



MIAMI-DADE COUNTY FINAL OFFICIAL MINUTES Transit Committee (TC)

Board of County Commissioners

Stephen P. Clark Center
Commission Chambers
111 N.W. First Street
Miami, Florida 33128

Wednesday, December 10, 2008
As Advertised

Harvey Ruvin, Clerk
Board of County Commissioners

Kay Sullivan, Director
Clerk of the Board Division

Alicia Stephenson, Commission Reporter
(305) 375-1475





Stephen P. Clark
Government Center
111 N.W. 1st Street
Miami, FL 33128

FINAL OFFICIAL Meeting Minutes Transit Committee

Dorrin D. Rolle (2) Chair; Barbara J. Jordan (1) Vice Chair; Commissioners Audrey M. Edmonson (3), Sally A. Heyman (4), and Katy Sorenson (8)

Wednesday, December 10, 2008

2:00 PM

COMMISSION CHAMBERS

Members Present: Audrey M. Edmonson, Sally A. Heyman, Barbara J. Jordan, Dorrin Rolle, Katy Sorenson.

Members Absent: None.

Members Late: None.

Members Excused: None.

Members Absent County Business: None.

1 MINUTES PREPARED BY:

Report: *Alicia Stephenson, Commission Reporter, 305 375-1475.*

INVOCATION

1A PLEDGE OF ALLEGIANCE

1B **ROLL CALL**

Report: *The following staff members were present: Assistant County Manager Ysela Llori; Assistant County Attorneys Hugo Benitez and Bruce Libhaber; and Deputy Clerk Alicia Stephenson.*

Assistant County Attorney Bruce Libhaber asked that the following changes be made to today's (12/10) agenda pursuant to changes listed in the December 10, 2008 County Manager's memorandum that a scrivener's error in item 1E2 be corrected as follows: "The foregoing resolution notes that a Citizens' Independent Transportation Trust (CITT) resolution was attached to and incorporated in the foregoing resolution. The CITT resolution was inadvertently not attached to the foregoing resolution. Copies of the CITT resolution were distributed to members of the Transit Committee"; and that a scrivener's error in item 3A be corrected on handwritten page 10 to read as follows:

*Harpal Kapoor, Director
Miami-Dade Transit
701 NW 1st Court, 17th Floor
Miami, FL 33136
(786) 469 5410*

(The foregoing resolution had the Transit Director's former title, address, and telephone number).

It was moved by Commissioner Heyman that the Committee approve the foregoing changes to the December 10, 2008 Transit Committee Agenda as requested by the County Attorney. This motion was seconded by Commissioner Edmonson and upon being put to a vote, passed by a vote of 4-0 (Commissioner Sorenson was absent).

1E1 Amended

083619 Ordinance Barbara J. Jordan

ORDINANCE AMENDING SECTION 29-124 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA PROVIDING THAT THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST (CITT) SHALL SUBMIT A RECOMMENDATION TO THE BOARD OF COUNTY COMMISSIONERS (BCC) PRIOR TO THE BCC AWARDED ANY CONTRACT FUNDED IN WHOLE OR IN PART BY CHARTER COUNTY TRANSIT SYSTEM SURTAX FUNDS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE [SEE ORIGINAL ITEM UNDER FILE NO. 082768] [SEE AGENDA ITEM NO. 083455]

Forwarded to BCC with a favorable recommendation with committee amendment(s)

Mover: Jordan

Seconder: Edmonson

Vote: 5-0

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed ordinance into the record.*

Chairman Rolle opened the public hearing.

The following members of the Citizens' Independent Transportation Trust (CITT) appeared before the Committee in support of the foregoing ordinance:

~Dr. Anna Ward, CITT Commission District 3 appointee, 415 N.W. 88 Terrace

~Lieutenant Colonel Antonio Colmenares, CITT Commission District 12 appointee, 18924 N.W. 91st Avenue

~Mr. Jim Reeder, CITT Miami-Dade County League of Cities appointee, 730 NE 121 Street

Lt. Col. Colmenares and Mr. Jim Reeder spoke about the current process for award of contracts funded in whole or in part by Charter County Transit System Surtax Funds. They noted that currently, the Commission reviewed contracts before the CITT reviewed them. They also noted that pursuant to this ordinance contracts would go to the CITT first, and that the Commission, whether it agreed or disagreed with the CITT, could take any action by a majority vote. They suggested this ordinance be amended to provide that a 2/3 vote be required for County Commission approval instead of a majority vote.

