

Memorandum



Date: (Second Reading 11-3-09)
September 15, 2009

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

Agenda Item No. 7(J)

From: George M. Burgess
County Manager

Ordinance No. 09-101

Subject: Ordinance Establishing the Miscellaneous Construction Contracts Program

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached ordinance, revising and codifying the County's Miscellaneous Construction Contracts (MCC) Program. The modified program increases oversight responsibilities, updates contract language in accordance with current legislation, creates on-line module to facilitate the vendor registration process, makes certain clarifications as to the contractual relationship between the County and the contractor and modifies the procurement methodology.

Scope

The MCC process has a direct beneficial impact on all Commission Districts by accelerating small construction projects, facility repairs and neighborhood improvements valued up to a \$2.5 million throughout Miami-Dade County.

Fiscal Impact/Funding Source

There is no direct funding provided to this Program in that each work issuance identifies the appropriate capital funding source for the project.

Track Record/Monitor

The Office of Capital Improvements (OCI), Johnny Martinez, P.E., Director administers and monitors the MCC Program. On a quarterly basis, the Board will be advised of the progress of the MCC Programs through quarterly reports detailing the contracting activities including the application of program measures.

Delegation of Authority

This item codifies the MCC Program which includes the authority previously granted the County Manager to award and reject bids or proposals for contracts for public improvements (construction) costing \$2.5 million or less without the need for action by the Board of County Commission, pursuant to Section 2-8.1(b).

Background

Recognizing that small businesses are critical to the County's economic recovery and strength, this ordinance proposes adjustments to the County's Miscellaneous Construction Contracts Program. The MCC process is a consistent and effective means of competitively distributing work to the construction trades for small projects including renovations, repairs and maintenance. The Program has historically been administered using two separate, renewable contracts to competitively bid small construction projects; the CICC No. 7360-0/08 is open to all vendors and is only used only when federal funding is involved or when 100% CSBE goal is not attainable and, CICC No. 7040-0/07 is a rotation based Community Small Business Enterprise set-aside pool of contractors. The current CICC No. 7360

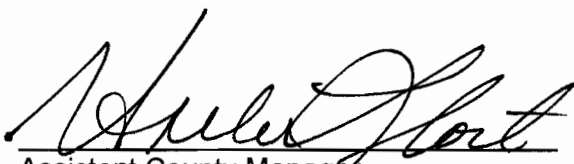
contract will expire on September 31, 2009. An extension to this contract is being requested in a separate agenda item in order to allow time to put the new program in place.

The MCC Program has evolved over the years, requiring changes to specific contractual terms and conditions to improve safeguards and streamline the selection process while enhancing opportunities to small businesses. This ordinance establishes an ongoing MCC Program with the same components, as the 7360 Plan and the 7040 Plan, codified into County Code and administered by an Implementing Order (IO). The new MCC Program shall be subject to an Overall Program Expenditure Limit (OPEL) which will be established by the Board. Having a codified, ongoing program allows for standards and guidelines to be set for managing the program countywide, while allowing for the administrative refinement and clarification of provisions to the contract specifications as needed. Modifications to the overall program would be implemented by Board approval of changes to the IO.

Key attributes of the modified program included in this ordinance, (which are more accurately described in the accompanying Implementing Order) are as follows:

- Inclusion of Community Workforce legislation
- Establishes prerequisites for contractors and departments using emergency RPQ procedures
- Specifies thresholds for application of Liquidated Damages
- Grants authority to administratively make revisions to the MCC's Program Contract documents to address ambiguities and to make other clarifications as needed
- Clarifies Change Order process establishing levels for authorization

This recommendation reflects the County's continued commitment to developing and nurturing a competitive local construction industry in which contractors for publicly financed projects provide high-quality services, the best value to taxpayers and provide opportunities to the community's workforce programs.



Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss **DATE:** November 3, 2009
and Members, Board of County Commissioners

FROM: R. A. Cuevas, Jr. **SUBJECT:** Agenda Item No. 7(J)
County Attorney

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

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(J)
11-3-09

ORDINANCE NO. 09-101

ORDINANCE REVISING AND CODIFYING THE MISCELLANEOUS CONSTRUCTION CONTRACTS PROGRAM AND FACILITATING AND EXPEDITING THE AWARD OF CONSTRUCTION CONTRACTS TO SMALL BUSINESSES; CREATING A PROCESS TO ESTABLISH AND ADMINISTER A ROTATIONAL POOL TO DISTRIBUTE WORK AMONG PROGRAM PARTICIPANTS IN AN EQUITABLE MANNER; AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO ADVERTISE AND RECEIVE BIDS, AND AWARD CONTRACTS UP TO THE THRESHOLD AMOUNT SET FORTH IN SECTION 2-8.1(b); AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO ISSUE CHANGE ORDERS; PROVIDING EXCEPTIONS; CREATING SECTION 2-8.2.7.01 OF THE CODE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE

