

■ ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2, ARTICLE VI, ENTITLED "PROCUREMENT", BY CREATING DIVISION 5, ENTITLED "DEBARMENT", SECTIONS 2-397 THROUGH 2-406 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, PROVIDING FOR DEBARMENT OF CONTRACTORS FROM CITY WORK; PROVIDING FOR SEVERABILITY; CODIFICATION; REPEALER; AND AN EFFECTIVE DATE.

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

SECTION 1. Miami Beach City Code, Chapter 2, entitled "Administration", Article VI, entitled "Procurement", is hereby amended by adding the following Division 5, entitled "Debarment of Contractors from City Work" reading as follows:

Division 5. Debarment of contractors from City work.

Section 2-397 Purpose of debarment.

- (a) The City shall solicit offers from, award contracts to, and consent to subcontractors with responsible contractors only. To effectuate this policy, the debarment of contractors from City work may be undertaken.
- (b) The serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the City's protection, and not for purposes of punishment. Debarment shall be imposed in accordance with the procedures contained in this ordinance.

Section 2-398 Definitions.

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

- (b) Civil judgment means a judgment or finding of a civil offense by any court of competent jurisdiction.
- (c) Contractor means any individual or other legal entity that:
- (1) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a City contract, including, but not limited to, vendors, suppliers, providers, bidders, proposers, consultants, and/or design professionals, or
 - (2) Conducts business, or reasonably may be expected to conduct business, with the City as an agent, representative or subcontractor of another contractor.
- (d) Conviction means a judgment or conviction of a criminal offense, be it a felony or misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a convictions entered upon a plea of nolo contendere.
- (e) Debarment means action taken by the Debarment Committee to exclude a contractor (and, in limited instances specified in this ordinance, a bidder or proposer) from City contracting and City approved subcontracting for a reasonable, specified period as provided in subsection (j) below; a contractor so excluded is debarred.
- (f) Debarment Committee means a group of seven (7) individual members, each appointed by the Mayor and individual City Commissioners, to evaluate and, if warranted, to impose debarment.
- (g) Preponderance Greater weight of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- (h) Indictment means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.
- (i) Legal proceeding means any civil judicial proceeding to which the City is a party or any criminal proceeding. The term includes appeals from such proceedings.
- (j) List of debarred contractors means a list compiled, maintained and distributed by the City's Procurement Office, containing the names of contractors debarred under the procedures of this ordinance.

Section 2-399 List of debarred contractors.

- (a) The City's Procurement Office, as the agency charged with the implementation of this ordinance, shall:
- (1) Compile and maintain a current, consolidated list (List) of all contractors debarred by City departments. Such List shall be public record and shall be available for public inspection and dissemination;
 - (2) Periodically revise and distribute the List and issue supplements, if necessary, to all departments, to the Office of the City Manager, and to the Mayor and City Commissioners; and
 - (3) Included in the List shall be the name and telephone number of the City official responsible for its maintenance and distribution.
- (b) The List shall indicate:
- (1) The names and addresses of all contractors debarred, in alphabetical order;
 - (2) The name of the department that recommends initiation of the debarment action;
 - (3) The cause for the debarment action, as is further described herein, or other statutory or regulatory authority;
 - (4) The effect of the debarment action;
 - (5) The termination date for each listing;
 - (6) The contractor's certificate of competency or license number, when applicable;
 - (7) The person through whom the contractor is qualified, when applicable;
 - (8) The name and telephone number of the point of contact in the department recommending the debarment action.

- (c) The City's Procurement Office shall:
- (1) In accordance with internal retention procedures, maintain records relating to each debarment;
 - (2) Establish procedures to provide for the effective use of the List, including internal distribution thereof, to ensure that departments do not solicit offers from, award contracts to, or consent to subcontracts with contractors on the List; and
 - (3) Respond to inquiries concerning listed contractors and coordinate such responses with the department that recommended the action.

Section 2-400 Effects of debarment.

- (a) Debarred contractors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the City Manager determines that an emergency exists justifying such action, and obtains approval from the Mayor and City Commission, which approval shall be given by 5/7ths vote of the City Commission at a regularly scheduled City Commission meeting. Debarred contractors are also excluded from conducting business with the City as agents, representatives, subcontractors or partners of other contractors.
- (b) Debarred contractors are excluded from acting as individual sureties.

