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## COMMISSION MEMORANDUM

TO: Finance and City-wide Projects Committee Members

FROM: Jimmy L. Morales, City Manager

DATE: February 21, 2014

SUBJECT: **DISCUSSION ON THE REVIEW AND RECOMMENDATIONS FOR IMPROVING THE CITY'S PROCUREMENT CODE COMPLETED BY THE NATIONAL INSTITUTE FOR GOVERNMENTAL PROCUREMENT (NIGP)**

### INTRODUCTION

At its July 17, 2013, meeting, the City Commission of the City of Miami Beach, Florida, approved a referral to the Finance and City-wide Projects Committee (the "Committee") for a discussion on the review and recommendations for improving the City's Procurement Code completed by the National Institute for Governmental Procurement (NIGP) (the "Report").

### BACKGROUND

The acquisition of goods and services by City departments is primarily governed by the City of Miami Beach Code, Chapter 2, Administration, Article VI, Procurement. Many of the sections of the City's requirements related to the acquisition of goods and services have not been reviewed or revised in many years. In an effort to assure that the City is engaged in acquisition activities that are based on sound business practices that promote the efficient receipt of goods and services necessary to serve constituents, the Administration engaged the expertise of the National Institute for Governmental Purchasing (NIGP) to complete a full review of all Procurement requirements. The goals of the review were to:

- review ordinances, statutes, policies and procedures to ensure consistency with statutory requirements and public procurement best practices;
- determine regulatory constraints that impede efficiencies, including creating a competitive and business-friendly environment;
- compare City requirements against the recommendations of the American Bar Association (ABA) Model Procurement Code, intended to promote transparency, fairness, and competitiveness in public procurement; and,
- complete a benchmarking analysis against similar public agencies locally and nationally.

The NIGP review has resulted in the Report (attached) which outlines the results of the review and includes recommendations for making improvements to the City's regulations for the acquisition of goods and services. A summary of the recommendations begins on page 18 of the Report. Many of the recommendations are relatively minor language modifications intended to improve clarity, internal controls and/or process efficiencies, which are addressed in Recommendation 1 below. Recommendations 2 – 4, include the more significant recommendations included in the Report. As such, they are addressed individually from Recommendation 1. Recommendations 5 and 6 are administrative recommendations, separate from the NIGP review, intended to increase competition in City procurements and expedite the procurement process for construction projects.

The recommendations addressed in this memo are intended to provide expeditious improvements to the City's current procurement ordinances. In the longer term, the City Commission may wish to consider replacing current ordinances with a unified procurement code, such as the American Bar Association, Model Procurement Code, which includes clearly outlined sections for source selection and contract formation, specifications, infrastructure and construction procurement, ethics, vendor rights and responsibilities, and others.

1. **Procurement Ordinance Review.** The analysis of the Miami Beach's Procurement Ordinances includes review of *Miami Beach, Florida, Code of Ordinances, Subpart A - GENERAL ORDINANCES, Chapter 2, ADMINISTRATION*, with primary focus on *ARTICLE VI. PROCUREMENT, and ARTICLE VII. STANDARDS OF CONDUCT*. These Code sections make up the primary enabling legislation of the procurement function for the City of Miami Beach. As a benchmark, NIGP selected three comparable procurement ordinances for review: City of St. Petersburg, Florida; City of Daytona Beach, Florida; and City of Virginia Beach, Virginia. NIGP noted that the City's procurement ordinances compared favorably with the benchmark agencies, but could benefit by implementation of the recommendations noted in pages 6 through 24 of the Report. Again, many of these recommendations are relatively minor language modifications, with the more significant recommendations being addressed separately below.

**Recommendation #1:** It is recommended that the Committee endorse the recommendations for improving the procurement code noted in pages 6 through 24 of NIGP's Report, exclusive of recommendations 2 through 4 highlighted below, and direct staff to prepare the necessary ordinance changes for the consideration by the City Commission.

2. **Expand the use of cooperative purchases.** According to the National Association of State Procurement Officials (NASPO), cooperative purchases is a broad term that includes the following:
  - a. **Cooperative contracting.** Cooperative contracting occurs when two or more public sector agencies combine requirements and jointly solicit bids in an effort to maximize buying power (volume) and reduce the operational costs and time of single government solicitations.
  - b. **Piggybacking.** Piggybacking refers to a public sector agency contracts that allows other public sector agencies to acquire the contract items at the same cost and terms as the awarding agency. Piggybacking usually allows public sector agencies to acquire routine operational needs without the need to *re-create the wheel* in issuing its own solicitation for items that have already been competitively solicited by another public agency.
  - c. **Third-Party Aggregators.** Third-party aggregators, usually non-profit organizations, competitively solicit the combined requirements of member agencies in a similar manner as in cooperative purchasing noted above. An example of third-party aggregators is US Communities, a national organization endorsed by the US Conference of Mayors, and the Western States Contracting Alliance (WSCA), a national organization endorsed by NASPO. Contracts awarded by both, as well as others, are available to all public sector agencies.

Cooperative purchases, usually for routine operational requirements utilized similarly by many public agencies, allows public agencies to acquire necessary goods and services from reputable vetted vendors at competitive costs often based on the aggregated volume of many public sector agencies, which often exceed the volume pricing discounts possible through any single agency solicitation. The other benefit of cooperative purchases is that they allow agency staff to concentrate on other non-routine priorities and pursue more strategic sourcing opportunities instead of unnecessarily processing competitive solicitations for items already competitively solicited through the cooperative process.

Given the previously stated benefits, it is uncommon for public sector agencies to restrict cooperative purchases. However, the current City Code does just that by restricting cooperative purchasing opportunities to those contracts awarded by: the Florida Department of Management Services (State Procurement), Miami-Dade County, Miami-Dade Public Schools, the US General Services Administration and US Communities Government Purchasing Alliance. The restrictions create operational challenges in terms of both maximizing volume discount opportunities and efficiently utilizing staffing resources. For example, several agencies within Miami-Dade County are currently pursuing discussions for creating a public sector cooperative within the County to aggregate volume on like purchases of routine operational requirements to maximize volume discount opportunities and eliminate the need to unnecessarily duplicate the efforts of staffing resources. The current code restrictions on cooperative purchases would restrict the City from participating in any award made by many of the public agencies in the County.

**Recommendation #2:** To maximize the goal of obtaining quality goods and services that support effective and efficient government while ensuring the prudent use of public funds and best use of staffing resources, NIGP recommends that the current Code language be expanded to include contracts awarded by:

*“...other procurement alliance or public entities that have utilized a public procurement processes to competitively solicit for award of the contracts, or from any cooperative contract in which the City of Miami Beach participates...”*

- 3. Revise the threshold for formal solicitations from \$25,000 to \$50,000.** The City's current threshold for formal bids is \$25,000. The threshold was established many years ago, most probably when Florida statute established the threshold for requiring formal solicitations by State agencies at \$25,000.00. However, since that time, the State statute threshold for formal solicitations has been amended to \$65,000.00 in recognition that the formal solicitation process utilized by public sector agencies, including the City, is usually time consuming and labor intensive, often exceeding 90 days due to the complexity of the process. While the process of formal competitive solicitations is a necessary element of larger, more complex projects, the current low threshold requirement places an operational burden by causing a delay in the receipt of items necessary for routine, smaller, and less complex projects and requirements.

NIGP reviewed best practices and has noted that nationally the trend over the last few years has indicated an increase dollar thresholds for formal solicitations. Many public sector agencies have already revised their threshold for formal solicitations above \$25,000, with as many as 41% of public sector agencies having placed the threshold at \$50,000 or higher. Several municipalities locally and within the State of Florida have also adjusted the threshold for formal solicitations as follows:

| Agency                    | Formal Bid Threshold |
|---------------------------|----------------------|
| City of Miami             | \$50,000             |
| Miami-Dade County         | \$250,000            |
| City of Saint Petersburg  | \$50,000             |
| City of Tampa             | \$100,000            |
| Sarasota County           | \$500,000            |
| State of Florida Agencies | \$65,000             |

**Recommendation #3:** It is recommended that the dollar threshold for requiring formal solicitations be raised to \$50,000. Accordingly, it is also recommended that all other ordinance references noting \$25,000 be changed to \$50,000, including the City Manager’s authority for purchases under \$50,000. This change will allow city procurement staff to increase administrative efficiency by expediting the acquisition of smaller purchases and allowing for a greater focus on large dollar and complex procurements. For smaller requirements under the \$50,000, the City would continue to pursue its current small purchase requirements, which includes soliciting quotations from at least three (3) vendors for amounts in excess of \$1,000.

4. **Implement a protest bond or filing fee as required in Section 287.042, Florida Statutes.** The opportunity for bidders to file a protest or filing fee pursuant to a public sector agency’s competitive solicitation process is a necessary element for facilitating transparency and accountability. However, since most protest procedures utilized by public sector agencies require a stay of contract award until the protest has been resolved, some protests, especially those that are frivolous in nature, may unnecessarily delay time-sensitive contract awards. In addition, unnecessary bid protests can add costs to the solicitation process when additional resources are required to solve the protest.

In light of the above, Florida Statutes require that any bidder protesting a decision or award recommendation on a public procurement project issued by a State agency shall post a bond in an amount equal to one (1) percent of the estimated contract amount. Some other public sector agencies across the state, as well as others nationally, have also implemented a requirement that bidders or proposers desiring to protest an agency’s award recommendation post a bond or filing fee at the time of filing their protest. The purpose of the bond or filing fee is to assist in any expenses the City may incur in the investigation of a protest and to discourage frivolous protests that often unnecessarily delay contract awards and add costs to the solicitation process. NIGP has recommended that the City consider a implementing a financial requirement at the time of the filing of a solicitation protest.

