

ARTICLE VI. PROCUREMENT

DIVISION 1. GENERALLY

Sec. 2-311. Purpose.

The purpose of this article is to prescribe the manner in which the city shall control the purchase of materials, supplies, equipment and certain contractual services of the city, and to maintain a high ethical standard for all officers and employees of the city in connection therewith.

(Code 1964, § 31A-2)

Sec. 2-312. 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:

Contractual services include all telephone, gas, water, electric light and power service, towel and cleaning service, insurance, and other like services. The term "services" shall not include professional services unique in their nature and not subject to competition.

Purchasing agent or *agent* means the procurement director of the city.

Supplies includes all supplies, materials and equipment.

Using agency means any department, agency, commission, board, committee, authority, or other unit in the city government using supplies or procuring contractual services as provided for in this article.

(Code 1964, § 31A-3)

Cross references: Definitions generally, § 1-2.

Sec. 2-313. Requisition and estimates.

(a) All using agencies either by or with the authorization of the head of the department under which the using agency operates shall file with the procurement director detailed requisitions or estimates of their requirements in supplies and contractual services in such manner, at such times, and for such future period as the procurement director shall prescribe.

(b) A using agency shall not be prevented from filing, in the same manner, with the procurement director at any time a requisition or estimate for any supplies and contractual services the need for which was not foreseen when the detailed estimates were filed.

(Code 1964, § 31A-6)

Sec. 2-314. Encumbrance of funds.

Except in cases of emergency, the procurement director shall not issue any order for delivery on a contract or open market purchase until either the director of finance or accounting division supervisor shall have certified, after preaudit, that there is to the credit of the using agencies concerned a sufficient unencumbered appropriation balance, in excess of all unpaid obligations, to defray the amount of such order.

(Code 1964, § 31A-8)

Sec. 2-315. Surplus stock--Transfer, sale, auction, exchange, trade and donation.

(a) *Submittal to city manager or his designee.* All city departments shall submit to the city manager or his designee, at such times and in such form as the city manager or his designee shall prescribe, reports showing all surplus stock (i.e., all supplies, materials and/or equipment) that are no longer used or that have become obsolete, worn out or scrapped.

(b) *Transfer.* The city manager or his designee shall have the authority to transfer surplus stock to other city departments.

(c) *Sales or auctions.* The city manager or his designee shall have the authority to sell all surplus stock that has become unsuitable for public use. Sales under this section shall be made to the highest responsible bidder and in conformance with competitive conditions.

(d) *Exchanges or trades.* The city manager or his designee shall have the authority to exchange or trade in surplus stock that does not exceed a replacement value of \$25,000.00. City commission approval shall be obtained if the replacement value of the item to be exchanged or traded exceeds \$25,000.00.

(e) *Donations.* The city manager or his designee shall have the authority to donate surplus stock to another governmental entity, agency, or not-for-profit organization without placing the surplus stock for public sale if the donation serves a charitable or public purpose, the donation is in the best interest of the city, and the value does not exceed a replacement value of \$25,000.00. In such case, the city manager shall, after the fact, disclose to the city commission the value, condition, intended use of the surplus stock, and the manner in which the donation serves the best interest of the city. Donations with a replacement value in excess of \$25,000.00 must be approved by the city commission. In such latter case, prior to donation, the city manager shall disclose the value, condition, intended use of the surplus stock, and the manner in which the donation serves the best interest of the city. As to all donations, preference shall be given to donees within the city.

(Ord. No. 2002-3372, § 1, 6-19-02)

Secs. 2-316--2-335. Reserved.

DIVISION 2. PROCUREMENT DIRECTOR*

***Cross references:** Officers and employees generally, § 2-191 et seq.

Sec. 2-336. Position created.

There is hereby created the position of procurement director, who shall be supervisor of the procurement division, shall perform all duties required by law and such other duties as assigned by the city manager, and shall have the powers and duties prescribed by this division.

(Code 1964, § 31A-5)

Sec. 2-337. Appointment.

The procurement director shall be appointed by the city manager according to personnel regulations pertaining to the unclassified service.

(Code 1964, § 31A-5.a)

Sec. 2-338. Scope of purchasing authority.

The procurement director shall have the following powers and duties:

- (1) *Purchase or contract.* To perform the duties specified in this article in connection with the purchase or contract for purchases of all current supplies and contractual services needed by any using agency deriving its support wholly or in part from the city, when duly authorized, in accordance with purchasing procedures as prescribed by this article and such rules and regulations as may be adopted for the internal management and operation of the procurement division and such other rules and regulations as shall be prescribed by the city manager.
- (2) *Exceptions prohibited.* The authority of the procurement director to negotiate all purchases for all using agencies shall not be abridged, except as required by the Charter.
- (3) *Unauthorized purchases.* Except as provided in this article, it shall be unlawful for any city officer or other person to order the purchase of any material or supplies or make any contract for municipal materials or supplies within the purview of this article other than through the procurement division, and the city shall not be bound by any purchase order or contract made contrary to the provisions in this article.

(Code 1964, § 31A-5.b)

Sec. 2-339. Other powers and duties generally.

In addition to any other powers and duties conferred by this article, the procurement director shall:

- (1) *Minimum expenditure.* Act to procure for the city the highest quality in supplies and contractual services at least expense to the city.
- (2) *Encourage competition.* Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales.
- (3) *Rules and regulations.* Enforce all rules and regulations authorized by this article and any others necessary to its operation not in conflict with this article.

(4) *Purchasing analysis.* Keep informed of current developments in the field of purchasing, prices, market conditions and new products, and secure for the city the benefits of research conducted in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private businesses and organizations.

(5) *Procedures.* Prescribe and maintain a manual of purchasing procedures and provide same for all using agencies.

(6) *Forms.* Prescribe and maintain such forms as he shall find reasonably necessary to the operation of this article.

(7) *Standard nomenclature.* Prepare and adopt a standard purchasing nomenclature for using agencies and suppliers.

(8) *Vendor's catalog file.* Prepare, adopt and maintain a vendor's catalog file. Such catalog shall be filed according to materials and shall contain descriptions of vendor's commodities, prices and discounts.

(9) *Bulk purchases.* Exploit the possibilities of buying "in bulk" so as to take full advantage of discounts.

(10) *Tax exemptions.* Act so as to procure for the city all tax exemptions to which it is entitled.

(11) *Cooperation.* Cooperate with using agencies so as to secure for the city the maximum efficiency in budgeting and accounting.

(12) *Disqualification of bidders.* Have the authority to declare vendors who default their quotations irresponsible bidders and to disqualify them for receiving any business from the city for a stated period of time, subject to approval of the city manager.

(13) *Revisory power.* Examine each requisition or estimate and shall have the authority to revise it as to quantity or quality, but revision as to quality shall be in accordance with any standards or specifications established pursuant to this article. The procurement director shall further have the authority to require from the requesting agency any justification as may be needed to ascertain that the contemplated purchase falls within acceptable city requirements.

(Code 1964, § 31A-5.c)

Sec. 2-340. Regulations and procedures.

The procurement director is hereby authorized and directed to adopt such written regulations and procedures as may be necessary for the implementation of this article. Such regulations and procedures shall become effective when approved in writing by the city manager. Copies of the regulations shall be on file in the office of the procurement director and shall be made available for public inspection during normal business hours.

(Code 1964, § 31A-16)

Sec. 2-341. Inspection and testing.

(a) *Required.* The procurement director shall inspect or supervise the inspection of or cause to be inspected all deliveries of supplies or contractual services to determine their conformance with the specifications set forth in the order or contract.

(b) *Inspection by using agency.* The procurement director shall have the authority to authorize using agencies having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies under rules and regulations the procurement director shall prescribe.

(c) *Tests.* The procurement director shall have the authority to require chemical and physical test of samples submitted with bids and samples of deliveries necessary to determine their quality and conformance with the specifications. In the performance of such test, the procurement director shall have the authority to make use of laboratory facilities or any agency of the city government or of any outside laboratory.

(Code 1964, § 31A-22)

Sec. 2-342. Reserved.

