

# MIAMI BEACH

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## COMMISSION MEMORANDUM

TO: Honorable Mayor Dan Gelber and Members of the City Commission

FROM: Alina T. Hudak, City Manager  
Joseph M. Centorino, Inspector General



DATE: February 9, 2022

**SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING A POLICY ON INTERNAL CONTROLS FOR MAJOR CONSTRUCTION PROJECTS.**

### **RECOMMENDATION**

The City Manager and Inspector General recommend that the Mayor and City Commission approve the Resolution implementing a policy on internal controls for major construction projects.

### **BACKGROUND/ HISTORY**

In 2012, the City Commission adopted a revised Stormwater Master Plan and 20-year plan of investments for modernizing the City's aging gravity-based drainage system. In the years that followed, the Administration built pumping stations and drainage systems, raised the elevation of roads, and completed other neighborhood infrastructure improvements in low-lying neighborhoods.

As the City enters the second decade of its long march toward resiliency and sustainability, completing that journey will require the successful management of a construction projects with a combined value of approximately \$1 billion. Given the size of these investments and the accelerating rate of sea-level rise, it is imperative that these projects be completed on schedule, that they do not incur excessive cost overruns, and that they deliver the expected flood prevention Level of Service (LOS).

Achieving these objectives will require disciplined execution of the fundamentals of acquisition planning, contract administration and project management; rigorous compliance with applicable laws and regulatory requirements; and skillful management of the inherent financial and legal risks. Further, experience has shown that the success of these proposed projects will also depend on sustaining the confidence of regulatory agencies, the public, and members of the Commission in the Administration's stewardship.

### **ANALYSIS**

The primary purpose of adopting an enhanced system of internal controls for the contracting and management of major construction projects is to provide the Commission and City Manager with a reliable means of overseeing the City's most significant infrastructure investments, including those intended to reduce flooding and counter the existential threat of sea-level rise.

The attached city-wide policy incorporates best practices used by CIP and the Procurement Department, lessons learned from neighborhood improvement projects, and standards and practices recommended by GAO, the National Institute for Government Procurement (NIGP) and other entities. It was developed jointly by the City Administration and Office of Inspector

General (OIG), and addresses recommendations in a February 2021 report of the OIG's investigation of the Palm and Hibiscus Neighborhood Infrastructure Improvement Project.

Adoption of the policy by ordinance is essential to the policy's effectiveness. That official act will communicate the City's unequivocal support for compliance with applicable laws, regulations, and best practices. Additionally, it will establish a legal framework and transparent process for refining the policy as needed and help deter any future attempts to override the Administration's system of internal controls that apply to major construction projects. Finally, it will establish a baseline of processes and procedures that will assist auditors in identifying control deficiencies.

**SUPPORTING SURVEY DATA**

Not Applicable.

**FINANCIAL INFORMATION**

Not Applicable.

**CONCLUSION**

The City Manager and Inspector General recommend that the Mayor and City Commission approve the Resolution adopting a policy on internal controls for major construction projects.

## EXHIBIT "A"

### Management Policy for Internal Controls on Major Construction Projects

#### Section 1 – Definitions.

Architectural and Engineering Services means professional services of an architectural or engineering nature as defined by Section 287.055, Florida Statutes.

City's contingency means an amount approved by the City Commission to cover construction-related costs which were not foreseeable or quantifiable at the time design requirements were prepared for competitive bidding. The contingency amount is typically ten (10) percent of the contract amount. The City Commission approval authorizes the City Manager, or designee, to utilize the contingency at his/her discretion to defray any additional expenses relative to design and construction of the project, as well as additional expenses expressly chargeable to the City pursuant to the Contract Documents, including material changes. The contractor or design-build firm has no right or entitlement whatsoever to the City's contingency and any unused amounts in City's contingency remaining at the completion of the project shall accrue solely to the City.

Competitive sealed bidding means a procurement method based on an Invitation to Bid (ITB), which shall, at a minimum, include design requirements (as applicable), terms and conditions, and cost.

Competitive sealed proposals means the procurement method based on a Request for Proposals (RFP), which shall include specifications, design requirements (as applicable), terms and conditions, and cost. The RFP shall establish the evaluation criteria against which proposals will be evaluated. Proposals are typically evaluated and ranked by an Evaluation Committee appointed by the City Manager based on the evaluation criteria established in the RFP.