To implement the protest filing fee recommended by NIGP, the Administration proposes that the City follow the Miami-Dade County protest fee requirement which establishes the following fees:

| Contract Amount            | Filing Fee |
|----------------------------|------------|
| Up to \$250,000            | \$500      |
| \$250,000.01 - \$500,000   | \$1,000    |
| \$500,000.01 - \$5 million | \$3,000    |
| Greater than \$5 million   | \$5,000    |

**Recommendation #4:** The Administration has been pursuing options for improving its bid protest procedures, which include the time and manner in which bidders may file bid protests and the methodology for consideration of protests filed. While the protest fee

requirement will assist in improving the process by discouraging frivolous protests and allowing both bidders and staff to address legitimate protests, staff recommends that this recommendation not be implemented until such time as the review of the City's bid protest procedures can be completed.

In addition to the NIGP recommendations highlighted above and in the attached Report, the Administration has been reviewing Procurement regulations in an effort to more efficiently conduct business operations, increase the level of competition on City competitive solicitations, and implement best practices wherever possible. In doing so, the Administration is providing the following items for discussion purposes and committee direction.

5. **Local Bidder Preference.** Section 2-372 of the City Code requires a preference to be awarded in City competitive solicitations for Miami Beach based bidders. While the local preference is well-intentioned, it also creates some challenges. First, with the exception of a few industries (primarily tourism and entertainment related), the ability of local vendors to supply the goods and services required by the City is very limited; therefore, a very small percentage of the City's contracts for goods and services are awarded to local vendors. As a result, the local preference requirement has very little impact on the City's industry base. Second, an unintended consequence of local preference ordinances is that they tend to discourage non-local vendors from participating in the City's competitive solicitations. In recent years, the City has experienced limited competition for many of the competitive solicitations it receives despite significant outreach efforts to increase competition. This reality is especially true for competitive solicitations relating to construction projects. To address the lack of competition concerns in construction contracting, the Administration has been working with the Associated Builders and Contractors – Florida (ABC), the local chapter of the national trade association for the construction industry. ABC has reported to the City that many of its member companies are averse to participating in competitive solicitations that include local preference requirements and are issued by municipalities in which the vendor does not have an office because of the time and effort that is required of these solicitations and the likelihood that the solicitation will be awarded to a local vendor. Accordingly, competition on competitive solicitations becomes limited and, over time, may result in a very limited pool of bidders.

**Recommendation #5:** To improve competition on the City's competitive solicitations and allow the City to cooperate with other local municipalities on joint procurements for like items in an effort to maximize aggregated volume discounts, the Administration recommends eliminating local preference requirements. As an alternative, the Committee may consider implementing local preference only when it has been determined that a sufficient number of potential local bidders are available to compete on a given solicitation.

6. **Contracting Methodologies for Expediting Construction and Infrastructure Projects.** Prior to October, 2012, the City acquired construction services for many small or emergency construction projects through a Job Order Contracting process. Job Order Contracting (JOC) is a contracting methodology that enables facility owners to accomplish a large number of repairs, maintenance and construction projects with a single, competitively bid contract. In doing so, JOC eliminates the time and expense of completing the normal design-bid-construct cycle for each project. Prior to the award of JOC contracts, the City selects one of several available comprehensive catalogs of construction tasks established by one of several national organizations, such as RS Means or the Gordian Group. The catalogs contain almost every imaginable construction task possible and a unit of measure and cost for each construction task. Contractors are required to competitively bid an adjustment

factor (e.g. 1.15) to be applied to a comprehensive catalog of almost every imaginable construction tasks established by one of several national organizations, such as RS Means or the Gordian Group, with pre-set unit prices. The prospect of continuing work keeps the contractor motivated to provide timely, responsive, and high quality work.

Since the discontinuation of the Job Order Contracting (JOC) process in the fall of 2012 due to the Affidavit in Support of the Arrest of Gus Lopez (former procurement director) issued by the State Attorney's Office (the "Affidavit"), the City has been without a methodology for expediting construction and infrastructure projects. This is especially problematic for smaller projects and projects related to unplanned emergency work for which releasing independent solicitations is not operationally feasible and causes unnecessary delays.

It is important to note that, following the hold placed on JOC projects as a result the Affidavit, the City has examined the internal control failures that occurred with the previous JOC process utilized by the City. It has been determined that the failures that occurred were unrelated to the actual JOC process, but rather a manipulation of that process by prior City staff as detailed in the Affidavit. Any future implementation of JOC or similar process will include procedural changes to eliminate any recurrence of past problems with internal controls, including appropriate levels of administrative approval and regular reports to the City Commission.

**Recommendation #6:** To address this concern and to expedite the delivery of planned construction projects, the Administration is proposing implementation of the following tiered approach for construction contracting:

| Project Threshold   | Contract Methodology  |
|---|---|
| <p>From the amount established for formal solicitations and up to \$250,000 or for infrastructure emergencies</p> | <p>As authorized by Florida Statutes, it is recommended that projects within this threshold category be procured through a pre-priced, indefinite quantity continuing contract. These types of contracts are extensively used throughout public sector contracting because they provide pre-established competitive pricing and allow for an expedited contracting process for small projects and emergency services.</p> <p>The City Commission will need to approve contracts for any contractor selected on a pre-priced, indefinite quantity methodology and will receive a monthly report of any project contracted through this methodology.</p>  |
| <p>\$250,000.01 and \$2,000,000.00</p>  | <p>As authorized by Florida Statutes, it is recommended that projects within this threshold category may be procured through continuing contract for construction management services or through a pre-qualified contractor process. The City is already utilizing continuing contracts for architectural/engineering design services as authorized in statute.</p> <p>For projects where it is advisable to utilize a construction manager process, the continuing contracts for construction management contractors will allow the City to retain qualified contractors that would be required to competitively bid all sub-contracts in order to develop a guaranteed maximum price (GMP) for each project.</p> <p>For projects where it is advisable to utilize the bid process to determine lowest pricing, the pre-qualified contractor process will allow the pre-qualified contractors to compete on a pre-determined set of project plans and specifications. Both processes will maximize best value for City projects.</p> |

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|                           | while minimizing the length of time required for the solicitation process; thereby, expediting completion of City projects.<br><br>In either case, the selected contractor and project costs would need to be approved by the City Commission. |
| Greater than \$2,000,000. | As required by Florida Statutes, projects within this category must be procured through a project specific competitive solicitation issued in accordance with the requirements of Florida Statutes.  |

**CONCLUSION**

To improve operational efficiencies and maximize best value received for the goods and services required by City departments, the Administration recommends that the Committee endorse the recommendations for improving the City's procurement Code and direct staff to submit the appropriate ordinance changes to the City Commission.

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**City of Miami Beach**  
**Procurement Ordinance Review and**  
**Manual Recommendations**

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**Final Report**

**Rick Berry, MPA, FNIGP, CPPO, VCO**

**Senior Consultant**

July 19, 2013

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## PROJECT SCOPE

The City of Miami Beach commissioned the National Institute of Governmental Purchasing (NIGP) to conduct a review of their procurement program to include:

- Ordinances, statutes, procurement policies and procedures to ensure consistency with current best practices in the profession,
- A high-level benchmarking analysis of approval thresholds and approving entities at the national level among a select group of similar municipalities,
- State legislation that impacts the City,
- Regulatory constraints that may impede efficiency,
- Other policy and procedure manuals related to purchasing practices and procedures, such as the Purchasing Card program and vendor guides.

NIGP assigned Consultant Rick Berry, FNIGP, CPPO, VCO to the project to conduct this review and recommend improvements based the scope of services requested by the City of Miami Beach.

## EXECUTIVE SUMMARY

The analysis of the Miami Beach Procurement Ordinance includes review of *Miami Beach, Florida, Code of Ordinances, Subpart A - GENERAL ORDINANCES, Chapter 2 - ADMINISTRATION*, with primary focus on *ARTICLE VI. - PROCUREMENT and ARTICLE VII. - STANDARDS OF CONDUCT*. This Ordinance makes up the primary enabling legislation of the procurement function for the City of Miami Beach. Ordinance sections were compared to the American Bar Association Model Procurement Code (MPC) fundamental requirements, as well as three comparable procurement ordinances; City of St. Petersburg, Florida, City of Daytona Beach, Florida, and City of Virginia Beach, Virginia and several sections of Florida Statute. In general, the current Miami Beach Ordinance provides most of the fundamental requirements included in the MPC. Language modifications will be recommended in order to improve and/or clarify the authority, roles, and responsibilities of the procurement department and the Procurement Director. Additional language and sections will be recommended to address appropriate methods of procurement, including small purchases, construction and professional services, cooperative procurements and other important procurement functions, processes and programs. It should be noted that many of the existing sections of the Ordinance are very clear, concise and well written and should be included verbatim in the Procurement Manual. The Ordinance, along with the additional suggested language and sections, is recommended to be used to develop a comprehensive procurement policy manual.

## **APPROACH AND METHODOLOGY**

NIGP conducted a review and analysis of the following:

- *Miami Beach, Florida, Code of Ordinances, Subpart A - GENERAL ORDINANCES, Chapter 2 – ADMINISTRATION, ARTICLE VI. PROCUREMENT*
- *Miami Beach, Florida, Code of Ordinances, Subpart A - GENERAL ORDINANCES, Chapter 2, ARTICLE VI, VII. STANDARDS OF CONDUCT*
- Florida Statute Section Title XIX, Chapter 287, Title XII, Chapter 166 ,and Title XVIII, Chapter 255.20
- Regulatory constraints that may impede efficiency
- Comparable Procurement Ordinances from the City of Virginia Beach, Virginia Beach the City of St. Petersburg, Florida; and City of Daytona Beach, Florida
- The American Bar Association Model Procurement Code (MPC)

The first phase of the project was the review and analysis of Florida legislation, followed by review of the existing City of Miami Beach City Ordinance and comparable procurement ordinances. NIGP then provided recommendations to improve language in the Miami Beach Ordinance based on Florida legislation, comparable ordinances, best practices and the MPC. The second phase was to provide format and content for a comprehensive procurement policy manual. These two phases will be addressed in the two primary sections of this report; recommended changes to the existing City Ordinance, followed by recommended content and format for a new procurement manual.