WHEREAS, the Board of County Commissioners of Miami-Dade County finds it necessary and appropriate to establish an ongoing Miscellaneous Construction Contracts Program to provide opportunities for small contractors in an efficient and meaningful manner; and

WHEREAS, this Board desires to institute procedures to establish and administer a program with two contracting plans; a set aside CSBE rotational pool and an open competitive plan to distribute work among program participants in an effective manner, all subject to dollar limitations set forth in Section 2-8.1(b) of County Code; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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

Section 1. The Code of Miami-Dade County is hereby amended by adding the following new section thereto as Section 2-8.2.7.01¹

>>Sec. 2-8.2.7.01 Miscellaneous Construction Contracts Program

- (1) Policy: This ordinance, to be known as the Miscellaneous Construction Contracts Program ("MCC"), is intended to enhance the contracting opportunities of Community Small Business Enterprises ("CSBE") as defined in Section 10-33.02 and to facilitate and expedite the award of construction contracts to small businesses.
- (2) Scope: This Section, and the processes set forth herein, shall be applicable to the pre-qualifying, registration, award and construction of miscellaneous construction contracts designed to provide opportunities for Community Small Business Enterprises.
- (3) MCC participants shall be allowed to participate in two different contracting plans, with contracting procedures and specifications to be developed, maintained and amended by the Office of Capital Improvements ("OCI") specifically for these purposes, all in accordance with an Implementing Order ("IO") to be approved by the Board:
 - (a) 7040 Plan ("CSBE Rotational Set Aside Plan")
 1. the Set Aside Plan shall be a 100% CSBE set aside. To qualify participants must be certified by the Department of Small Business Development ("SBD") in their contracting trade.
 2. OCI shall establish and administer a rotational pool to distribute work among program participants in an equitable manner through competitive bids. The pool shall be designed to effect the maximum distribution of work among qualified firms, established in accordance with the contractor's license and abilities to do the work, all in accordance with the provisions of the IO.
 3. The SBD Review Committee shall establish an annual Community Workforce Program ("CWF") goal applicable to all contracts with construction costs of more than \$100,000.
 - (b) 7360 Plan ("Open Competitive Plan")
 1. bidders under this plan shall be prequalified prior to award in forms to be developed for this purpose by IO.

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.

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2. this plan shall be used whenever the funding source prohibits the use of CSBE set asides or when SBD determines that there is insufficient availability for a CSBE set aside within the 7040 Plan to accomplish the proposed work.
 3. this plan shall provide contract award opportunities to CSBEs through subcontracting
 4. CWF goals shall be established for each award under the 7360 Plan by the Review Committee of the Department of Small Business Development.
- (4) The MCC Program shall be subject to an Overall Program Expenditure Limit ("OPEL") which is to be set by the Board of County Commissioners by resolution. OCI shall be authorized to allocate the OPEL among the plans as necessary. Individual awards within the plans shall be subject to the dollar limitations set forth in Section 2-8.1(b) of this Code. The first OPEL shall be the unexpended balance of the amount previously authorized by the Board by Resolution R-597-08.
- (5) Notwithstanding any other provision of the Code of Miami-Dade County to the contrary, the Mayor or Mayor's designee shall have the following authority with respect to the Miscellaneous Construction Contracts Program:
 - (a) to issue bid and proposal documents including addenda thereto;
 - (b) to receive, open and review bids and proposals;
 - (c) to make revisions to the MCC Contract and Program documents to address ambiguities and to make other clarifications as needed.
 - (d) to award or reject bids for construction contracts and issue the Notice to Proceed on each where:
 1. operational considerations, if applicable have been reviewed and approved by the Office of Strategic Business Management; and
 2. the base value of a recommended award does not exceed the dollar limitations set forth in Section 2-8.1(b); and
 3. the contractor receiving the award is a registered vendor who is licensed, properly insured and in good standing with the County including but not limited to: no outstanding debts; demonstrated acceptable past performance; and has submitted required insurance, bonds, affidavits and documentation provided for by the solicitation; and