Construction documents means the written and graphic instructions necessary for the construction of a project that define the work and responsibilities required under a construction contract and are legally binding on the parties (City and Contractor).

Construction manager at-risk means a project delivery method that entails a contractual obligation to deliver the project within the agreed to Guaranteed Maximum Price (GMP). The construction manager acts as consultant to the owner in the development and design phases (often referred to as "preconstruction services") and as the equivalent of a general contractor during the construction phase.

Design-bid-build means a project delivery method for which the City sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

Design-build means a project delivery method in which the City enters into a single contract for design and construction of an infrastructure facility.

Design-build-finance-operate-maintain means a project delivery method in which the City enters into a single contract for design, finance, construction, maintenance, and operation of an infrastructure facility over a contractually defined period.

Design-build-operate-maintain means a project delivery method for which the City enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period.

Design Criteria Package (DCP) means concise specifications intended to be the baseline design requirements about project requirements to permit design-build firms to prepare a proposal in response to a request for proposal. The design criteria package must comply with the requirements set forth in Section 287.055, Florida Statutes.

Design Criteria Professional means an individual or firm that is duly licensed to practice architecture or engineering and who is employed by or under contract to the City to provide professional architecture or engineering services in connection with the preparation of the design criteria package for a particular project for which the design-build project delivery method will be used.

Design requirements means the written technical and contractual requirements of a project that should include (but not necessarily be limited to): the features, functions, characteristics, qualities, and properties that are required by the City; the anticipated or desired schedule or time for completion; and the estimated budget. Design requirements may be used synonymously with DCP, construction documents, and specifications, as applicable to a particular project.

Independent Cost Estimate means a cost estimate, prepared by an organization independent of the project design or construction phases, using the same detailed technical and relevant project information to establish or validate the anticipated construction costs.

Independent Reviewer Services are additional architectural and engineering services provided to the City in design-build-operate-maintain or design-build-finance-operate-maintain procurements. The function of the independent peer reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care. Services include (but are not limited to) constructability, estimating and inspection services.

Infrastructure Facility means a building, structure, or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, or facilities utilized by residents, visitors, or employees. Examples may include (but are not limited to) government buildings; educational facilities; public safety or judicial facilities; water, stormwater, wastewater facilities, and pumping stations; public roads and streets; public parking facilities; public transportation systems, including terminals.

Job Order Contract (JOC) means a contract for a fixed term or maximum dollar value in which a contractor is competitively selected to perform various separate job orders during the life of the contract, typically based on prices established in a construction task catalog and an agreed-to fee or multiplier.

Major Change means any change to the project scope that requires significant redesign or revision to any major design element or any change that may result in a project construction cost increase of more than 10%.

Major Construction Project means building, improving, renovating, restoring, altering, repairing or demolishing a city building or physical infrastructure asset with a construction value of \$5 million or greater.

Material Change means: (i) any change to a project's budget, construction contract or construction documents that would result in an overall increase or decrease in excess of five percent (5%) in cost; (ii) a change in the design intent of the project or additional scope that would add or decrease costs in excess of 5% of the overall value of the contract; or change in construction schedule in excess of 25% of the contract duration beyond the allowable delays stipulated in the contract.

Qualifications-based selection means the procurement method based on a Request for Qualifications (RFQ) which shall include the format for submitting qualifications-based proposals and the applicable terms and conditions. The RFQ shall establish the evaluation criteria against which proposals will be evaluated. Proposals are typically evaluated and ranked by an evaluation committee appointed by the City Manager based on the evaluation criteria established in the RFQ.

Responsible Director means the director of the department primarily responsible for the construction or design, of the project, as applicable.

