

ORDINANCE NO. 2019- _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 31 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PURCHASING," BY AMENDING ARTICLE II THEREOF, ENTITLED "CONSTRUCTION CONTRACTS - MINIMUM WAGES AND BENEFITS," BY AMENDING SECTION 31-27, ENTITLED "ESTABLISHMENT OF MINIMUM WAGES," TO INCREASE THE CONTRACT THRESHOLD FOR CITY PROJECTS SUBJECT TO MINIMUM WAGES AND BENEFITS; BY AMENDING SECTION 31-31, ENTITLED "EXCEPTIONS," TO EXEMPT EMERGENCY PURCHASES FROM THE MINIMUM WAGE REQUIREMENTS OF THE ORDINANCE; BY CREATING SECTION 31-32, ENTITLED "REPORTING REQUIREMENT," TO INCLUDE A REPORTING REQUIREMENT OF CERTIFIED PAYROLL INFORMATION FOR ALL CITY CONSTRUCTION CONTRACTS IN EXCESS OF \$1,500,000, INCLUDING CONTRACTS EXEMPTED PURSUANT TO SECTION 31-31 OF THE CITY CODE; AND BY AMENDING ARTICLE III, ENTITLED "LOCAL WORKFORCE PARTICIPATION GOALS AND REPORTING REQUIREMENTS FOR CITY CONSTRUCTION CONTRACTS," SECTION 31-40 THEREOF, ENTITLED "LOCAL WORKFORCE PARTICIPATION GOALS AND REPORTING REQUIREMENTS FOR CITY CONSTRUCTION CONTRACTS," TO STREAMLINE REPORTING REQUIREMENTS AND ELIMINATE UNNECESSARY INTERIM WORKFORCE PARTICIPATION REPORTING REQUIREMENTS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Section 31-27 of the City Code currently requires that for City construction projects with a contract value in excess of \$1,000,000, the contractor must pay laborers, apprentices and mechanics minimum wages, commonly referred to as "prevailing wages," in accordance with the wage rates established from time to time by the United States Department of Labor and published in the Federal Register; and

WHEREAS, the City Commission has not updated the minimum wage requirements of the City Code since 1994, and desires to to increase the minimum contract threshold for City projects that are subject to minimum wages and benefits from \$1,000,000 to \$1,500,000, and to create an exemption for emergency contracts; and

WHEREAS, the City Commission also desires to create a reporting requirement for the submission of certain certified payroll information on all City construction contracts in excess of \$1,500,000, including, without limitation, contracts exempted pursuant to Section 31-31 of the City Code, to permit the City to monitor the wage rates being paid to laborers on larger City projects, and determine whether the wages actually paid to workers are keeping up with inflation in a manner that is comparable to other projects in Miami-Dade County; and

WHEREAS, the City also desires to amend the workforce participation reporting requirements set forth in Section 31-40 of the City Code, to streamline reporting requirements and eliminate an unnecessary interim reporting requirement concerning workforce participation goals.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Chapter 31, entitled "Purchasing," Article II thereof, entitled "Procurement," thereof, entitled "Construction Contracts-Minimum Wages and Benefits," of the Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 31
PURCHASING**

* * *

ARTICLE II. - CONSTRUCTION CONTRACTS-MINIMUM WAGES AND BENEFITS

Sec. 31-27. – Establishment of minimum wages.

Every construction contract in excess of ~~\$1,000,000.00~~\$1,500,000.00 to which the City of Miami Beach is a party shall include a provision that the rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by any contractor or subcontractor on the work covered by the contract, shall be not less than the prevailing rate of wages and fringe benefit payments or cash equivalence for similar skills or classifications of work as established by the Federal Register, in the City of Miami Beach, Florida.

Every three years commencing in 1997, the city manager shall present a report to the city commission regarding increases in the Construction Cost Index for South Florida, if any, and shall recommend to the city commission whether there should be an adjustment to the ~~\$1,000,000.00~~\$1,500,000.00 threshold. In the event that the city manager recommends an adjustment, the city commission shall hold a public hearing regarding an amendment to this article to ~~provide for~~consider the adjustment.

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Sec. 31-31. - Exceptions.

The provisions of section 31-27 shall not apply to the following City of Miami Beach projects:

- (a) Water, except water treatment facilities and lift stations.
- (b) Sewer, except sewage treatment facilities and lift stations.
- (c) Storm drainage.

- (d) Road construction, except bridges or structures requiring pilings.
- (e) Beautification projects which may include resurfacing new curbs, gutters, pavers, sidewalks, landscaping, new lighting, bus shelters, bus benches and signage.
- (f) Proposed parking garage projects located at Seventh Street and Collins Avenue, Tenth Street and Collins Avenue, Thirteenth Street and Collins Avenue, Twelfth Street and Washington Avenue and the Seventeenth Street garage renovation project; however future parking structures not specified herein and estimated to cost in excess of \$1,000,000.00 shall not be exempt.
- (g) Emergency projects pursuant to Section 2-396 of the City Code.

In determining whether a construction project meets the ~~\$1,000,000.00 estimated cost~~ contract threshold established in section 31-27, all segments of the project, except land acquisition, architectural/engineering design, and legal costs, shall be considered as one entirety. Construction projects for which the estimated cost exceeds ~~\$1,000,000.00~~ the contract threshold established in section 31-27 shall not be bid in a manner which would avoid the requirements of ~~section 31-27~~ this article.

Sec. 31-32. – Certified payroll reporting requirement.

