



# **OFFICE OF THE COMMISSION AUDITOR**

## **COMMISSION AUDITOR'S INFORMATIONAL RESEARCH**

### **BOARD OF COUNTY COMMISSIONERS MEETING**

**January 17, 2023**

**9:30 A.M.**

**Commission Chambers**

Yinka Majekodunmi, CPA  
Commission Auditor

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*Pursuant to Resolution No. [R-229-09](#), the Office of the Commission Auditor (OCA) monitors the Miami-Dade Board of County Commissioners' agenda to provide legislative analysis of agenda items that include research findings and additional value-added information, if available, or at the request of a Commissioner.*

**BCC Meeting:  
January 17, 2023  
Research Notes**

**Item No. 3A1**

**Research: JVJ / Reviewer: PAR**

**File No. [222889](#)**

Resolution approving the City of Miami Beach's codesignation of that portion of 14th Street located between Washington Avenue and Ocean Drive as "Andy Sweet Street"

**Prime Sponsor:** Commissioner Eileen Higgins, District 5

**Requester:** None

**Committee Action Date:** None

**RESEARCH FINDINGS**

OCA completed the required background check on "Andy Sweet" and noted no adverse findings. OCA determined that there is no prior Board of County Commissioners (BCC) codesignation for "Andy Sweet." As also required by Rule 9.02(f)(1), OCA verified that "Andy Sweet" is deceased. OCA is providing this report as a Supplement to BCC Agenda File Item No. 222889.

**ADDITIONAL INFORMATION**

1. Bulleted below is the relevant legislation relating to the background research process:
  - [Section 2-1](#) Rule 9.02(f) of the Code requires OCA to conduct background research on any person, organization, place, or thing that is the subject of a naming, renaming or codesignation item or an item approving the codesignation of state or municipal roads and prepare a report detailing the findings of said research prior to the Commission meeting during which the item is scheduled to be considered.
2. In order to vet applicants for County Boards, Trusts, naming, renaming, or codesignation, OCA receives each applicant's full name, including middle name and date of birth. Once that information is received from the entity forwarding the background research request, OCA investigates the following:
  - A. Conducts a Westlaw public records search to check for additional risk factors; these factors include any criminal record or financial judgment that does not have an associated release or acquittal.
  - B. Checks the Miami-Dade Clerk of the Courts website for judgments. Judgments include federal tax liens and criminal court proceedings. Where the tax lien has an associated certificate of release, such information is not considered a finding unless specifically requested by the Board.

**BCC Meeting:  
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Research Notes**

**Item No. 3A2**

**Research: JVJ / Reviewer: PAR**

**File No. [222922](#)**

Resolution approving the City of Miami's codesignation of that portion of Southwest 25<sup>th</sup> Street from Douglas Road/Southwest 37<sup>th</sup> Avenue to Southwest 36<sup>th</sup> Avenue as "Pedro Milian Street"

**Prime Sponsor:** Commissioner Raquel A. Regalado, District 7

**Requester:** None

**Committee Action Date:** None

**RESEARCH FINDINGS**

OCA completed the required background check on "Pedro Milian" and noted no adverse findings. OCA determined that there is no prior Board of County Commissioners (BCC) codesignation for "Pedro Milian." As also required by Rule 9.02(f)(1), OCA verified that "Pedro Milian" is deceased. OCA is providing this report as a Supplement to BCC Agenda File Item No. 222922.

**ADDITIONAL INFORMATION**

1. Bulleted below is the relevant legislation relating to the background research process:
  - [Section 2-1](#) Rule 9.02(f) of the Code requires OCA to conduct background research on any person, organization, place, or thing that is the subject of a naming, renaming or codesignation item or an item approving the codesignation of state or municipal roads and prepare a report detailing the findings of said research prior to the Commission meeting during which the item is scheduled to be considered.
2. In order to vet applicants for County Boards, Trusts, naming, renaming, or codesignation, OCA receives each applicant's full name, including middle name and date of birth. Once that information is received from the entity forwarding the background research request, OCA investigates the following:
  - A. Conducts a Westlaw public records search to check for additional risk factors; these factors include any criminal record or financial judgment that does not have an associated release or acquittal.
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**BCC Meeting:  
January 17, 2023  
Research Notes**

**Item No. 5B**

**Research: JVJ/ Reviewer: PAR**

**File No. [222586](#)**

Ordinance Creating the Princeton Commons Community Development District

**Prime Sponsor:** None

**Requester:** Parks, Recreation and Open Spaces

**Committee Action Date:** None

**RESEARCH FINDINGS**

OCA completed the required background research regarding the appointment of Teresa Amaris Baluja, Vanessa Perez, Antonia Meyers, Brett Benson, and Marc Szasz to the Princeton Commons Community Development District. The research yielded no adverse informational findings for the appointees. This report is being provided as a supplement to BCC Agenda File Item No. 222586.