There being no further persons to appear before the Board in connection with this ordinance, Chairman Rolle closed the public hearing.

Commissioner Heyman expressed concern that items may be delayed if the CITT could not make recommendations due to lack of a quorum.

As requested by Vice-Chairwoman Jordan, Assistant County Attorney Libhaber responded to Commissioner Heyman's concern regarding lack of a quorum. Mr. Libhaber explained that this proposed ordinance could be amended to identify a timeframe in which the CITT must make a recommendation or forfeit the right to make a recommendation. He noted the timeframe would begin when the County Manager filed a recommendation. Mr. Libhaber noted this amendment could be made if it was amenable to Vice-Chairwoman Jordan, who was the sponsor of this ordinance.

Commissioner Sorenson suggested that the CITT meet with either the members of the Commission or members of the Transit Committee to discuss issues related to the People's Transportation Plan summit held on November 15, 2008.

In response to Chairman Rolle's request for clarification regarding the CITT's vote on this proposed ordinance, Mr. Libhaber noted that the CITT did not take a formal vote of approval or disapproval on this proposed ordinance. He added that the CITT and the CITT Nominating Committee had concerns regarding the vote required for the Commission to accept, reject, or modify the CITT's recommendation (handwritten page 4).

Assistant County Attorney Libhaber responded to Chairman Rolle's inquiries as to the intent of this proposed ordinance and whether the ordinance would weaken the CITT's authority. He noted the CITT voted on contracts after the Commission approved the County Manager's recommendations on the contracts. Therefore, Mr. Libhaber noted, CITT members felt they had little input when they received the contracts.

Mr. Libhaber further noted that currently if the Commission approved a contract the contract was submitted to the CITT; if the CITT disagreed with the Commission, the contract was reviewed by the Commission; and the Commission could override the CITT's disapproval only by a 2/3 vote. He added that, pursuant to this proposed ordinance, the CITT would review contracts before the Commission did and the Commission, whether it

agreed or disagreed with the CITT, could take any action by a majority vote.

Vice Chairwoman Jordan proposed that the foregoing ordinance be amended to establish the following timeframe for the Citizens' Independent Transportation Trust (CITT) to submit to the Transit Committee (TC) recommendations regarding contracts: 45 days after the County Manager files a recommendation.

Discussion ensued regarding whether the proposed amendment would allow for contracts to be submitted in a timely manner to Commission Committees and included on Commission agendas, and regarding the CITT's meeting schedule.

Vice-Chairwoman Jordan proposed that this proposed ordinance also be amended to establish quarterly meetings between members of the Transit Committee and CITT.

In response to Chairman Rolle's inquiry as to whether the CITT supported this proposed ordinance, Lt. Col. Colmenares noted CITT members supported it and the amendment concerning the 45 day timeframe.

Hearing no further questions or comments, the Committee proceeded to vote on this proposed ordinance as amended to establish the following timeframe for the Citizens' Independent Transportation Trust (CITT) to submit to the Transit Committee (TC) recommendations regarding transit items: 45 days after the County Manager files a recommendation; and to establish that quarterly meetings would be held between members of the TC and CITT.

During consideration of Agenda Item 1E2, Mr. Lee Swerdlin, 6285 S.W. 72 Street, noted that the Committee did not amend this proposed ordinance to require a 2/3 majority vote of the County Commission to take action on contracts after the CITT had voted on them.

1E1 SUPP.

