the OIG or the COE and considered by the ~~[[selection]]~~

[[e]]>>C<<ommittee or provide a description of such reports and findings and a link to where such reports and findings may be viewed.

>>ADMINISTRATIVE LEAVE FOR SELECTION COMMITTEE MEMBERS

County employees shall only be entitled to receive any applicable administrative leave for their work on Competitive Selection Committees if they serve as a scoring member and have timely completed all committee-related duties, and such administrative leave must be used within one year from the date that the employee completes his or her service as a scoring member of a Competitive Selection Committee.<<

EFFECTIVE DATE:

This Implementing Order shall become effective after approval by the Board of County Commissioners.

## Implementing Order



**Implementing Order No.:** IO 2-13

**Title:** GUIDELINES AND PROCEDURES REGARDING LEGAL OPINIONS WITH RESPECT TO COUNTY COMPETITIVE PROCESSES

**Ordered:** ~~[[10/4/2014]]~~ >> <<<sup>1</sup> **Effective:** ~~[[10/14/2014]]~~ >> <<

### AUTHORITY:

Section 1.01 and 5.03(D) of the Miami-Dade County Home Rule Charter and Section 2-8.4 of the Code of Miami-Dade County.

### SCOPE:

Notwithstanding any contrary provision of any other Administrative Order or Implementing Order, it is the policy of the Board that the procedures expressed in this Implementing Order shall be applicable to and shall govern administrative requests for and opinions rendered by the County Attorney's Office in connection with any competitive process of the County, its agencies and administrative boards, including the Public Health Trust. The opinions covered shall include any relating to the responsiveness of any bidder or proposer where the determination may affect the outcome of the solicitation. This Implementing Order is directory in nature only, designed to guide the administration and the County Attorney's Office in the rendering of such opinions, and is not intended to create any rights for any participant in a bid contest or other proceeding.

### DEFINITIONS:

**Responsiveness:** Responsiveness deals with a bidder or proposer's unequivocal promise, as shown on the face of the response to the solicitation, to provide the items or services called for by the material terms of the solicitation. Responsiveness typically involves matters of form; a responsive bid or proposal means one submitted at the correct time and place, in the correct forms, containing all required information and signatures. Responsiveness deals with whether the effect of a deviation from a solicitation would deprive the County of its assurance that a contract will be entered into, performed and guaranteed according to the County's specified requirements and whether a deviation would adversely affect the competitive process by placing a bidder or proposer in a position of advantage over other bidders or proposers or by otherwise undermining the necessary common standard of competition. Examples of issues involving responsiveness include whether a bid or proposal was signed, whether a bid or proposal bond was posted, and whether a bidder or proposer qualified a response by stating that it would provide something less than what was called for. Responsiveness issues are generally not curable after bid or proposal submission as the bidder or proposer could opt in or out of the process at its will, depriving the County of a valid offer and placing that bidder or proposer at a material advantage over other responders who have made firm offers.

Section 2-8.4(a) of Code of Miami-Dade County provides that before the Board or any committee hears any protests of a competitive bid or request for proposal, or request for qualifications, administrative staff shall request the County Attorney to determine whether the bid or proposal in

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<sup>1</sup> 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.

question is responsive. Sec. 2-8.4(a) further provides that the Board and any committee shall be bound by the determination of the County Attorney with regard to the issue of responsiveness.

**Responsibility:** Responsibility deals with whether the bidder or proposer can perform as provided in the solicitation. In general, solicitation requirements for information relating to a bidder or proposer's financial condition, capability, experience and past performance pertain to responsibility. The term responsible is not limited in its meaning to financial resources and capabilities but include a bidder or proposer's honesty and integrity, skill and business judgment, experience and capacity for carrying out the proposed work, previous conduct under other contracts and the quality of previous work performed. The terms of a solicitation document cannot ordinarily change an issue of responsibility into one of responsiveness. A bidder or proposer need not demonstrate compliance with solicitation requirements pertaining to its responsibility in order for its bid or proposal to be deemed responsive and evaluated. Information regarding a bidder or proposer's responsibility may be furnished up to the time of award.

Determinations of bidder or proposal responsibility are ultimately made by the Board of County Commissioners, or in those instances of delegated authority, by the County Mayor or Mayor's designee, with the advice of the County's professional staff and/or selection and negotiation committees. Issues of responsibility are fundamentally ones of business judgment and policy and should not be covered in responsiveness determinations of the County Attorney's Office.

