

MEMORANDUM

Agenda Item No. 7(B)

TO:	Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners	DATE:	March 7, 2023
FROM:	Geri Bonzon-Keenan County Attorney	SUBJECT:	Ordinance relating to debarment of contractors from County work; amending section 10-38 of the Code; revising definitions; providing for debarment of contractors that cause damage to County underground infrastructure under certain circumstances; making conforming changes

A substitute was presented and forwarded to the BCC with a favorable recommendation at the 2-14-23 County Infrastructure, Operations and Innovations Committee.

This substitute differs from the original version in that it:

- Clarifies that contractors who cause damage to County underground facilities, not just Miami-Dade Water and Sewer underground facilities, may be subject to debarment under section 10-38 of the Code;
- Revises section 10-38(b)(13) to broaden the definition of underground facility to include other County underground facilities, including water and stormwater infrastructure and lines, the County's electrical grid, the County's fiber optic network, and underground traffic and signals; and
- Makes other technical changes.

Rule 5.06(i) of the Board's Rules of Procedure provides that differences between an original item and a substitute item should be uniquely identified in the substitute by double underlining and double strike-through, or where such approach would not clearly show the difference or are not practical, by providing footnotes or comments on the item. Based on Rule 5.06(i), the preceding description of the differences between the original item and the substitute item is provided in lieu of double underlining and double strike-through.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins and Co-Sponsor Commissioner Raquel A. Regalado.



Geri Bonzon-Keenan
County Attorney

GBK/gh


MDC001

Memorandum



Date: March 7, 2023


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

From: Honorable Daniella Levine Cava 
Mayor

Subject: Fiscal Impact Statement for Ordinance Relating to the Debarment of Contractors from
County Work

The proposed ordinance amends Section 10-38 of the Code of Miami Dade County, which provides the procedures for the debarment of contractors from County work. The proposed amendment would allow the County to debar contractors that negligently cause damage to an underground facility three or more times in a 12-month period.

The approval of this ordinance does not have a fiscal impact to the County. The potential deterrence effect of the debarment procedures that seek to reduce the damage done by non-compliant contractors to underground county infrastructure will lead to a positive fiscal impact to the County.




Jimmy Morales
Chief Operations Officer

Memorandum



Date: March 7, 2023

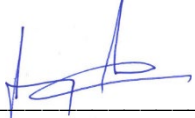
To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Honorable Daniella Levine Cava 
Mayor

Subject: Social Equity Statement for Ordinance Relating to the Debarment of Contractors from County Work

The proposed ordinance amends Section 10-38 of the Code of Miami Dade County, which provides the procedures for the debarment of contractors from County work. The proposed amendment would allow the County to debar contractors that negligently cause damage to an underground facility three or more times in a 12-month period.

If adopted, the proposed legislation would benefit the County and all residents by deterring companies from negligently damaging County underground infrastructure and by providing recourse to the County against repeat offenders.

A handwritten signature in blue ink, appearing to read "Jimmy Morales".

Jimmy Morales
Chief Operations Officer



MEMORANDUM
(Revised)

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

DATE: March 7, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 7(B)

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(B)
3-7-23

ORDINANCE NO. _____

ORDINANCE RELATING TO DEBARMENT OF CONTRACTORS FROM COUNTY WORK; AMENDING SECTION 10-38 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REVISING DEFINITIONS; PROVIDING FOR DEBARMENT OF CONTRACTORS THAT CAUSE DAMAGE TO COUNTY UNDERGROUND INFRASTRUCTURE UNDER CERTAIN CIRCUMSTANCES; MAKING CONFORMING CHANGES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the Miami-Dade County Water and Sewer Department (“WASD”) maintains more than 8,500 miles of underground water lines, as well as approximately 4,100 miles of sewer lines, serving 2.4 million residents and thousands of visitors; and

WHEREAS, the continuous, uninterrupted water and sewer service to Miami-Dade County residents is imperative to ensure that residents’ lives are not unnecessarily interrupted, and that the environment is protected; and