Editor's note: Ord. No. 2002-3372, § 2, adopted June 19, 2002, repealed the former § 2-342, which pertained to surplus stock and derived from the Code of 1964, § 31A-23.

Sec. 2-343. Central warehousing.

- (a) *General control.* The procurement director shall control and supervise storerooms and warehouses and shall administer same.
- (b) *Accounting procedure.* Requisitions from supplies in a storeroom or warehouse shall be credited by the procurement director to the storeroom's revolving fund by a charge against the appropriation of the using agency.
- (c) *Inventory.* The procurement director shall maintain a perpetual inventory record of all materials, supplies or equipment stored in storerooms and warehouses.

(Code 1964, § 31A-24)

Secs. 2-344--2-365. Reserved.

DIVISION 3. CONTRACT PROCEDURES

Sec. 2-366. Generally.

- (a) *Bids required.* All supplies and equipment, except as otherwise provided in this division, when the estimated cost thereof shall exceed \$25,000.00, shall be purchased by formal, written contract and/or purchase order from the lowest and best responsible bidder, after due notice inviting proposals; however, the city commission shall have authority to waive execution of formal contract in cases where it deems it advisable to do so. All sales of personal property (except trade-in personal property) which has become obsolete and unusable, when the estimated value shall exceed \$25,000.00, shall be accomplished by formal written contract to the highest bidder, after due notice inviting proposals has been published as required by law.
- (b) *Notice inviting bids.*
 - (1) *Newspaper.* Notice inviting bids shall be published once in at least one official newspaper having general distribution in the city and at least five working days preceding the last day set for the receipt of proposals.
 - (2) *Scope of notice.* The newspaper notice required in subsection (b)(1) of this section shall include a general description of the articles to be purchased or sold and shall state where bid blanks and specifications may be secured and the time and place for opening bids.
 - (3) *Bidders' list.* The procurement director shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a bidders' list the procurement director shall maintain, by sending them a copy of such newspaper notices or such other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.
- (c) *Bid deposits.* When deemed necessary by the procurement director, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of surety where the procurement director has required such. A successful bidder shall forfeit any surety required by the procurement director upon failure on his part to enter a contract within 30 days after the award.
- (d) *Submission and opening of bids.*
 - (1) *Sealed bids.* Bids shall be submitted sealed to the procurement director and shall be identified as bids on the outside of the envelope.
 - (2) *Opening.* Bids shall be opened in public at the time and place stated in the public notices or to a publicly announced continued time certain for such lawful reason approved by the city attorney, and shall be witnessed and certified.
 - (3) *Tabulation.* A tabulation of all bids received shall be made and shall be available for public inspection.

(Code 1964, § 31A-9; Ord. No. 2001-3290, § 1, 1-31-01)

Sec. 2-367. Rejection of bids; negotiation; waiver of competitive bidding.

- (a) Except as further provided under subsections 2-367(b) and (c), generally, if a bid is \$25,000.00 or less, the city manager shall have the authority to reject any and all bids. Except as further

provided under subsections 2-367(b) and (c), generally, if the bid is in excess of \$25,000.00, the city commission shall have the authority to reject any and all bids.

(b) Where only one bid response is received, and/or the bid exceeds the budgeted amount, the city manager, without any action by the city commission, shall have the power to select one of the following options:

(1) Reject the bid and, if he determines that same is in the best interest of the city, readvertise the item for bidding; or

(2) Request that the city commission make additional funds available and proceed to negotiate an agreement with the sole bidder.

(c) Notwithstanding subsection 2-367(b), in bids for municipal construction projects, where the lowest and best bid exceeds the budgeted amount allocated toward the construction cost of the project, the city manager, without any action by the city commission, shall have the power to negotiate an agreement with the lowest and best bidder exceeding the budgeted amount of the work. If the city manager is unable to successfully negotiate an agreement with the lowest and best bidder, the city manager may terminate negotiations with such bidder and commence negotiations with the second lowest and best bidder. If the city manager is unable to successfully negotiate an agreement with the second lowest and best bidder, the city manager may terminate negotiations with the second bidder and commence negotiations with the third lowest and best bidder.

(d) The procurement director, with approval of the city manager, for contracts of \$25,000.00 dollars or less, or the city commission, by simple majority vote, for contracts in excess of \$25,000.00, shall have the power to negotiate those contracts and purchases where only one source for the product or service is evident. A sole-source purchase shall be defined as goods and/or services for which the availability of multiple vendors who could compete as bidders is precluded. Before any sole-source purchase can be made, the using agency shall submit justification in writing, together with all supporting documentation, to the procurement director, stating that the proposed supplier is the only source of supply of the desired goods and/or services, and that there is no other supplier or authorized repair/service center (as applicable). The supporting documentation shall include a written quotation with terms and conditions of sale. In addition, the using agency shall obtain the written determination from an industry expert or consultant that the item or service is the only one available to fulfill the city's need. For purposes of this article, trademarks alone, and commodity type products, lacking differentiating characteristics from similar products, shall not be considered for sole-source purchases.

(e) The city commission, upon written recommendation of the city manager, may by resolution adopted by a five-sevenths vote of the city commission waive competitive bidding when the city commission finds such waiver to be in the best interest of the city. In the event of such a waiver the city commission may authorize the execution of a negotiated contract.

(Code 1964, § 31A-10; Ord. No. 96-3065, § 1, 12-18-96; Ord. No. 2001-3290, § 1, 1-31-01; Ord. No. 2003-3390, § 1, 2-5-03)

Sec. 2-368. Waiver of irregularities.

The city commission shall have the authority to waive any and all irregularities in any and all formal bids.

(Code 1964, § 31A-11)

Sec. 2-369. Award of contract.

All contracts, when the sum is \$10,000.00 or less, shall be awarded by the procurement director to the lowest and best bidder. All contracts, when the sum is in excess of \$10,000.00 and not exceeding \$25,000.00 shall be awarded by the city manager, or his designee, to the lowest and best bidder. When the amount of a contract is in excess of \$25,000.00, the city commission shall award the contract to the lowest and best bidder, or may delegate to the city manager the power to award such contract to the lowest and best bidder; however, the purchase of commodities, materials, supplies or other items on a continuing basis from Miami-Dade County; from the School Board of Miami-Dade County; from the U.S. Communities Government Purchasing Alliance or from state or federal general services administration bid lists may be approved by the city manager without any action by the city commission, even though the total cost of such commodities, materials, supplies or other items may exceed \$25,000.00 over a one-year period; provided that prior to approval of such purchases, the city manager shall prepare, or cause to

be prepared, a written analysis, in such form and manner as shall be determined by the city manager, which shall include a justification as to why it is in the city's best interest to purchase the particular commodities, materials, supplies, or items on a continuing basis from the entities set forth in this section 2-369. In determining the lowest and best bidder, in addition to price, there shall be considered the following:

- (1) The ability, capacity and skill of the bidder to perform the contract.
- (2) Whether the bidder can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality of performance of previous contracts.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.

(Code 1964, §§ 31A-12, 31A-19; Ord. No. 2001-3290, § 1, 1-31-01; Ord. No. 2003-3390, § 1, 2-5-03; Ord. No. 2004-3449, § 1, 6-9-04)

Sec. 2-370. Award of contract to other than low bidder.

(a) When a contract award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the procurement director, included in the minutes typed on the tabulation sheet, which must be signed by the procurement director and filed with the other papers relating to the transaction.

(b) Award of all tie bids of \$10,000.00 value or less shall be made by the procurement director. All tie bids in excess of \$10,000.00 but not exceeding \$25,000.00 shall be awarded by the city manager or his designee.

(Code 1964, §§ 31A-13, 31A-19; Ord. No. 2001-3290, § 1, 1-31-01)

Sec. 2-371. Authority to resolve protested bids and proposed awards.