**FINANCIAL ANALYSIS**

N/A

**ADDITIONAL INFORMATION**

1. Bulleted below is the relevant legislation relating to the background research process:
  - [Resolution No. R-636-14](#), adopted on July 1, 2014, requires OCA to conduct background research on applicants being considered to serve on County Boards and Trusts that require nominations or appointments by the BCC.
2. In order to vet applicants for County Boards, Trusts, naming, renaming, or codesignation, OCA receives each applicant's full name, including middle name and date of birth. Once that information is received from the entity forwarding the background research request, OCA investigates the following:
  - A. Conducts a Westlaw public records search to check for additional risk factors; these factors include any criminal record or financial judgment that does not have an associated release or acquittal.
  - B. Checks the Miami-Dade Clerk of the Courts website for judgments. Judgments include federal tax liens and criminal court proceedings. Where the tax lien has an associated certificate of release, such information is not considered a finding unless specifically requested by the Board.

**BCC Meeting:  
January 17, 2023  
Research Notes**

**Item No. 5H**  
**File No. [230015](#)**

**Research: JVJ / Reviewer: PAR**

Resolution codesignating that portion of SW 162nd Avenue from SW 56th Street to SW 72nd Street as "Officer Cesar Echaverry Way"

**Co-Prime Sponsors:** Commissioner Roberto J. Gonzalez, District 11 and Commissioner Kionne L. McGhee, District 9  
**Requester:** None  
**Committee Action Date:** None

**RESEARCH FINDINGS**

OCA completed the required background check on "Officer Cesar Echaverry" and noted no adverse findings. OCA determined that there is no prior Board of County Commissioners (BCC) codesignation for "Officer Cesar Echaverry." As also required by Rule 9.02(f)(1), OCA verified that "Officer Cesar Echaverry" is deceased. OCA is providing this report as a Supplement to BCC Agenda File Item No. 230015.

**ADDITIONAL INFORMATION**

1. Bulleted below is the relevant legislation relating to the background research process:
  - [Section 2-1](#) Rule 9.02(f) of the Code requires OCA to conduct background research on any person, organization, place, or thing that is the subject of a naming, renaming or codesignation item or an item approving the codesignation of state or municipal roads and prepare a report detailing the findings of said research prior to the Commission meeting during which the item is scheduled to be considered.
2. In order to vet applicants for County Boards, Trusts, naming, renaming, or codesignation, OCA receives each applicant's full name, including middle name and date of birth. Once that information is received from the entity forwarding the background research request, OCA investigates the following:
  - A. Conducts a Westlaw public records search to check for additional risk factors; these factors include any criminal record or financial judgment that does not have an associated release or acquittal.
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**BCC Meeting:  
January 17, 2023  
Research Notes**

**Item No. 801**

**Research: SR | DB | SC / Reviewer: PAR**

**File No. [222814](#)**

Resolution ratifying rejection of all proposals for Design-Build Services for the construction of the North District Wastewater Treatment Plant Oxygen Trains and Oxygen Production Facility Consent Decree Projects 3.03 and 3.04 - Project No. DB20-WASD-02 by the County Mayor's designee under Miami-Dade County's Water and Sewer Department's Consent Decree and Capital Improvement Programs Acceleration Ordinance, Section 2-8.2.12 of the Code of Miami-Dade County, Florida.

**Prime Sponsor(s):** None

**Requester:** Water and Sewer Department

**Committee Action Date:** None

**RESEARCH FINDINGS**

OCA's review of the item found no substantive legislative, procedural or administrative non-compliance. See the Background and Contextual Information sections for the item's historical and other information.

**CONTEXTUAL INFORMATION**

- ***Justification for Rejection:*** This item requests the Board of County Commissioners (Board) to ratify the rejection of two proposals received during the advertisement of the Request for Design-Build Services (RDBS), Project DB20-WASD-02, the *North District Wastewater Treatment Plant Oxygen Trains and Oxygen Production Facility* ("Project"). The Project is part of the Miami-Dade Water and Sewer Department Consent Decree, further described in the Additional Information section of this research note.

