

ORDINANCE NO. 2019-_____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CITY CODE, ENTITLED ADMINISTRATION, BY AMENDING ARTICLE VI THEREOF, ENTITLED PROCUREMENT, BY AMENDING DIVISION 3 THEREOF, ENTITLED CONTRACT PROCEDURES, BY CREATING SECTION 2-378, ENTITLED "INSPECTOR GENERAL CONTRACT ALLOCATION," TO PROVIDE FOR DEDICATED FUNDING FOR THE ACTIVITIES AND OPERATIONS OF THE CITY'S OFFICE OF INSPECTOR GENERAL, BASED ON A PERCENTAGE OF THE CONTRACT AMOUNTS EXPENDED BY THE CITY UNDER CERTAIN CITY CONTRACTS, AND TO ESTABLISH MANDATORY CONTRACT PROVISIONS RELATING TO THE INSPECTOR GENERAL'S REVIEWS, AUDITS, INSPECTIONS AND INVESTIGATIONS OF CITY CONTRACTS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, on November 6, 2018, the City's voters approved an amendment to the City Charter, creating Article IX, which creates the City of Miami Beach Office of Inspector General; establishes the functions of the office; provides the Inspector General with the power to subpoena witnesses, administer oaths, and require production of records, in order to conduct its investigations; and provides that the Inspector General's appointment, term, functions, authority, and powers shall be further established by Ordinance; and

WHEREAS, on February 23, 2019, the Mayor and City Commission adopted Ordinance No. 2019-4239, to implement the provisions of the newly created Article IX of the City Charter; and

WHEREAS, the Mayor and City Commission desire to establish a dedicated fund for the activities and operations of the Office of Inspector General (the "OIG Fund"), with allocations to the OIG Fund consisting of a specified percentage of the contract expenditures made under all City contracts, except as provided herein.

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

Section 1. That Chapter 2, entitled "Administration," Article VI thereof, entitled "Procurement," Division 3 thereof, entitled "Contract Procedures," of the Code of the City of Miami Beach is hereby amended by creating Section 2-378 as follows:

**CHAPTER 2
ADMINISTRATION**

* * *

ARTICLE VI. PROCUREMENT

Sec. 2-378 – Inspector General Contract ~~Fee~~ Allocation.

- a. The inspector general may, on a random basis, perform reviews, audits, inspections, or investigations of any past, present, or proposed city contracts. ~~The cost of random reviews, audits, inspections and investigations shall, except as provided in subsection (1) through (15) below, be incorporated into the contract price of all city contracts, and shall consist of one and one half percent (1.50%) of the contract price (hereinafter the "IG contract fee"). . The IG contract fees shall not apply to the following contracts: All appropriations of city funding for city contracts shall include an allocation of funding to the office of inspector general ("OIG") fund, as provided herein. Monies placed in the OIG fund shall be exclusively dedicated for the operations and activities of the office of inspector general, and for no other purposes; provided, however, that such monies shall not be expended, except as approved by the city commission pursuant to a budgeted appropriation in accordance with Florida law and section 2-256(i) of the city code.~~
- b. The amount allocated to the OIG fund shall consist of one half of one percent (.5%) of the contract amounts expended by the city pursuant to all city contracts, including contract amendments or change orders, except as provided herein. The total amount allocated to the OIG fund for any individual city contract shall be capped, and shall not exceed \$50,000. The requirements of this subsection (b) shall not apply to the following city contracts:
- (1) auditing contracts;
 - (2) insurance contracts;
 - (3) contracts for legal services;
 - (4) contracts for financial advisory services;
 - (5) leases and facility rental agreements;
 - ~~(6) concession agreements;~~
 - (6) ~~(7)~~ management agreements;
 - (7) ~~(8)~~ revenue-generating contracts, including, without limitation, concession agreements;
 - ~~(8) (9) purchase orders or other including, without limitation, concession agreements for the purchase of goods and services under the amount established for formal bids in section 2-366(a) of the city code. typically referred to as open market purchases;~~

- (8) ~~(40)~~ federal, state and local government agreements, including grants;
- (9) ~~(41)~~ interlocal agreements;
- (10) ~~(42)~~ grant agreements; and
- (11) ~~(43)~~ independent contractor agreements; and
- (14) ~~contracts awarded pursuant to section 2-391 of the city code, based on awards by cooperative alliances or public entities that have previously utilized a competitive procurement process ("piggyback" contracts); and~~
- (12) ~~(45)~~ contracts for emergency purchases pursuant to section 2-396 of the City code.

Notwithstanding the foregoing, the city commission may by resolution specifically authorize ~~the inclusion of the IG contract fee in an allocation of funds to the OIG fund for any contract.~~

~~c. b.~~ Nothing contained in this subsection shall in any way limit the powers of the inspector general to perform audits, inspections, reviews and investigations on all city contracts including, but not limited to, those contracts ~~specifically~~ exempted from an allocation of funding to the ~~IG contract fee~~ OIG fund.

~~d. e.~~ All city contracts and competitive solicitations shall disclose the requirements of this section and shall include the following contract language:

1. Pursuant to Section 2-256 of the code of the city of Miami Beach, the city has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all city contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on on behalf of the city. ~~To pay for the functions of the Office of Inspector General, all payments to be made under this contract will be assessed one and one half percent (1.50%) of the total amount of the payment (the "IG contract fee"), to be deducted from each progress payment as the same becomes due, unless this contract is exempt from the payment of the IG contract fee pursuant to Section 2-378 of the City Code. The contractor, vendor, or consultant (hereinafter, the "contractor") shall, in stating its agreed prices, be mindful of the IG contract fee assessment, which will not be separately identified, calculated or adjusted in the proposal or bid form or on behalf of the city.~~

2. The Office of the Inspector General is authorized to investigate city affairs and empowered to review past, present and proposed city programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor city projects and programs. Monitoring of an existing city project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the contractor, its officers, agents and employees, lobbyists, city staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
3. Upon ten (10) days written notice to the contractor, the contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the contractor, its officers, agents and employees, lobbyists, city staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
4. The Inspector General shall have the right to inspect and copy all documents and records in the contractor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
5. The contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by

statute or by other clauses of this contract. In addition:

- i. If this contract is completely or partially terminated, the contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. The contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
6. The provisions in this section shall apply to the contractor, its officers, agents, employees, subcontractors and suppliers. The contractor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the contractor in connection with the performance of this contract.
7. Nothing in this section shall impair any independent right to the city to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the contractor or third parties.
- e. The provisions of this section shall not apply to any contract entered into prior to ~~March~~ April 1, 2020, or to any competitive solicitation issued prior to ~~March~~ April 1, 2020, provided, however, that the contract provisions set forth in subsection (d) may be incorporated in contracts or competitive solicitations prior to April 1, 2020, at the city manager's discretion.

SECTION 2. REPEALER.

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

SECTION 3. 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 4. 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 5. EFFECTIVE DATE.

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

PASSED AND ADOPTED this ____ day of _____, 2020.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions

~~Strikethrough~~ denotes deletions

~~Double Strikethrough~~ denotes deletions at Second Reading

Double Underline denotes additions at Second Reading

(Sponsored by Commissioner Mark Samuelian)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Joel Cant 1-2-20
City Attorney Date
RAP