(a) Right to protest. Any actual bidder, qualified proposer, or interested parties (hereinafter collectively referred to as the "bidder") who has a substantial interest in, and is aggrieved in connection with the solicitation or proposed award of, a request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI") or invitation for bid for goods and/or services ("hereinafter, collectively referred to as the bid") may protest to the city manager or his or her designee. Protests arising from the decisions and votes of any evaluation or selection committee shall be limited to protests based upon alleged deviation(s) from established purchasing procedures set forth in this Code, any written guidelines of the procurement department, and the specifications, requirements and/or terms set forth in any bid.

(1) Any protest concerning the bid specifications, requirements, and/or terms must be made within three business days (for the purposes of this section, "business day" means a day other than Saturday, Sunday or a national holiday), from the time the facts become known and, in any case, at least two business days prior to the opening of the bid. Such protest must be made in writing to the city manager or his or her designee, and such protest shall state the particular grounds on which it is based and shall include all pertinent documents and evidence. No bid protest shall be accepted unless it complies with the requirements of this section. Failure to timely protest bid specifications, requirements and/or terms is a waiver of the ability to protest the specifications, requirements and/or terms.

(2) Any protest after the bid opening, including challenges to actions of any evaluation or selection committee as provided in subsection (a) above shall be submitted in writing to the city manager, or his or her designee. The city will allow such bid protest to be submitted anytime until two business days following the release of the city manager's written recommendation to the city commission, as same is set forth and released in the city commission agenda packet, for award of the bid in question. Such protest shall state the particular grounds on which it is based and shall include all pertinent grounds on which it is based, and shall include all pertinent documents and evidence. No bid protest shall be accepted unless it complies with the requirements of this section. All actual bidders shall be notified in writing (which may be transmitted by electronic communication, such as facsimile transmission and/or e-mail), following the release of the city manager's written recommendation to the city commission.

(b) Any bidder who is aggrieved in connection with the solicitation or proposed award of a purchase order based on an oral or written quotation may protest to the city manager or his or her designee anytime during the procurement process, up to the time of the award of the purchase order, but not after such time. Such protest shall be made in writing and state the particular grounds on which it is based and shall include all pertinent documents and evidence. No bid protest shall be accepted unless it complies with the requirements of this section.

(c) The city may request reasonable reimbursement for expenses incurred in processing any protest hereunder, which expenses shall include, but not be limited to, staff time, legal fees and expenses (including expert witness fees), reproduction of documents and other out-of-pocket expenses.

(d) Authority to resolve protests. The city manager or his or her designee shall have the authority to settle and resolve a protest concerning the solicitation or award of a bid.

(e) Responsiveness. Prior to any decision being rendered under this section with respect to a bid protest, the city manager and the city attorney, or their respective designees, shall certify whether the submission of the bidder to the bid in question is responsive. The parties to the protest shall be bound by the determination of the city manager and the city attorney with regard to the issue of responsiveness.

(f) Decision and appeal procedures. If the bid protest is not resolved by mutual agreement, the city manager and the city attorney, or their respective designees, shall promptly issue a decision in writing. The decision shall specifically state the reasons for the action taken and inform the protestor of his or her right to challenge the decision. Any person aggrieved by any action or decision of the city manager, the city attorney, or their respective designees, with regard to any decision rendered under this section may appeal said decision by filing an original action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in accordance with the applicable court rules. Any action not brought in good faith shall be subject to sanctions including damages suffered by the city and attorney's fees incurred by the city in defense of such wrongful action.

(g) Distribution. A copy of each decision by the city manager and the city attorney shall be mailed or otherwise furnished immediately to the protestor.

(h) Stay of procurements during protests. In the event of a timely protest under this section, the city shall not proceed further with the solicitation or with the award pursuant to such bid unless a written determination is made by the city manager, that the award pursuant to such bid must be made without delay in order to protect a substantial interest of the city.

(i) The institution and filing of a protest under this Code is an administrative remedy that shall be employed prior to the institution and filing of any civil action against the city concerning the subject matter of the protest.

(j) Protests not timely made under this section shall be barred. Any basis or ground for a protest not set forth in the letter of protest required under this section shall be deemed waived.

(k) At the time the city manager's written recommendation for award of a bid is presented at a meeting of the mayor and city commission, the city attorney, or his or her designee, shall present a report to inform the mayor and city commission of any legal issues relative to any bid protest filed in connection with the bid in question.

(l) The determination of the city manager and the city attorney with regards to all procedural and technical matters shall be final.

(Ord. No. 2002-3344, § 1, 12-19-01)

Sec. 2-372. Procedure to provide preference to Miami Beach-based vendors in contracts for goods and general services.

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

(1) *Bid* shall mean a competitive bid procedure established through the issuance of an invitation to bid. The term "bid," as used herein, shall not include requests for proposals, requests for qualifications, requests for letters of interest, or the solicitation of purchase orders based on oral or written quotations.

(2) *General services* means support services performed by an independent contractor requiring specialized knowledge, experience, or expertise that includes, but is not limited to,

pest control, janitorial, laundry, catering, security, lawn maintenance and maintenance of equipment, framing, and film development.

(3) *Goods* includes, but is not limited to, supplies, equipment, materials and printed matter.

(4) *Miami Beach-based vendor* means a bidder that has a valid occupational license issued by the city, which authorizes said vendor to provide the subject goods and/or services, and has its headquarters in the city, or has a place of business located in the city at which it will produce the goods or perform the services to be purchased. The city manager shall administratively resolve any issues relating to a vendor's status as a Miami Beach-based vendor, and his decision on whether a vendor is a Miami Beach-based vendor shall be final.

(b) Exemptions.

(1) The provisions of this section, shall not apply, and no local preference shall be accorded hereunder, to bids or proposal procedures for professional services, which are defined, for purposes of this section, as any services where the city is obtaining advice, instruction, or specialized work from an individual, firm, or corporation specifically qualified in a particular area, and also those services procured pursuant to F.S. § 287.055.

(2) The provisions of this section shall not apply, and no local preference shall be accorded hereunder, to bids and/or the solicitation or proposed award of a purchase order based on an oral or written quotation for the purchase of, or contract for, the construction/renovation of public buildings, facilities, public works, or other public capital construction projects.

(c) Preference in purchase of goods or general services. Except where federal or state law mandates to the contrary, in the purchase of goods or general services by means of a competitive bid, a preference will be given to a responsive and responsible Miami Beach-based vendor, who is within five percent of the lowest and best bidder, an opportunity of providing said goods or general services for the lowest responsive bid amount.

(d) Whenever, as a result of the foregoing preference, the adjusted prices of two or more Miami Beach-based vendors constitute the lowest bid for a competitively bid purchase, and such bids are responsive and otherwise equal with respect to quality and service, then the award shall be made to the Miami Beach-based vendor having the greatest number of its employees that are Miami Beach residents.

(e) Whenever, two or more Miami Beach-based vendors have the same number of its employees that are Miami Beach residents, then the award shall be made to the Miami Beach-based vendor who is certified by Miami-Dade County as a minority or women business enterprise.

(f) 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 materials 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 instead of the preferences granted herein.

(Ord. No. 2003-3413, § 1, 6-11-03)

Sec. 2-373. Requirement for city contractors to provide equal benefits for domestic partners.

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

(1) *Benefits* means the following plan, program or policy provided or offered by a contractor to its employees as part of the employer's total compensation package: sick leave, bereavement leave, family medical leave, and health benefits.

(2) *Bid* shall mean a competitive bid procedure established by the city through the issuance of an invitation to bid, request for proposals, request for qualifications, or request for letters of interest.

(3) *Cash equivalent* means the amount of money paid to an employee with a domestic partner (or spouse, if applicable) in lieu of providing benefits to the employee's domestic partner (or spouse, if applicable). The cash equivalent is equal to the employer's direct expense of providing benefits to an employee for his or her spouse.

Cash equivalent. The cash equivalent of the following benefits apply:

a. For bereavement leave, cash payment for the number of days that would be allowed as paid time off for the death of a spouse. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.

b. For health benefits, the cost to the contractor of the contractor's share of the single monthly premiums that are being paid for the domestic partner employee, to be paid on a regular basis while the domestic partner employee maintains such insurance in force for himself or herself.

c. For family medical leave, cash payment for the number of days that would be allowed as time off for an employee to care for a spouse who has a serious health condition. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.