Section 2-401 Continuation of current contracts.

- (a) Commencing on the effective date of this ordinance, all proposed City contracts, as well as Request for Proposals (RFP), Request for Qualifications (RFQ), Requests for Letters of Interest (RFLI), or bids issued by the City, shall incorporate this ordinance and specify that debarment may constitute grounds for termination of the contract, as well as disqualification from consideration on any RFP, RFQ, RFLI, or bid.
- (b) The debarment shall take effect in accordance with the notice provided by the City Manager pursuant to subsection 2-405(h) below, except that if a City department has contracts or subcontracts in existence at the time the contractor was debarred, the debarment period may commence upon the conclusion of the contract, subject to approval of same by 5/7ths vote of the Mayor and City Commission at a regularly scheduled meeting.

- (c) City departments may not renew or otherwise extend the duration of current contracts, or consent to subcontracts with debarred contractors, unless the City Manager determines that an emergency exists justifying the renewal or extension or for an approved extension due to delay or time extension for reasons beyond the contractor's control, and such action is approved by 5/7ths vote of the Mayor and City Commission at a regularly scheduled meeting.
- (d) No further work shall be awarded to a debarred contractor in connection with a continuing contract, where the work is divided into separate discrete groups and the City's refusal or denial of further work under the contract will not result in a breach of such contract.

Section 2-402 Restrictions on subcontracting.

- (a) When a debarred contractor is proposed as a subcontractor for any subcontract subject to City approval, the department shall not consent to subcontracts with such contractors unless the City Manager determines that an emergency exists justifying such consent, and the Mayor and City Commission approves such decision, by 5/7ths vote, at a regularly scheduled meeting.
- (b) The City shall not be responsible for any increases in project costs or other expenses incurred by a contractor as a result of rejection of proposed subcontractors pursuant to subsection 2-402(a) above, provided the subcontractor was debarred prior to bid opening or opening of proposals, where the contract was awarded by the City pursuant to an RFP, RFQ, RFLI, or bid.

Section 2-403 Debarment.

- (a) The Debarment Committee may, in the public interest, debar a contractor for any of the causes listed in this ordinance, using the procedures outlined below. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.
- (b) Debarment constitutes debarment of all officers, directors, shareholders owning or controlling twenty-five (25) percent or more of the stock, partners, divisions or other organizational elements of the debarred contractor, unless the debarred decision is limited by its terms to specific divisions, organizational elements, or commodities. The Debarment Committee's decision includes any existing affiliates of the contractor, if they are (i) specifically named and (ii) given written notice of the proposed debarment and an opportunity to respond. ~~Future affiliates of the contractor are subject to the Debarment Committee's decision.~~
- (c) A contractor's debarment shall be effective throughout City government.

Section 2-404 Causes for debarment.

- (a) The Debarment Committee shall debar a contractor for a conviction or civil judgment:
- (1) For commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, performing, or making a claim upon a public contract or subcontract, or a contract or subcontract funded in whole or in part with public funds;
 - (2) For violation of federal or State antitrust statutes relating to the submission of offers;
 - (3) For commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (4) Which makes the City the prevailing party in a legal proceeding, and a court determines that the lawsuit between the contractor and the City was frivolous or filed in bad faith.
- (b) The Committee may debar a contractor, (and, in limited instances set forth hereinbelow, a bidder or proposer) based upon a ~~preponderance~~ the greater weight of the evidence, for:
- (1) Violation of the terms of a City contract or subcontract, or a contract or subcontract funded in whole or in part by City funds, such as failure to perform in accordance with the terms of one (1) or more contracts as certified by the City department administering the contract; or the failure to perform, or unsatisfactorily perform in accordance with the terms of one (1) or more contracts, as certified by an independent registered architect, engineer, or general contractor.
 - (2) Violation of a City ordinance or administrative order which lists debarment as a potential penalty.
 - (3) ~~Any other cause which affects the responsibility of a City contractor or subcontractor in performing City work.~~

Section 2-405 Debarment procedures.