## **LEGISLATION THAT IMPACTS MIAMI BEACH and REGULATORY CONSTRAINTS THAT IMPEDE EFFICIENCY**

NIGP reviewed state legislation and the City's Ordinance. There are no major impacts resulting from the City's Ordinance or state legislation. There are, however, several areas that could benefit from modification of language in the City Ordinance to better address several areas to include; authority and responsibility of the Purchasing Director, cooperative procurement, methods of procurement, specifications and contract administration. Recommended language will be addressed in the Procurement Ordinance Review section of this report.

## **MODEL PROCUREMENT CODE (MPC)**

The Ordinance is critical to the success of the procurement function for the City of Miami Beach. It is the enabling legislation that prescribes the function of the procurement department, its major components, processes and programs, as well as establishes the



authority, roles and responsibilities of the Chief Procurement Officer. It is the precursor for the development of a comprehensive procurement manual and its programs, processes, policies, procedures. The Ordinance and Manual should become the basis of training for the procurement staff as well as city departmental staff.

As the City considers modifications to its current Procurement Ordinance, the following roadmap of the MPC should be reviewed and considered.

1. The Ordinance should start with general provisions that describe the general purpose of the Ordinance and should specify its applicability, provide guidance for authority, interpretations, and contain definitions of terms.
2. There should be an article on organization that establishes the Procurement Department and the authority and duties of the Chief Procurement Officer. The organization article should also cover the organizational concepts for establishing procurement policy and conducting procurement operations.
3. There should be an article that describes the source selection (methods of procurement) and contract formation methods authorized by the Ordinance. It should authorize the Chief Procurement Officer to select and apply these methods. These source selection methods (methods of procurement) should include at a minimum: competitive sealed bidding, competitive sealed proposals, small purchase procedures, sole source procurement and emergencies, but should also include other methods used by the City.
4. The Ordinance should have language that adds flexibility to the extent to which Competitive Sealed Proposals may be used as a source selection method. This language should also permit the use of Competitive Sealed Proposals for the solicitation of construction contracts, specifically for construction management and design-build methods of project delivery. Evaluation criteria should require that RFP's state the relative importance of price and other criteria that will be evaluated and scored by the City.
5. A Specifications section should be included and contain requirements for developing, monitoring and using specifications. It should require that specifications be written in a manner to maximize competition to the maximum feasible degree.

6. In 2007, the ABA created a new section in the MPC titled “Procurement for Infrastructure Facilities and Services.” This section authorizes five different project delivery and finance methods for use in managing infrastructure facilities and services. Delivery methods are structured so that an agency can select from among project delivery methods based on the circumstances of each project and its impact on the overall portfolio of projects and services. These five delivery methods are Design-Bid-Build (including Construction Management At-Risk as a permitted variation), Design-Build, Design-Build-Operate-Maintain, Design-Build-Finance-Operate-Maintain, and Operations and Maintenance. These methods of delivery should be authorized by the ordinance and included in greater detail in the manual, as determined by the governing body.
7. The Ordinance should include provisions for the competitive award of contracts for architectural, engineering and other professional services and mechanisms for the resolution of disputes relating to solicitations and awards, bid protests, contract performance, and debarment or suspension determinations. The goal of a good protest procedure is to allow and process appropriate protest, but avoid frivolous protest. The City may want to consider including by reference the “Protest Bond Requirements” per section 287.042(2)(c) of Florida Statutes. In addition, there should be an article which contains provisions designed to facilitate cooperative procurement among units of government.
8. There should be an article that outlines procedures for assisting small and disadvantaged businesses with information related to how to do business with the City. This article may also incorporate additional socioeconomic policies that are to be implemented through the procurement process.
9. An article that contains ethical standards with accompanying sanctions applicable to all participants in the public procurement process should also be included. The proposed ethical standards should cover conflicts of interest, gratuities and kickbacks, contingent fees and misuse of confidential information.

While it is not critical to follow the exact steps and order stated above, it is important for the major components to be addressed in the Ordinance, with supporting topics and language to be further addressed in the Procurement Manual. The existing City of Miami Beach Ordinance contains most of these primary components. However, additional language will be recommended in several sections to address, expand upon, and/or clarify important topics.

When the Miami Beach Procurement Ordinance was compared to the MPC, there are four major areas of the MPC that have not been fully addressed. NIGP will provide recommendations to address these sections in the Miami Beach Ordinance. These include the following articles of the MPC:

- *Article 2 - Procurement Organization*
- *Article 3 - Source Selection and Contract Formation (Methods of Procurement)*,
- *Article 4 - Specifications*
- *Article 5 - Procurement Infrastructure (Construction, project delivery methods).*

Additional language modifications and new sections are recommended to clarify or expand other areas of the Ordinance based on the MPC. These recommendations will be addressed separately in later sections of this report.

## **COMPARABLE ORDINANCE REVIEW**

The analysis of the Miami Beach Procurement Ordinance includes review of *Miami Beach, Florida, Code of Ordinances, Subpart A - GENERAL ORDINANCES, Chapter 2, ADMINISTRATION*, with primary focus on *ARTICLE VI. PROCUREMENT, and ARTICLE VII. STANDARDS OF CONDUCT*. This Ordinance makes up the primary enabling legislation of the procurement function for the City of Miami Beach. Ordinance sections were compared to the MPC fundamental requirements. NIGP selected three comparable procurement ordinances for review: City of St. Petersburg, Florida; City of Daytona Beach, Florida; and City of Virginia Beach, Virginia. The City of Miami Beach Ordinance compared very favorable with the each of these but could benefit by adding methods of procurement and definitions similar to the St. Petersburg Ordinance. Detailed recommendations will be addressed in the Ordinance Review section of this report.

## **MIAMI BEACH PROCUREMENT ORDINANCE REVIEW**

This portion of the report will address each primary section of the current Ordinance specifically Subpart A - General Ordinance, Chapter 2 - Administration and will include comments and recommendations.

### **Article VI – Procurement. Division 1. Generally**

**Section 2-311. Purpose and 2-312. Definitions:** These sections are of primary importance as they establish the purpose and scope of the procurement function within the City of Miami Beach. The purpose statement (section 2.311) is clear and concise but is somewhat restrictive, particularly given the limiting definition of contractual services

in section 2.312. Based on conversations with Miami Beach staff, the Procurement Department currently processes solicitations for the procurement of construction, professional services, and contractual services beyond the definition stated in section 2.311 and 2.312. These procurement functions are common among most governmental procurement organizations. NIGP recommends that the purpose statement be expanded as follows: *“The purpose of this article is to prescribe the manner in which the city shall control the purchase of materials, supplies, equipment, **services, construction, and professional services**, and to maintain a high ethical standard for all officers and employees of the city in connection therewith.”* It is also recommended that the “contractual services” definition be modified to a more traditional definition of services, and that “professional services” and “construction” definitions be added. Given that section 2.313 addresses requisitions, it would be helpful to add “requisition” to the definitions section as well. These definitions can be extracted from the NIGP Dictionary, Florida Statute, and/or developed and modified to address the specific intent of the City. The recommended modifications to these sections will provide clear direction and identify the purpose of the procurement department as well as set the stage for the balance of the Ordinance and the Procurement Manual.

**Section 2-315.Surplus Stock:** Item (d) Exchanges or trades: This language limits the authority of the City Manager or designee to exchange or trade-in surplus stock “not to exceed \$25,000”. NIGP suggests that this language be revised to state *“not to exceed the dollar threshold requirement for formal solicitations”*. This language will eliminate the need to modify this section should the dollar threshold be changed. Consideration should be given as to whether or not the City Manager and the City Commissioner still want to approve of exchange or trade-ins and at what level.

#### **Article VI – Procurement. Division 2. Procurement Director**

**Section 2-336. Position created and Section 2-337. Appointment:** No changes are recommended.

**Section 2-338. Scope of purchasing authority:** The language in this section is well written and fairly comprehensive. This is a very important section that establishes the foundation for all procurement functions under the purview of the chief procurement officer (Director of Procurement). This authority is often debated by other departments within public organizations. Therefore, it is essential to clearly define all major authority, roles and responsibilities to eliminate such debate regarding who is authorized to interpret procurement policy, direct procurement processes, and make decisions. This

also sets the stage for the development of a well written, clear and concise procurement manual. In order to clarify the authority for the Procurement Director, NIGP suggests minor changes in (1) *Purchase or contract* section to further that the role and scope of the Procurement Director is for all aspects of procurement (the procurement cycle). This language should be placed immediately after “Scope of purchasing authority”. Recommended language modifications are as follows:

*Purchase or contract. Unless otherwise exempted by Florida statute, this ordinance, or the Procurement Manual, the Procurement Director shall perform the duties specified in this article in connection with the purchase or contract for purchases of all, ~~current supplies and contractual services~~ goods, services, construction and professional services needed by any using agency deriving its support wholly or in part from the city when duly authorized, in accordance with the purchasing policies, procedures, and programs as prescribed by this article and , such rules regulations as may be adopted for internal management and operation of the procurement division and other rules regulations as shall be prescribed by the city manager and to manage all aspects of the procurement function within the city and centralized control and/or disposal or sale of surplus, excess, obsolete and salvageable materials and equipment.*

**Section 2-339. Other powers and duties generally:** The list of duties included is fairly comprehensive. However, NGIP recommends several additions to enhance and clarify the Procurement Director’s expressed and implied authority. NIGP recommends several additional duties that are common among chief procurement officers as follows:

- *Responsible for the delegation of procurement authority to procurement staff and department personnel*
- *Responsible for the implementation, interpretation, and control of all aspects of the procurement function.*
- *Ensure efficient and effective operation of the procurement division.*
- *Ensure all procurement policies, procedures and programs include adequate internal controls.*
- *Ensure appropriate administration of all contracts.*
- *Ensure that all qualified vendors have access to participate in procurement opportunities and that no vendor is arbitrarily or capriciously excluded.*

NIGP also recommends elimination of item 8 – Vendor’s catalog file. The electronic availability of on-line catalogs and contract databases has made this responsibility

obsolete. NIGP suggests that item 1 “Minimum Expenditures” be revisited and possibly modified to encourage best value rather than least expense.