(4) *Contract* means any written agreement, purchase order, standing order or instrument entered into pursuant to the award of a bid whereby the city is committed to expend or does expend funds in return for work, labor, professional services, consulting services, supplies, equipment, materials, construction, construction related services or any combination of the foregoing.

(5) *Contractor* means any person or persons, sole proprietorship, partnership, joint venture, corporation, or other form of doing business, that is awarded a bid and enters into a covered contract with the city, and which maintains 51 or more full-time employees on the payroll during 20 or more calendar work weeks in either the current or the preceding calendar year. Work weeks include consecutive and nonconsecutive work weeks.

(6) *Covered contract* means a contract between the city and a contractor awarded subsequent to the date when this section becomes effective valued at over \$100,000.

(7) *Domestic partner* shall mean any two adults of the same or different sex, who have registered as domestic partners with a governmental body pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least one of the domestic partners. A contractor may institute an internal registry to allow for the provision of equal benefits to employees with domestic partner who do not register their partnerships pursuant to a governmental body authorizing such registration, or who are located in a jurisdiction where no such governmental domestic partnership registry exists. A contractor that institutes such registry shall not impose criteria for registration that are more stringent than those required for domestic partnership registration by the City of Miami Beach.

(8) *Equal benefits* means the equality of benefits between employees with spouses and employees with domestic partners, and/or between spouses of employees and domestic partners of employees.

(b) *Equal benefits requirements.*

(1) All bids for covered contracts which are issued on or after the effective date of this section shall include the requirement to provide equal benefits in the procurement specifications for such bids.

(2) The city shall not enter into any covered contract unless the contractor certifies that such contractor does not discriminate in the provision of benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees.

(3) Such certification shall be in writing and shall be signed by an authorized officer of the contractor and delivered, along with a description of the contractor's employee benefits plan, to the city's procurement director prior to entering into such covered contract.

(4) The city manager or his/her designee shall reject a contractor's certification of compliance if he/she determines that such contractor discriminates in the provision of benefits or if the city manager or designee determines that the certification was created, or is being used for the purpose of evading the requirements of this section.

(5) The contractor shall provide the city and/or the city manager or his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this section, and upon request shall provide evidence that the contractor is in compliance with the provisions of this section upon each new bid, contract renewal, or when the city manager has received a complaint or has reason to believe the contractor may not be in compliance with the provisions of this section. This shall include but not be limited to providing the city and/or the city manager or his/her designee with certified copies of all of the

contractor's records pertaining to its benefits policies and its employment policies and practices.

(6) The contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Miami Beach, Florida, the contractor will provide Equal Benefits to its employees with spouses and its employees with domestic partners."

The posted statement must also include a city contact telephone number which will be provided each contractor when the covered contract is executed.

(7) The contractor may not set up or use its contracting entity for the purpose of evading the requirements imposed by this section.

(c) *Other options for compliance.* Provided that the contractor does not discriminate in the provision of benefits, a contractor may also comply with this section in the following ways:

(1) The contractor may provide an employee with the cash equivalent of such benefit or benefits, if the city manager or his/her designee determines that either:

a. The contractor has made a reasonable yet unsuccessful effort to provide equal benefits. The contractor shall provide the city manager or his/her designee with sufficient proof of such inability to provide such benefit or benefits which shall include the measures taken to provide such benefits or benefits and the cash equivalent proposed, along with its certificate of compliance, as is required under subsection (b) of this section. The city manager or his designee shall, based on submitted evidence, determine whether the contractor's failure to provide such benefit or benefits precludes such contractor from entering into a covered contract pursuant to the requirements of this section; or

b. Under the circumstances, it would be unreasonable to require the contractor to provide benefits to the domestic partner (or spouse, if applicable).

(2) The contractor provides benefits neither to employees' spouses nor to employees' domestic partners.

(d) *Applicability.*

(1) Unless otherwise exempt, a contractor is subject to and shall comply with all applicable provisions of this section.

(2) The requirements of this section shall apply to contractor's operations as follows:

a. Employees of a contractor with a covered contract who work within the city limits of the City of Miami Beach, Florida; and

b. The contractor's employees located in the United States, but outside of the City of Miami Beach limits, if those employees are directly performing work on the covered contract within the City of Miami Beach.

(e) *Mandatory contract provisions pertaining to equal benefits.* Unless otherwise exempt, every covered contract shall contain language that obligates the contractor to comply with the applicable provisions of this section. The language shall include provisions for the following:

(1) During the performance of the covered contract, the contractor certifies and represents that it will comply with this section.

(2) The failure of the contractor to comply with this section will be deemed to be a material breach of the covered contract.

(3) If the contractor fails to comply with this section, the city may terminate the covered contract and all monies due or to become due under the covered contract may be retained by the city. The city may also pursue any and all other remedies at law or in equity for any breach.

(4) If the city manager or his designee determines that a contractor has set up or used its contracting entity for the purpose of evading the requirements of this section, the city may terminate the covered contract.

(5) Failure to comply with this section may subject the contractor to the procedures set forth in Division 5 of this article, entitled "Debarment of contractors from city work."

(f) *Enforcement.* If the contractor fails to comply with the provisions of this section:

(1) The failure to comply may be deemed to be a material breach of the covered contract; or

(2) The city may terminate the covered contract; or

- (3) Monies due or to become due under the covered contract may be retained by the city until compliance is achieved; or
 - (4) The city may also pursue any and all other remedies at law or in equity for any breach;
 - (5) Failure to comply with this section may also subject contractor to the procedures set forth in Division 5 of this article, entitled "Debarment of contractors from city work."
- (g) *Nonapplicability, exceptions and waivers.*
- (1) The provisions of this section shall not apply where:
 - a. The contractor provides benefits neither to employees' spouses nor to employees' domestic partners.
 - b. The contractor is a religious organization, association, society or any non-profit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.
 - c. The contractor is a governmental entity.
 - (2) The provisions of this section shall not apply to covered contracts which involve:
 - a. The sale or lease of city property.
 - b. Development agreements entered into pursuant to F.S. § 163.3220, (the "Florida Local Government Development Agreement"), as same may be amended.
 - c. The award, pursuant to competitive processes, of CDBG, HOME, SHIP and Surtax Funds administered by the city's Office of Community Development.
 - d. The award, pursuant to competitive processes, of Cultural Arts Council Grants.
 - e. The acquisition of professional architectural, engineering, landscape architectural, or survey and mapping services procured pursuant to Chapter 287.055, Florida Statutes (the "Consultants' Competitive Negotiation Act"), as same may be amended.
 - f. The procurement of life, health, accident, hospitalization, legal expense, annuity insurance, or all or any kinds of other insurance for the officers and employees of the city, and for the dependents of such officers and employees, from a group insurance plan.
 - (3) Upon the request and written recommendation of the city manager, the city commission may, by resolution adopted by a five-sevenths vote of the city commission, waive compliance of this section under the following circumstances:
 - a. The covered contract is necessary to respond to an emergency, where the existence of an emergency is requested, upon written recommendation of the city manager, and same is determined by the city commission. for purposes of waiver under this subsection only, in determining whether there is an emergency, the city commission may consider the following nonexclusive factors:
 1. The nature of the covered contract;
 2. The length of the covered contract;
 3. The cost of the covered contract;
 4. Whether grants are involved in the covered contract and the requirements of those grants
 5. Whether there is a need to have materials, goods, and services furnished immediately and the consequences of a delay in having those materials, goods, and services furnished;
 6. The monetary consequences if action is not taken immediately;
 7. Any health, safety, and welfare issues that may be involved.
 8. Increased labor costs, and scheduling of labor;
 9. The need to complete work before a strict deadline; or
 10. The impact of delaying one phase or portion of a project on the other phase(s) or portion(s) of the project.
 - b. Where only one bid response is received;
 - c. Where more than one bid response is received, but the bids demonstrate that none of the bidders can comply with the requirements of this section, and one or more of the bids received would otherwise have been responsive if compliance with this section would not have been listed as a requirement in the bid specifications;
 - d. Where more than one bid response is received and bid responses are received from:

1. One or more bidders that comply with the requirements of this section and are otherwise responsive; and
 2. One or more bidders that do not or cannot comply with the requirements of this section, but would otherwise have been responsive if compliance with this section would not have been listed as a requirement in the bid specifications; and
 3. The procurement director's review of the bids demonstrates that the cost of the bid (and/or the proposed covered contract which may be negotiated for such bid), as submitted by the lowest responsive bidder which complies with the requirements of this section (or, in the case of a proposal, the proposal of the top-ranked proposer), would be at least five percent, or \$250,000 (whichever is less), greater than the lowest responsive bid submitted by the bidder which does not comply with the requirements of this section but would otherwise have been responsive if compliance with this section would not have been listed as a requirement in the bid specifications (or, in the case of a proposal, where the top-ranked proposer which does not comply with the requirements of this section, but would otherwise have been responsive if compliance with this section would not have been listed as a requirement in the bid specifications);
- then, upon request and written recommendation of the city manager, the city commission may, by resolution adopted by a five-sevenths vote of the city commission, waive compliance of this section, and award the bid to the lowest bidder (or, if a proposal, to the top ranked proposer) which does not comply with the requirements of this section but would otherwise have been responsive if compliance with this section would not have been listed as a requirement in the bid specifications.

(h) *Consistency with federal or state law.* The provisions of this section do not apply where the application of these provisions would violate or be inconsistent with the laws, rules or regulations of federal or state law, or where the application would violate or be inconsistent with the terms or conditions of a grant or contract with the United States of America, the State of Florida, or the instruction of an authorized representatives of any of these agencies with respect to any grant or contract.

(i) *[City's authority to cancel contract.]* Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a nonresponsibility finding, issue a nonresponsiveness finding, deny a person or entity prequalifications, or otherwise deny a person or entity city business.

(j) *Timing of application.* This section shall be applicable only to covered contracts awarded pursuant to bids which are issued six months from the date when this section becomes effective.

(Ord. No. 2005-3494, § 1, 10-19-05)

Secs. 2-374--2-390. Reserved.

DIVISION 4. PURCHASES

Sec. 2-391. Standardization and cooperative purchasing.

(a) Where standardization is determined to be desirable by the procurement director, the purchase of materials, supplies and equipment and certain contractual services may be by negotiation with the written approval of the city manager.

(b) The procurement director shall have the authority to join with other units of governments in cooperative purchasing ventures when the best interest of the city would be served thereby, and the same is in accordance with the city and state law.

(Code 1964, § 31A-14)

Sec. 2-392. Performance and payment bond.

A contractor or vendor shall provide a corporate surety bond from a surety company authorized to do business in the state to guarantee the full and faithful performance of his contract obligations and the payment of labor and material expended pursuant to the contract whenever and in such amounts as is deemed necessary by the procurement director. All such bonds shall be approved as to form by the city attorney.

(Code 1964, § 31A-15)

Sec. 2-393. Unauthorized purchases.

(a) *Purchases to be made only by procurement director.* It shall be unlawful for any city officers or employees to order the purchase of any materials, supplies, equipment and certain contractual services, or make any contract within the purview of this article other than through the procurement director, and any purchase, order or contract made contrary to the provisions of this article shall not be approved and the city shall not be bound thereby.

(b) *Exceptions prohibited.* There shall be no exceptions by any using agency to the above provisions except as may be specifically authorized by the city manager in writing, stating the reasons for such exceptions.

(c) *Emergency.* This section shall not apply to any emergency purchase subsequently approved by the procurement director or city manager upon justification by the using agency.

(Code 1964, § 31A-17)

Sec. 2-394. Subdivision of contracts or purchases prohibited.

No contract or purchase shall be subdivided to avoid the requirements of this article.

(Code 1964, § 31A-18)

Sec. 2-395. Open market procedures.

All purchasing of supplies and contractual services of a total estimated value not exceeding \$25,000.00 may be made in the open market without newspaper advertisement and without observing the procedure prescribed by this article for formal purchasing or sales procedures.

(1) *Minimum number of bids.* All open market procedures or sales shall, whenever possible, be based on at least three competitive bids and shall be awarded to the lowest responsible bidder in accordance with the standards set forth in this article or to the highest responsible bidder in case of a sale.

(2) *Invitation of bids.* The procurement director may solicit either oral or written bids for open market pricing or sale but shall use all reasonably available and current bidders and supply lists.

(3) *Public record.* The procurement director shall keep a record of all open market bids submitted in competition thereon, and such records shall be open to public inspection.

(Code 1964, § 31A-20; Ord. No. 2001-3290, § 1, 1-31-01)

Sec. 2-396. Emergency purchases.

(a) *City manager.* In case of an apparent emergency requiring immediate purchase of supplies or contractual service, the city manager shall be empowered to authorize the procurement director to secure by open market procedure at the lowest obtainable price, any supplies or contractual services not exceeding \$25,000.00. The city manager has the authority to act in the case of an emergency that might affect the health, safety and welfare of the city. Such action shall be reported at the next regular meeting of the city commission when supplies or services exceed \$25,000.00.

(b) *Head of department.* In case of actual emergency, and with the prior consent of the procurement director, and the prior approval of the city manager, the head of any using agency may purchase directly any supplies whose immediate procurement is essential to prevent delays in the work of the using agency that may vitally affect the life, health or convenience of citizens. The head of such using agency shall send to the procurement director a requisition and a copy of the delivery record, together with a full written report of the circumstances of the emergency.

(Code 1964, § 31A-21; Ord. No. 2001-3290, § 1, 1-31-01)

DIVISION 5. DEBARMENT OF CONTRACTORS FROM CITY WORK

Sec. 2-397. Purpose of debarment.

(a) The city shall solicit offers from, award contracts to, and consent to subcontractors with responsible contractors only. To effectuate this policy, the debarment of contractors from city work may be undertaken.

(b) The serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the city's protection, and not for purposes of punishment. Debarment shall be imposed in accordance with the procedures contained in this division.

(Ord. No. 2000-3234, § 1, 2-23-00)

Sec. 2-398. Definitions.

As used in this division:

(a) *Affiliates*. Business concerns, organizations, lobbyists or other individuals are affiliates of each other if, directly or indirectly, (i) either one controls or has the power to control the other, or (ii) a third party controls or has the power to control both. Indicia of control include, but are not limited to, a fiduciary relation which results from the manifestation of consent by one individual to another that the other shall act on his behalf and subject to his control, and consent by the other so to act; interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or a business entity organized by a debarred entity, individual, or affiliate following debarment of a contractor that has the same or similar management, ownership, or principal employees as the contractor that was debarred or suspended.

(b) *Civil judgment* means a judgment or finding of a civil offense by any court of competent jurisdiction.

(c) *Contractor* means any individual or other legal entity that:

(1) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a city contract, including, but not limited to, vendors, suppliers, providers, bidders, proposers, consultants, and/or design professionals; or

(2) Conducts business, or reasonably may be expected to conduct business, with the city as an agent, representative or subcontractor of another contractor.

(d) *Conviction* means a judgment or conviction of a criminal offense, be it a felony or misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a convictions entered upon a plea of nolo contendere.

(e) *Debarment* means action taken by the debarment committee to exclude a contractor (and, in limited instances specified in this ordinance, a bidder or proposer) from city contracting and city approved subcontracting for a reasonable, specified period as provided in subsection (j) below; a contractor so excluded is debarred.

(f) *Debarment committee* means a group of seven individual members, each appointed by the mayor and individual city commissioners, to evaluate and, if warranted, to impose debarment.

(g) *Greater weight of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(h) *Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Legal proceeding* means any civil judicial proceeding to which the city is a party or any criminal proceeding. The term includes appeals from such proceedings.

(j) *List of debarred contractors* means a list compiled, maintained and distributed by the city's procurement office, containing the names of contractors debarred under the procedures of this division.

(Ord. No. 2000-3234, § 1, 2-23-00)

Sec. 2-399. List of debarred contractors.

