

ORDINANCE NO. 2021- _____

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 AMENDING SECTION 2-378, ENTITLED "INSPECTOR GENERAL CONTRACT ALLOCATION," TO REPEAL PROVISIONS RELATING TO THE CONTRACT ALLOCATION METHODOLOGY UTILIZED FOR FUNDING THE OFFICE OF INSPECTOR GENERAL; 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, on January 15, 2020, the Mayor and City Commission adopted Ordinance No. 2020-4325 which created 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 certain City contracts; and

WHEREAS, the Administration and the Inspector General desire to repeal the contract allocation methodology codified in Section 2-378 of the City Code, to permit the City to adopt a more flexible internal service fund methodology for annual funding of the Office of Inspector General, similar to the approach utilized with other departments such as City Clerk-Central Services, Fleet Management, Information Technology, Property Management, Risk Management, and Medical & Dental Insurance; and

WHEREAS, the proposed Ordinance would otherwise leave intact the required contract provisions which provide audit and other rights to the Inspector General in connection with City contracts and competitive solicitations.

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 Provisions. ~~Allocation.~~

- a. ~~The inspector general may, on a random basis, perform reviews, audits, inspections, or investigations of any past, present, or proposed city 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) management agreements;~~
 - ~~(7) revenue-generating contracts, including, without limitation, concession agreements;~~
 - ~~(8) federal, state and local government agreements, including grants;~~
 - ~~(9) interlocal agreements;~~
 - ~~(10) grant agreements; and~~

~~(11) contracts for emergency purchases pursuant to section 2-396 of the city code.~~

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

~~e. 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 exempted from an allocation of funding to the OIG fund.~~

~~ad. All city contracts and competitive solicitations 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.
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 April 1, 2020, or to any competitive solicitation issued prior to April 1, 2020.~~

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 _____, 2021.

PASSED AND ADOPTED this ____ day of _____, 2021.

ATTEST:


Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner Mark Samuelian)

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney *PAZ*

2-26-21

Date