**Section 2-340. Regulations and Procedures:** No recommended changes.

**Section 2-341. Inspection and Testing:** This section is well written and is an extremely important component of the procurement function. Inspection and testing, however, fall under a larger more comprehensive procurement function referred to as “contract administration”. The purpose of contract administration is to ensure that all parties comply with the terms and conditions of contracts, that the City pays the prices stated in the contract, and only for those goods and services received and appropriately inspected. The concept of contract administration is included in this section. NIGP recommends adding contract administration to 2.339 and expanding upon the process in greater detail in the Procurement Manual. It is also recommended that the term “contract administration” be included in a definitions section of the ordinance.

**Section 2-434. Central Warehousing:** This section is sufficient as it is currently written. However, there is a national trend to reduce the size and function or eliminate warehouse operations. NIGP recommends the City review this section to ensure it is still current based on the City’s existing practices and priorities.

### **Article VI – Procurement. Division 3. Contract Procedures**

Division 3 establishes the dollar threshold required for formal solicitations (currently referencing only “bids”) and establishes clear direction regarding the special issues that occur during the competitive process, to include; rejection of bids, irregularities, award to other than a low bidder, protests and disputes. It also addresses several additional key areas to include the process of awarding contracts, local and veterans’ preference, and equal benefits for domestic partners. In general, this section establishes the framework for the primary procurement and contract programs, processes, policies and procedures for the City. Most of this division is well written and provides very clear direction. However, there is no language that specifically authorizes the primary methods of procurement that are being used by the City. NIGP recommends special focus on Section 2-366 – Generally.

**Section 2-366. Generally** Item (a) could be improved by expanding language to include all methods of procurement currently being used by the City. This recommendation is consistent with the framework provided in the MPC; *Article 3, Source Selection and Contract Formation*, which provides for “competitive sealed bidding, competitive sealed

proposals, small purchase procedures, sole source procurements, emergency procurement, and professional services.”

As a result, the primary methods of procurement used by the City are not addressed in Section 2-366. NIGP recommends modification to the language to section 2-366 as follows:

*(a) Formal Solicitations Required. All goods, services and construction, except as otherwise provided in this division when the estimated cost thereof shall exceed \$25,000, shall be purchased by formal solicitation and awarded by written contract and/or purchase order from the lowest responsible and responsible bidder(s), or best offeror(s), after due notice inviting bids, or proposals, and any other requirements of this ordinance or law. The City Manager or designee shall be authorized to utilize any method of procurement that is not prohibited by law or as stated herein. The primary methods of procurement authorized by this section include but are not limited to:*

- *Small Purchases*
- *Competitive Sealed Bidding*
- *Competitive Sealed Proposals*
- *Request for Negotiations*
- *Professional Services Procurements*
- *Request for Qualifications*
- *Request for Letters of Interest*
- *Sole Source Procurements*
- *Emergency Procurement*

*(b) Notice Inviting formal solicitations. . .*

*The City Manager or designee shall be authorized to develop procedures for each methods, which shall include all advertising and notice requirements.*

**Section 2-366. Generally. (b), (c), and (d):** These sections are well written, but clarity could be enhanced with minor language additions. NIGP recommends modifications to include the terms “*bids and proposals*” in all areas where only “bids” are currently referenced and inclusion of the terms “*bidders or offerors*” in all areas where “bidders” only are referenced.

## Dollar Threshold

The scope of work required review of dollar thresholds as part of the project. Section 2-366. Generally establishes \$25,000 as the threshold requiring formal bids. The last update in the dollar threshold for which formal solicitations are required was in January 2001. As part of this Ordinance review, NIGP reviewed best practices based on the 2012 *NIGP Public Procurement Survey*. The trend over the last few years indicates increased dollar thresholds for formal solicitations. This trend is expected to continue. It is important to note that procurement organizations that are responsible for construction procurements generally have a higher dollar threshold than those who do not. The fact that Miami Beach handles procurement of construction services supports the recommendation for increasing the dollar threshold. Based on this survey, 47% of the responses were above \$25,000, 41% were at \$50,000 or above, and more than 12% were at \$100,000 or above.

**A detailed summary of NIGP Survey thresholds is as follows:**

| Formal Solicitation Threshold | %      |
|-------------------------------|--------|
| \$7,500 and below             | 6.45%  |
| \$10,000                      | 9.68%  |
| \$15,000 - \$24,000           | 11.29% |
| \$25,000                      | 25.81% |
| \$25,001 - \$49,999           | 5.91%  |
| \$50,000                      | 23.12% |
| \$50,001 - \$69,999           | 1.08%  |
| \$75,000                      | 2.15%  |
| \$75,001 - \$90,000           | 2.15%  |
| \$100,000                     | 10.22% |
| Over \$100,000                | 2.15%  |

The formal threshold for other Florida cities was also reviewed.  
The results are included below.

| City                | Formal Threshold | Notes   |
|---------------------|------------------|---|
| Daytona Beach, FL   | \$25,000         |   |
| Fort Lauderdale, FL | \$25,000         |   |
| St. Petersburg, FL  | \$50,000         |   |
| Tampa, FL           | \$100,000        |   |
| Sarasota County, FL | \$500,000        | Not list in Code – established administratively |
| Virginia Beach, VA  | \$100,000        | Limited administratively to \$50,000            |

The Categories established by Florida Statute are included below.

| Threshold | Category       |
|-----------|----------------|
| \$20,000  | Category One   |
| \$35,000  | Category Two   |
| \$65,000  | Category Three |
| \$195,000 | Category Four  |
| \$325,000 | Category Five  |

Based on the aforementioned information, NIGP recommends that the City consider increasing the dollar threshold requiring formal solicitations to \$50,000 for procurements and the sale of surplus property. It is also recommended that all other Ordinance references noting \$25,000 be changed to \$50,000. This change will allow city procurement staff to increase administrative efficiency by spending less time and effort on smaller purchases and focus more on large dollar and complex procurements.

**Section 2-367. Rejection of bids; negotiation; wavier of competitive bidding:** The City Manager’s authority is referenced in (a), “the city manager shall have the authority to reject any and all bids”. (b) “Where . . . the bid exceeds the budgeted amount, the city manager, . . . shall have the power to select one . . .”, and (c) “the city manager shall have the power to negotiate . . .” These functions are generally delegated to the Chief Procurement Officer. Therefore, NIGP recommends replacing the term “city manager”

with the term “*city manager or designee*” in this section to provide the City Manager the option to delegate this authority.

Section (d) addresses sole source procurement. While this section is clear and concise, NIGP suggests that the City consider the value of the following statement contained in section (d). “*The using agency shall obtain a written determination from an industry expert or consultant that the item or service is the only one available to fulfill the city’s need.*” This language is somewhat restrictive and could be administratively burdensome. NIGP recommends replacing with the following language. “*The using agency director shall fully document and provide justification that only one source is practicably available, or obtain a written determination from an industry expert or consultant that the item or service is the only one practicably available to fulfill the City’s need.*” This section allows the using agency head to conduct research and provide documentation in lieu of paying a consultant or expert. This is particularly appropriate in cases where the City has experts on staff or research provides compelling evidence of sole source.

The current sole source language requires justification that there is “only one available”. Adding the term “practicably” provides appropriate discretion that should be applied regarding sole source decisions and allows the City to apply factors such as amount of time and effort, quality and appropriate use and risk of using alternatives. In section (e), NIGP recommends changing the term “competitive bidding” to “*competitive solicitation*”.

**Section 2-368. Waiver of irregularities:** NIGP recommends changing the term “formal bids” to “*competitive sealed bids, competitive sealed proposals, and other methods of procurement*”.

**Section 2-369. Award of contract:** In order to include reference to competitive sealed bidding and competitive sealed proposals, NIGP recommends changing the term “lowest and best bidder” to the “*lowest and best bidder or offeror*”.

Section 2.369 also addresses the use of procurement cooperatives is limited to Miami-Dade County, the school board of Miami-Dade County and U.S. Communities Government Purchasing Alliance, and state and federal general services administration bid lists. There are many excellent cooperative organizations throughout the Country that provide opportunities to increase administrative efficiency and reduce costs. In order to take advantage of these opportunities, NIGP recommends expanding language as follows:



From: *“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 out any action by the city commission.”*

To: *“however, the purchase of commodities, materials, supplies or other items on a Purchasing Alliance continuing basis from Miami-Dade County; from the U.S. Communities Government, other procurement alliance or public entities that utilized public procurement processes to competitively solicit for award of the contracts, or from any cooperative contract in which the City of Miami Beach participates. . .”*

**Section 2-370. Award of contract to other than low bidder:** No changes recommended to this section.

**Section 2-371. Authority to resolve protested bids, and proposed awards:** While the language in the title only addresses “protested bids”, the language within the section clarifies that bids actually means request for proposal (RFP), request for qualification (RFQ), request for letters of interest (RFLI) and Invitation for Bid (IFB). To further clarify and address any future methods of procurement that may be adopted by the City, NIGP recommends that the language be modified as follows: “Any actual bidder, qualified proposer, or interested parties (hereafter collectively referred to as the “bidder”) who has substantial interest in, and is aggrieved in the connection with the solicitation or proposed award of, a request for Proposal (RFP), request for qualifications (RFQ), request for letters of interest (RFLI), or invitation for bid (IFB), for goods and/or services, *or any other methods of procurement used by the City*, (“hereinafter, collectively referred to as the bid”) may protest to the city manager or designee. Any party that wishes to protest shall provide a protest bond per section 287.042 of Florida statute.” This section is of critical importance and provides clear direction. NIGP also recommends the title be changed to state *“Authority to resolve protested bids, proposals and proposed awards”*. It is also recommended that a statement be added in section (a), (2) which should state: *“no protest shall be allowed for a charge that another bidder or offeror is non-responsible”*. This statement or a similar statement avoids protests based on complaints among vendors speculating or charging that a competing vendor has delivered poor past performance.

**Section 2-372. Authority to resolve protested bids and proposed awards** includes reference to: Request for Proposals (RFP), Request for Qualifications (RFQ), Request for Letters of Interest (RFLI) and Invitations for Bids (IFB), which is specific to this section only. NIGP recommends this language be expanded to add: *“or any other method of procurement utilized by the City”*. NIGP recommends that this language be used throughout the Ordinance to fully define all methods of procurement whenever a program, policy or procedure addresses the term “bid”.