083239 Supplement

SUPPLEMENTAL INFORMATION TO ORDINANCE
AMENDING SECTION 29-124 OF THE CODE OF MIAMI-
DADE COUNTY, FLORIDA

*Forwarded to BCC with a
favorable recommendation
Mover: Jordan
Seconder: Edmonson*

1E2

083455 Resolution Barbara J. Jordan

RESOLUTION AMENDING EXHIBIT 1 TO THE PEOPLE'S TRANSPORTATION PLAN BY CREATING A CAPITAL EXPANSION RESERVE FUND AND ALLOWING FOR GREATER FLEXIBILITY IN THE USE OF CHARTER COUNTY TRANSIT SURTAX FUNDS FOR THE OPERATION AND MAINTENANCE OF THE TRANSIT SYSTEM [SEE AGENDA ITEM NO. 083619]

Forwarded to BCC with a favorable recommendation
Mover: Jordan
Seconder: Edmonson
Vote: 4-1
No: Rolle

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.*

Chairman Rolle opened the public hearing.

The following persons appeared before the Committee in opposition to this proposed resolution:

~Mr. Paul Schwiep, Citizens' Independent Transportation Trust (CITT) District 8 Appointee, 6850 N. Cartee Road
~Mr. Lee Swerdlin, 6285 SW 72 Street
~Lieutenant Colonel Antonio Colmenares, CITT Commission District 12 appointee, 18924 NW 91st Avenue
~Mr. Harold Braynon, CITT Commission District 2 Appointee, 100 NW 131st Street,
~Ms. Barbara Walters, Citizen's Transportation Advisory Committee (CTAC), 640 NE 72nd Terrace
~Mr. Jim Reeder, CITT Miami-Dade County League of Cities appointee, 730 NE 121 Street

Lt. Col. Colmenares suggested that this proposed resolution be tabled and discussed in a meeting of the County Commission, the Transit Committee, and the CITT.

Mr. Reeder suggested a conference committee discuss this proposed resolution before it was moved forward.

The following persons appeared before the Committee in support of this proposed resolution:

~Dr. Anna Ward, CITT Commission District 3 appointee, 415 NW 88 Terrace,
~ Ms. Maria E. Johnson, Office of the CITT, Manager/Project and Financial Review Analyst, appeared on behalf of Mr.

Marc Buoniconti, CITT

Commission District 7 Appointee. On his behalf, she read portions of a statement of intent and implementation regarding CITT Resolution No. 08-079.

Chairman Rolle noted for the record that the Committee accepted the complete statement of intent and implementation.

There being no further persons to appear before the Committee in connection with the foregoing resolution, the public hearing was closed.

Vice-Chairwoman Jordan noted the intent of this proposed resolution and noted it resulted from several meetings with the CITT. Vice-Chairwoman Jordan also noted that existing bus routes were the most productive routes. She expressed concern that if this proposed resolution was not adopted, existing routes would be cut while the County would be unable to cut routes which were less productive and which were implemented as a result of People's Transportation Plan (PTP) resources.

Discussion ensued regarding this proposed resolution with regard to the previous voting on the PTP ballot issues, the use of PTP funds, and the needs of the County as a whole.

Commissioner Sorenson noted her intent was to make the County's transit system available to everyone in the community. She spoke in opposition to expanding the County's urban area and noted this made transit more expensive. Commissioner Sorenson added that the federal government would consider whether the County was using its transit dollars effectively and efficiently. She expressed concern regarding language in this resolution which reflected the County's intent to annually increase the General Fund support for the Miami-Dade Transit Agency by 3.5% over that provided in the preceding fiscal year.

In response to Commissioner Sorenson's concern regarding the 3.5% annual increase in General Fund support for Miami-Dade Transit, Assistant County Attorney Libhaber noted the Commission was not obligated to continue making a 3.5% increase. He added that if in any fiscal year the Commission decided not to make a 3.5% increase,

then as a matter of operation of law, the amendment to Exhibit 1 of the PTP in this proposed resolution would cease to exist.

Commissioner Edmonson expressed concern that some CITT members voiced their opposition to this proposed resolution before the Transit Committee. She acknowledged that the CITT passed this resolution by a 5-4 vote.

Commissioner Edmonson noted she believed that when a body voted on an issue, regardless of the vote count, that body should support those on the majority side of the vote. She also noted she would support this proposed resolution because the CITT approved it by a majority vote.

