

MEMORANDUM

Amended
Agenda Item No. 7(D)

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

DATE: September 6, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to non-competitive purchases; amending section 2-8.1 of the Code; requiring that certain additional information be included in the County Mayor's recommendation for the award of a waiver of competitive bidding, legacy purchase, or designated purchase; requiring identification of legislative item as seeking approval of a non-competitive purchase in the title and body of the resolution and memorandum comprising the legislative item; making technical revisions; requiring quarterly reports; and providing severability, inclusion in and exclusion from the code, and an effective date

Ordinance No. 23-66

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Senator René García and Co-Sponsors Commissioner Juan Carlos Bermudez and Commissioner Kevin Marino Cabrera.


Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: September 6, 2023

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

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink, reading "Daniella Levine Cava".

Subject: Fiscal Impact Statement for Ordinance Relating to Non-competitive Purchases

The proposed ordinance amends Section 2-8.1 of the Code of Miami-Dade County to require that the Mayor's recommendation to the Board of County Commissioners (Board) for non-competitive purchases include additional information that is currently not required and directed the Administration to prepare a report within 120 days of the effective date of the ordinance regarding noncompetitive purchases in the preceding three years.

There may be a minimal fiscal impact associated with the implementation of this ordinance because preparation of the report will require a manual review of all non-competitive contracts and associated agenda items approved by the Board for the preceding three years. No other fiscal impact to the County is anticipated.

A handwritten signature in blue ink, reading "Edward Marquez".

Edward Marquez
Chief Financial Officer

Memorandum



Date: September 6, 2023

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

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink, reading "Daniella Levine Cava".

Subject: Social Equity Statement for Ordinance Relating to Non-Competitive Purchases

The proposed ordinance amends Section 2-8.1 of the Code of Miami-Dade County to require that the Mayor's recommendation to the Board of County Commissioners (Board) for non-competitive purchases include additional information than is currently required and directed the Administration to prepare a report within 120 days of the effective date of the Ordinance regarding non-competitive purchases in the preceding three years.

This item will provide a social benefit by increasing transparency regarding non-competitive purchases presented to the Board and the public by more clearly identifying such purchases in the agenda items and further explaining the justification for these purchases, as determined to be in the best interest of the County.

A handwritten signature in blue ink, reading "Edward Marquez".

Edward Marquez
Chief Financial Officer



MEMORANDUM

(Revised)

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

DATE: September 6, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Amended
Agenda Item No. 7(D)

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 _____

Amended
Agenda Item No. 7(D)
9-6-23

ORDINANCE NO. **O-23-66**

ORDINANCE RELATING TO NON-COMPETITIVE PURCHASES; AMENDING SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REQUIRING THAT CERTAIN ADDITIONAL INFORMATION BE INCLUDED IN THE COUNTY MAYOR’S RECOMMENDATION FOR THE AWARD OF A WAIVER OF COMPETITIVE BIDDING, LEGACY PURCHASE, OR DESIGNATED PURCHASE; REQUIRING IDENTIFICATION OF LEGISLATIVE ITEM AS SEEKING APPROVAL OF A NON-COMPETITIVE PURCHASE IN THE TITLE AND BODY OF THE RESOLUTION AND MEMORANDUM COMPRISING THE LEGISLATIVE ITEM; MAKING TECHNICAL REVISIONS; REQUIRING QUARTERLY REPORTS; AND PROVIDING SEVERABILITY, INCLUSION IN AND EXCLUSION FROM THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the Miami-Dade County Home Rule Charter (the “Charter”) provides that “[c]ontracts for public improvements and purchases of supplies, materials, and services other than professional shall be made whenever practicable on the basis of specifications and competitive bids,” except where such contracts and purchases are below a threshold established by the Board; and

WHEREAS, pursuant to the Charter, the Board has adopted section 2-8.1 of the Code of Miami-Dade County, Florida (the “Code”), which requires purchases exceeding \$250,000.00 to be competitively bid and identifies waivers of competitive bidding, “legacy purchases,” and “designated purchases” as types of non-competitive procurements; and