**Section 2-373. Requirement for city contractors to provide equal benefits for domestic partners.** This section defines a “bid” as “bids shall mean a competitive bid procedure established by the City through the issuance of an Invitation to bid (IFB), Request for Proposal (RFP), Request for Qualification (RFQ), or Request for Letters of Interest (RFLI). NIGP recommends this language be expanded to add: *“or any other method of procurement utilized by the City”*. NIGP recommends that this language be used throughout the Ordinance to fully define all methods of procurement whenever a program, policy or procedure addresses the term “bid”. It is important to note that this definition, as well as other definitions stated above can only be used for the section in which the definition is stated and cannot be applied to Division 3 as a whole.

While sole source and emergency procurements are addressed later in the Ordinance, there is no language in Division 2 to specifically authorize the use of small purchases (those under the threshold that requires formal solicitations), competitive sealed proposals, construction procurements, professional services, requests for qualifications, etc. In addition to adding the above recommended language that enables the use of all methods of procurement and language that allows the City to utilize any procurement method not prohibited by law, NIGP recommends this section be further expanded to address all methods of procurement utilized by the City based on the guidelines provided in the MPC, Article 3.

Florida Statute Title XIX, Chapter 287 and the three comparable Florida cities provide specific reference to source selection (methods of procurement) that could be valuable in developing language that meets the intent of the City of Miami Beach. They are:

*Florida Statute Title XIX, Chapter 287*

*Daytona Beach - CODE OF ORDINANCES, Chapter 30 – Contracts, Purchasing, and Acquisition of Disposal of Personal Property, Article II. – Purchase of Goods or Services, Division 3 – Source Selection and Contract Formation>> Sec. 30.81 – 30.90.*



*City of St. Petersburg -Code of Ordinances, Part II – St. Petersburg City Code, Chapter 2 – Administration, Article V. – Purchasing, Contracts, Etc., Division 3. – Procurement Code, Section 2.237 – 2.245.*

The City of St. Petersburg Ordinance provides the most comprehensive language related to methods of procurement and is the most valuable reference for updating the language in the Miami Beach Ordinance. While all of the existing language in Division 3 is worthy of review, the primary areas of the City of St. Petersburg code that will be most helpful to include are Division 3, Section 2-239 “Definitions”, and Section 2-241 “Source Selection and Contracting.” Florida Statute Chapter 287 provides excellent language that could be adopted by reference if the City chooses to use this as an option to define any method of procurement. Example: Procurement of Architecture and Engineering Services.

**Section 2-374. Procedure to provide preference to veterans in contracts of goods and contractual services.** The terminology referencing goods and contractual services, and references to invitation to bid (ITB), request for proposal (RFP), request for qualifications (RFQ), and request for letters of interest (RFLI), should be used consistently through the Ordinance, and should also include request for negotiations (RFN) if so selected by the City. This recommendation applies to 2-372 and 2-373 as well. These program requirements should also be included in the City’s Procurement Manual.

**Section 2-375. Definitions:** NIGP recommends using this reserved section of the Ordinance to address all definitions that provide clarity and information for this Division. NIGP also recommends a comprehensive list of definitions in the Procurement Manual.

#### **Article VI – Procurement. Division 4. Purchases**

**Section 2-391. Standardization and cooperative purchasing:** This section provides very good enabling language. No changes are recommended to this section of the Ordinance. More expansive language will be recommended in the section of the Procurement Ordinance that addresses cooperative procurement.

**Section 2-392. Performance and payment bond:** No changes are recommended.

**Section 2-393. Unauthorized purchases:** This section provides very strong and clear language and should also be highlighted and placed in a prominent place in the Procurement Manual. No changes recommended.

**Section 2-395. Open market procedures:** This section addresses procurements under \$25,000 (recommended to be increased to \$50,000), which is recommended to be addressed as “Small Purchases” in a “Methods of Procurement” section of the ordinance. The current language states that *“Minimum number of bids. . . . all open market procedures or sales shall whenever possible, be based on at least three competitive bids”*. The requirement for three bids for very small purchases is administrative burdensome. The administrative cost for soliciting three bids may exceed the cost savings of the goods or services and at times may exceed the actual cost of the goods or services. Small purchases procedures are developed in order to require an appropriate level of competition based on the dollar value of the purchase and taking into consideration the administrative cost and time required for the purchase. Generally, small purchases procedures are developed to establish a tiered structure that requires a progressive level of competition depending on the dollar value of the goods and services. NIGP recommends that the City determine the level of competition that is reasonable for small purchases and develop a schedule of requirements to be included in the Procurement Manual.

In addition to the previous recommendation of adding a “Small Purchases” section in a new “Methods of Procurement” section of the Ordinance, NIGP recommends that this section be modified to include the following language:

*(1) Minimum number of bids. All open market purchases or sales shall be made based on a reasonable level of competition based on the dollar value of the purchase, complexity and administrative efficiency as determined by the City Manager or designee.”*

**Section 2-396. Emergency purchases:** No changes are recommended to this section. However, NIGP recommends moving this section under the previously recommended “Methods of Procurement” section of the Ordinance. This recommendation is consistent with the MPC guidance. In addition, grouping all methods within the same section makes it easier for readers to locate any methods of procurement.

**Article VI – Procurement. Division 5. Debarment of Contractors from City Work:**

This section is very thorough and recently modified. No changes are recommended. This Ordinance section should be referenced in a prominent section of the Procurement Manual.

**Article VII – Standards of Conduct. Division 2. Officers, Employees and Agency Members:**

This section is very thorough and provides a very clear message to all employees. The language is consistent with recommended content of Article 12 - *Ethics in Public Contracting* of the MPC. No changes are recommended. This Ordinance section should also be placed in a separate section of the Procurement Manual along with the City's Ethics Policy.

**Article VII– Standards of Conduct. Division 4. Procurement:**

No changes are recommended. This section should be placed in the Procurement Manual immediately following methods of procurement.

**PROCUREMENT ORDINANCE RECOMMENDATION SUMMARY**

**Article VI – Procurement. Division 1. Generally**

**Section 2-311. Purpose and 2-312. Definitions:**

- NIGP recommends that the purpose statement be expanded as follows: *The purpose of this article is to prescribe the manner in which the city shall control the purchase of materials, supplies, equipment, services, construction and professional services, and to maintain a high ethical standard for all officers and employees of the city in connection therewith.*
- Recommend that the “contractual services” definition be modified to a more traditional definition of services, and that “professional services” and “construction” definitions be added.
- Recommend adding “requisitions” to the Definitions section.

**Section 2-315. Surplus Stock:**

- NIGP recommends that the language regarding authority limits of the City Manager or designee be revised to state *“not to exceed the dollar threshold requirement for formal solicitations”*.
- Consideration should be given as to whether the City Manager and the City Commission want to approve of exchanges and trade-ins and at what level.

## Article VI – Procurement. Division 2. Procurement Director

### **Section 2-336. Positions created and Section 2-337. Appointment:**

- No changes are recommended.

### **Section 2-338. Scope of purchasing authority:**

- Clearly define all major authority, roles and responsibilities of the Procurement Director.
- Recommended language changes are as follows:  
*Purchase or contract. Unless otherwise exempted by Florida statute, this ordinance, or the Procurement Manual, the Procurement Director shall perform the duties specified in this article in connection with the purchase or contract for purchases of all ~~current supplies and contractual services~~ goods, services, construction and professional services needed by any using agency deriving its support wholly or in part from the city when duly authorized, in accordance with the purchasing policies, procedures, and programs as prescribed by this article and , such rules regulations as may be adopted for internal management and operation of the procurement division and other rules regulations as shall be prescribed by the city manager and to manage all aspects of the procurement function within the City and centralized control and/or disposal or sale of surplus, excess, obsolete and salvageable materials and equipment.*

### **Section 2-339. Other powers and duties generally:**

- NIGP recommends expanding the list of duties for the Procurement Director. Recommended language is as follows:
  - *Responsible for the delegation of procurement authority to procurement staff and department personnel*
  - *Responsible for the implementation, interpretation, and control of all aspects of the procurement function.*
  - *Ensure efficient and effective operation of the procurement division.*
  - *Ensure all procurement policies, procedures and programs include adequate internal controls.*
  - *Ensure appropriate administration of all contracts.*
  - *Ensure that all qualified vendors have access to participate in procurement opportunities and that no vendor is arbitrarily or capriciously excluded.*
- NIGP recommends eliminating Item 8 – Vendor’s catalog file from the Ordinance.

- Review item 1 “Minimum Expenditures” for possible modification to encourage best value rather than least expense.

**Section 2-340. Regulations and Procedures:**

- No changes are recommended.

**Section 2-341. Inspection and testing:**

- NIGP recommends adding contract administration to 2-339 and including “Contract administration” in the definitions portion of this section.
- Expand upon contract administration in the Manual.

**Section 2-434. Central Warehousing:**

- NIGP recommends the City review this section to ensure it is still current based on the City’s existing practices and priorities.

**Article VI – Procurement. Division 3. Contract Procedures**

**Section 2-366. Generally**

- Expand language to include in (a) to include all methods of procurement. Recommended language is included below.

*(a) Formal Solicitations Required. All goods, services and construction, except as otherwise provided in this division when the estimated cost thereof shall exceed \$25,000, shall be purchased by formal solicitation and awarded by written contract and/or purchase order from the lowest responsible and responsible bidder(s), or best offeror(s), after due notice inviting bids, or proposals, and any other requirements of this ordinance or law. The City Manager or designee shall be authorized to utilize any method of procurement that is not prohibited by law or as stated herein. The primary methods of procurement authorized by this section include but are not limited to:*

- *Small Purchases*
- *Competitive Sealed Bidding*
- *Competitive Sealed Proposals*
- *Request for Negotiations*



- *Professional Services Procurements*
- *Request for Qualifications*
- *Request for Letters of Interest*
- *Soles Source Procurements*
- *Emergency Procurement*

*(b) Notice Inviting formal solicitations. . .*

*The City Manager or designee shall be authorized to develop procedures for each methods, which shall include all advertising and notice requirements.*

- Modify language to include *“bids and proposals”* where only *“bids”* are referenced and *“bidders or offerors”* in all areas where *“bidders”* only are referenced.
- Consider increasing the dollar threshold requiring formal solicitation from \$25,000 to \$50,000 for procurements and the sale of surplus property.