- (a) Requests for the debarment of contractors may be initiated by a City Department or by a citizen-at-large and shall be made in writing to the Office of the City Manager. Upon receipt of a request for debarment, the City Manager shall transmit the request to the Mayor and City Commission at a regularly scheduled meeting. The Mayor and City Commission shall transmit the request to a person or persons who shall be charged by the City Commission with the duty of promptly investigating and preparing a written report(s) concerning the proposed debarment, including the cause and grounds for debarment, as set forth in this ordinance.
- (b) Upon completion of the aforesaid written report, the City Manager shall forward said report to the Debarment Committee. The City's Procurement Office shall act as staff to the Debarment Committee and, with the assistance of the City department person or persons which prepared the report, present evidence and argument to the Debarment Committee.
- (c) Notice of proposal to debar. Within ten (10) working days of the Debarment Committee having received the request for debarment and written report, the City's Procurement Office, on behalf of the Debarment Committee, shall issue a notice of proposed debarment advising the contractor and any specifically named affiliates, by certified mail, return receipt requested, or personal service, containing the following information:
- (1) That debarment is being considered;
 - (2) The reasons and causes for the proposed debarment in terms sufficient to put the contractor and any named affiliates on notice of the conduct or transaction(s) upon which it is based;
 - (3) That a hearing shall be conducted before the Debarment Committee on a date and time not less than thirty (30) days after service of the notice. The notice shall also advise the contractor that it may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine evidence and testimony presented against it.
 - (4) The notice shall also describe the effect of the issuance of the notice of proposed debarment, and of the potential effect of an actual debarment.
- (d) No later than seven (7) working days prior to the scheduled hearing date, the contractor must furnish the City's Procurement Office a list of the defenses the contractor intends to present at the hearing. If the contractor fails to submit the list,

in writing, at least seven (7) working days prior to the hearing, or fails to seek an extension of time within which to do so, the contractor shall have waived the opportunity to be heard at the hearing. The Debarment Committee has the right to grant or deny an extension of time, and, for good cause, may set aside the waiver to be heard at the hearing, and its decision may only be reviewed upon an abuse of discretion standard.

- (e) Hearsay evidence shall be admissible at the hearing but shall not form the sole basis for initiating a debarment procedure nor the sole basis of any determination of debarment. The hearing shall be transcribed, taped or otherwise recorded by use of a court reporter, at the election of the Committee and at the expense of the City. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party.
- (f) Debarment Committee's decision. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the Debarment Committee shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submissions made by the contractor. Where actions are based on disputed evidence, the Debarment Committee shall decide what weight to attach to evidence of record, judge the credibility of witnesses, and base its decision on the ~~preponderance~~ greater weight of the evidence standard. The Debarment Committee shall be the sole trier of fact. The Committee's decision shall be made within ten (10) working days after conclusion of the hearing, unless the Debarment Committee extends this period for good cause.
- (g) The Committee's decision shall be in writing and shall include the Committee's factual findings, the principal causes of debarment as enumerated in this ordinance, identification of the contractor and all named affiliates affected by the decision, and the specific term, including duration, of the debarment imposed.
- (h) Notice of Debarment Committee's decision.
 - (1) If the Debarment Committee decides to impose debarment, the City Manager shall give the contractor and any named affiliates involved written notice by certified mail, return receipt requested, or hand delivery, within ten (10) working days of the decision, specifying the reasons for debarment and including a copy of the Committee's written decision; stating the period of debarment, including effective dates; and advising that the debarment is effective throughout the City departments.

- (2) If debarment is not imposed, the City Manager shall notify the contractor and any named affiliates involved, by certified mail, return receipt requested, or personal service, within ten (10) working days of the decision.

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

Section 2-406 *Period of debarment.*

- (a) The period of debarment imposed shall be within the sole discretion of the Debarment Committee. Debarment shall be for a period commensurate with the seriousness of the cause(s), and, where applicable, within the guidelines set forth below, but in no event shall exceed five (5) years.

- (b) The following guidelines in the period of debarment shall apply except where mitigating or aggravating circumstances justify deviation:
 - (1) For commission of an offense as described in subsection 2-404(a)(1): five (5) years.

 - (2) For commission of an offense as described in subsection 2-404(a)(2): five (5) years.

 - (3) For commission of an offense as described in subsection 2-404(a)(3): five (5) years.