## **Section 2 – Project Delivery Methods.**

1. Scope. This section specifies the allowed project delivery methods, except as provided in Section 3 (Small Purchases), Section 4 (Job Order Contracting), Section 5 (Continuing Contracts) and Section 6 (Emergency Procurements). Notwithstanding any project delivery method identified below, the Procurement Director may make a determination that an alternate project delivery method is better suited for the particular project.
2. Design-bid-build. For the design phase, a qualifications-based selection process shall be used to procure architectural and engineering services. For the construction phase, a competitive sealed bidding process should be used to procure construction in design-bid-build procurements, except in the case of contracts for construction manager at-risk for which competitive sealed proposals or qualifications-based selection process should be used.
  - a. Prior to issuing a solicitation for the construction phase of the design-bid-build project delivery method, the responsible director must affirm the following:
    - i. Construction documents have been completed and submitted to the Procurement Department for inclusion in the solicitation.
    - ii. The Budget Department has confirmed the availability of funding for the construction phase.
    - iii. For projects with an estimated construction cost greater than \$5 million, an independent cost estimate has been completed and submitted to the Procurement Department.
3. Design-build. A competitive sealed proposals process should be used to procure contracts for the design-build project delivery method, except in the case of progressive design build procurements for which a qualifications-based selection should be utilized.
  - a. Prior to issuing a solicitation for the construction phase of the design-build project delivery method, the responsible director must affirm the following:
    - i. The DCP has been completed, signed/sealed by the design criteria professional, and submitted to the Procurement Department for inclusion in the solicitation.
    - ii. The Budget Department has confirmed the availability of sufficient funding for the project.

iii. For projects with an estimated construction cost greater than \$5 million, an independent cost estimate has been completed and submitted to the Procurement Department.

4. Design-build-operate-maintain and design-build-finance-operate-maintain. A competitive sealed proposals process shall be used to procure contracts for the design-build-operate-maintain or design-build-finance-operate-maintain project delivery methods.

a. Prior to issuing a solicitation for the design-build-operate-maintain or design-build-finance-operate-maintain project delivery methods, the responsible director must affirm:

i. The DCP has been completed, signed/sealed by the design criteria professional, and submitted to the Procurement Department for inclusion in the solicitation.

ii. The Budget Department has confirmed the availability of sufficient funding for the project.

iii. For projects with an estimated construction cost greater than \$5 million, an independent cost estimate has been completed and submitted to the Procurement Department.

### **Section 3 – Small Purchases.**

1. Scope. Projects with a value estimated at less than the formal bid threshold, pursuant to Section 2-366 of the City Code, may be procured through open market procedures as stipulated in Administrative Order PO.16.02 or, in the case of electrical projects, up to \$75,000, pursuant to Section 255.20, Florida Statutes, except as provided in Section 4 (Job Order Contracting), Section 5 (Continuing Contracts) and Section 6 (Emergency Procurements). Notwithstanding, the requirements of Section 10 (Performance and Payment Bonds) shall apply to any project with a value equal to or greater than \$200,000.

### **Section 4 – Job Order Contracting.**

1. Scope. Notwithstanding the requirements of this procedure, job order contracting may be utilized as a project delivery method providing that the requirements of the construction phase of the design-bid-build project delivery method with regard to the completion of construction documents and an independent cost estimate are met, as well as any applicable requirement relating to performance and payment bonds, prevailing wages and local workforce. Job Order Contracting may not be utilized on federal and state funded procurements without the prior written authorization of the funding agency.

### **Section 5 – Continuing Contracts.**

1. Scope. Continuing contracts for construction services (e.g., push button contracts) and design services, providing that the requirements of Sec. 287.055 have been met, are expressly allowed.

### **Section 6 – Emergency Procurements.**

1. Scope. Emergency goods and services shall be procured in accordance with Section J, Administrative Order PO.16.02.

### **Section 7 – Prevailing Wages and Local Workforce**

1. Scope. The requirements of Chapter 31 of the City Code shall apply to all contracts for construction services greater than \$1,500,000.

## **Section 8 – Federal Requirements**

1. Scope. The requirements of Administrative Order PO.16.06 shall apply to all contracts that are federally funded or subject to federal reimbursement requirements.

## **Section 9 – Bid Bonds**

1. Scope. All competitive solicitations for projects which are federally funded shall include the requirement that the bidder submit a bid bond in the amount stipulated in the funding agency agreement or in 2 CFR Part 200, Code of Federal Regulations, as applicable. For other projects, the competitive solicitation may require a bid bond if such is a requirement of a grant intended to fund any portion of the construction contract or, for non-grant projects, when deemed appropriate by the Procurement Director. For non-grant projects, the bid bond requirement shall not exceed five (5) percent of the estimate of the cost of the work. In the discretion of the bidder, the bid bond may be in the form of a cashier's check, bank money order, bank draft of any national or state bank, certified check, or surety bond, payable to the City.

