

MEMORANDUM

Agenda Item No. 11(A)(10)

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

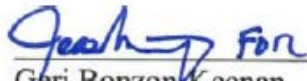
DATE: January 17, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution waiving, to the extent necessary, Miami-Dade County Resolution Nos. R-56-10, R-632-10, and R-1017-10 relating to contract lobbyist conflict of interest waiver procedures; providing for an expedited conflict waiver review process by the Chairperson of this Board when a County contract lobbyist discloses to the County or attests, in any conflict waiver request made, that a representation conflict exists; setting policy for Miami-Dade County that when contract lobbyists disclose to the County or attest that a representation conflict exists, such conflict waiver requests shall be forwarded by the Director of the Office of Intergovernmental Affairs to the Chairperson of the Board of County Commissioners for review and issuance, as necessary, of a conflict waiver; and directing the County Mayor to include language reflecting the policy set forth in this resolution in all future federal and state lobbying requests for qualification, other procurement documents as applicable, contracts, and renewals

Resolution No. R-43-23

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Oliver G. Gilbert, III.



Geri Bonzon-Keenan
County Attorney

GBK/uw

MDC001



MEMORANDUM

(Revised)

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

DATE: January 17, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 11(A)(10)

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. 11(A)(10)
1-17-23

RESOLUTION NO. R-43-23

RESOLUTION WAIVING, TO THE EXTENT NECESSARY, MIAMI-DADE COUNTY RESOLUTION NOS. R-56-10, R-632-10, AND R-1017-10 RELATING TO CONTRACT LOBBYIST CONFLICT OF INTEREST WAIVER PROCEDURES; PROVIDING FOR AN EXPEDITED CONFLICT WAIVER REVIEW PROCESS BY THE CHAIRPERSON OF THIS BOARD WHEN A COUNTY CONTRACT LOBBYIST DISCLOSES TO THE COUNTY OR ATTESTS, IN ANY CONFLICT WAIVER REQUEST MADE, THAT A REPRESENTATION CONFLICT EXISTS; SETTING POLICY FOR MIAMI-DADE COUNTY THAT WHEN CONTRACT LOBBYISTS DISCLOSE TO THE COUNTY OR ATTEST THAT A REPRESENTATION CONFLICT EXISTS, SUCH CONFLICT WAIVER REQUESTS SHALL BE FORWARDED BY THE DIRECTOR OF THE OFFICE OF INTERGOVERNMENTAL AFFAIRS TO THE CHAIRPERSON OF THE BOARD OF COUNTY COMMISSIONERS FOR REVIEW AND ISSUANCE, AS NECESSARY, OF A CONFLICT WAIVER; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO INCLUDE LANGUAGE REFLECTING THE POLICY SET FORTH IN THIS RESOLUTION IN ALL FUTURE FEDERAL AND STATE LOBBYING REQUESTS FOR QUALIFICATION, OTHER PROCUREMENT DOCUMENTS AS APPLICABLE, CONTRACTS, AND RENEWALS

WHEREAS, on November 11, 1999, this Board adopted Resolution No. R-1236-99 which provides that no County contract lobbyist or subcontractor shall represent any client and/or issue that may be adverse to the County without first requesting and obtaining permission from the County; and

WHEREAS, Resolution No. R-1236-99 also requires all contract lobbyists and their subcontractors to faithfully present and advocate for the County's best interests and policy positions as determined by the County's legislative package and resolutions passed by the Board, as well as other County interests that may arise over the course of the legislative process; and

WHEREAS, on May 9, 2000, this Board enacted Ordinance No. 00-64, codified at section 2-11.1.2 of the Code of Miami-Dade County, providing that no person or entity, whether an individual, firm, partnership or corporation, which receives compensation from the County for lobbying on behalf of the County or any of its agencies or instrumentalities at either the state, national or municipal level, shall represent any entity in any forum to support a position in opposition to a position of the County unless the Board grants a specific waiver for a specific lobbying activity; and

WHEREAS, the failure of any county contract lobbyist to comply with the provisions of Ordinance No. 00-64 shall result in either or both of the following:

- (1) That lobbyist's contract with the County being voidable by the County;
- (2) A prohibition, for a period of up to three years, as determined by this Board, on the lobbyist's entering into a lobbying contract with the County; and

WHEREAS, on January 21, 2010, this Board adopted Resolution No. R-56-10 setting policy related to conflict waiver requests by County contract lobbyists and requiring, among other things, that all County contract lobbyists obtain a conflict waiver from this Board prior to representing any client in any forum that is adverse to the County's interests, whether or not such interests are expressly set forth in the County's legislative package; and

WHEREAS, Resolution No. R-56-10 also required all County contract lobbyists to obtain a waiver from the Board for any actual or perceived conflicts of interest or provide a statement that the contract lobbyist has no conflicts prior to award or renewal of a contract, subcontract or work order, and placed all County contract lobbyists under a continuing, affirmative duty during the term of the lobbying contract and any renewal terms to promptly seek in writing and obtain a waiver from the Board for any conflict of interest prior to representing any entity in any forum; and

WHEREAS, on June 3, 2010, this Board adopted Resolution No. 632-10 which requested that the County's Commission on Ethics and Public Trust conduct conflict of interest checks related to County contract lobbyists and provide to this Board a report and recommendation on any County contract lobbyist conflict of interest waiver requests; and

WHEREAS, specifically, Resolution No. R-632-10 requested the Commission on Ethics and Public Trust to:

- (1) Conduct conflict checks related to the lobbying clients of County contract lobbyists on an annual basis and whenever any new clients or issues arise;
- (2) Review all conflict waiver requests submitted to the County by County contract lobbyists, and provide this Board with a report and recommendation on whether a conflict is presented related to such requests when the conflict waiver request goes before the Board at the next Board meeting; and
- (3) Provide the Board with a report and recommendation on whether a conflict is presented in any situation in which it comes to the attention of the County that a conflict of interest may have arisen; and

WHEREAS, on October 5, 2010, this Board adopted Resolution No. R-1017-10, which amended Resolution No. R-56-10 to require that any contract lobbyist conflict waiver request be submitted directly to the Clerk of the Board rather than the Chairperson of the Board, and directed the Clerk to both place the conflict waiver request on the agenda of the next available Board meeting and transmit the waiver request to the Executive Director of the Commission on Ethics and Public Trust so the Ethics Commission could conduct the review required by Resolution No. R-632-10; and

WHEREAS, in addition to the foregoing, the County's federal and state contract lobbyist agreements independently require all County contract lobbyists, including both the prime consultants and subconsultants, to comply with the provisions of Resolution No. R-1236-99 and Ordinance No. 00-64, as well as the County's general Conflict of Interest Ordinance, Ordinance No. 72-82, as amended; and

WHEREAS, the federal and state agreements also place all County contract lobbyists, including both the prime consultants and subconsultants, under an obligation to disclose all clients to the County and to advise the County immediately when any actual or perceived conflict may arise; and

WHEREAS, the federal and state agreements impose these obligations on County contract lobbyists on a continuing basis throughout the term of the contract and any extensions or renewal terms; and

WHEREAS, the federal and state agreements also provide that once a conflict waiver request has been received by the County, the County reserves the right to determine whether the contract lobbyist, partner, or subcontractor may continue representing the County and the other interest until the Board of County Commissioners can consider the conflict issue; and

WHEREAS, upon review of the waiver request, this Board may take, in its sole discretion, any action regarding a conflict waiver request, including the following:

- (1) Grant a waiver and allow the lobbying firm to continue to represent both the County and the other client on all issues, including the issue on which a conflict or potential conflict exists;
- (2) Refuse to grant a waiver and require the lobbying firm to choose between representing either the County or the other party, requiring the lobbying firm to entirely give up its representation either of the County or the other party;

(3) Refuse to grant a waiver and void the County's contract with the lobbying firm;

(4) Grant a limited waiver and allow the lobbying firm to continue to represent both the County and the other party under whatever limitations or restrictions the County, in its sole discretion, determines to be appropriate; and