According to the Mayoral Memorandum, both design builders were invited to participate in Step 2, submitting the price proposal bid. In consecutive order, neither the highest-ranked proposer, Kiewit Water Facilities Florida Co. (Kiewit), nor the second-ranked proposer, PCL Construction, Inc. (PCL), completed the negotiation process. Both negotiations ended in an impasse because both proposers requested that language that may increase the Contract Time and Contract Price be added to the contract. The Mayoral Memorandum states that the Negotiation Committee could not recommend a higher bid price than the price proposal submitted initially and evaluated by the Competitive Selection Committee (CSC).

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File No. [222814](#)

- **Negotiation Timeline:** Table 1 below provides a summary timeline of the negotiation process for the RDBS.

**Table 1**

Negotiation Timeline Summary	
Procurement Action	Date
The RDBS is advertised	10/22/2020
CSC evaluates and ranks the two (2) proposals (Step 1)	03/04/2021
ISD receives technical and price proposals from vendors	06/23/2021
The CSC evaluates the price proposals (Step 2)	07/26/2021
The Negotiation Committee holds the first of six (6) negotiation meetings with Kiewit	03/04/2022
Negotiations with Kiewit are terminated due to an impasse	06/28/2022
The Negotiation Committee held the first and only negotiation meeting with PCL	07/19/2022
PCL informs ISD that they were no longer able to pursue the Project due to price escalation since submittal.	08/10/2022

- **The Total Maximum Compensation and Estimated Completion Timeline.** The RDBS stated a total maximum compensation of \$101,528,494. The estimated term of the contract was 1,320 calendar days at the time the solicitation was advertised, October 22, 2020. Table 2 shows the breakdown presented by the department in the advertised solicitation.

**Table 2**

Project Costs	
Item Description	Estimated Cost
Estimated Construction Cost	\$74,415,920
Estimated Design Services	\$7,266,000
Construction Contingency Fee (5%)	\$3,720,796
Engineering Contingency Fee (10%)	\$726,600
Dedicated Allowance	\$13,166,700
Permitting Fees (3%)	\$2,232,478



**Table 3** below reflects the proposed prices submitted by each vendor.

**Table 3**

Proposers' Price Increases	
Vendor	Proposed Prices
Kiewit Water Facilities Florida Co.	\$110,670,000
PCL Construction, Inc.	\$105,011,225

- **Procurement Procedures Guiding the Rejection Recommendation:** On January 11, 2023, OCA inquired with the Strategic Procurement Department (SPD) relating to the bid price increases made after the price proposal submittals, and the County regulations that prevented the Negotiation Committee from recommending a higher bid price than originally submitted by each proposer. The department's response is summarized below.

According to SPD, both design builders requested language to be incorporated into the contract that would allow equitable price and time adjustments through change order "in the event of significant delay or price increase of material, equipment, or energy occurring during the performance of the contract through no fault" of the design-builder. The County could not accept the requested language from the highest-ranked proposer because the advertised RDBS did not include a price escalation clause or process. The incorporation of the language during negotiations would be considered a material difference to the advertised solicitation. Accepting the language would require the waiver of the competitive process.

- According to OCA's research, Florida courts have invalidated contracts where a vendor entered into a contract under terms that were materially different than in the request for proposal.<sup>1</sup> In one case, the court determined that the contract was materially different because it was more financially favorable than the proposal, noting that the State agency should have started the process anew.<sup>2</sup>

**ADDITIONAL INFORMATION**

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- **Examples of Ratifying Action by the County Mayor to Reject all Bids Related to Consent Decree Procurements:** To provide additional context to this item, OCA compiled a list in **Table 4** below that shows six (6) instances between 2014 and 2020 of ratifications approving the Mayor's action rejecting all bids.