Commissioner Heyman expressed concern regarding language in this proposed resolution reflecting the County intended to dedicate at least 10% of its annual share of surtax funds, excluding existing and future debt service, for capital expansion of the transit system. She inquired of Mr. Harpal Kapoor, Transit Agency Director, whether this proposed resolution would help move forward the Transit Agency's commitment to expand the system, to continue pursuing the 27th Avenue Corridor, and to address issues other than the transit deficit.

Mr. Kapoor noted that currently, the Transit Agency was considering what construction projects were feasible. He pointed out the proposed capital expansion reserve fund in this proposed resolution.

In response to Commissioner Heyman's inquiry as to whether the County's proposed intent to dedicate at least 10% of its annual surtax fund share, excluding existing and future debt service, for capital expansion of the transit system was realistic, Mr. Kapoor noted this proposed resolution would help the Transit Agency with bonding capacities for debt service and with issues related to bonds for the expansion projects.

Mr. Kapoor responded to additional questions from Commissioner Heyman regarding the intent of this proposed resolution. He noted that annually increasing the General Fund support for the Miami-Dade Transit Agency by 3.5% would assist areas which were losing resources and which were not included in proposals to increase resources. He also noted that existing routes would be cut and that with bonding options and

other issues involved in the operation of the Transit Agency being taken into consideration, he was in support of this resolution.

In response to Chairman Rolle's inquiries regarding the use of funds generated by the PTP half cent sales tax, Mr. David Clodfelter, Miami-Dade Transit Chief, Budget, Audit & Reporting, noted that 20% of the funds would go toward municipalities; that \$29 million of the \$178 million of revenue in the Fiscal Year (FY) 2008-09 budget would go toward existing debt service; that \$2 million would go to the CITT; and that \$97 million would remain. Mr. Clodfelter added that the 10% of the County's share of surtax funds would be approximately \$10 million and would go toward future debt service related to bonds.

In response to Chairman Rolle's concerns as to whether the 10% would be sufficient to address transit items presented to the community, Mr. Clodfelter noted that as capital expansion projects and related debt service increased, revenue for operations would decrease. He added that \$10 million was a healthy amount towards bonding of debt service for the next issuance of bonds for projects which were to be moved forward.

Hearing no further questions or comments, the Committee proceeded to vote on the proposed resolution.

2 COUNTY COMMISSION

3 DEPARTMENTS

3A

083398 Resolution

RESOLUTION AUTHORIZING RETROACTIVE EXECUTION OF AN INTERLOCAL AGREEMENT WITH THE SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY (SFRTA) FOR FINANCING OF THE COMMUTER RAIL PROJECT IN THE AMOUNT OF \$6,805,298; AND AUTHORIZING THE COUNTY MAYOR, OR COUNTY MAYOR'S DESIGNEE, TO EXPEND FUNDS AS SPECIFIED IN THE INTERLOCAL AGREEMENT (Miami-Dade Transit Agency)

Forwarded to BCC with a favorable recommendation

Mover: Heyman

Seconder: Sorenson

Vote: 5-0

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this proposed resolution with the correction to the scrivener's error made during consideration of changes to today's agenda.

3B

083444 Resolution

RESOLUTION AUTHORIZING EXECUTION OF AWARD FOR THE CONSTRUCTION OF THE ORANGE LINE PHASE I - MIAMI INTERMODAL CENTER - EARLINGTON HEIGHTS CONNECTOR PROJECT, CONTRACT NO. NCP004-TR06-CT2, TO ODEBRECHT-TOWER-COMMUNITY JOINT VENTURE IN THE AMOUNT \$360,405,395.00 (Miami-Dade Transit Agency)

Forwarded to BCC with a favorable recommendation

Mover: Sorenson

Second: Rolle

Vote: 5-0

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.*

Commissioner Sorenson expressed concern that the Tower Group company was involved with the South Dade Performing Arts Center project and the County had issues with this project.