WHEREAS, notwithstanding the general requirement that contracts and purchases exceeding the Board’s established threshold must be competitively bid, the County Mayor may recommend, in writing, a waiver of competitive bidding when in the best interest of the County

and, in addition, for (1) designated purchases, subject to the approval of a resolution by two-thirds of the Board members present; and (2) legacy purchases, subject to the approval of a resolution by a majority of the Board members present; and

WHEREAS, bid waivers may be used under broad sets of circumstances, while the parameters of legacy purchases and designated purchases have been more narrowly drawn by this Board; and

WHEREAS, under the Code, legacy purchases are utilized for the purchase of goods and services when competition is unavailable, impractical, or constrained because of the County's need to operate an existing system, which cannot be replaced without substantial expenditure; and

WHEREAS, to undertake a legacy purchase, the County Mayor must include in any award recommendation a statement as to the need for such purchase and a description of what steps have been taken to reduce or eliminate the future need of legacy purchases for the same good or service; and

WHEREAS, under the Code, designated purchases are utilized when formal sealed bids are not practicable because, among other reasons: (1) the proposed purchase is a sole source purchase; (2) no competition exists in the marketplace, such as with public utility services; (3) purchases or rates are fixed by law or ordinance; (4) the purchase concerns unique professional or artistic services not governed by the Consultants' Competitive Negotiation Act; (5) the purchase is necessary to address an emergency, or additional formal competition would not be practicable; or (6) only a single proposer has responded to a competitive solicitation, but the response contains material defects and the County still desires to enter into a contract with such proposer; and

WHEREAS, the County Mayor's recommendation for award of a designated purchase must include, in writing: (1) an explanation of why the purchase through formal sealed bids would not be practicable under the circumstances and is in the best interest of the County; (2) an explanation of the process followed resulting in the recommendation for a designated purchase; and (3) a description of any informal competition conducted and any and all efforts to obtain a valuation of the recommended purchase; and

WHEREAS, in addition to the information currently required in section 2-8.1 of the Code, in each instance in which the County Mayor recommends the use of a non-competitive purchase, the Board desires to obtain additional information from the County Mayor or the County Mayor's designee regarding all such non-competitive purchases, including a summary of the findings of any market research or cost-benefit analysis conducted by the County Mayor or County Mayor's designee in connection with the recommended non-competitive purchase; and

WHEREAS, the Board also desires to direct the County Mayor or County Mayor's designee to gather information on the anticipated usage of non-competitive purchases to assist the Board with future policymaking initiatives relating to non-competitive purchases; and

WHEREAS, furthermore, the Board desires to bring greater transparency to the use of non-competitive procurement approaches by requiring that any legislative item seeking the approval of a non-competitive purchase (whether through bid waiver, designated purchase, or legacy purchase) shall identify the purchase as non-competitive in the title and body of both the resolution and memorandum comprising the item,

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

Section 1. Section 2-8.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-8.1. **Contracts and purchases generally.**

- (a) *Scope.* Except as provided in subsections (b), (f), (h), and (m), this section shall apply to all contracts for public improvements and purchases of all supplies, materials, and services other than professional services.
- (b)(1) *Bid requirement for certain purchases; delegation of authority to advertise, award and reject bids or proposals for certain purchases.* Formal sealed bids shall be secured for all contracts and purchases within the scope of this section when the transaction involves the expenditure of two hundred fifty thousand dollars (\$250,000.00) or more, except that the Board of County Commissioners, upon written recommendation of the >>County<< Mayor or >>County<< Mayor's designee, may, by resolution adopted by two-thirds ($\frac{2}{3}$) vote of the members present, waive competitive bidding when it finds this is to be in the best interest of the County. >>Any recommendation by the County Mayor for a waiver of competitive bidding shall, at a minimum, provide: (i) a written explanation of why competitive bidding processes should not be utilized, how the recommended waiver of competitive bidding is in the best interest of the County, and the steps taken to reduce or eliminate the future need for waivers of competitive bidding for the particular good or service; and (ii) a written description and summary of the findings of any market research or cost-benefit analysis conducted by the County Mayor or County Mayor's designee which supports a waiver of competitive bidding as the preferred method of procurement, including any informal competition conducted and any and all efforts to obtain a valuation of the recommended purchase.<< The >>County<< Mayor or >>County<< Mayor's designee is hereby delegated the authority to advertise for bid all County contracts, including contracts for public improvements, purchases of supplies, materials and services, and purchases of professional services, without the need for action by the County

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.