(a) The city's procurement office, as the agency charged with the implementation of this division, shall:

(1) Compile and maintain a current, consolidated list (list) of all contractors debarred by city departments. Such list shall be public record and shall be available for public inspection and dissemination;

(2) Periodically revise and distribute the list and issue supplements, if necessary, to all departments, to the office of the city manager, and to the mayor and city commissioners; and

(3) Included in the list shall be the name and telephone number of the city official responsible for its maintenance and distribution.

- (b) The list shall indicate:
 - (1) The names and addresses of all contractors debarred, in alphabetical order;
 - (2) The name of the department that recommends initiation of the debarment action;
 - (3) The cause for the debarment action, as is further described herein, or other statutory or regulatory authority;
 - (4) The effect of the debarment action;
 - (5) The termination date for each listing;
 - (6) The contractor's certificate of competency or license number, when applicable;
 - (7) The person through whom the contractor is qualified, when applicable;
 - (8) The name and telephone number of the point of contact in the department recommending the debarment action.
- (c) The city's procurement office shall:
 - (1) In accordance with internal retention procedures, maintain records relating to each debarment;
 - (2) Establish procedures to provide for the effective use of the list, including internal distribution thereof, to ensure that departments do not solicit offers from, award contracts to, or consent to subcontracts with contractors on the list; and
 - (3) Respond to inquiries concerning listed contractors and coordinate such responses with the department that recommended the action.

(Ord. No. 2000-3234, § 1, 2-23-00)

Sec. 2-400. Effects of debarment.

- (a) Debarred contractors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the city manager determines that an emergency exists justifying such action, and obtains approval from the mayor and city commission, which approval shall be given by a five-sevenths vote of the city commission at a regularly scheduled city commission meeting. Debarred contractors are also excluded from conducting business with the city as agents, representatives, subcontractors or partners of other contractors.
- (b) Debarred contractors are excluded from acting as individual sureties.

(Ord. No. 2000-3234, § 1, 2-23-00)

Sec. 2-401. Continuation of current contracts.

- (a) Commencing on the effective date of this division, all proposed city contracts, as well as request for proposals (RFP), request for qualifications (RFQ), requests for letters of interest (RFLI), or bids issued by the city, shall incorporate this ordinance and specify that debarment may constitute grounds for termination of the contract, as well as disqualification from consideration on any RFP, RFQ, RFLI, or bid.
- (b) The debarment shall take effect in accordance with the notice provided by the city manager pursuant to subsection 2-405(h) below, except that if a city department has contracts or subcontracts in existence at the time the contractor was debarred, the debarment period may commence upon the conclusion of the contract, subject to approval of same by a five-sevenths vote of the mayor and city commission at a regularly scheduled meeting.
- (c) City departments may not renew or otherwise extend the duration of current contracts, or consent to subcontracts with debarred contractors, unless the city manager determines that an emergency exists justifying the renewal or extension or for an approved extension due to delay or time extension for reasons beyond the contractor's control, and such action is approved by a five-sevenths vote of the mayor and city commission at a regularly scheduled meeting.
- (d) No further work shall be awarded to a debarred contractor in connection with a continuing contract, where the work is divided into separate discrete groups and the city's refusal or denial of further work under the contract will not result in a breach of such contract.

(Ord. No. 2000-3234, § 1, 2-23-00)

Sec. 2-402. Restrictions on subcontracting.

- (a) When a debarred contractor is proposed as a subcontractor for any subcontract subject to city approval, the department shall not consent to subcontracts with such contractors unless the city

manager determines that an emergency exists justifying such consent, and the mayor and city commission approves such decision, by a five-sevenths vote, at a regularly scheduled meeting.

(b) The city shall not be responsible for any increases in project costs or other expenses incurred by a contractor as a result of rejection of proposed subcontractors pursuant to subsection 2-402(a) above, provided the subcontractor was debarred prior to bid opening or opening of proposals, where the contract was awarded by the city pursuant to an RFP, RFQ, RFLI, or bid.

(Ord. No. 2000-3234, § 1, 2-23-00)

Sec. 2-403. Debarment.

(a) The debarment committee may, in the public interest, debar a contractor for any of the causes listed in this division, using the procedures outlined below. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

(b) Debarment constitutes debarment of all officers, directors, shareholders owning or controlling 25 percent or more of the stock, partners, divisions or other organizational elements of the debarred contractor, unless the debarred decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarment committee's decision includes any existing affiliates of the contractor, if they are (i) specifically named and (ii) given written notice of the proposed debarment and an opportunity to respond.

(c) A contractor's debarment shall be effective throughout city government.

(Ord. No. 2000-3234, § 1, 2-23-00)

Sec. 2-404. Causes for debarment.

(a) The debarment committee shall debar a contractor for a conviction or civil judgment:

(1) For commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, performing, or making a claim upon a public contract or subcontract, or a contract or subcontract funded in whole or in part with public funds;

(2) For violation of federal or state antitrust statutes relating to the submission of offers;

(3) For commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(4) Which makes the city the prevailing party in a legal proceeding, and a court determines that the lawsuit between the contractor and the city was frivolous or filed in bad faith.

(b) The committee may debar a contractor, (and, in limited instances set forth hereinbelow, a bidder or proposer) based upon a the greater weight of the evidence, for:

(1) Violation of the terms of a city contract or subcontract, or a contract or subcontract funded in whole or in part by city funds, such as failure to perform in accordance with the terms of one or more contracts as certified by the city department administering the contract; or the failure to perform, or unsatisfactorily perform in accordance with the terms of one or more contracts, as certified by an independent registered architect, engineer, or general contractor.

(2) Violation of a city ordinance or administrative order which lists debarment as a potential penalty.

(Ord. No. 2000-3234, § 1, 2-23-00)

Sec. 2-405. Debarment procedures.

(a) Requests for the debarment of contractors may be initiated by a city department or by a citizen-at-large and shall be made in writing to the office of the city manager. Upon receipt of a request for debarment, the city manager shall transmit the request to the mayor and city commission at a regularly scheduled meeting. The mayor and city commission shall transmit the request to a person or persons who shall be charged by the city commission with the duty of promptly investigating and preparing a written report(s) concerning the proposed debarment, including the cause and grounds for debarment, as set forth in this division.

(b) Upon completion of the aforesaid written report, the city manager shall forward said report to the debarment committee. The city's procurement office shall act as staff to the debarment

committee and, with the assistance of the person or persons which prepared the report, present evidence and argument to the debarment committee.

(c) Notice of proposal to debar. Within ten working days of the debarment committee having received the request for debarment and written report, the city's procurement office, on behalf of the debarment committee, shall issue a notice of proposed debarment advising the contractor and any specifically named affiliates, by certified mail, return receipt requested, or personal service, containing the following information:

- (1) That debarment is being considered;
- (2) The reasons and causes for the proposed debarment in terms sufficient to put the contractor and any named affiliates on notice of the conduct or transaction(s) upon which it is based;
- (3) That a hearing shall be conducted before the debarment committee on a date and time not less than 30 days after service of the notice. The notice shall also advise the contractor that it may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine evidence and testimony presented against it.
- (4) The notice shall also describe the effect of the issuance of the notice of proposed debarment, and of the potential effect of an actual debarment.

(d) No later than seven working days prior to the scheduled hearing date, the contractor must furnish the city's procurement office a list of the defenses the contractor intends to present at the hearing. If the contractor fails to submit the list, in writing, at least seven working days prior to the hearing, or fails to seek an extension of time within which to do so, the contractor shall have waived the opportunity to be heard at the hearing. The debarment committee has the right to grant or deny an extension of time, and, for good cause, may set aside the waiver to be heard at the hearing, and its decision may only be reviewed upon an abuse of discretion standard.

(e) Hearsay evidence shall be admissible at the hearing but shall not form the sole basis for initiating a debarment procedure nor the sole basis of any determination of debarment. The hearing shall be transcribed, taped or otherwise recorded by use of a court reporter, at the election of the committee and at the expense of the city. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party.