Mr. Max Fajardo, Miami-Dade Aviation Department (MDAD) Deputy Aviation Director, responded to Commissioner Sorenson's inquiries regarding the Parsons-Odebrecht Joint Venture (POJV) at the Miami International Airport (MIA). He noted that POJV was sued by some of its contractors for delayed claims on Phase I of the South Terminal project and POJV was working with MDAD to resolve the claims so that the County did not become adjointed to the lawsuit.

In response to Commissioner Sorenson's request for a suggestion regarding the award of this contract, Mr. Fajardo noted his suggestion depended on whether the individuals assigned to the project were focused on finishing the project in a timely manner.

In response to Chairman Rolle's inquiry regarding the bid process on the proposed contract, Mr. Albert Hernandez, Miami-Dade Transit Agency Deputy Director, Engineering, noted a Request to Advertise was released in March 2008, and four responsible and responsive bidders submitted bids. He pointed out the lowest bidder was the Odebrecht-Tower-Community Joint Venture.

Commissioner Heyman expressed concern regarding past problems with Odebrecht and potential substantial costs for storage and transport. She also expressed concern regarding the County utilizing companies which were not responsible.

Mr. Hernandez responded to Commissioner Heyman's question regarding what measures were in place in case Odebrecht caused a delay on this project and noted the proposed contract contained a provision regarding liquidated damages for any delays caused by Odebrecht.

Commissioner Heyman expressed concern regarding possible consequences for the County if delays developed on the project.

In response to Commissioner Heyman's concerns regarding the total cost of this proposed contract, Mr. Hernandez noted the total was approximately \$360 million. He added that the County was responsible for \$325 million for the MIC-Earlington Heights connector.

Commissioner Heyman noted issues had developed on contracts which she supported in the past, and she wanted this contract award to be qualified.

Mr. Fajardo explained that general contractors besides POJV were working on the South Terminal, which caused a lot of conflicts. He noted historical issues were changes to the project after the contract was issued and unforeseen conditions at the project site.

In response to Commissioner Heyman's inquiry as to who was performing work involved with the proposed contract award, Assistant County Attorney Libhaber noted that the bidder was a joint venture and they were the prime contractor. He noted Community Asphalt was doing the road work.

In response to Commissioner Heyman's comments regarding prime contractors doing a joint venture and who would perform the proposed work, Assistant County Attorney Libhaber noted Odebrecht was primarily handling guide way construction, Tower Group would construct the Metromover station area, and Community Asphalt would do a majority of the roadway work. He noted that subcontractors and suppliers reporting to these companies were listed in today's (12/10) agenda package. Mr. Libhaber addressed some of Commissioner Heyman's inquiries as to what protections for the County were included in the proposed contract. He explained that performance and payment bonds would be used to address any situation wherein subcontractors and suppliers

were not paid or the contractor did not complete its work.

In response to Chairman Rolle's inquiry as to whether Odebrecht could perform the proposed work, Mr. Fajardo noted he was unaware of any negative record of the company. In response to Chairman Rolle's inquiries as to whether any of the four companies which submitted bids could perform the work, Mr. Fajardo noted this was correct.

Commissioner Heyman expressed concern that in the past, companies started out as the lowest bidders, but after issues developed, the costs of the projects were not the lowest bids. She added that since safeguards had not been explained, she wanted them on the record.

Mr. Fajardo responded to Commissioner Heyman's inquiry as to whether the County was facing a \$190 million lawsuit, and whether it was related to the proposed contract. He noted the certified claim to the County was \$65.2 million for the South Terminal. Mr. Fajardo added that POJV was sued by a subcontractor for approximately \$88 million and the \$190 million may be related to the \$88 million. He reiterated that the County and POJV were negotiating downwards.

Commissioner Heyman noted for the record that in the event that a company was suing the County, the County's policy was to refrain from doing business with this company.

Hearing no further questions or comments, the Committee proceeded to vote on this proposed resolution.