4. participants have submitted a program participation application form.
- (e) to negotiate and settle contractual disputes, and issue change orders for additional work; and
- (f) to terminate contracts in accordance with the contract documents.
- (6) All actions taken by the Mayor or Mayor's designee under this Section shall not require review by the Board of County Commissioners. The Mayor or Mayor's designee shall submit to the Board, on a quarterly basis, reports on the contracting activities during the previous quarter. These reports shall include the number of awards, total dollars awarded and CSBE activity.
- (7) Special Exemptions: This process shall be modified to ensure full conformance with any special provisions or review processes established by the Board. As such any proposed County contract for a project that is funded in whole or in part by proceeds of the Charter County Transit System Sales Surtax shall be governed in accordance with the authority granted in Section 29-124 of the Code of Miami-Dade County. The County Mayor or Mayor's designee shall have the authority to advertise and issue bid or proposal documents for those contracts funded in whole or in part by proceeds of the Charter County Transit System Sales Surtax.

Section 2. The Mayor or Mayor's designee is hereby expressly authorized and directed to establish the Miscellaneous Construction Contracts Program in accordance with the provisions of this section. The Mayor or Mayor's designee is hereby directed to develop an Implementing Order to be approved by the Board of County Commissioners to implement this section. The Implementing Order shall contain a transition plan to address work that may have been awarded under the existing 7360 and 7040 contracts. Nothing in this ordinance shall affect the contractual obligations of the County under the existing programs. <<

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

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Section 4. 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 re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

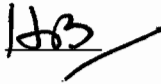
Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED: **November 3, 2009**

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Hugo Benitez



**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 7(J)
File Number: 092490
**Committee(s)
of Reference:** Board of County Commissioners
Date of Analysis: October 13, 2009
Commission District: Countywide
Type of Item: Ordinance

Summary

The proposed ordinance revises and codifies the County's **Miscellaneous Construction Contracts (MCC) Program**. The modified MCC Program: (1) increases oversight responsibilities; (2) updates contract language in accordance with current legislation; (3) creates on-line module to facilitate the vendor registration process; (4) makes certain clarifications as to the contractual relationship between the County; and (5) the contractor and modifies the procurement methodology.

Key attributes of the Program provide for the following:

- The proposed MCC Program is similar as the CICC No. 7360 (open to all vendors and only used when federal dollars are available) and the CICC No.7040 (is a rotational based Community Small Business Enterprise set-aside pool of contractors).
- The MCC program will be subject to on Overall Program Expenditure Limit (OPEL). This limit will set by the Board of County Commissioners (BCC) by resolution.
- The Office of Capital Improvements will be authorized to allocate the OPEL among the program.
- The Mayor or his designee will have the authority to issue bids and proposal documents; receive, open and review bids; make revisions and clarifications to the MCC Program; and negotiate and settle contract disputes.
- All actions taken under the MCC Program will not require BCC review. Reports will be submitted on a quarterly basis to the BCC.
- Includes Community Workforce legislation applicable to all a contracts (under the 7040 Plan) with construction costs of more than \$100,000.
- Establishes prerequisites for contractors and departments using emergency RPQ procedures.
- Specifies thresholds for application of Liquidated Damages.
- Grants authority to administratively make revisions to the MCC's Program Contract documents to address ambiguities and to make other clarifications as needed.
- Clarifies Change Order process establishing levels for authorization.

Comparison Table of Modified MCC Program vs. Current MCC Contracts

Modified MCC Program 7040 – 7360 Plans New Ordinance – Implementing Order	Current MCC Contracts CICC7040-0/07 CICC7360-0/08
Codifying the MCC Program into County Code	Not in the Code
Establishes an Implementing Order for managing the program countywide	No Implementing Order
Clarifies that the vendor participation in both plans does not constitute a contractual relationship unless the contractor submits the signed Notice to Proceed	Unclear
Inclusion of Community Workforce Legislation	Not included
Clarifies the Emergency RPQ procedure for vendors and user departments	Unclear
New Ordinance makes reference to CSBE County Code (10-33.02). If this section of the code is modified, the changes will also apply to the MCC program	CSBE County Code was only included in the Contract language
Change Order approval process establishing levels for authorization within the user departments and OCI	Not established
Establishes an Overall Program Expenditure Limit (OPEL). Contracts extensions will not be required while allocation is available.	Board Resolutions were required to extend the contracts and also to increase the allocation
Grants authority to administratively make revisions to the MCC's Program Contract documents to address ambiguities and to make other clarifications as needed	Not included
Specifies thresholds for application of liquidated damages rates	Not established
Establishes a timeline for contractors performance evaluations completion by the users in CIIS	Not established
Requires monthly updates of RPQ status in CIIS by the users	Not included

Prepared by: Michael Amador-Gil