**Section 2-367. Rejection of bids; negotiation; wavier of competitive bidding:**

- Replace the term *“city manager”* with the term *“city manager or designee”*.
- Revise language in item (d) regarding sole source requirements. Recommended language is included below:

*“The using agency director shall fully document and provide justification that only one source is **practicably** available, or obtain a written determination from an industry expert or consultant that the item or service is the only one practicably available to fulfill the City’s need.”*

- Revise language in item (e). Replace the term *“competitive bidding”* with the term *“competitive solicitation”*.

**Section 2-368. Wavier of irregularities:**

- Change the term *“formal bids”* to *“competitive sealed bids, competitive sealed proposals, and other methods of procurement”*.

**Section 2-369. Award of contract:**

- Change the term *“lowest and best bidder”* to the *“lowest and best bidder or offeror”*.

- Revise language regarding the use of cooperative contracts. Recommendation includes adding the following language “*...and any other procurement alliance or public entities that utilized public procurement processes to competitively solicit for award of the contracts, or from any cooperative contract in which the City of Miami Beach participates or from any contract that allows City of Miami Beach to utilize resulting from appropriate cooperative language,...*”

**Section 2-370. Award of contract to other than low bidder:**

- No changes are recommended.

**Section 2-371. Authority to resolve protested bids, and proposed awards:**

- Change title to *Authority to resolve protested bids, proposals and proposed awards.*
- NIGP recommends that the language be modified as follows: “Any actual bidder, qualified proposer, or interested parties (hereafter collectively referred to as the “bidder”) who has substantial interest in, and is aggrieved in the connection with the solicitation or proposed award of, a request for Proposal (RFP), request for qualifications (RFQ), request for letters of interest (RFLI), or invitation for bid (IFB), for goods and/or services, *or any other methods of procurement used by the City,* (“hereinafter, collectively referred to as the bid”) may protest to the city manager or designee.
- Review existing language of Division 3 and compare with City of St. Petersburg Code and Florida Statute, Chapter 287 to update language based on the City of Miami Beach’s preference. (See page 16 of this report).
- Add language to address protest bonds. Recommended language is as follows: *Any party that wishes to protest shall provide a protest bond per section 287.042 of Florida statute.*
- Add language in section (a), (2) which states: *“no protest shall be allowed for a charge that another bidder or offeror is non-responsible.”*

**Section 2-372. Procedure to provide preference to Miami Beach-based vendors in contracts for good and contractual services:**

- Expand language regarding methods of procurement by adding “*or any other method of procurement utilized by the City*”.

- NIGP recommends that this language be used throughout the Ordinance to fully define all methods of procurement whenever a program, policy or procedure addresses the term “bid”.

**Section 2-373. Requirement for city contractors to provide equal benefits for domestic partners:**

- Expand language regarding methods of procurement by adding *“or any other method of procurement utilized by the City”*.
- Use the language relating to Invitation to bid (ITB), request for proposals (RFP), request for qualifications (RFQ), request for letters of interest (RFLI), and any other method of procurement utilized by the City consistently throughout the Ordinance.
- Review City of St. Petersburg Code and Florida Statute 287 to update the Miami Beach Ordinance for 2-239 “Definitions” and 2-241 “Source Selection and Contracting”, based on the preference of the City of Miami Beach.

**Section 2-374. Procedure to provide preference to veterans in contracts of goods and contractual services.**

- The terminology referencing goods and contractual services, and references to invitation to bid (ITB), request for proposal (RFP), request for qualifications (RFQ), and request for letters of interest (RFLI), should be used consistently through the Ordinance, and should also include request for negotiations (RFN) if so selected by the City. Note: This recommendation applies to 2-372 and 2-373 as well.

**Section 2-375. Definitions**

- Use this reserved section for a new general Definitions section of the Ordinance and provide comprehensive list of definitions in the Procurement Manual.

**ARTICLE VI – Procurement. Division 4. Purchases**

**Section 2-391. Standardization and cooperative purchasing:**

- Refer to Article VI – Procurement. Division 3. Contract Procedures, Section 2-369 for expanded language recommendations for cooperative purchasing.

**Section 2-392. Performance and payment bond:**

- No changes are recommended.

**Section 2-393. Unauthorized purchases:**

- No changes are recommended.

**Section 2-395. Open market procedures:**

- NIGP recommends that the City determine the level of competition that is reasonable for small purchases and develop a schedule of requirements to be included in the Procurement Manual.
- In addition, it is recommended that this Ordinance section be modified to include the following language:

*(1) Minimum number of bids. All open market purchases or sales shall be made based on a reasonable level of competition based on the dollar value of the purchase, complexity and administrative efficiency as determined by the City Manager or designee.*

**Section 2-396. Emergency purchases:**

- NIGP recommends moving this section to the previously recommended "methods of procurement" section.

**Article VI. Division 5. Debarment of contractors from city work:**

No changes recommended to this section. This Ordinance section should be included in the Procurement Manual.

**Article VII – Standards of conduct. Division 2. Officers, employees and agency members**

No changes recommended to this section. This Ordinance section should be included in the Procurement Manual.

**Article VII – Standards of conduct. Division 4. Procurement:**

No changes are recommended. This Ordinance section should be included in the Procurement Manual.

## **PROCUREMENT MANUAL RECOMMENDATIONS**

The City of Miami Beach does not have a current procurement manual. This report recommends development of a comprehensive procurement manual based on the content, flow and format of the MPC. NIGP recommendations will include information extracted from other ordinances, laws, and manuals, and address and expand upon the existing programs, policies and procedures stated in the Ordinance. After the Procurement Manual is completed, approved and distributed, the Procurement Director should train the procurement and the using department staff to ensure they have a complete understanding of all aspects of the procurement function.

The Manual should expand upon the intent of enabling legislation, the content of the existing Ordinance, and incorporate NIGP recommended changes in the Procurement Ordinance section of this report. The Procurement Manual should also outline and address the City's procurement policies, procedures, processes and programs. It should define the specific duties and responsibilities of those who participate in the procurement process, list the principles and goals of the procurement program and adequately address processes for requisitions, specifications, purchase orders, change orders, receiving and processing of invoices for payment.

The Manual should have a section that prominently outlines the procure-to-pay process, commonly referred to as the "procurement cycle". The procurement cycle should summarize the entire procurement process supplemented with diagrams and flow charts. It should be prominently placed since it provides a high level outline of how the subjects will be organized by their placement in the procurement cycle.

The Manual's organization should clearly indicate the flow of important processes, programs and procedures and should be accompanied by a statement of applicability and responsibility, and the consequences for non-compliance. A definition of terms should be included in the Manual as a whole and addressed in specific sections as necessary.

NGIP reviewed of the City Ordinance, information provided by the Procurement Director and information extracted from the website. Based on review of this information and using the MPC as a guide, NIGP recommends the following format for the City of Miami Beach Procurement Manual. Each section referenced below will be addressed separately.

Section 1, Purpose and Objectives

Section 2, Structure, Responsibilities and Authority

Section 3, Procurement Cycle

Section 4, Purchase Requisition



- Section 5, Specifications
- Section 6, Methods of Procurement
- Section 7, Construction Contract Procurement
- Section 8, Evaluation and Award
- Section 9, Cooperative Procurement
- Section 10, Contracts, Purchase Orders and Amendments
- Section 11, Protest and Disputes
- Section 12, Contract Administrations, Receiving and Vendor Performance
- Section 13, Disposal of Surplus Property
- Section 14, Special Programs, Preferences, and Processes
- Section 15, Ethics
- Appendix
  - List of Forms
  - Glossary of Terms

The recommendations stated herein include the primary topics as well as the recommended general content at a policy level. It is recommended the City review and clarify policy where necessary in advance of adopting the Manual. Individual internal procedures should also be developed by the City staff to further support policies and programs contained within the Manual.

### **Section 1: Purpose and Objectives**

The opening section of the Manual should include the purpose and objectives of the City's procurement program. The Manual should serve as a guide for all stakeholders who participate in the procurement process and serve as a handbook for best principles and practices within public procurement. For City departments, procurement is a service function supporting their programs through the acquisition of goods and/or services. Procurement is also accountable for contract administration after the contract is signed and purchase orders and contracts are issued.

The Manual should encompass all relevant procurement statutes, ordinances, policies and administrative directives. Once completed, the Procurement Manual should be posted on the City's website and a training program should be implemented. The primary goal of the Manual and training is to ensure that City personnel who have a part in any aspect of the procurement to payment process (procurement cycle) are fully aware of the procurement function and their respective role and responsibilities.

NIGP recommends the City utilize *Article VI - Procurement. Division 1. Generally of the City Ordinance* with the modified language recommended as a starting point, and to expand this section further to include:

- Statement of Purpose
- Vision Statement
- Mission
- Goals & Objectives
- Guiding Principles: Examples as follows:
  - Obtain high quality goods and services,
  - All procurement be conducted in an open, fair and impartial manner,
  - Avoid impropriety and the appearance of impropriety,
  - Ensure all qualified vendors have access to the City's procurement opportunities, and no vendor be arbitrarily or capriciously excluded,
  - Seek competition to the maximum feasible degree,
  - All procurement policies, procedures, processes and programs involve openness and administrative efficiency,
  - Specifications reflect the City's needs rather than being drawn to favor a particular vendor, and
  - Purchaser and vendors freely exchange information concerning what is sought to be procured.