3C

083396 Resolution

RESOLUTION AUTHORIZING THE USE OF CHARTER COUNTY TRANSIT SYSTEM SURTAX (SURTAX) AS A FUNDING SOURCE FOR THE PURCHASE OF GOODS AND SERVICES (Procurement Management Department)

Forwarded to BCC with a favorable recommendation
Mover: Heyman
Secunder: Sorenson
Vote: 5-0

Report: Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.

Hearing no questions or comments, the Committee proceeded to vote on this proposed resolution.

3D

083368 Resolution

RESOLUTION AUTHORIZING EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF SOUTH MIAMI TO PROVIDE \$15,126.11 IN CITY FUNDS FOR THE CONSTRUCTION OF IMPROVEMENTS FOR THE WEST SIDE OF SW 57 AVENUE FROM SW 74 STREET TO SW 72 STREET; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS THEREIN (Public Works Department)

Forwarded to BCC with a favorable recommendation
Mover: Sorenson
Seconder: Heyman
Vote: 5-0

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this proposed resolution.

3E

083370 Resolution

RESOLUTION AUTHORIZING EXECUTION OF THE FIRST AMENDMENT TO THE JOINT PARTICIPATION AGREEMENT (JPA) BETWEEN THE CITY OF MIAMI AND MIAMI-DADE COUNTY TO PROVIDE AN ADDITIONAL FUNDING CONTRIBUTION NOT TO EXCEED \$350,000 FOR THE PEOPLE'S TRANSPORTATION PLAN (PTP) PROJECT ENTITLED ROADWAY IMPROVEMENTS ALONG SOUTH MIAMI AVENUE FROM SE 25 ROAD TO SE 15 ROAD (Public Works Department)

Forwarded to BCC with a favorable recommendation
Mover: Heyman
Seconder: Sorenson
Vote: 5-0

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this proposed resolution.

3F

083399 Resolution

RESOLUTION AUTHORIZING THE APPROVAL OF A REIMBURSEMENT TO FLORIDA POWER AND LIGHT COMPANY FOR THE RELOCATION OF DISTRIBUTION FACILITIES REQUIRED FOR THE PEOPLE'S TRANSPORTATION PLAN (PTP) PROJECT ENTITLED ROADWAY IMPROVEMENTS ALONG 74 STREET, PROJECT NO. 20070575, IN THE AMOUNT OF \$499,078.28 (Public Works Department)

Forwarded to BCC with a favorable recommendation

Mover: Sorenson

Secunder: Edmonson

Vote: 5-0

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this proposed resolution.

3G

083400 Resolution

RESOLUTION AUTHORIZING THE APPROVAL OF A REIMBURSEMENT TO FLORIDA POWER AND LIGHT COMPANY FOR THE RELOCATION OF DISTRIBUTION FACILITIES REQUIRED FOR THE PEOPLE'S TRANSPORTATION PLAN (PTP) PROJECT ENTITLED ROADWAY IMPROVEMENTS ALONG SW 127 AVENUE, PROJECT NO. 20060289, IN THE AMOUNT OF \$669,462.29 (Public Works Department)

Forwarded to BCC with a favorable recommendation

Mover: Sorenson

Secunder: Edmonson

Vote: 5-0

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this proposed resolution.

3H

083488 Resolution

RESOLUTION APPROVING A CONTRACT AWARD RECOMMENDATION IN THE AMOUNT OF \$3,266,562.40 BETWEEN AMERICAN EARTH MOVERS, INC. AND MIAMI-DADE COUNTY FOR THE PEOPLE'S TRANSPORTATION PLAN (PTP) PROJECT ENTITLED NW 74 STREET IMPROVEMENTS – CONTAMINATION AND REMEDIATION WORK, LOCATED WITHIN COMMISSION DISTRICT 12 (PROJECT – NO. 20070610) (Public Works Department)

Amended

Report: *See Agenda Item 3H Amended-Legislative File No. 090050*

3H Amended

090050 Resolution

RESOLUTION APPROVING A CONTRACT AWARD RECOMMENDATION IN THE AMOUNT OF \$3,910,709.12 BETWEEN WRS INFRASTRUCTURE & ENVIRONMENT, INC. AND MIAMI-DADE COUNTY FOR THE PEOPLE'S TRANSPORTATION PLAN (PTP) PROJECT ENTITLED NW 74 STREET IMPROVEMENTS – CONTAMINATION AND REMEDIATION WORK, LOCATED WITHIN COMMISSION DISTRICT 12 (PROJECT NO. 20070610) [SEE ORIGINAL ITEM UNDER FILE NO. 083488] (Public Works Department)