All city construction contracts in excess of \$1,500,000, including contracts for exempt city projects pursuant to subsections 31-31(a) through (g) of the city code, shall include a provision requiring the contractor to submit certified payroll records along with each payment application, to allow the city to verify the wage rates paid to construction workers performing work on city projects. All certified payroll records submitted to the city shall, at a minimum, include the name, address or zip code, labor classification, hours worked, and hourly base rate paid for each laborer, mechanic and apprentice employed by any contractor or subcontractor on the work covered by the contract.

The requirements of this section shall be reviewed annually by the finance and citywide projects committee (or successor committee), at which time the committee will provide an advisory recommendation to the city commission as to whether to continue to maintain this section in force and effect.

SECTION 2. That Chapter 31, entitled “Purchasing,” Article III thereof, entitled “Procurement,” thereof, entitled “Local Workforce Participation Goals and Reporting Requirements for City Construction Contracts,” of the Code of the City of Miami Beach is hereby amended as follows:

ARTICLE III. - LOCAL WORKFORCE PARTICIPATION GOALS AND REPORTING REQUIREMENTS FOR CITY CONSTRUCTION CONTRACTS

Sec. 31-40. - Local workforce participation goals and reporting requirements for city construction contracts.

- (1) *Definitions.* The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- (a) *City construction contract* means (i) a city contract valued in excess of \$1,000,000.00 the contract threshold established in section 31-27 for the construction, demolition, alteration and/or repair of city buildings or city public works, or (ii) a contract valued in excess of \$1,000,000.00 the contract threshold established in section 31-27 which provides for privately-funded construction, demolition, alteration and/or repair of buildings or improvements located on city-owned land.
 - (b) *Department* means the department responsible for managing the awarded city construction contract as designated by the city manager.
 - (c) *Contractor* means any person or entity providing construction services pursuant to subsection (1)(a).
- (2) *Implementation.* The provisions of this article shall apply to city construction contracts that: a) are subject to section 31-27 of article II of this chapter; and b) are awarded pursuant to an Invitation to Bid (ITB) or Request for Proposals (RFP) issued by the city on or after April 1, 2017.
- (3) *General requirements.*
- (a) Except where state, county or federal laws or regulations, or other approved granting agencies, mandate to the contrary, all contractors and subcontractors of any tier performing on a city construction contract shall satisfy the requirements of this article.
 - (b) As a condition of submitting a bid or proposal for a city construction contract, a general contractor, construction manager, or other contractor seeking award of a contract, shall submit a responsible contractor affidavit, as provided in subsection (4)(a)(1), with its bid or proposal. The city shall provide notice to any contractor who fails to submit a responsible contractor affidavit that said contractor has forty-eight (48) hours from the time of notification to submit a responsible contractor affidavit or its bid or proposal will be deemed nonresponsive and disqualified from consideration.
 - (c) The responsible contractor affidavit shall be completed on a standard form authorized by the Procurement Director and shall reference the city construction contract for which a bid or proposal is being submitted by name and contract or project number. Any city agency, department, or other party responsible for administering a city construction contract shall require contractors to use the standard form authorized by the Procurement Director.(d)A city construction contract shall not be executed until all

requirements of this section have been fulfilled.(e)No contractor shall receive final payment for completion of a city construction contract until the city receives a completed workforce performance report submitted pursuant to subsection (4)(b).

(4) *Responsible contractor affidavit and ~~workforce—performance~~ reporting requirements; contractor past performance.*

(a) *Responsible contractor affidavit.* A construction manager, general contractor, or other contractor submitting a bid or proposal for a city construction contract shall ~~verify the following information on its responsible contractor affidavit form:~~

1. The contractor shall affirm that it will make its bestgood-faith, reasonable efforts to promote employment opportunities for Miami-Dade County residents by seeking to achieve a project goal of having thirty percent (30%) of all construction labor hours performed by Miami-Dade County residents. The contractor shall also make its best reasonable efforts to promote employment opportunities for Miami Beach residents. ~~To verify workers' residency, contractors shall provide the residence address of each worker.~~

2. ~~The responsible contractor affidavit shall specify the total number of persons that will be used by the contractor (and by all subcontractors) to perform all of the construction trades and labor work of the contract, broken down by trade and labor category, minimum qualifications for each category, and the number of persons to be utilized in each category. The name, address, and trade category of all persons proposed to perform work under the contract currently on the contractor's (or on any proposed subcontractor's) payroll who reside in Miami Beach and Miami-Dade County shall be provided. The responsible contractor affidavit shall also indicate the number of positions shown on the work, trade categories, and minimum qualifications therefore, to be hired by the contractor (or by any proposed subcontractors) to perform the construction trades and labor work under the contract.~~

(b) *Local ~~W~~workforce performance report.* Before its final application for payment of a city construction contract, the contractor responsible for the project shall submit a workforce performance report to the city which shall include the following information on the workforce employed in the execution of the contract:

(1) The total number of construction labor work hours performed on the project, and the number and percentage of such work hours performed by Miami Beach and Miami-Dade County residents;

- (2) Supporting documentation verifying construction labor work hours performed by Miami Beach and Miami-Dade County residents;
 - (3) Supporting documentation verifying reasonable efforts to promote employment opportunities for Miami Beach and Miami-Dade County residents if the project goal of thirty percent (30%) of all construction labor hours to be performed by Miami-Dade County residents is not met.
- (c) ~~[Evaluation.]~~ Contractor's past performance. When evaluating a prospective contractor's bids or proposals for future city construction contracts, in addition to those factors identified in Section 2-369 of the City Code for determination of award, the contractor's past record of meeting local workforce goals and complying with reporting requirements of this article shall be considered.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed:

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity. portions of this ordinance.

SECTION 5. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Miami Beach City Code. 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. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2020.

PASSED AND ADOPTED this ____ day of _____, 2019.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions

~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner Micky Steinberg)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

22081 - 12/6/19
City Attorney RAJ Date