## **Section 2: Structure, Responsibility and Authority**

The City Ordinance has established the City's procurement organization and system. Specific authority and responsibilities have been delegated to the City Manager who in turn has delegated authority and responsibility to the Procurement Director. This information should be addressed in general terms in this section and more specifically throughout the Manual. The Procurement Director's specific authority, roles and responsibilities should be included in substantial detail, as well as the limitations on other staff's authority and responsibility regarding the procurement function. This section should also state that the Procurement Director shall have the authority and responsibility to implement procedures, programs and processes, and guidelines to carry out the mission, goals and objectives as stated in "Section 1 – Purpose and Objectives", and to ensure administrative efficiency in the development of such policies, procedures, processes, and programs. There should be a clear statement that authorizes the Procurement Director to re-delegate procurement authority to procurement staff and to decentralize authority to using departments as deemed appropriate.

Much of the content in Article VI. Procurement, Division 1. Generally and Division 2. Procurement Director, along with recommended language changes included in the Ordinance review section of this report, provides a sound basis for section 2 of the Manual.

### Section 3 - Procurement Cycle

The procurement cycle model identifies the typical steps in contracting for goods and services. It begins with the identification of the need for goods or services, ensure funds are budgeted, and includes all processes from the requisition through the contract award, contract administration, and ends with disposal or sale of surplus property. The purpose of this section is to identify the procurement steps in general terms, as well as the responsible parties in order to provide a foundation to more clearly explain the individual processes, roles and responsibilities that will be addressed in the balance of the Manual. The section should end with a clear concise statement that *“The Procurement Director shall be responsible for administration, review and management of all policies, procedures, process and programs that support or result from the procurement cycle.”*

A model of the procurement cycle is as follows:



#### Section 4 – Requisitions

This section should include the City's requisition requirements, approval authority, and information required for preparation and submission of requisitions, as well as any associated Information Technology system requirements. It should also include the requirements for an acceptable requisition to include: appropriate specifications or scope of work, funding sources and any special approvals for specific commodities or services where appropriate. The requisition section should reference any special procedures, processes, programs that should be considered during the requisitioning processes, including local preference, veterans' preference, disadvantaged businesses programs, and other related programs. These considerations should also be addressed in the appropriate section of the Manual. NIGP also recommends that the responsible parties for requisition development, submission, review, and approval be clearly addressed.

#### Section 5 – Specifications

Based on the MPC guideline, specifications/scope of work should be included in a separate section. This section should fully define specifications and scope of work and identify the requirements, types and appropriate use of specifications. This separation and placement of specifications/scope of work provides critical information regarding its importance and the requirements of a good specifications and/or scope of work. Specifications are among the most important components in the procurement cycle. They are necessary for a good requisition, critical for a good solicitation, the focal point for evaluation and award, and the primary component for a purchase order or contract. Specifications are also the basis for inspection, receiving, and acceptance or rejection and are the key element used in contract administration. The existing Ordinance has very limited information on specifications.

The specifications section should include language similar to the following: *"It shall be the policy of the City of Miami Beach that specifications describe the needs of the organization, and that specifications shall not generally be written to favor any particularly vendor (unless otherwise approved as a sole source) but shall be used to maximize competition to the maximum feasible degree. The Procurement Directors shall be authorized to utilize the most appropriate type of specification. The primary specification types include:*

- **Design:** Sets forth the requirements for an item to be purchased by detailing the characteristics that item must possess.
- **Performance:** Sets forth the performance requirements the product or service must meet. The end result is the primary consideration.

- **Brand Name:** Cites a brand name, model number or some other designation that identifies a specific product. Brand name specifications should be used to state a quality level desired, but not normally to restrict competition.
- **Combination of above:** May specifically combine two or more of the above to more clearly define the product or services desired.
- **Statement of Work (SOW):** A detailed description of work which includes the desired type and level of performance that will be expected from the successful contractor. A SOW is a variation of a performance specification and is often used in complex procurements.
- **Blueprints and Drawing:** Specification variations include or may be supplemented by blue prints and drawings.

Due to the critical importance of specifications and scopes of work, NIGP recommends a separate section be included in this section to identify the responsible parties for the development, review and approval of quality specifications/scope of work.

### **Section 6 - Methods of Procurement**

The MPC addresses methods of source selection in Article 3 “Source Selection and Contract Formation”. The more commonly used term is “Methods of Procurement”. The primary source selection method in the City Ordinance is formal sealed bidding. Small purchasing is not addressed. Other methods of procurement, emergency and sole source, are mentioned in other sections of the Ordinance but they are not addressed as specific methods of procurement, nor are they specifically authorized. As previously stated, NIGP has recommended all methods of procurement that are currently being utilized by the City be included in the Ordinance. These same procurement methods should be included in the Manual. The Manual should define the appropriate use of each method, detailed processes and procedures, and any other necessary or related instructions or guidance that need to be addressed. Several of these sections can be extracted from the Ordinance. For example, the following Ordinance sections could be restated in the Manual: cone of silence, protest procedures, irregularities, bonding, authority to accept or reject bids in whole or in part, authority to negotiate with the low bidder, etc. All policies, procedures and processes related to the methods of procurement should be addressed in this section of the Manual or by reference. At a minimum the Methods of Procurement Section should include:

- Small Purchases
- Competitive Sealed Bidding
- Competitive Sealed Proposals
- Construction Procurement (to be addressed in a later section of the Manual)
- Sole Source Procurement
- Emergency Procurement
- Request of Qualifications
- Request for letters of interest
- Invitation to Negotiate

The selection of the appropriate method of procurement shall be determined based on the estimated cost of the goods and/or services, the availability of clear and concise specifications, the needs of the agency, and competition within the market. All contracts with nongovernmental contractors for the purchase of good and/or services shall be awarded after use of the appropriate methods of procurement contained herein unless otherwise authorized by law. The Procurement Director's authority for selection of the most appropriate method of procurement should be clearly stated in the Manual.

#### **Section 7 - Construction Contract Procurement**

Due to the complexity and dollar volume of construction project procurement, construction procurements are often addressed in a separate section of the Procurement Manual. Addressing construction as a separate section provides the City the opportunity to address unique requirements specific to construction. NIGP recommends that the City determine the specific construction requirements that best meet the City's needs, that those requirements be documented in detail and addressed in a separate section of the procurement manual.

An alternative is to adopt a construction procurement process that has already been developed, such as Florida Statute, Title XVIII, Chapter 255, by reference. This section should address the appropriate procurement process (competitive sealed bid) and be used for typical design-bid-build construction procurement. This section should also include any special methods of procurement (competitive sealed proposals) that may be used based on alternative project delivery methods such as construction management and design-build. Bid bonds, performance bonds, and any other construction specific requirements should be included.

Approved alternative method of project delivery should be listed along with any special approvals that may be required by the City Manager or the City Commission. A sample section of the construction project delivery methods is as follows:



- **Design-Bid-Build:** *The Design-Bid-Build (DBB) project delivery method includes the use of Competitive Sealed Proposals method of procurement for Architectural Services for the design phase-and the competitive sealed bidding procurement method for the construction phase. Design-Bid-Build is the traditional method for project delivery.*
- **Design-Build:** *The Design-Build (DB) project delivery method is procured by one solicitation resulting in a single contract for both the design phase and the construction phase of the project. The solicitation of the design-builder shall be conducted using the multi-step competitive sealed bid method or the competitive sealed proposal-method. The use of this method shall require approval of the Board.*
- **Construction Management at Risk (CMAR):** *CMAR shall require the construction manager to warrant that the work will be completed at or below a guaranteed maximum prices (GMP) with provision for change order adjustments for owner directed work outside of the agree upon GMP scope of work. This method of project delivery may be not used for construction projects estimated at less than \$10,000,000. The use of this method shall require approval of the Board.*

## **Section 8 – Evaluation and Award**

The Manual should include language noting that the evaluation of competitive sealed bids shall be based on the lowest responsible and responsive bidder and that proposals shall be evaluated based on the criteria set forth in the solicitation documents. It should also address that the evaluation committee members shall evaluate bids and proposals in an objective manner and comply with all requirements of the Procurement Ordinance and that all recommendations and contract and purchase order awards shall be approved by the parties authorized by this Ordinance. Detailed processes and procedures for evaluation of award should be developed and provided in the Manual including any requirements to enter purchase orders in the City’s electronic financial/ purchasing system.

## **Section 9 - Cooperative Procurement**

Cooperative contracts are addressed in two sections of the Ordinance: Article VI, Division 3 - Contract Procedures Ordinance 2-369, and Article VI, Division 4. Purchases Section 2-391 Standardization and Cooperative Purchasing. However, the language in Section 2-369 of the Ordinance is very limiting. NIGP recommended updates to this language to provide more flexibility to utilize cooperative contracts with the potential of increasing administration efficiency and cost savings. This language is also consistent with the language included in



Section 2.391. Section 2.391 states: *“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 as in accordance with the city and state law.”* This language should be stated in the Manual and should include procedures, documentation and justification necessary and/or required by the City Manager or Commission.

## **Section 10 – Contracts, Purchase Orders and Amendments**

Authority to review, approve and execute formal contracts or purchase orders, change orders or contract modifications should be addressed in a separate Contracts, Purchase Orders and Amendment section of the Procurement Manual per the Procurement Ordinance, or as directed by the City Manager. Unless otherwise prohibited by Law, regulation or policy, the Procurement Director should be authorized to utilize any type of contract that best meets the interest of the City.

This section should include any special requirements related to entry in the City’s electronic procurement or financial system, authorization and encumbrance of funds, or any special. All confirming orders shall require a statement in an obvious location on the purchase order that states *“Confirming Order – do not duplicate”*.