Commission. The >>County<< Mayor or >>County<< Mayor's designee shall be required to include in any such advertisement the measures approved by the Review Committee relating to the County's small and community business programs established in this Code. The >>County<< Mayor or >>County<< Mayor's designee shall further be required to report to this Board on a bi-annual basis all contracts advertised with the measures included, and other steps taken to foster small and community business programs. The Commission Auditor shall review and evaluate the Mayor's or Mayor's designee exercise of authority delegated pursuant to this section and report the results of his or her evaluation to the Board of County Commissioners on a periodic basis. The >>County<< Mayor or >>County<< Mayor's designee is hereby delegated the authority to award and reject bids or proposals for contracts for public improvements (construction), and purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to section 2-10.4 and Section 287.055, Florida Statutes) costing one million dollars (\$1,000,000.00) or less, or in the case of miscellaneous construction contracts or purchasing programs designed to provide opportunities for Community Small Business Enterprises specifically authorized by Board resolution five million dollars (\$5,000,000.00) or less, without the need for action by the County Commission. The authority to award contracts provided in the preceding sentence shall not constitute authority for the >>County<< Mayor or >>County<< Mayor's designee to exercise an option to renew any contract where the combined value for such contract's initial term and the option to renew would exceed one million dollars (\$1,000,000.00), and in such instances the >>County<< Mayor or >>County<< Mayor's designee shall obtain the prior authorization of the County Commission to exercise such option. The >>County<< Mayor or >>County<< Mayor's designee may recommend that the foregoing requirement to obtain prior Commission authorization to exercise an option to renew be waived for a specific contract when the >>County<< Mayor or >>County<< Mayor's designee deems it to be in the best interests of the County. The Inspector General shall be invited to participate as appropriate in the processes by which the authority delegated hereby is exercised. The >>County<< Mayor or >>County<< Mayor's designee is delegated the authority to utilize any of the following

processes for selection of a contractor to perform contracts for public improvements: competitive price bidding, request for proposals, or request for qualifications without the need for prior approval of the County Commission. The >>County<< Mayor or >>County<< Mayor's designee shall review all construction projects to determine whether the break-up of the project into smaller contracts will increase the opportunity for CSBEs to participate therein. For those contracts where the >>County<< Mayor or >>County<< Mayor's designee requests authority from the County Commission to advertise, the request for such authority shall advise the steps taken to accomplish the foregoing sentence. The >>County<< Mayor or >>County<< Mayor's designee may designate appropriate County staff to exercise the authority delegated hereunder by implementing order, approved by the Board of County Commissioners.

- (2) *Legacy Purchases.* Notwithstanding the provisions of section 2-8.1(b)(1), formal sealed bids shall not be required for Legacy Purchases which do not result in the budget for the user department(s) exceeding the amount approved by the County Commission during the annual budget approval process. >>For the purposes of this section, Legacy Purchases shall mean the purchase of goods and services where competition is unavailable, impractical or constrained as a result of the need to continue to operate an existing County system which may not be replaced without substantial expenditure.<< Such Legacy purchases may be awarded by the Board of County Commissioners upon a majority vote of those Board Members present, where the amount of such award exceeds the threshold for purchases by the Mayor set forth in section 2-8.1(b)(1). >>Any recommendation by the County Mayor for a Legacy Purchase shall, at a minimum, provide: (i) a written explanation of why a Legacy Purchase is necessary and the steps taken to reduce or eliminate the future need for Legacy Purchases for the particular good or service; and (ii) a written description and summary of the findings of any market research or cost-benefit analysis conducted by the County Mayor or County Mayor's designee supporting the recommendation of a Legacy Purchase, including any informal competition conducted and any and all efforts to obtain a valuation of the recommended purchase.<< ~~[[The County Mayor shall include, in any Legacy Purchase award recommendation, a statement as to the need for such purchase and the provisions taken to reduce or eliminate the~~

