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Miami-Dade County's Procurement Modernization

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Under the leadership of a new administration and a new generation of Board of County Commissioners ("Board"), for the past few years, Miami-Dade County ("County") has been updating its procurement procedures to increase efficiency and accelerate the timeline for completion of County procurements. For the most part, the changes have been incremental and have focused on (a) setting a framework to receive and consider objections or protests from proposers, (b) accelerating the evaluation process by removing obstacles to the appointment of selection committees, and (c) developing strict timelines with disclosure of missed deadlines to the Board. The County has also modified the small business program and local business ordinances. However, Part I of this update will focus on the bid protest procedures and evaluation process changes.

Amendments to the Bid Protest Procedures

Right before the change in administration and the entry of a new generation of county commissioners, on May 5, 2020, the Board approved [Ordinance No. 20-37](#), which amended [Section 2-8.4, Miami-Dade County Code](#), to remove an aggrieved proposer's ability to protest any recommendation to reject all proposals received for a solicitation. Moreover, the Ordinance removed the administration's ability to review and potentially amend a contract award recommendation after a finding by a Hearing Examiner that in making the initial recommendation, the administration acted fraudulently, arbitrarily, illegally, or dishonestly, or that there was a violation of the County's ethics code. Instead, the Ordinance requires that the matter be placed in the next available commission agenda for the Board to determine, by majority vote, whether to "reject all proposals and resolicit the procurement, disqualify the

recommended proposer, direct negotiations or award to the next ranked proposer, award to the recommended proposer or take any other action the [Board] deems appropriate." Section 2-8.4(h), County Code.

After the change in administration, two crucial amendments to Section 2-8.4, Bid Protest Procedures have been made. The first amendment was adopted on June 2, 2021, under [Ordinance No. 21-118](#). The Ordinance, codified in Section 2-8.4(f), modified the existing procedures for the selection, attendance requirements, removal, and announcement of vacancies for Hearing Examiners for bid protest hearings. The amendment broadened the eligibility requirements to participate in the panel of Hearing Examiners to include members of the Florida Bar in addition to retired judges who have served for ten (10) years or more in the Eleventh Judicial Circuit of Florida. The amendment also required the County to publish any vacancies on the County website. The objective of the Ordinance was to further the new administration's social equity policy and provide access to County government to all citizens. Then, on April 5, 2022, the Board adopted [Ordinance No. 22-35](#), which amended Section 2-8.4, to require Hearing Examiners to determine whether a bid protest is frivolous. The Ordinance also directed the county administration to promulgate an implementing order increasing bid protest filing fees, which may be refundable if the Hearing Examiner does not find the bid protest frivolous.

In addition to changes in the code, on May 2, 2023, the Board also adopted [Resolution No. 428-23](#), amending [Implementing Order No. 3-21](#): Bid Protest Procedures ("I.O. 3-21"). Under the new procedures, proposers protesting the rankings or recommendations of the evaluation committee must submit written objections to the procurement officer within five days of receiving the selection committee coordinator report. Otherwise, proposers forego the opportunity to raise any such objections during the bid protest process, which is initiated upon the Mayor's recommendation to award. The updated version of I.O. 3-21 requires the County to notify proposers of the issuance of the selection committee coordinator report. Before, the report was an internal document only available through a public records request. The objective of the amendment was to provide a process for County procurement professionals to review and consider

objections promptly and avoid a protracted bid protest process.

Amendments to the Evaluation Process

In addition to the changes to the County's bid protest procedures, the County has also been making changes to the formation and performance of competitive selection committees and providing timelines for the completion of specific milestones in the process. On July 6, 2023, through [Resolution 654-23](#), the Board amended [Implementing Order No. 03-34](#) ("I.O. 3-34"): Formation and Performance of Competitive Selection Committees, to reduce the number of selection committee members required to review contract awards depending on the contract value. Now, for contracts with an estimated value equal to or exceeding ten million dollars (\$10,000,000.00), the County must appoint a five-member selection committee, including an assistant or deputy director from the affected County user department. On the other hand, only three committee members must be appointed for all other lower-value contracts. The amendment also includes detailed timelines governing each step of the procurement process. When the procurement matter is presented to the Board, the agenda item must disclose any missed deadlines and specify the department that missed the deadline. Furthermore, to encourage active and committed participation in selection committees, the I.O. 3-34 allows county employees to receive administrative leave based on their involvement in a committee, but only if they serve as a scoring member and have timely completed all committee-related duties.

Finally, Resolution 654-23 also amended [Implementing Order No.: 02-13](#) ("I.O. 2-13"): Guidelines and Procedures Regarding Legal Opinions concerning County Competitive Processes. The updates require the County administration to send any responsiveness inquiries to the County Attorney's Office within ten days of receipt of proposals and for the County Attorney's Office to provide an opinion within thirty days of receipt. Similarly, to I.O. 3-34, the updates to I.O. 2-13 also require disclosure to the Board of any missed deadlines.

Conclusions and Considerations

With the ongoing efforts to modernize the County's procurement policies, the County has shown a commendable commitment to enhancing efficiency and transparency. As the County advances in this direction, preserving the right balance between accelerating the procurement process while maintaining adequate safeguards to maintain the public trust should remain a priority.

In this spirit, we suggest building upon the existing efforts. In addition to providing a period for objections upon issuance of the selection committee coordinator report, the County may consider adopting a formal process where proposers are allowed to respond to the County's responsiveness inquiries before a determination to disqualify a proposal is issued. This approach, successfully implemented by jurisdictions like Broward County, would allow proposers to present additional facts and legal considerations before they are denied the opportunity to participate in the evaluation and selection process. This step would also avoid protracted bid protest litigation and delays in the award of contracts. The County could also consider creating a repository of procurement documents for large procurements. Such a repository could help alleviate the burden on procurement officers to respond to multiple –and often repetitive- records requests. The County should also study the resources available under the Florida Division of Administrative Hearings (“DOAH”), which following Section 120.65(6), Florida Statutes, provides Administrative Law Judges to serve as hearing officers on a contract basis to any governmental agency. On its [website](#), DOAH promotes this service based on its extensive experience reviewing similar issues and its capability to deliver clear and concise opinions in a timely fashion.

Finally, in finding the delicate balance between efficiency and expediency, caution should be exercised when imposing unreasonable obstacles to the filing of a bid protest. Because of the costs and potential ramifications of filing a bid protest, the filing of a bid protest is a decision that is rarely taken lightly by the aggrieved proposer. Moreover, compared to other portions of the procurement process the administrative bid protest is

subject to accelerated timelines. Florida law also places a high standard of review for bid protest hearings with significant deference given to the government. The bid protest process is one of the final administrative safeguards to ensure County contracts are being awarded in a fair and transparent manner.

In summary, the County's commitment to streamlining the procurement process is a laudable effort. By fostering an efficient process that also provides for transparent and timely communication with the process participants, the County can cultivate a procurement environment that attracts high-quality business partners and vendors while ensuring the continued confidence of the members of the public.

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