WHEREAS, the County also maintains other underground infrastructure, including but not limited to chilled water infrastructure, chilled water lines, the County’s electrical grid, County’s fiber optic network, stormwater infrastructure, underground street lighting infrastructure, and underground traffic and signals; and

WHEREAS, each year, the County’s underground infrastructure is damaged by underground excavation by developers and utility companies, which has resulted in hundreds of thousands (and sometimes millions) of dollars in repair costs, has interrupted water and sewer

service to County residents, has caused public safety and environmental concerns when raw sewage spills into the streets or into Biscayne Bay as a result, and has increased traffic congestion during the repair of same; and

WHEREAS, chapter 556, Florida Statutes, lays out a procedure that must be followed by individuals and companies that are performing excavation work in the State of Florida; and

WHEREAS, among the requirements in chapter 556 is a mandate that, before performing any excavation, excavators must contact the Florida Sunshine State One Call System and provide specific information about the location of their intended excavation work so that utilities with underground facilities in the area become aware of an upcoming excavation project and can mark the location of their underground facilities at the site in an effort to prevent damage; and

WHEREAS, despite chapter 556, year after year, the County's underground infrastructure, such as water, sewer, stormwater facilities, and other underground facilities, nonetheless gets damaged by excavators; and

WHEREAS, on September 1, 2022, this Board adopted Resolution No. R-847-22, which directed the County Mayor or County Mayor's designee to prepare a report regarding companies that damage WASD's sewer pipes during construction, and to update said report every six months thereafter; and

WHEREAS, on October 25, 2022, the County Mayor presented her first such report; and

WHEREAS, it was evident from the first report that several contractors continually damage WASD's underground facilities without compensating the County for such damage within a reasonable time; and

WHEREAS, the County seeks to solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only; and

WHEREAS, the County does not wish to do business with contractors that not only continually damage County property, but also fail to take responsibility for such damage and compensate the County for damages caused; and

WHEREAS, section 10-38 of the Miami-Dade County Code, which concerns debarment of contractors from County work, lays out procedures for preventing individuals or entities from contracting or subcontracting with the County for a reasonable, specified period of time; and

WHEREAS, the serious nature of debarment and suspension requires that such sanctions be imposed only in the public interest for the County's protection and not for the purpose of punishment; and

WHEREAS, this Board believes that contractors that continually damage WASD infrastructure and fail to make the County whole from such damage demonstrate a lack of business integrity and honesty which seriously impacts said contractors' responsibility; and

WHEREAS, this Board believes it is in the public interest of the County to ensure that individuals or companies that repeatedly damage WASD infrastructure and fail to make the County whole should be prohibited from receiving County business,

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

Section 1. Section 10-38 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 10-38. Debarment of contractors from County work.

* * *

(b) Definitions

* * *

>>(2) *Causing Damage* means impacting or contacting, including, without limitation, penetrating, striking, scraping, displacing, or denting, however slight, the protective coating, housing, or other protective devices of an underground facility, or removing or weakening of any lateral or vertical support from an underground facility, or severing, whether partially or completely, an underground facility resulting in injury to the underground facility. <<

~~[[2]]~~ >>(3)<< *Civil Judgment* means a judgment or finding of a civil offense by any court of competent jurisdiction.

~~[[3]]~~ >>(4)<< *Contractor* means any individual or other legal entity that: (i) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a County contract for construction or for procurement of goods or services, including professional services; or (ii) Conducts business, or reasonably may be expected to conduct business, with the County as an agent, surety, representative or subcontractor of another contractor. (iii) For the purposes of this section, the terms “vendor” and “consultant” have the same meaning as “contractor.” “Subconsultant” has the same meaning as “subcontractor.”

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.

[[~~(4)~~]] >>(5)<< *Conviction* means a judgment or conviction of a criminal offense, be it a felony or a misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

[[~~(5)~~]] >>(6)<< *Debarment* means action taken by the Debarment Committee to exclude a contractor from County contracting and County-approved subcontracting for a reasonable, specified period as provided in subsection (j) below; a contractor so excluded is debarred.