Forwarded to BCC with a favorable recommendation with committee amendment(s)
Mover: Edmonson
Seconder: Heyman
Vote: 5-0

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.*

Vice-Chairwoman Jordan requested that Ms. Penny Townsley, Department of Small Business Development (SBD) Director, define "fronting" in terms of the Community Small Business Enterprise (CSBE) program.

Ms. Townsley noted "fronting" meant that a company or firm indicated it was performing work that another entity was performing.

Vice-Chairwoman Jordan noted "fronting" also meant that a company's scope of work included a specific function, but the company was moved from the specific function to another function. She also noted "fronting" meant that companies were paid to go away. Vice-Chairwoman Jordan expressed concern that this recommended contract involved a company which had violations involving fronting. Vice-Chairwoman Jordan also expressed concern that this company had appealed the violation, but upon learning about this proposed contract award, signed a voluntary suspension. She further expressed concern that the proposed contract award was submitted to the Committee.

Commissioner Heyman asked whether the DeMoya company had grounds to claim the County was delaying the proposed work if the proposed contract was not awarded.

Assistant County Attorney Libhaber advised to the extent this proposed project was related to DeMoya's contract and to the extent that it impeded DeMoya's ability to proceed expeditiously on its contract, DeMoya may file a claim.

Commissioner Heyman expressed concern that no member of management staff saw consequences associated with this contract and acted to protect the County.

Commissioner Edmonson concurred with Vice-Chairwoman Jordan.

It was moved by Commissioner Edmonson that this proposed resolution be tabled. This motion was seconded by Vice-Chairwoman Jordan.

Commissioner Sorenson noted she thought members of staff understood that this proposed resolution had to be addressed before the DeMoya contract went through, and staff tried to address the issue through a six month sanction; however, the Committee would reward bad behavior if it voted for this proposal.

Assistant County Manager Ysela Llorc noted that staff functioned within the County's rules. She also noted that staff debated whether the proposed company was responsible and responsive. Ms. Llorc further noted the rules guiding small business operations were fairly clear and expressed concern regarding whether the Commission wanted staff to abide by different rules.

Assistant County Attorney Hugo Benitez noted that tabling this proposed resolution would involve delays. He noted that if the County Manager was prepared to recommend the award to the second lowest bidder, the Committee could recommend the award to the second lowest bidder so that the resolution would go to the Commission without delays.

Mr. Mitchell Bierman, attorney representing American Earth Movers, Inc. (AEM), appeared before the Committee. He noted he had advised AEM to accept a suspension of its contract instead of appeal its violation. Mr. Bierman also noted that part of SBD's recommendation was that the suspension would not affect the proposed contract. He further noted that AEM accepted responsibility for its violations and the remedies recommended by SBD. Mr. Mitchell noted AEM agreed to make up its deficit very soon.

In response to Vice-Chairwoman Jordan's statement that she would defer to staff on whether

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to recommend an award to the second lowest bidder or to go out to bid again, Ms. Esther Calas, Public Works Department (PWD) Director, noted that she did not object to an award to the second lowest bidder. She added that the Notice to Proceed for DeMoya's contract was January 2009; if the County went out to bid again, a six month overlap would result; and penalties for a six month delay to the DeMoya contract would be \$600,000 or more.

Vice-Chairwoman Jordan noted she believed the difference between bids from AEM and the second lowest bidder was \$500,000 on the proposed contract, and this difference may be partly due to issues which AEM was cited for.

It was moved by Commissioner Edmonson that the foregoing resolution be amended to substitute the lowest bidder with the second lowest bidder at the price submitted by the second lowest bidder. This motion was seconded by Commissioner Sorenson.