 - (4) For commission of an offense as described in subsection 2-404(a)(~~5~~4): two (2) to five (5) years.

 - (5) For commission of an offense as described in subsections 2-404(b)(1) or (2): two (2) to five (5) years.

- (c) The Debarment Committee may, in its sole discretion, reduce the period of debarment, upon the contractor's written request, for reasons such as:
 - (1) Newly discovered material evidence;

 - (2) Reversal of the conviction or civil judgment upon which the debarment was based;

 - (3) Bona fide change in ownership or management;

- (4) Elimination of other causes for which the debarment was imposed; or
 - (5) Other reasons the Debarment Committee deems appropriate.
- (d) The ~~debarment~~debarred contractor's written request shall contain the reasons for requesting a reduction in the debarment period. The City's Procurement Office, with the assistance of the affected department, shall have thirty (30) days from receipt of such request to submit a written response thereto. ~~The decision of the Debarment Committee regarding a request made under this subsection is final and non-appealable.~~

SECTION 2. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article," or other appropriate word.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the 3rd day of March, 2000.

PASSED and ADOPTED this 23rd day of February, 2000.



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

RJA\kw(F:\ATTO\AGUR\RESOS\DEBARMNT.ORD)



City of Miami Beach
Date 2-28-00

OFFICE OF THE CITY ATTORNEY

City of Miami Beach

F L O R I D A



MURRAY H. DUBBIN
City Attorney

Telephone: (305) 673-7470
Telecopy: (305) 673-7002

COMMISSION MEMORANDUM NO. 172-00

DATE: FEBRUARY 23, 2000

TO: MAYOR NEISEN KASDIN
MEMBERS OF THE CITY COMMISSION

FROM: MURRAY DUBBIN
CITY ATTORNEY

LAWRENCE A. LEVY
CITY MANAGER

SECOND READING - PUBLIC HEARING

SUBJECT: ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2, ARTICLE VI, ENTITLED "PROCUREMENT", BY CREATING DIVISION 5, ENTITLED "DEBARMENT", SECTIONS 2-397 THROUGH 2-406 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, PROVIDING FOR DEBARMENT OF CONTRACTORS FROM CITY WORK; PROVIDING FOR SEVERABILITY; CODIFICATION; REPEALER; AND AN EFFECTIVE DATE.

The above-referenced Debarment Ordinance, as requested and sponsored herein by Commissioner David Dermer, was deferred by the Mayor and City Commission at their February 9, 2000 City Commission meeting, and is thus ready for consideration.

RJAkw
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Attachment

Agenda Item RSB

Date 2-23-00

**CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS**

NOTICE IS HEREBY given that public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, February 9, 2000, at the times listed below**, to consider the adoption of the following ordinances:

at 10:45 a.m.:

AN ORDINANCE AMENDING CHAPTER 2 OF THE MIAMI BEACH CITY CODE ENTITLED "ADMINISTRATION", BY AMENDING ARTICLE III ENTITLED "AGENCIES, BOARDS, AND COMMITTEES", BY AMENDING SECTION 2-22 ENTITLED "GENERAL REQUIREMENTS", BY REDUCING THE RESIDENCY REQUIREMENT FOR MEMBERSHIP ON AGENCIES, BOARDS, AND COMMITTEES FROM TWO YEARS TO SIX MONTHS; PROVIDING FOR CODIFICATION, SEVERABILITY, REPEALER, AND AN EFFECTIVE DATE.

At 11:00 a.m.: **OPENED AND CONTINUED TO FEBRUARY 23, 2000 AT 10:30 A.M.**

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE VI, ENTITLED "PROCUREMENT", BY CREATING DIVISION 5, ENTITLED "DEBARMENT", SECTIONS 2-397 THROUGH 2-406 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, PROVIDING FOR DEBARMENT OF CONTRACTORS FROM CITY WORK; PROVIDING FOR SEVERABILITY; CODIFICATION; REPEALER; AND AN EFFECTIVE DATE.

Inquiries may be directed to the the Legal Department at (305) 673-7470.

ALL INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should contact the City Clerk's office. Telephone (305) 673-7411 for assistance; if hearing impaired, telephone the Florida Relay Service numbers, (800) 955-8771 (TDD) or (800) 955-8770 (VOICE), for assistance.