

ORDINANCE NO. 2017-_____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH RELATING TO THE PROCEDURES TO PROVIDE A VENDOR PREFERENCE IN THE AWARD OF CONTRACTS FOR GOODS AND CONTRACTUAL SERVICES, TO SMALL BUSINESSES OWNED AND CONTROLLED BY VETERANS OR STATE-CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISES, BY AMENDING CHAPTER 2, ENTITLED, "ADMINISTRATION," BY AMENDING ARTICLE VI, ENTITLED, "PROCUREMENT," BY AMENDING DIVISION 3, ENTITLED, "CONTRACT PROCEDURES," BY AMENDING SECTION 2-374, ENTITLED, "PROCEDURE TO PROVIDE PREFERENCE TO VETERANS IN CONTRACTS FOR GOODS AND CONTRACTUAL SERVICES," BY CREATING A SUBSECTION 4 THEREOF, TO DELEGATE TO THE CITY MANAGER THE AUTHORITY TO WAIVE THE REQUIREMENTS OF SECTION 2-374 IF THE CITY MANAGER FINDS SUCH A WAIVER TO BE REQUIRED FOR FEDERAL, STATE OR MIAMI-DADE COUNTY FUNDING ELIGIBILITY PURPOSES; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, on December 14, 2011, the City adopted City Ordinance No. 2011-3748, codified in Section 2-374 of the City Code, in order to increase contracting opportunities for small business concerns owned and controlled by veterans or certified service-disabled veteran business enterprises, consistent with Section 502 of the "Veterans Benefits, Health Care, and Information Technology Act of 2006" (the Federal Act), which allows for certain preferences in the award of contracts to such small business concerns, and Section 295.187 of the Florida Statutes; and

WHEREAS, from time to time, the City applies for Federal, State or Miami-Dade County funding in support of various capital projects in the best interests of the City, and such grants are often contingent on the City's compliance with the grantor agency's requirements; and

WHEREAS, notwithstanding that Federal and State laws encourage municipalities to support veterans and service-disabled veterans, and the strong public policy interests for providing a veterans preference in connection with the procurement of goods and services, the Florida Department of Transportation ("FDOT") has interpreted the City's veterans preference procedure as being somehow in conflict with Federal grant requirements, and FDOT has therefore requested that the City either waive the provisions of Section 2-374 of the City Code, or forego millions in Federal funding that the City is otherwise eligible for; and

WHEREAS, the City desires to amend Section 2-374 to delegate to the City Manager the authority to waive the requirements of Section 2-374, if such waiver is required for Federal, State, or Miami-Dade County funding eligibility purposes.

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

SECTION 1: That Chapter 2, Article VI, Division 3 of the Miami Beach City Code is hereby amended to create a new Section 2-374(4) as follows:

ARTICLE VI. PROCUREMENT

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DIVISION 3. CONTRACT PROCEDURES

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Sec. 2-374. - Procedure to provide preference to Veterans in contracts for goods and contractual services.

(1) *Definitions.* For purposes of this section only, the following definitions shall apply:

- (a) *Bid* shall mean a competitive procedure established by the City through the issuance of an invitation to bid (ITB), request for proposals (RFP), request for qualifications (RFQ), request for letters of interest (RFLI), or the solicitation of purchase orders based on oral or written quotations.
- (b) *Certified service-disabled veteran business enterprise* means an independently owned and operated business, domiciled in Florida, and as further defined under Section 295.187(3)(c) of the Florida Service-Disabled Veteran Business Enterprise Opportunity Act, as same may be amended from time to time, that has been certified by the Florida State Department Management Services to be a service-disabled veteran business enterprise.
- (c) *Service-disabled veteran* means a veteran who is a permanent Florida resident with a service-connected disability, as determined by the United States Department of Veterans Affairs, or who has been terminated from military service by reason of disability by the United States Department of Defense.
- (d) *Service-disabled business enterprise* means an independently owned and operated business, domiciled in Florida, and as further defined in Section 295.187(3)(c) of the "Florida Service-Disabled Veteran Business Enterprise Opportunity Act," as same may be amended from time to time .
- (e) *Small business concerns owned and controlled by veterans* means those independently owned and operated small businesses, as defined in Section 502 of

the Veterans Benefits, Health Care, and Information Technology Act of 2006, as same may be amended from time to time, which are also domiciled in Florida, and listed in the federal Database of Veteran-owned Businesses.

- (f) *Veteran* means a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions. For purposes of this section, the definition of "veteran" shall adopt the same definition as provided therefor in Section 1.01(14) , Florida Statutes, as same may be amended from time to time .
- (2) *Preference in purchase of goods or contractual services.*
- (a) *ITS's and requests for oral or written qualifications.* The city, when considering two (2) or more bids submitted pursuant to an ITS or an oral or written request for quotations for the purchase of goods or contractual services shall give a preference to a responsive and responsible bidder which is a small business concern owned and controlled by a veteran(s) or which is a service-disabled veteran business enterprise, and which is within five percent (5%) of the lowest and best bidder, by providing such bidder an opportunity of providing said goods or contractual services for the lowest responsive bid amount. Whenever, as a result of the foregoing preference, the adjusted prices of two (2) or more bidders which are a small business concern owned and controlled by a veteran(s) or a service-disabled veteran business enterprise constitute the lowest bid pursuant to an ITS or oral or written request for quotation, and such bids are responsive, responsible and otherwise equal with respect to quality and service, then the award shall be made to the service-disabled veteran business enterprise.
 - (b) *Request for proposals, request for qualifications, and request for letters of interest, and invitation to negotiate.* The city commission, or the city manager (in instances where such action has been delegated to the manager), in considering, determining, and/or approving the evaluation methodology, selection criteria, and/or other factors determined by the city to [be] applicable in the recommendation and selection of proposers submitting responses pursuant to an RFP, RFQ, or RFLI, as appropriate, shall include (as part of such evaluation methodology, selection criteria, and/or other applicable factors to be set forth and included within the RFP, RFQ, or RFLI document) and give an additional five (5) points (where the evaluation methodology is based on points system from 0 - 100 points), or an additional five percent (5%), (where the evaluation methodology is based on a percentage system from 0 - 100%), to proposers, which are, or include as part of their proposal team, a small business concern owned and controlled by a veteran(s) or a service-disabled veteran business enterprise. The additional points shall be applied by the city's procurement division of Miami Beach-based vendors following the completion of the allocation of points by the evaluation committee.
- (3) *Comparison of qualifications.* The preferences established herein in no way prohibit the right of the City Manager and/or the Mayor and City Commission, as applicable, to compare quality of goods and/or contractual services proposed for purchase and compare qualifications, character, responsibility and fitness of all person, firms, or corporations submitting bids. Further, the preferences established herein in no way prohibit the right of

the City Manager and/or the Mayor and City Commission, as applicable, from giving any other preference permitted by law in addition to the preferences granted herein.

- (4) The City Manager may waive the requirements of this section if the City Manager finds such a waiver to be required for Federal, State, or Miami-Dade County funding eligibility purposes.

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, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining 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 Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered 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 ten (10) days after its adoption.

PASSED and ADOPTED this _____ day of _____, 2017.

ATTEST:

MAYOR PHILIP LEVINE

RAFAEL E. GRANADO, CITY CLERK

Underline denotes additions

~~Strikethrough~~ denotes deletions

(Sponsored by City Commissioner Aleman)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Reel 3-15-17

City Attorney RAP Date