**Table 4**

Prior Consent Decree Ratifications to Ratify the Mayor's Rejection of all Bids				
Resolution	Project	Date	Estimated Cost <sup>3</sup>	Reasons for the Rejection
<a href="#">R-812-20</a>	DB17-WASD-02	8/31/2020	\$32,398,000	Negotiations with the benefitting city prolonged the procurement process. The procurement timeline reached two years deeming the procurement stale because the bidders were judged on their past three years of safety ratings
<a href="#">R-1003-19</a>	CD 1.11 General Electrical Design Substations 9, 10, 11 and 12 Contract No. S-914	10/3/2019	Not Identified	During the bid evaluation, the Administration learned that adequate roofing repair work was already covered under a separate solicitation
<a href="#">R-844-18</a>	CD 5.03 Upgrades to Sewer Pump Station 0692 - Contract No. S -908	09/05/2018	\$7,012,402	All bids received were over 10% above the engineer's base estimate
<a href="#">R-791-18</a>	DB14-WASD-09	07/24/2018	\$7,344,451	Price increases to the proposed price after negotiations and prior to the award
<a href="#">R-790-18</a>	DB16-WASD-01	07/24/2018	\$155,416,000	Of the two proposals received, one was deemed nonresponsive and the other withdrew their proposal
<a href="#">R-1119-14</a>	DB14-WASD-01	12/16/2014	\$18,220,836	Ambiguities in the specifications were identified in the advertised solicitation after negotiations. The item requested from the BCC: 1. the approval of the emergency replacement/rehabilitation

<sup>1</sup> *Emerald Corr. Mgmt. v. Bay Cnty. Bd. of Cnty. Com'rs*, 955 So. 2d 647, 653 (Fla. 1st DCA 2007); *State of Fla. Dept. of Lottery v. Gtech Corp.*, 816 So. 2d 648, 652 (Fla. 1st DCA 2001)

<sup>2</sup> *State of Fla. Department of Lottery*, 816 So. 2d at 652.

<sup>3</sup> The estimated cost is based on the estimated project cost indicated in the Mayoral Memo requesting the ratification or in the advertised RDBS.

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**File No. [222814](#)**

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|--|--|--|--|---|
|  |  |  |  | <ol style="list-style-type: none"> <li>2. rejection of all proposals,</li> <li>3. waive competitive bids,</li> <li>4. request bids from the three short-listed firms under the Sanitary Sewer RDBS,</li> <li>5. waive protest procedures,</li> <li>6. delegate authority to the Mayor to award the emergency design-build construction contract, and</li> <li>7. provide for ratifying any resulting emergency design-build construction contract by the BCC</li> </ol> |
|--|--|--|--|---|

- **The Consent Decree:** The April 16, 2014 Consent Decree is a settlement agreement between the U.S., the State of Florida, and the County,<sup>4</sup> where the County agreed to remediate its aging wastewater infrastructure.<sup>5</sup> The agreement resolved allegations that the County violated federal and state water pollution control laws and regulations at its three wastewater treatment plants.

The County passed [Ordinance No. 14-77 on September 2, 2014](#), which created Section 2-8.2.12 of the Miami-Dade County Code to accelerate the procurement process for projects consistent with the Consent Decree.<sup>6</sup> Section 2-8.2.12 of the Code provides the County Mayor with several powers, including the ability to amend contracts, extend the time for completion of professional services contracts, construction, or materials contracts, and award and reject bids associated with any competitive procurement as stated in subsections (4)(a) through (4)(k).

<sup>4</sup> The Consent Decree was approved by the Board through R-393-13 on May 21, 2013: [Legislative Matter \(miamidade.gov\)](#)

<sup>5</sup> April 16, 2014 Consent Decree: [Miami-Dade Consent Decree \(epa.gov\)](#); EPA Miami-Dade County Clean Water Act Settlement: <https://www.epa.gov/enforcement/miami-dade-county-clean-water-act-settlement>

<sup>6</sup> Miami-Dade County Code of Ordinances Sec. 2-8.2.12: [Miami-Dade County Code of Ordinances Sec. 2-8.2.12](#)

### **CONTRIBUTORS**

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### **The Office of the Commission Auditor, Miami-Dade Board of County Commissioners**

The Office of the Commission Auditor (OCA) was established in September 2002 by Ordinance 03-2 to provide support and professional analysis of the policy, service, budgetary and operational issues before the Miami-Dade Board of County Commissioners. The Commission Auditor's duties include reporting to the Board of County Commissioners on the fiscal operations of County departments, as well as whether the fiscal and legislative policy directions of the Commission are being efficiently and effectively implemented.

These research notes, prepared in collaboration with the Miami Dade County departments as subject matter experts, is substantially less detailed in scope than an audit in accordance with the Generally Accepted Auditing Standards (GAAS). The OCA plans and performs the review to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on its objectives; accordingly, the OCA does not express an opinion on the data gathered by the subject matter expert(s).