~~future need for Legacy Purchases for the particular good or service. For the purposes of this section, Legacy Purchases shall mean the purchase of goods and services where competition is unavailable, impractical or constrained as a result of the need to continue to operate an existing County system which may not be replaced without substantial expenditure.]]~~

- (3) *Procedures for purchases when competitive procedures are not practicable.* Notwithstanding the requirements of section 2-8.1(b)(1), formal sealed bids for purchase of goods or services shall not be required where such formal sealed bids would not be practicable as set forth herein. Designated Purchase shall mean a purchase within the scope of this section when the purchase through the use of formal sealed bids is not practicable, including, but not limited to: (i) sole source purchases, (ii) services where no competition exists such as public utility services, (iii) where purchases or rates are fixed by law or ordinance, (iv) unique professional or artistic services not governed by the Consultants' Competitive Negotiations Act, section 287.055, Florida Statutes, (v) purchases of goods and services necessary to address an emergency, or where additional formal competition would not be practicable, and (vi) solicitations where only a single proposer has responded to a competitive solicitation but such response contains material defects and the County still desires to enter into a contract with such proposer. Where appropriate in a Designated Purchase, the County shall pursue the maximum amount of competition available under the circumstances, which may include telephonic bids and informal price quotations. Any recommendation by the Mayor for the award of a Designated Purchase shall ~~>>~~, ~~<<~~ at a minimum ~~>>~~, provide ~~<<~~: (i) ~~[[provide]]~~ a written explanation of why the purchase through formal sealed bids would not be practicable under the circumstances and ~~>>~~ that the recommended non-competitive purchase ~~<<~~ is in the best interest of the County, ~~>>~~ and the steps taken to reduce or eliminate the future need for a Designated Purchase for the particular good or service; and ~~<<~~ (ii) ~~[[provide a written explanation of the process followed resulting in the recommendation for a Designated Purchase, and (iii) provide]]~~ a written description ~~>>~~ and summary of the findings of any market research or cost-benefit analysis conducted by the County Mayor or County Mayor's designee for a Designated Purchase as the preferred method of procurement, including ~~<<~~ ~~[[of]]~~ any informal

competition conducted and any and all efforts to obtain a valuation of the recommended purchase. The Board of County Commissioners shall adopt any resolution authorizing a Designated Purchase by a two-thirds vote of the members present. Such adoption shall be deemed for all purposes to constitute a determination by the Board of County Commissioners that formal sealed bids are not practicable for this purchase and that it is in the best interest of the County to waive competitive bidding. A recommendation for award of a Designated Purchase shall not be subject to the protest procedures set forth in section 2-8.4. Nothing in this subsection is intended to affect or modify any federal or state requirements relating to competitive purchases.

* * *

Section 2. This Board directs the County Mayor or County Mayor's designee to prepare a written report on a quarterly basis setting forth each instance after the effective date of this ordinance in which the County Mayor anticipates recommending the Board's approval of a bid waiver, legacy purchase, or designated purchase. Such reports shall set forth, at a minimum: (i) the monetary value of the anticipated purchase; (ii) the justification for the anticipated non-competitive purchase; and (iii) whether the County Mayor or County Mayor's designee anticipates following a non-competitive solicitation for the subsequent purchase of the same or similar good or service. The completed reports shall be placed on an agenda of the full Board without committee review pursuant to Rule 5.06(j) of the Board's Rules of Procedure.

Section 3. This Board directs the County Mayor or County Mayor's designee, in any legislative item seeking the approval of a non-competitive purchase (whether through bid waiver, designated purchase, or legacy purchase) to identify the purchase as non-competitive in the title and body of both the resolution and memorandum comprising the item, including the specific type of non-competitive purchase recommended.

Section 4. 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 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of section 1 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 6. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of sections 2 and 3 of this ordinance shall be excluded from the Code of Miami-Dade County.

Section 7. 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:

September 6, 2023

Approved by County Attorney as
to form and legal sufficiency:

GKS for GBK

Prepared by:

MAG

Miguel A. Gonzalez

Prime Sponsor: Senator René García
Co-Sponsors: Commissioner Juan Carlos Bermudez
Commissioner Kevin Marino Cabrera