

# MEMORANDUM


Agenda Item No. 7(A)

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<b>TO:</b>	Honorable Chairman Jose "Pepe" Diaz and Members, Board of County Commissioners	<b>DATE:</b>	(Second Reading: 4-5-22) February 15, 2022
<b>FROM:</b>	Geri Bonzon-Keenan County Attorney	<b>SUBJECT:</b>	Ordinance relating to bid protest procedures; amending section 2- 8.4 of the Code; requiring hearing examiners to determine whether a protest is frivolous; providing standards for such determination; requiring the County Mayor to promulgate an implementing order providing for increased protest filing fees, to be refundable if the protest is not frivolous

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The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Danielle Cohen Higgins.

  
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Geri Bonzon-Keenan  
County Attorney

GBK/uw

# Memorandum



**Date:** April 5, 2022

**To:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners

**From:** Daniella Levine Cava  
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava". The signature is written in a cursive style and is positioned to the right of the printed name.

**Subject:** Fiscal Impact Statement for Ordinance Relating to Hearing Examiner to Determine Whether a Protest is Frivolous

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The proposed ordinance, relating to bid protest procedures, seeks to amend Section 2-8.4 of the Miami-Dade County Code in the following manner: 1) requiring hearing examiners to determine whether a protest is frivolous; 2) providing standards for such determination; and 3) requiring the County Mayor to promulgate an Implementing Order providing for increased protest filing fees, to be refundable if the protest is not frivolous.

The fiscal impact of this proposed amendment should be minimal. The Clerk of the Board will receive the funds associated with the filing; and, if the bid is determined not to be frivolous, the proceeds submitted with the filing, will be returned to the vendor via a check.

A handwritten signature in blue ink that reads "Edward Marquez". The signature is written in a cursive style and is positioned above a horizontal line.

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Edward Marquez  
Chief Financial Officer

# Memorandum



**Date:** April 5, 2022

**To:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners

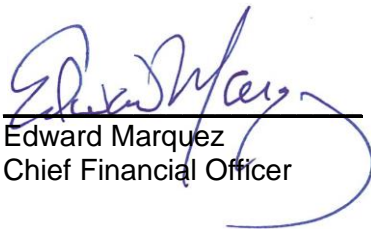
**From:** Daniella Levine Cava   
Mayor

**Subject:** Social Equity Impact Statement for Ordinance Relating to Amending Section 2-8.4 of  
the Miami-Dade County Code

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The proposed ordinance, relating to bid protest procedures, seeks to amend Section 2-8.4 of the Miami-Dade County Code as follows: 1) requiring hearing examiners to determine whether a protest is frivolous; 2) providing standards for such determination; and 3) requiring the County Mayor to promulgate an Implementing Order providing for increased protest filing fees, to be refundable if the protest is determined not to be frivolous.

The implementation of this ordinance will have a positive social equity impact as it will preserve the integrity of the existing process for the award of contracts, while at the same time ensuring that frivolous bid protests are identified and handled appropriately. The passage of this ordinance will also decrease the time it takes to award a contract, and the need to utilize County resources, as protests should only be filed where a protester has a good faith legal or factual belief that the underlying procurement was flawed. Additionally, the filing of a separate required fee to compensate the County for the costs of participating in frivolous bid protests, will deter a litigant from filing such bid protests.

  
Edward Marquez  
Chief Financial Officer



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners

**DATE:** April 5, 202

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

**SUBJECT:** Agenda Item No. 7(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 7(A)  
4-5-22

ORDINANCE NO. \_\_\_\_\_

ORDINANCE RELATING TO BID PROTEST PROCEDURES; AMENDING SECTION 2-8.4 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REQUIRING HEARING EXAMINERS TO DETERMINE WHETHER A PROTEST IS FRIVOLOUS; PROVIDING STANDARDS FOR SUCH DETERMINATION; REQUIRING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROMULGATE AN IMPLEMENTING ORDER PROVIDING FOR INCREASED PROTEST FILING FEES, TO BE REFUNDABLE IF THE PROTEST IS NOT FRIVOLOUS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, Miami-Dade County has established bid protest procedures to allow disappointed bidders or proposers a venue to address any flaws they believe may exist in a given County procurement; and