**POLICY:**

The County Mayor or Mayor's designee or other person authorized by the Public Health Trust or an agency or administrative board of the County may issue a written request for a Responsiveness Opinion to the County Attorney's Office when an issue of responsiveness is identified in response to a solicitation that will affect the ultimate award of the solicitation. For any contract in an amount which exceed the threshold for award by the Board of County Commissioners set forth in Section 2-8.1 of the Code of Miami-Dade County, or any contract matter which will be considered by the Board of County Commissioners or the Public Health Trust the County Attorney's Opinion shall be in writing and submitted to the Board, the Public Health Trust or other body along with the award recommendation. Informal opinions in contract matters that do not exceed the threshold amount or that may be awarded pursuant to delegated authority may be issued by the County Attorney's Office.

Questions relating the Conflict of interest and Code of Ethics Ordinance, including any concerning the application of the Cone of Silence, shall be referred to the Executive Director or legal staff of the Miami-Dade County Commission on Ethics & Public Trust.

**PROCEDURES FOR REQUESTING RESPONSIVENESS OPINIONS:**

The County Mayor or Mayor's designee or other authorized person, shall prepare a written request for opinion. At a minimum, the request shall describe the specific issue raising the question of responsiveness, identify the relevant provisions of the specification documents which bear on the issue, and be accompanied by all relevant documentation including the solicitation and the responses under investigation. Staff shall meet with the County Attorney's Office as necessary to understand and address the issue. In the event that the County Mayor or Mayor's designee or other person authorized to request a Responsiveness Opinion cannot deliver a written request of opinion with sufficient time for the County Attorney's Office to issue an opinion on a timely basis, the Responsiveness Opinion shall so state and shall identify the factual basis for the opinion.

#### TIMING AND SCOPE OF REQUESTS FOR RESPONSIVENESS OPINIONS:

For Requests for Proposals and other solicitation processes utilizing selection committees, negotiating committees or similar selection processes, the County Mayor or County Mayor's designee or such other authorized person shall review all proposals upon receipt to identify potential responsiveness issues and submit >>in writing<< any identified questions to the County Attorney's Office for a Responsiveness Opinion >>within ten (10) calendar days following the deadline for submitting proposals or bids.<< [[prior to such proposal being submitted for oral presentations or final ranking, whichever comes first.]] >>The County Attorney's Office shall provide any applicable Responsiveness Opinion within thirty (30) calendar days after receiving the written request for an opinion accompanied by all pertinent documentation from the County Mayor or County Mayor's designee.<<

For Invitations to Bid and other solicitation processes relying exclusively on price that do not utilize a selection committee as the selection criteria, Responsiveness Opinions shall be requested of the top bidder recommended for award where the administrative staff has identified a potential responsiveness issue.

The County Mayor or County Mayor's designee shall not submit responsiveness inquiries when the issue of responsiveness is irrelevant to the proposed action or to the type of solicitation involved. Ordinarily, for example, the County Mayor or Mayor's designee need not request responsiveness determinations in connection with a recommendation of rejection of all bids because the low bid exceeds the project budget, or in instances where the County seeks to establish open pools based on qualifications alone.

The failure to submit such inquiries to the County Attorney's Office in accordance with this Implementing Order shall not constitute a waiver of any non-conformity. In the event the County Mayor or County Mayor's designee fails to timely submit a responsiveness inquiry as provided herein, the County Mayor shall include a written explanation of such failure and the causes in the Mayor's recommendation to the Board on the solicitation. >>The deadlines in this Implementing Order address the County's internal administrative processes and are not intended to serve as a basis to challenge the ultimate selection or contract award recommendation in any particular procurement action or to create any rights for any participant in a bid contest or other proceeding.<<

#### PRESENTATION OF RESPONSIVENESS OPINION TO THE BOARD

Written Responsiveness Opinions shall be contained in the agenda package where the related matter is presented to the Board for consideration. >>In addition, if any of the deadlines established in this Implementing Order are missed, then the County Mayor shall disclose the missed deadlines and the department that missed the relevant deadline in the County Mayor's memorandum contained in the agenda package where the related matter is presented to the Board for consideration.<< If new facts are discovered or a mistake is made, or any other change is made to an opinion, the County Attorney's Office shall issue a revised opinion, stating expressly that the prior opinion has been revised and superseded and the latest opinion shall be made available to the County Mayor and Board of County Commissioners.

The County Attorney's Office shall maintain a record of all written Responsiveness Opinions rendered.

#### EFFECTIVE DATE:

This Implementing Order shall be effective after approval by the Board of County Commissioners.