## **Section 10 –Performance and Payment Bonds**

1. Scope. All contracts for construction services in excess of \$200,000 shall include a requirement that the contractor submit a performance and payment bond. The performance and payment bond shall be in an amount equal to 100% of the portion of the contract price for construction. Any change order that increases the amount of the project by more than \$100,000 shall require a review of the performance and payment bond. If the remaining contract amount, after payments have been applied, on the project plus the amount of the change order is less than or equal to the amount of the existing bond, there shall be no requirement for a new performance and payment bond. If the unpaid amounts on the project plus the amount of the change order is less than or equal to the amount of the existing bond, there shall be no requirement for a new performance and payment bond. If the remaining contract amount, after payments have been applied, on the project plus the amount of the change order is greater than 10% of the amount of the bond, the contractor may furnish a revised bond (or bond rider) for the remaining contract amount plus the change order.

## **Section 11 – Technical Review for Design-Build Projects**

1. Scope. The City's design criteria professional, and its sub-consultants, shall assist the City during the bidding and award phases of the design-build project delivery method. The design criteria professional must review and evaluate submissions from the design-build firms for completeness, technical compliance and satisfaction with the Design Criteria Package on its technical merits, including the technical proposal and the design-build coordination plan. The purpose of the technical review is to provide the city manager, responsible city director(s) and the evaluation committee with a written assessment of any material issues of compliance with the DCP for each submission by a design-build firm.
2. The design criteria professional will prepare an evaluation matrix comparing each submission and may be required to assist during any interviews with short-listed design-build firms. The design criteria professional may also be required to participate in pre-bid conferences, attend the bid opening and attend any presentations by the design-build firms, and assist during the negotiation phase of a contract with a selected design-build firm.

## **Section 12 – Construction Phase Requirements for Permits and Plans**

1. Permit Applications. Notwithstanding any provision in a City contract or the City Code, no City official shall sign a permit application for a major construction projects unless the City official who signs the application as permittee on behalf of the City has confirmed that the permit application and associated construction plans accurately and fully describe the project the City intends to construct.
2. Notice to Proceed. Notwithstanding any provision in a City contract or agreement, no city official shall issue a Notice to Proceed with the construction phase of a construction project until all required permits have been issued by all agencies having jurisdiction.
3. Precedence. Notwithstanding any provision in a City contract or the City Code, under no circumstances, including public emergencies, shall the approval of a project's plans by the responsible director supersede the project's permitted plans or substitute for any of the above.

## **Section 13 – Contract Modifications and Change Orders**

1. Scope. Notwithstanding any provision in a City contract or the City code, after award of a design, construction or Design-Build contract, no City official shall approve a major change in scope to the project until (a) the City Manager receives a fully executed "Request for Major Modification to the Project's Scope" report; (b) the City Manager submits the modification request to the Mayor and the City Commission; and (c) the Mayor and City Commission approves the major change. The City Manager shall have the authority and discretion to utilize the project's contingency as needed and in the best interest of the city to keep projects moving forward.

## **Section 14 – Request for Major Modification to the Project's Scope**

1. Scope. In the event that a major change in the project's scope is warranted, the Responsible City Department shall initiate, prepare and sign a "Request for Major Modification to the Project's Scope" ("Modification Request") and submit to the affected Department Directors and respective Assistant City Manager(s).

The Modification Request form shall include the following information:

- a) A summary of the current status of the project, including the percentage of the project's completion; the total amount expended to date; the estimated cost to complete the project without the major change; the project's current anticipated completion date.
- b) A detailed summary of all pertinent facts and circumstances that serve as the basis of the request; the expected benefits to the project of the change; the estimated increase in the cost of the project and impact on the schedule if the change is approved; and a cost-benefit analysis of the proposed change; any risks to the project's cost and/or schedule if the request for a major change is denied or delayed.
- c) A statement from the City Engineer, Architect/Engineer of Record, or Design Criteria Professional, as applicable, providing their evaluation of the requested change and the following issues: the extent to which the requested scope change will require changes to the project's basis of design criteria, design criteria package or actual permitted/construction plans;



any potential technical, architectural/engineering, or construction risks that could result from the change; and their assessment of any proposals by the Design-Builder or Contractor to mitigate such risks.

The Responsible Department Director shall sign the Modification Request and indicate their recommendations. The completed Modification Request shall be provided to the City Manager.