[[~~(6)~~]] >>(7)<< *Debarment Committee* means a group of two (2) County department directors or assistant directors and one (1) member from the hearing officers appointed pursuant to Section 8CC-2 of the Code. The Debarment Committee shall be appointed by the County Mayor, to evaluate and, if warranted, to impose debarment. At least one (1) member of the Debarment Committee shall have working knowledge of the affected area. All Debarment Committee members appointed to a specific Debarment Committee shall be subject to restrictions similar to those in the Cone of Silence Ordinance No. 98-106 in that they are prohibited from having any communication with any of the parties involved in the specific debarment, or their representatives. Violation of this policy could lead to removal from the Debarment Committee.

[[~~(7)~~]] >>(8)<< *Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

[[~~(8)~~]] >>(9)<< *Make-up Plan* means a plan whereby a proposer submits via the County's web-based system its commitment that if awarded the contract, it will fulfill all or a portion of any pending Small Business Enterprise ("SBE") program makeup requirement, identifying the certified SBE firm(s) to be utilized to fulfill the make-up requirement that is in excess of any SBE goal(s) required on the project, and the percentage, dollar value and description of the work that needs to be made-up within the time frame specified by Small Business Development ("SBD").

~~[(9)]~~ >>(10)<< *Legal proceeding* means any civil judicial proceeding to which the County is a party or any criminal proceeding. The term includes appeals from such proceedings.

~~[(10)]~~ >>(11)<< *List of debarred contractors* means a list compiled, maintained and distributed by SBD or successor division or department of Miami-Dade County, containing the names of contractors debarred under the procedures of this ordinance.

~~[(11)]~~ >>(12)<< *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

>>(13) *Underground Facility* means a County property that is buried, placed below ground, or submerged on the right-of-way, easement, or permitted use that is being used or will be used in connection with the storage or conveyance of water, stormwater, sewage, electronic or telephone communication, optical signals, or street lighting and includes, but is not limited to, pipelines, pipes, sewers, lines, conduits, and cables.<<

~~[(12)]~~ >>(14)<< *Utilization Plan* means the plan whereby a bidder submits via the County's web-based system its commitment that if awarded the contract, it will fulfill the SBE goal(s) required for the project identifying certified firms to fulfill goal(s), percentages and/or dollar value of work and description of work within the time frame specified by SBD. Subcontractor(s) listed will also be required to confirm their participation via the County's web-based system. Bidders must enter into written subcontracts with the listed SBE(s).

* * *

(h) *Causes for debarment:*

(1) The Debarment Committee may debar a contractor for a conviction or civil judgment:

* * *

(iv) For commission of any other payment or performance related offense that seriously and directly affects the completion of one (1) or more contracts or the performance of the completed building, or project, or goods and services; ~~[[øø]]~~

(v) Which makes the County the prevailing party in a legal proceeding, and a court determines that the lawsuit between the contractor and the County was frivolous or filed in bad faith~~[[:-]]>>~~; or

(vi) for negligence or a violation of section 556.106, Florida Statutes, or its successor statute, in connection with damage to a County underground facility, as defined in section 556.102(16), Florida Statutes.<<

(2) The Debarment Committee may debar a contractor, based upon a preponderance of the evidence, for:

* * *

>>(iv) Negligently causing damage to an underground facility three (3) or more times in a 12-month period and failing to fully compensate the County for costs incurred by the County to repair the damage within 90 days of notice of the damage. Such 12-month period shall start on the date that notice of damage to the first underground facility is sent by the County to the contractor.<<

* * *

Section 2. 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 3. 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 4. 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:

Approved by County Attorney as
to form and legal sufficiency:

EWJ for

Prepared by:

AB

Angela F. Benjamin

Prime Sponsor: Commissioner Eileen Higgins
Co-Sponsor: Commissioner Raquel A. Regalado