**WHEREAS**, protests do delay award of contracts; and

**WHEREAS**, protests should only be filed where a protester has a good faith legal or factual belief that the underlying procurement was flawed; and

**WHEREAS**, a litigant who files frivolous litigation in state court may be subject to fees and costs; and

**WHEREAS**, a protester who files a frivolous bid protest, which delays the award of a contract and consumes County resources, currently faces no repercussions; and

**WHEREAS**, it is appropriate to require a fee of protesters who file a frivolous bid protest to compensate the County for the costs of participating in the bid protest, including legal fees and costs,

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

**Section 1.** Section 2-8.4 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:<sup>1</sup>

**Sec. 2-8.4. - Protest procedures.**

\* \* \*

- (c) Protests filed in accordance herewith shall be referred to a hearing examiner. A hearing examiner shall be appointed not later than five (5) working days following the filing of a bid protest. The hearing examiner shall conduct a hearing in connection with the bid protest which shall be completed within ten (10) working days following his or her appointment. The hearing examiner shall, within five (5) working days of the hearing, file written findings and recommendations with the Clerk of the Board and shall submit or mail a copy of same to all participants in the competitive process and to the County Attorney. The hearing examiner may extend the deadline for completion of the hearing upon written petition for good cause shown, but such extension shall not exceed an additional five (5) working days. The hearing examiner shall consider the written protest and supporting documents and evidence appended thereto, the County Mayor's recommendation, and supporting documentation, and all evidence presented at the hearing. The hearing examiner may also require written summaries, proffers, affidavits and other documents the hearing examiner determines to be necessary in order to conclude the hearing and issue the report and recommendation within the time limits set forth in this ordinance. The hearing examiner shall be entitled to rely on evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, whether or not such evidence would be admissible in a trial in the courts of Florida. >>The Hearing Examiner shall determine, for each protest, whether the legal or factual grounds for the protest are frivolous; in making such determination, the Hearing Examiner shall consider whether or not the protest was supported by material facts necessary to establish the claim, or if the claim was supported by the application of then-existing law to those material facts.<<

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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.

- (d) The hearing examiner shall allow a maximum of two hours for the protester's presentation of its protest and a maximum of two hours for the County's response to each protest. In the event of multiple protests, the hearing examiner shall allocate the time as necessary to ensure that the hearing shall not exceed one day.
  
- (e) The County Mayor shall prepare an implementing order, to be approved by this Commission, amending >>Implementing<< ~~[[implementing]]~~ Order No. 3-21 and setting forth a fee schedule for filing of bid protests. The fee shall be in the amount necessary to defray the cost of the bid protest process established in this section. >>A separate fee shall be established reflecting the costs of the County's participation in the process, including legal fees and costs; this fee shall be retained by the County in the event the hearing examiner determines the protest is frivolous as provided in section 2-8.4(c) above, and shall otherwise be refundable to the protester at the conclusion of the process. There shall be no fee for the County's participation in the process for informal bid protests as defined in Implementing Order No. 3-21.<< The administrative order shall also establish the amount of compensation to be paid the hearing examiner, and shall provide for a prorated reduction of that compensation in the event the hearing examiner fails to abide by the time limitations set forth in section 2-8.4(c) above.

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**Section 2.** The County Mayor or County Mayor's designee is directed to promulgate an implementing order, to be approved by this Commission, amending Implementing Order 3-21 and establishing the refundable fee for the County's participation in the protest process.

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

**Section 4.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, 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 relettered 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.

**Section 6.** This ordinance shall stand repealed 10 year(s) from its effective date.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:

Handwritten initials in blue ink. The top line reads "GBK" and the bottom line reads "DMM".

Prepared by:

David M. Murray

Prime Sponsor: Commissioner Danielle Cohen Higgins