

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 22, 2014 Consent Regular
 Workshop Public Hearing

Department: Administration

Submitted By: Administration

Submitted For: Mayor Taylor

I. EXECUTIVE BRIEF

Motion and Title: Staff requests Board direction: regarding establishing employment diversity policy or criteria for entities doing business with the County.

Summary: Mayor Taylor initiated this item at the May 20, Board meeting. Resolution R-92-13, as amended by R-2012-0197 and R-2014-0113, states the Board's policy that the County "shall not conduct business with nor appropriate funds for any organization that practices discrimination on the basis of race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, genetic information or disability". County contracts currently include this requirement. Observing nondiscriminatory policies does not necessarily achieve diversity in hiring. The County's employment policy is in accordance with applicable law and establishes principles to encourage equal employment opportunity and diversity. On May 29, the Board received a legal opinion from the County Attorney that mandatory employment diversity goals for competitive contracts might not be legally sustainable. Among options are: 1) maintaining current policy language; or 2) requiring contractors to prepare if necessary, and submit, evidence of their non-discrimination policies when submitting bids or RFP responses. For non-competitive contracts such as BDB and tourism agencies, the Board of County Commissioners may consider an organization's consistency with County policies in determining whether to award contracts and could require proof of the existence of such non-discrimination policies prior to entering into contracts. (TKF) Countywide

Background and Policy Issues: See attachments.

Attachments:

- 1. May 29 County Attorney Opinion
 - 2. Contractual Language
 - 3. County Employment Policy
-
-

Approved By: 
County Administrator

7/22/14
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* =====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No. _____

Budget Account No.: Fund _____ Agency _____ Org. _____ Object _____
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Department Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

** No Fiscal Impact*

[Signature]

OFMB
7/11/14

[Signature] *7/11/14*

Contract Dev. and Control
7-11-14, Bushnell

B. Legal Sufficiency:

[Signature] *7/15/14*

Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

Robert Weisman

From: Tammy Fields K.
Sent: Thursday, May 29, 2014 10:08 PM
To: Priscilla Taylor A.; Paulette Burdick P.; Shelley Vana; Hal Valeche; Steven Abrams; MaryLou Berger; Jess Santamaria
Cc: Denise Nieman; Robert Weisman; Kathy Scarlett; David Ottey
Subject: Employment Diversity for organizations seeking county grants or contracts

Dear Mayor Taylor and County Commissioners:

On May 28th, I sent all commissioners an email responding to the direction given at the May 20th Board of County Commissioners meeting to research the issue of requiring a certain level of employee diversity in order to obtain County contracts or grants. The email said the following:

Pursuant to the direction given at the May 20, 2014 Board of County Commissioners meeting, our office researched the issue of requiring organizations to have a certain level of employee diversity in order to obtain County contracts or grants. I did not find any similar ordinances that addressed contracting with non-profits or even with for profits which required a diversity in their employees. Most of the contracting ordinances focus on procurement and are similar to the County's SBE program or the former M/WBE ordinance.

I do think the constitutional parameters, such as those in the *Croson* decision, would also be applicable here. The County would have to establish a compelling governmental interest and a narrowly tailored program in order to apply preferences based on the racial or ethnic make-up of an organization's employees. I do not think the County currently has enough information to meet the compelling governmental interest portion of the test; and, therefore, should the County establish an ordinance requiring a certain diversity of employees for organizations the County contracts with, a legal challenge may be successful.

With that said, I do think it would be legal to include in RFPs that an organization must submit their employment discrimination policy, and that it be consistent with the BCC's resolution on non-discrimination. The County already includes the non-discrimination policy in all contracts.

Further questions have arisen regarding that email, and I would like to provide clarification. The opinion addressed those contracts that are competitively awarded. As stated, I do think it would be legally permissible to require bidders or proposers to submit their non-discrimination or diversity policies in order to be eligible for award. Such a requirement could be included in the County's non-discrimination resolution or in an ordinance.

For contracts that are not based on a competitive process (ex.: Business Development Board), the Board of County Commissioners has discretion as to who they wish to contract with, and if the Board believes that an organization does not meet standards that are important to the Board, the Board may decline to enter into a contract.

Please let me know if you have any other questions on this issue.

ATTACHMENT 1

BIDS:

DISCRIMINATION PROHIBITED:

Palm Beach County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. The successful bidder warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression or genetic information.

CONTRACTS:

ARTICLE 24 - NONDISCRIMINATION

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

DATE: October 1, 2013
TO: All Department and Division Heads
FROM: Robert Weisman
County Administrator
RE: **EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION
POLICY STATEMENT**

Palm Beach County Board of County Commissioners is an Equal Opportunity/Affirmative Action employer. As such, the County is committed to using equal employment practices in all terms and conditions of employment and to employ protected groups consistent with their availability in the relevant labor market.

To accomplish this objective County administration and management staff will:

- recruit, hire, train and promote persons in all job categories without regard to race, color, religion, gender, national origin, age, disability, marital status, familial status, sexual orientation, and gender identity or expression;
- make and enforce employment decisions in such manner as to further the principle of equal employment opportunity;
- employ and advance in employment disabled and Vietnam Era Veterans and qualified persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of a position; and
- ensure that all personnel actions including compensation, benefits, transfers, layoffs, County sponsored training, education, tuition reimbursement, social and recreational programs will be administered without regard to race, color, religion, gender, national origin, age, disability, marital status, familial status, or sexual orientation and gender identity or expression.

The Manager of Fair Employment Programs in the Human Resources Department is responsible for carrying out the provisions of the Affirmative Action Plan including monitoring and reporting, developing special Affirmative Action programs, and apprising managers and supervisors of their equal employment opportunity/affirmative action responsibilities.

The provisions of the Affirmative Action Plan and policy statement require a concerted effort and commitment by all employees. Each employee is expected to assist in establishing a representative work force and maintaining a work environment free of discrimination.



Robert Weisman, County Administrator