### **Contract Pricing Arrangements**

Contract Pricing Arrangements should also be addressed in Contracts, Purchase Orders and Amendments section of the Manual. They include the terms and conditions that dictate how the contractor is compensated or reimbursed for the scope of services or specifications stated within the contract. Contract Pricing Arrangements are generally in three categories: (1) price type contracts, (2) cost type contracts, and (3) time and materials contracts. Each type should be addressed. An example of language that should be included is as follows:

- ***Fixed-Price Contracts:*** *Contracts providing for a firm price for items specified in the contract or a lump sum price for the contract that may only be adjusted in accordance with the contract clauses that provide for revision of the prices under specified circumstances. Variations of fixed price contracts include but are not limited to:*
  - *Fixed price with incentive*
  - *Fixed price with price redetermination*
  - *Fixed Price with economic price adjustment*

- **Cost Type Contracts:** *Contracts that reimburse the contractor for incurred costs which are allowable and allocable under the terms of the contract and applicable laws and regulations. Variations of cost contracts include but are not limited to:*
  - *Cost plus fixed fee*
  - *Cost plus award fee*
  - *Cost plus incentive fee*
  - *Cost reimbursement*
  
- **Time and Materials Contract:** *Contracts that provide for the acquisition of supplies or services on the basis of payment for hours at specified, fixed hourly rates which include wages, overhead, profit, and expenses. Materials shall be reimbursed per the terms and conditions specified in the contract.*

Addition language recommended for inclusion in the Contracts and Purchase Order section is as follows: *“Except as prohibited, the Procurement Director should be authorized to utilize any type of contract which shall promote the best interest of the City.”*

#### **Contract Modifications and Change Orders**

Contract modifications and change orders should be addressed in the Contracts, Purchase Orders and Amendments section of the Manual. An example of language that should be included is as follows:

*Any request for change affecting price, quality, quantity, delivery or cancellation requires a written explanation by the department. All change orders should be evaluated for contract validity and price reasonableness. No fixed-price contract may be increased by more than twenty-five percent of the amount of the contract without approval of the Procurement Director.*

*Change orders that exceed the requestor’s delegated purchasing authority and all contract modifications require the Procurement Director’s approval. No personnel shall notify a contractor that a change is approved until authorized by the Procurement Director.*

*All construction change orders shall be fully justified by the Project Manager and approved by the Department Head in advance of submission to the Procurement Director for approval. Construction change orders shall be approved and executed as directed by*

*the City Manager or Commission.*

NIGP also recommends the inclusion of term contract types and blanket contracts in this section. The various contract types (definite quantity contracts, indefinite quantity contracts, requirements contracts, and multi-year contracts) should be defined and the appropriate use of each should be identified. Language should be added to state that the Procurement Director has the authority to select the most appropriate contract type to serve the best interest of the City.

### **Section 11 - Protest and Disputes**

As previously stated, the Ordinance language relating to protests and disputes is concise and provides very clear direction. This language from the Ordinance should be included in the manual verbatim.

### **Section 12 - Contract Administration, Receiving and Vendor Performance**

Contract management and administration should be addressed in considerable detail in the Manual and include a description of the contract administration function, all duties, roles and responsibilities and any forms, surveys, guidelines and procedures necessary to carry out this function. Contract administration begins after award of the contract. Its purpose is to ensure that the contract is appropriately managed in all respects and that all parties comply with the specifications/scope of work, terms and conditions of the contractual agreement. The integrity of the public purchasing process demands that goods or services be furnished, received, invoiced and paid as specified in the contract. Contract administration includes all actions taken by the City relative to a specific contract after the award is made.

The Manual should address that the contract administrator should generally be the department user of the contract or one who has a vested interest in the procurement and who will be responsible for the proper adherence to all contract specifications by the contractor. NIGP suggests that when applicable, the Procurement Department should delegate in writing a specific individual to act as the contract administrator, and such delegation specify the important aspects of the contract, distinguishing between the administrator's authority and that which must remain a function of the purchasing office. Specific delegated tasks should be outlined in a contract administration designation letter which may include acceptance of goods or services, approval of invoices, scheduling and monitoring of project progress, coordination of resources and favorable or critical feedback to the contractor and procurement department.

The Manual should focus in considerable detail on defining the designated contract

administrator's role and responsibilities. Clear language should be included that state the contract administrator shall be responsible for ensuring that they and any staff members having duties related to administering the contract adhere to the policies set forth in this manual. NIGP suggests the following language should be considered during the development of contract administration language: *The contract administrator's responsibilities shall include, but not necessarily be limited to, the following:*

- *ensure proper receipt, inspection, and acceptance of all goods and services specifically related to the contract,*
- *ensure goods and services are being provided in a timely manner and in accordance with the contract scope of work and/or specifications and terms and conditions,*
- *ensure review, approval and timely submission of appropriate receiving reports,*
- *when applicable, review, approval and submission of any invoices submitted for all time and materials, consulting services and other services related to the performance of the contract,*
- *ensure the contract is valid and the contract term dates and renewal clauses are current,*
- *ensure the Contractor is providing timely goods and/or services in accordance with the contract requirements,*
- *ensure there is ongoing two-way communication with between the City and the Contractor,*
- *develop and maintain vendor/contractor information regarding contract performance,*
- *facilitate two way communications with the contractor/vendor regarding contract performance,*
- *provide performance information to the Procurement Director at the time of each performance issue, and in the case of blanket and term contracts, well in advance of contract renewal,*
- *identify, justify and request any contract modifications or change orders and submit such requests to the Procurement Director.*

The Procurement Director shall be responsible for the oversight of the contract administration process including the development of any guidelines or procedures.

### **Section 13 - Disposal of Surplus Property**

This section of the Manual should identify the purpose of the surplus property program, the authority of the City Manager and Procurement Director related to surplus, methods of



disposal, associated procedures, and clearly identify responsibilities. Suggested language is as follows:

*The purpose of the Surplus Property Program is to maximize the benefit from surplus property by either reassigning or maximizing the revenue generated from disposal. It shall be the responsibility of the Procurement Director to determine the value of such asset and take appropriate action considering administrative efficiency and potential revenue. The Procurement Director shall have the authority to use any disposal methods deemed to be in the best interest of City. Those methods shall include, but not be limited to the following:*

- *Public auction*
- *Electronic web-based auctions*
- *In-house auction*
- *Competitive Sealed bidding*
- *Trade-in*
- *Cannibalization*
- *Donation to another public agency*

***Responsibility/Authority***

*The Procurement Agent shall be responsible for the sale, reassignment or disposal of surplus, obsolete, excess or scrap materials and equipment. Departments shall be responsible for identification of surplus property with value and communicating to the Procurement Agent regarding such assets and their value.*

**Section 14 - Special Programs, Preferences, and Processes**

This section should be used to address any special programs, processes or procedures that must be considered for any process of the procurement cycle. Each program should include a statement of purpose and any program requirements and/or procedures. The components of this section should include but are not limited to the following:

- Purchasing Card Program
- Disadvantaged Business Program
- Veteran Preference Program
- Local preference
- Preference for Florida Small Businesses Owned and Controlled by Veterans and to State-Certified Services Disabled Veteran Business Enterprises
- Living Wage Requirements for City Services Contracts and Employees
- Equal Benefits for Domestic Partners

- Lobbyist Fee Disclosure
- Campaign Ordinance

### **Section 15 - Ethics**

The Ordinance language related to Ethics is clear, concise and provides valuable information and clear direction. This ordinance language should be included in the manual verbatim. NIGP also recommends adding or referencing the NIGP Code of Ethics to this section.

### **Appendix – List of Forms and Glossary of Terms**

The Manual should include frequently used forms and associated procedures and definitions from the Ordinance, Florida statute, relevant terms from the NIGP dictionary, and others as needed to clearly define the terms used throughout the Manual.

### **Additional Recommendation**

In addition to the above recommended outline, NIGP recommends a vendor guide be developed. The guide should include information to inform vendors of the following:

- Provide information on how to register for bidders lists and appropriate commodity code use,
- Identify rules regarding selling to and/or contacting HCC departments,
- Specify location for advertisements of formal solicitations,
- Provide information or reference to the Small Business Program,
- Reference relevant sections on protests and disputes,
- Clarify how to prepare and submit invoices and information required for a valid invoice,
- Provide information on how to contact procurement and departments,
- Provide information as it relates to vendors regarding the ethics and the code of silence, and
- Provide other information relevant to vendors.

This guide should be concise and posted on the Miami Beach procurement website for convenient reference for vendors.

## **PROCUREMENT MANUAL SUMMARY**

This Manual is based on policy that has been adopted by the City. This policy should be supplemented by additional operating procedures as well as any guidelines, forms, checklists that the purchasing Director deems appropriate. Further, the City should provide considerable focus on the methods of procurement they prefer, and any methods of procurement they choose to adopt by reference (Florida statutes, St. Petersburg Ordinance examples) to ensure all methods of procurement are fully addressed in the Manual. Any additional guidelines or explanations of programs should also be addressed in supplementary information including training.

The recommended Procurement Manual structure, format, and content are consistent with the City Ordinance requirements, the MPC and best practices. The Manual will also help clarify the procurement function and associated roles, responsibilities, as well as providing a foundation for procurement training. Upon adoption of the recommended changes in the Procurement Ordinance, NIGP recommends the Procurement Manual be developed as soon as it is deemed feasible by the City.

## **APPENDIX A**

### **Rick Berry, FNIGP, CPPO, VCO**

Rick Berry, FNIGP, CPPO, is the Executive Director of Construction and Procurement Services at Old Dominion University in Norfolk, Virginia. In 2010, under Mr. Berry's leadership, the University received the Pareto Award for Excellence, the highest award an organization can receive for high performance and best practices. There are only eight other organizations that have achieved this distinguished award.

Previously, Mr. Berry served at the Purchasing Agent for the City of Virginia Beach, Virginia.

Mr. Berry has received the NIGP's Albert Hall award, the most prestigious individual award bestowed by the Institute. He has also received the Distinguished Service Award. He is a past president of the Institute and served on the Board of Directors. He has served as chairman of several NIGP committees, including Education, Research, Marketing and Finance.

He served in leadership positions for the Universal Public Purchasing Certification Council from 2005 to 2008. He has been a consultant for the NIGP Consulting Program since 2004 and has performed reviews for cities, counties and higher education institutions.

Mr. Berry has served as an instructor for NIGP. He currently teaches a graduate level course on Contract Management at Old Dominion University. He serves as a Board member for the Virginia Association of State College and University Purchasing Professionals. He also serves on the Virginia Minority Supplier Development Council's Southeastern Advisory Board.