(f) Debarment committee's decision. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarment committee shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submissions made by the contractor. Where actions are based on disputed evidence, the debarment committee shall decide what weight to attach to evidence of record, judge the credibility of witnesses, and base its decision on the greater weight of the evidence standard. The debarment committee shall be the sole trier of fact. The committee's decision shall be made within ten working days after conclusion of the hearing, unless the debarment committee extends this period for good cause.

(g) The committee's decision shall be in writing and shall include the committee's factual findings, the principal causes of debarment as enumerated in this division, identification of the contractor and all named affiliates affected by the decision, and the specific term, including duration, of the debarment imposed.

(h) Notice of debarment committee's decision.

(1) If the debarment committee decides to impose debarment, the city manager shall give the contractor and any named affiliates involved written notice by certified mail, return receipt requested, or hand delivery, within ten working days of the decision, specifying the reasons for debarment and including a copy of the committee's written decision; stating the period of debarment, including effective dates; and advising that the debarment is effective throughout the city departments.

(2) Debarment is not imposed, the city manager shall notify the contractor and any named affiliates, by certified mail, return receipt requested, or personal service, within ten working days of the decision.

(i) All decisions of the debarment committee shall be final and shall be effective on the date the notice is signed by the city manager. Decisions of the debarment committee are subject to review by the Appellate Division of the Circuit Court. A debarred contractor may seek a stay of the debarment decision in accordance with the Florida Rules of Appellate Procedure.

(Ord. No. 2000-3234, § 1, 2-23-00)

Sec. 2-406. Period of debarment.

(a) The period of debarment imposed shall be within the sole discretion of the debarment committee. Debarment shall be for a period commensurate with the seriousness of the cause(s), and, where applicable, within the guidelines set forth below, but in no event shall exceed five years.

(b) The following guidelines in the period of debarment shall apply except where mitigating or aggravating circumstances justify deviation:

- (1) For commission of an offense as described in subsection 2-404(a)(1): Five years.
- (2) For commission of an offense as described in subsection 2-404(a)(2): Five years.
- (3) For commission of an offense as described in subsection 2-404(a)(3): Five years.
- (4) For commission of an offense as described in subsection 2-404(a)(4): Two to five years.
- (5) For commission of an offense as described in subsections 2-404(b)(1) or (2): Two to five years.

(c) The debarment committee may, in its sole discretion, reduce the period of debarment, upon the contractor's written request, for reasons such as:

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction or civil judgment upon which the debarment was based;
- (3) Bona fide change in ownership or management;
- (4) Elimination of other causes for which the debarment was imposed; or
- (5) Other reasons the debarment committee deems appropriate.

(d) The debarred contractor's written request shall contain the reasons for requesting a reduction in the debarment period. The city's procurement office, with the assistance of the affected department, shall have 30 days from receipt of such request to submit a written response thereto.

(Ord. No. 2000-3234, § 1, 2-23-00)

DIVISION 6. LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS AND CITY EMPLOYEES

Sec. 2-407. Definitions.

City means the government of Miami Beach or any authorized agents, any board, agency, commission, department, or other entity thereof, or any successor thereto.

Covered employee means anyone employed by the city or any service contractor, as further defined in this division, either full or part time, as an employee with or without benefits or as an independent contractor.

Covered employer means the city and any and all service contractors, whether contracting directly or indirectly with the city, and subcontractors of a service contractor.

Service contractor is any individual, business entity, corporation (whether for profit or not for profit), partnership, limited liability company, joint venture, or similar business who is conducting business in Miami Beach, or Miami-Dade County, and meets one of the two following criteria:

- (1) The service contractor is:
 - a. Paid in whole or part from one or more of the city's general fund, capital project finds, special revenue funds, or any other funds either directly or indirectly, whether by competitive bid process, informal bids, requests for proposals, some form of solicitation, negotiation, or agreement, or any other decision to enter into a contract; or
 - b. Engaged in the business of, or part of, a contract to provide, a subcontract to provide, or similarly situated to provide, services, either directly or indirectly for the benefit of the city.However, this does not apply to contracts related primarily to the sale of products or goods.

Covered services are the type of services purchased by the city that are subject to the requirements of this division which include the following:

- (1) City service contracts. Contracts involving the city's expenditure of over \$100,000.00 per year and which include the following types of services:
 - a. Food preparation and/or distribution;
 - b. Security services;
 - c. Routine maintenance services such as custodial, cleaning, computers, refuse removal, repair, refinishing, and recycling;
 - d. Clerical or other non-supervisory office work, whether temporary or permanent;

- e. Transportation and parking services;
 - f. Printing and reproduction services;
 - g. Landscaping, lawn, and or agricultural services; and
 - h. Park and public place maintenance.
- (2) Should any services that are being performed by city employees at the time this division is enacted be solicited in the future by the city to be performed by a service contractor, such services shall be covered services subject to this division.
- (Ord. No. 2001-3301, § 1, 4-18-01)

Sec. 2-408. Living wage.

(a) *Living wage paid.*

(1) *Service contractors.* All service contractors, as defined by this division, entering into a contract with the city shall pay to all its employees who provide services covered by this division, a living wage of no less than \$8.56 an hour with health benefits, or a living wage of not less than \$9.81 an hour without health benefits, as described in this section.

(2) *City employees.* For city employees under the city pay plan, the city will begin to pay a living wage consistent with the goals and terms of this division on phase-in basis beginning in the 2001--2002 city budget year, increasing on an annual basis incrementally so that the living wage is fully implemented for city employees in the 2003--2004 city budget year as may be adjusted pursuant to subsection (c) below. Thereafter, the living wage to be paid by the city to its employees shall not be subject to the annual indexing using the Consumer Price Index for all Urban Consumers (CPI-U) required under subsection (c) below and instead shall be subject to negotiations within the collective bargaining structure.

(b) *Health benefits; eligibility period.* For a covered employer or the city to comply with the living wage provision by choosing to pay the lower wage scale available when a covered employer also provides health benefits, such health benefits shall consist of payment of at least \$1.25 per hour toward the provision of health benefits for covered employees and their dependents.

If the health benefits plan of the covered employer or the city requires an initial period of employment for a new employee to be eligible for health benefits (eligibility period) the living wage provision shall be complied with as follows during the eligibility period:

(1) Provided the new employee will be paid health benefits upon the completion of the eligibility period, a covered employer or the city may only qualify to pay the \$8.56 per hour wage scale for a term not to exceed the first 90 days of the new employee's eligibility period, said term commencing on the employee's date of hire.

(2) If the covered employer's or the city's eligibility period exceeds the 90-day term provided in subsection (1), then the covered employer or the city, commencing on the ninety-first day of the new employee's eligibility period, must commence to pay a living wage of not less than \$9.81 an hour.

Proof of the provision of health benefits must be submitted to the awarding authority to qualify for the wage rate for employees with health benefits.

(c) *Indexing.* The living wage will be automatically indexed each year using the Consumer Price Index for all Urban Consumers (CPI-U) unless the city commission determines it would not be fiscally sound to implement the CPI-U in a particular year.

(d) *Certification required before payment.* Any and all contracts for covered services shall be void, and no funds may be released, unless prior to entering any agreement with the city for a covered services contract, the employer certifies to the city that it will pay each of its employees no less than the living wage described in section 2-408(a). A copy of this certificate must be made available to the public upon request. The certificate, at a minimum, must include the following:

(1) The name, address, and phone number of the employer, a local contact person, and the specific project for which the covered services contract is sought;

(2) The amount of the covered services contract and the city department the contract will serve;

(3) A brief description of the project or service provided;

(4) A statement of the wage levels for all employees; and

(5) A commitment to pay all employees a living wage, as defined by section 2-408(a).

(e) *Observation of other laws.* Every covered employee shall be paid not less than biweekly, and without subsequent deduction or rebate on any account (except as such payroll deductions as are directed or permitted by law or by a collective bargaining agreement). The covered employer shall pay covered employees wage rates in accordance with federal and all other applicable laws such as overtime and similar wage laws.