WHEREAS, although the County's conflict waiver request process is robust and thorough, it neither quickly or efficiently resolves contract lobbyist conflict waiver requests where there is no dispute regarding whether a conflict exists; and

WHEREAS, the County's current conflict waiver request process, which includes requesting a report and recommendation from the Commission on Ethics and Public Trust whenever a conflict issue is presented, is first aimed at resolving whether a conflict exists, and not designed to strictly or quickly resolve how to proceed once determined that a conflict does exist; and

WHEREAS, County contract lobbyists, who are experienced and highly trained professionals, are often immediately aware of and disclose that a conflict concerning representation exists and, in so doing, seek quick resolution from the County regarding the issuance of a conflict waiver; and

WHEREAS, in order to promote expediency and a more judicious use of County resources, this Board finds it prudent to direct all contract lobbyist conflict waiver requests, when it is undisputed that a conflict exists, and on behalf of this Board, to the Chairperson to take immediate action and determine whether a conflict waiver should be issued or, where more information is needed regarding whether a conflict exists, forward the waiver request to the Commission on Ethics and Public Trust for a report and recommendation and place the waiver request on the next available agenda of this Board,

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

Section 1. The foregoing recitals are incorporated as if fully set forth herein.

Section 2. This Board waives, to the extent necessary, Miami-Dade County Resolution Nos. R-56-10, R-632-10, and 1017-10 relating to contract lobbyist conflict waiver procedures in order to create an expedited conflict waiver review process by the Chairperson of this Board when a County contract lobbyist discloses to the County or attests, in any conflict waiver request made, that a representation conflict exists.

Section 3. It is the policy of Miami-Dade County that when contract lobbyists disclose to the County or attest that a representation conflict exists whereby the contract lobbyist, subcontractor, or any other lobbyist hired under work orders pursuant to the applicable contract may support a position in opposition to a position of the County, in any forum, such conflict waiver requests shall be forwarded by the Director of the Office of Intergovernmental Affairs to the Chairperson of the Board of County Commissioners who may, on behalf of this Board, take immediate action to determine whether a conflict waiver should be issued and, as necessary, issue such waiver. If the Chairperson does not issue a waiver following the disclosure or attestation by the contract lobbyist of a representation conflict, the Chairperson shall place the conflict waiver request on the next available agenda of this Board for its review.

Section 4. To effectuate this policy, and consistent with Miami-Dade County Resolution No. R-56-10, no contract or work order for lobbying shall be awarded, renewed, or payment made until the contract lobbyist who discloses to the County or attests that a representation conflict exists, including all subcontractors and lobbyists hired under work orders pursuant to the contract, seeks in writing and obtains a waiver from the Chairperson or this Board for any conflicts of interest.

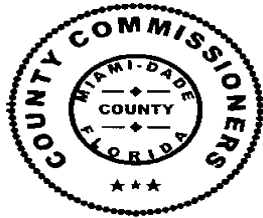
Section 5. Subject to the limitations described in Section 3 above concerning the expedited conflict waiver review process for contract lobbyists who disclose or attest, in any conflict waiver request made, that a representation conflict exists, and pursuant to Miami-Dade County Resolution No. R-632-10, the Commission on Ethics and Public Trust shall continue to review all other conflict waiver requests submitted to the County by County contract lobbyists, particularly in each instance where an assessment is required regarding whether a representation conflict may exist, and provide the Board a report and recommendation on whether a conflict is present related to such requests.

Section 6. The County Mayor or County Mayor's designee is directed to include language reflecting the policy set forth in this resolution in all future federal and state lobbying requests for qualification, other procurement documents as applicable, contracts, and renewals.

The Prime Sponsor of the foregoing resolution is Chairman Oliver G. Gilbert, III. It was offered by Commissioner **Oliver Gilbert III**, who moved its adoption. The motion was seconded by Commissioner **Kevin Marino Cabrera** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	nay
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 17th day of January, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

LUIS G. MONTALDO, CLERK AD INTERIM

Basia Pruna

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "JZ", written over a horizontal line.

Javier Zapata