

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ESTABLISHING PROCEDURES FOR RESOLVING BIDS (BIDS), REQUEST FOR PROPOSALS (RFP'S), REQUEST FOR QUALIFICATIONS (RFQ'S), REQUEST FOR LETTERS OF INTEREST (RFLI'S), AND PURCHASE ORDERS BASED ON WRITTEN OR ORAL QUOTATIONS, BY AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MIAMI BEACH ENTITLED "ADMINISTRATION"; BY AMENDING ARTICLE VI THEREOF ENTITLED "PROCUREMENT"; BY CREATING SECTION 2-371 ENTITLED "AUTHORITY TO RESOLVE PROTESTED BIDS AND PROPOSED AWARDS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, from time to time the City procures goods and services through Invitation for Bids, Requests for Proposals, Requests for Qualifications, Requests for Letters of Interest, and purchase orders based on written or oral quotations, in accordance with the public bidding procedures set forth in Florida law and the Code of the City of Miami Beach (the "City Code"); and

WHEREAS, such process may lead to protested bids and proposed awards; and

WHEREAS, it is the intent of the Mayor and City Commission that procedural and technical issues related to Invitations for Bids, Requests for Proposals, Requests for Qualifications, Requests for Letters of Interest, and purchase orders based on written or oral quotations, be decided by the City Manager and the City Attorney, and that their determinations with respect to said procedural and technical issues shall be deemed final; and

WHEREAS, it is in the best interests of the City and all respondents to Invitations for Bids, Requests for Proposals, Requests for Qualifications, Requests for Letters of Interest, and purchase orders based on written or oral quotations, to have a clear and unequivocal procedure for resolving such protests in a timely and expeditious manner.

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

Section 1. There is hereby added to Article VI of Chapter 2 of the City Code a new Section 2-371, which shall read as follows:

Section 2-371. Authority to Resolve Protested Bids and Proposed Awards.

- (a) **Right to Protest.** Any actual bidder, qualified proposer, or interested parties (hereinafter collectively referred to as the "bidder") who has a substantial interest in, and is aggrieved in connection with the solicitation or proposed award of, a request for proposals ("RFP"), request for

qualifications ("RFQ"), request for letters of interest ("RFLI") or invitation for bid for goods and/or services ("hereinafter, collectively referred to as the bid") may protest to the City Manager or his or her designee. Protests arising from the decisions and votes of any evaluation or selection committee shall be limited to protests based upon alleged deviation(s) from established purchasing procedures set forth in this Code, any written guidelines of the Procurement Department, and the specifications, requirements and/or terms set forth in any bid.

- (1) Any protest concerning the bid specifications, requirements, and/or terms must be made within three (3) business days (for the purposes of this ordinance, "business day" means a day other than Saturday, Sunday or a national holiday), from the time the facts become known and, in any case, at least two (2) business days prior to the opening of the. Such protest must be made in writing to the City Manager or his or her designee, and such protest shall state the particular grounds on which it is based and shall include all pertinent documents and evidence. No bid protest shall be accepted unless it complies with the requirements of this section. Failure to timely protest bid specifications, requirements and/or terms is a waiver of the ability to protest the specifications, requirements and/or terms.

 - (2) Any protest after the bid opening, ~~including challenges to the bid or to any evaluation or selection committee as provided in subsection (a) above~~ shall be submitted in writing to the City Manager, or his or her designee. The City will allow such bid protest to be submitted anytime until two (2) business days following the release of the City Manager's written recommendation to the City Commission, as same is set forth and released in the City Commission agenda packet, for award of the bid in question. Such protest shall state the particular grounds on which it is based and shall include all pertinent grounds on which it is based, and shall include all pertinent documents and evidence. No bid protest shall be accepted unless it complies with the requirements of this section. All actual bidders shall be notified in writing (which may be transmitted by electronic communication, such as facsimile transmission and/or e-mail), following the release of the City Manager's written recommendation to the City Commission.
- (b) Any bidder who is aggrieved in connection with the solicitation or proposed award of a purchase order based on an oral or written quotation may protest to the City Manager or his or her designee anytime during the procurement process, up to the time of the award of the purchase order, but not after such time. Such protest shall be made in writing and state the particular grounds on which it is based and shall include all pertinent documents and evidence. No bid protest shall be accepted unless it complies with the

requirements of this section.

- (c) The City may request reasonable reimbursement for expenses incurred in processing any protest hereunder, which expenses shall include, but not be limited to, staff time, legal fees and expenses (including expert witness fees), reproduction of documents and other out-of-pocket expenses.
- (d) **Authority to Resolve Protests.** The City Manager or his or her designee shall have the authority to settle and resolve a protest concerning the solicitation or award of a bid.
- (e) **Responsiveness.** Prior to any decision being rendered under this Ordinance with respect to a bid protest, the City Manager and the City Attorney, or their respective designees, shall certify whether the submission of the bidder to the bid in question is responsive. The parties to the protest shall be bound by the determination of the City Manager and the City Attorney with regard to the issue of responsiveness. ~~The determination of the City Manager and the City Attorney with regard to all procedural and technical matters shall be final.~~
- (f) **Decision and Appeal Procedures.** If the bid protest is not resolved by mutual agreement, the City Manager and the City Attorney, or their respective designees, shall promptly issue a decision in writing. The decision shall specifically state the reasons for the action taken and inform the protestor of his or her right to challenge the decision. Any person aggrieved by any action or decision of the City Manager, the City Attorney, or their respective designees, with regard to any decision rendered under this section may appeal said decision by filing an original action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in accordance with the applicable court rules. Any action not brought in good faith shall be subject to sanctions including damages suffered by the City and attorney's fees incurred by the City in defense of such wrongful action.
- (g) **Distribution.** A copy of each decision by the City Manager and the City Attorney shall be mailed or otherwise furnished immediately to the protestor.
- (h) **Stay of Procurements During Protests.** In the event of a timely protest under this section, the City shall not proceed further with the solicitation or with the award pursuant to such bid unless a written determination is made by the City Manager, that the award pursuant to such bid must be made without delay in order to protect a substantial interest of the City.
- (i) The institution and filing of a protest under this Code is an administrative remedy that shall be employed prior to the institution and filing of any civil action against the City concerning the subject matter of the protest.

- (j) **Protests not timely made under this section shall be barred.** Any basis or ground for a protest not set forth in the letter of protest required under this section shall be deemed waived.
- (k) At the time the City Manager's written recommendation for award of a bid is presented at a meeting of the Mayor and City Commission, the City Attorney, or his or her designee, shall present a report to inform the Mayor and City Commission of any legal issues relative to any bid protest filed in connection with the bid in question.

(l) ~~The determination of the City Manager and the City Attorney with regard to all procedural and technical matters shall be final.~~

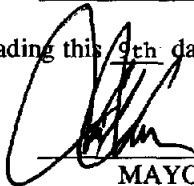
Section 2. All ordinances, resolutions or parts thereof in conflict herewith be and the same are hereby repealed.

Section 3. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance. 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 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. This Ordinance shall take effect ten (10) days after its adoption on the 19th day of January, 2002.

PASSED on First Reading this 19th day of December, 2001.

PASSED and ADOPTED on Second Reading this 9th day of January, 2002.



 MAYOR

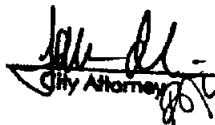
ATTEST:



 CITY CLERK

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APPROVED AS TO
 FORM & LANGUAGE
 & FOR EXECUTION



 City Attorney

1-3-02
 Date