(f) *Posting.* A copy of the living wage rate shall be kept posted by the covered employer at the site of the work in a prominent place where it can easily be seen and read by the covered employees and shall be supplied to the employee within a reasonable time after a request to do so. Posting requirements will not be required where the covered employer prints the following statements on the front of the covered employee's first paycheck and every six months thereafter: "You are required by City of Miami Beach law to be paid at least \$8.56 dollars an hour. If you are not paid this hourly rate, contact your employer, an attorney, or the City of Miami Beach." All notices will be printed in English, Spanish, and Creole.

(g) *Collective bargaining.* Nothing in this division shall be read to require or authorize any covered employer to reduce wages set by a collective bargaining agreement or are required under any prevailing wage law.

(Ord. No. 2001-3301, § 1, 4-18-01; Ord. No. 2003-3408, § 1, 4-30-03)

Sec. 2-409. Implementation.

(a) *Procurement specifications.* The living wage shall be required in the procurement specifications for all city service contracts for covered services on which bids or proposals shall be solicited on or after the effective date of this division. The procurement specifications for applicable covered services contracts shall include a requirement that service contractors and their subcontractors agree to produce all documents and records relating to payroll and compliance with this division upon request from the city. All covered service contracts awarded subsequent to the date when this division becomes effective, shall be subject to the requirements of this division.

(b) *Information distributed.* All requests for bids or requests for proposals for covered services contracts of \$100,000.00 or more shall include appropriate information about the requirements of this division.

(c) *Maintenance of payroll records.* Each covered employer shall maintain payrolls for all covered employees and basic records relating thereto and shall preserve them for a period of three years or the term of the covered services contract, whichever is greater. The records shall contain:

- (1) The name and address of each covered employee;
- (2) The job title and classification;
- (3) The number of hours worked each day;
- (4) The gross wages earned and deductions made;
- (5) Annual wages paid;
- (6) A copy of the social security returns and evidence of payment thereof;
- (7) A record of fringe benefit payments including contributions to approved plans; and
- (8) Any other data or information this division should require from time to time.

(d) *Reporting payroll.* Every six months, the covered employer shall file with the procurement director a complete payroll showing the covered employer's payroll records for each covered employee working on the contract(s) for covered services for one payroll period. Upon request from the city, the covered employer shall produce for inspection and copying its payroll records for any or all of its covered employees for any period covered by the covered service contract. The city may examine payroll records as needed to ensure compliance.

(Ord. No. 2001-3301, § 1, 4-18-01)

Sec. 2-410. Compliance and enforcement.

(a) *Service contractor to cooperate.* The service contractor shall permit city employees, agents, or representatives to observe work being performed at, in or on the project or matter for which the service contractor has a contract. The city representatives may examine the books and records of the service contractor relating to the employment and payroll to determine if the service contractor is in compliance with the provisions of this division.

(b) *Complaint procedures and sanctions.*

(1) An employee who believes that this division applies or applied to him or her and that the service contractor, or the city, is or was not complying with the requirements of this division has a right to file a complaint with the procurement director of the city. Complaints by employees of alleged violations may be made at any time and shall be investigated within 30 days by the city. Written and oral statements by an employee shall be treated as confidential and shall not be disclosed without the written consent of the employee to the extent allowed by the Florida Statutes.

(2) Any individual or entity may also file a complaint with the procurement director of the city on behalf of an employee for investigation by the city.

(3) It shall be the responsibility of the city to investigate all allegations of violations of this division within 30 days. If, at any time, the city, upon investigation determines that a violation of this division has occurred, it shall, within ten working days of a finding of noncompliance, issue a notice of corrective action of the employer specifying all areas of noncompliance and deadlines for resolutions of the identified violations. If a service contractor fails to comply with any notice issued, the city manager or the city manager's designee may issue an order in writing to the service contractor, by certified mail or hand delivery, notifying the service contractor to appear at an administrative hearing before the city manager or the city manager's designee to be held at a time to be fixed in such order, which date shall be not less than five days after service thereof.

(4) The proceedings shall be informal, but shall afford the service contractor the right to testify in the service contractor's own defense, present witnesses, be represented by counsel, submit relevant evidence, cross examine witnesses and object to evidence.

(5) The proceedings shall be recorded and minutes kept by the city. Any service contractor requiring verbatim minutes for judicial review may arrange for the services of a court reporter at the expense of the service contractor.

(6) Within ten days of the close of the hearing, the city manager or the city manager's designee shall render a decision in writing determining whether or not the service contractor is in compliance, or whether other action should be taken, or whether the matter should be continued, as the case may be, and stating the reasons and findings of fact.

(7) The city manager or the city manager's designee shall file findings with the city clerk, and shall send a true and correct copy of his order by certified mail, return receipt requested, or by hand delivery, to the business address as the service contractor shall designate in writing.

(8) The city manager's or designee's findings shall constitute the final administrative action of the city for purposes of judicial review under state law.

(9) If a service contractor fails to seek timely appellate review of an order of the city manager or the city manager's designee, or to comply timely with such order, the city may pursue the enforcement of sanctions set forth in section 2-410(c).

(c) *Private right of action against service contractor.* Any covered employee or former covered employee of a service contractor may, instead of utilizing the city administrative procedure set forth in this division, but not in addition to such procedure, bring an action by filing suit against the covered employer in any court of competent jurisdiction to enforce the provisions of this division and may be awarded back pay, benefits, attorney's fees, and costs. The applicable statute of limitations for such a claim will be two years as provided in F.S. § 95.11(4)(c) for an action for payment of wages. The court may also impose sanctions on the service contractor, including those persons or entities aiding or abetting the service contractor, to include wage restitution to the affected covered employee and damages payable to the covered employee in the sum of up to \$500.00 for each week each service contractor is found to have violated this division.

(d) *Sanctions against service contractors.* For violations of this division, the city shall sanction a service contractor by requiring the service contractor to pay wage restitution at the employers expense for each affected employee and may access the following:

(1) The city may impose damages in the sum of \$500.00 for each week for each employee found to have not been paid in accordance with this division; and/or

(2) The city may suspend or terminate payment under the covered services contract or terminate the contract with the service contractor; and/or

(3) The city may declare the employer ineligible for future service contracts for three years or until all penalties and restitution have been paid in full, whichever is longer. In addition, all

employers shall be ineligible under this section where principal officers of the employer were principal officers of an employer who violated this division.

(e) *Public record of sanctions.* All such sanctions recommended or imposed shall be a matter of public record.

(f) *Sanctions for aiding and abetting.* The sanctions in section 2-410(c) shall also apply to any party or parties aiding and abetting in any violation of this division.

(g) *Retaliation and discrimination barred.* A covered employer shall not discharge, reduce the compensation, or otherwise discriminate against any covered employee for making a complaint to the city, or otherwise asserting his or her rights under this division, participating in any of its proceedings or using any civil remedies to enforce his or her rights under this division. Allegations of retaliation or discrimination, if found true in a proceeding under paragraph (b) or by a court of competent jurisdiction under paragraph (c), shall result in an order of restitution and reinstatement of a discharged covered employee with back pay to the date of the violation or such other relief as deemed appropriate.

(h) *Enforcement powers.* If necessary for the enforcement of this division, the city commission may issue subpoenas, compel the attendance and testimony of witnesses and production of books, papers, records, and documents relating to payroll records necessary for hearing, investigations, and proceedings. In case of disobedience of the subpoena, the city attorney may apply to a court of competent jurisdiction for an order requiring the attendance and testimony of witnesses and production of books, papers, records, and documents. Said court, in the case of the refusal to obey such subpoena, after notice to the person subpoenaed, and upon finding that the attendance or testimony of such witnesses or the production of such books, papers, records, and documents, as the case may be, is relevant or necessary for such hearings, investigations, or proceedings, may issue an order requiring the attendance or testimony of such witnesses or the production of such documents and any violation of the court's order may be punishable by the court as contempt thereof.

(i) *Remedies herein nonexclusive.* No remedy set forth in this division is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the rights under this division in a court of law. This division shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(Ord. No. 2001-3301, § 1, 4-18-01)

Secs. 2-411--2-425. Reserved.