Commissioner Heyman expressed concern regarding awarding a contract to the second lowest bidder if the second lowest bid was \$500,000 more than the lowest bid.

Ms. Calas clarified that the difference between AEM's bid and the second lowest bid was \$644,000.

The Committee proceeded to vote on this proposed resolution as amended to reject the lowest bidder as irresponsible, to negotiate with the second lowest bidder which bid \$3,910,709, and to bring back to the full Board of County Commissioners at its December 16, 2008 meeting the lowest price that could be negotiated with the second lowest bidder; and in the event that the price was not acceptable or could not be negotiated, to bring back an alternative recommendation to the full Board.

Addressing Assistant County Manager Ysela Llort's concern regarding rules guiding small business operations, Vice-Chairwoman Jordan noted that the County Administration could always explain that an item was outside the purview of a program's design and why. The County Administration could also make a recommendation that was in the program's purview, she further noted. Vice-Chairwoman Jordan pointed out that an item was being

developed to amend the CSBE program to more clearly define issues of concern noted today.

31

083395 Resolution

RESOLUTION APPROVING AN OFFICE SPACE LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND WORLD TRADE CENTER MIAMI FOR OFFICE SPACE LOCATED AT 1007 NORTH AMERICA WAY, SUITE #500; AND AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY, AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS (Seaport Department)

Forwarded to BCC with a favorable recommendation

Mover: Sorenson

Seconder: Heyman

Vote: 4-0

Absent: Edmonson

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this proposed resolution.

Chairman Rolle asked staff to prepare the appropriate memorandum requesting that the County Commission's Chairman waive the Committee's rules and allow the foregoing resolution to be heard at the December 16, 2008 County Commission meeting.

3J

083461 Resolution

RESOLUTION AUTHORIZING EXECUTION OF A CRUISE TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND NORWEGIAN CRUISE LINE FOR CRUISE BERTHING AT THE PORT OF MIAMI; AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY, AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS; AUTHORIZING THE PORT DIRECTOR TO EXTEND THE NOTIFICATION DEADLINE RELATED TO F3 VESSELS (Seaport Department)

Forwarded to the BCC by the BCC Chairperson with a favorable recommendation

Mover: Sorenson

Secunder: Heyman

Vote: 4-0

Absent: Edmonson

Report: *Assistant County Attorney Bruce Libhaber read the foregoing proposed resolution into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this proposed resolution.

Chairman Rolle asked staff to prepare the appropriate memorandum requesting that the County Commission's Chairman waive the Committee's rules and allow the foregoing resolution to be heard at the December 16, 2008 County Commission meeting.

4 CLERK OF THE BOARD

4A

083431 Report

CLERK'S SUMMARY OF MEETING MINUTES FOR NOVEMBER 12, 2008 (Clerk of the Board)

Approved

Mover: Heyman

Secunder: Sorenson

Vote: 4-0

Absent: Edmonson

Report: *Assistant County Attorney Bruce Libhaber read the foregoing report into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this report.

5 REPORTS

5A

083397 Report

MONTHLY INVOICING AND DBE STATUS REPORT ON THE PROGRAM MANAGEMENT CONSULTANT (PMC) CONTRACT (County Manager)

Report Received

Report: *Assistant County Attorney Bruce Libhaber read the foregoing report into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this report.

5B

083433 Report

MONTHLY REPORT FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION ON THE PORT OF MIAMI TUNNEL

Report Received

Mover: Sorenson

Seconder: Heyman

Vote: 4-0

Absent: Edmonson

(County Manager)

Report: *Assistant County Attorney Bruce Libhaber read the foregoing report into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this report.

5C

083434 Report

MONTHLY ORANGE LINE UPDATE (County Manager)

Report Received

Mover: Jordan

Seconder: Rolle

Vote: 4-0

Absent: Edmonson

Report: *Assistant County Attorney Bruce Libhaber read the foregoing report into the record.*

Hearing no questions or comments, the Committee proceeded to vote on this report.

6 ADJOURNMENT

Report: *Hearing no further business, the Committee adjourned the meeting at 4:40 p.m.*



Dorrin Rolle, Chairman