

ORDINANCE NO. 2020-4325

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CITY CODE, ENTITLED ADMINISTRATION, BY AMENDING ARTICLE VI THEREOF, ENTITLED PROCUREMENT, BY AMENDING DIVISION 3 THEREOF, ENTITLED CONTRACT PROCEDURES, BY CREATING SECTION 2-378, ENTITLED "INSPECTOR GENERAL CONTRACT ALLOCATION," TO PROVIDE FOR DEDICATED FUNDING FOR THE ACTIVITIES AND OPERATIONS OF THE CITY'S OFFICE OF INSPECTOR GENERAL, BASED ON A PERCENTAGE OF THE CONTRACT AMOUNTS EXPENDED BY THE CITY UNDER CERTAIN CITY CONTRACTS, AND TO ESTABLISH MANDATORY CONTRACT PROVISIONS RELATING TO THE INSPECTOR GENERAL'S REVIEWS, AUDITS, INSPECTIONS AND INVESTIGATIONS OF CITY CONTRACTS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, on November 6, 2018, the City's voters approved an amendment to the City Charter, creating Article IX, which creates the City of Miami Beach Office of Inspector General; establishes the functions of the office; provides the Inspector General with the power to subpoena witnesses, administer oaths, and require production of records, in order to conduct its investigations; and provides that the Inspector General's appointment, term, functions, authority, and powers shall be further established by Ordinance; and

WHEREAS, on February 23, 2019, the Mayor and City Commission adopted Ordinance No. 2019-4239, to implement the provisions of the newly created Article IX of the City Charter; and

WHEREAS, the Mayor and City Commission desire to establish a dedicated fund for the activities and operations of the Office of Inspector General (the "OIG Fund"), with allocations to the OIG Fund consisting of a specified percentage of the contract expenditures made under all City contracts, except as provided herein.

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

Section 1. That Chapter 2, entitled "Administration," Article VI thereof, entitled "Procurement," Division 3 thereof, entitled "Contract Procedures," of the Code of the City of Miami Beach is hereby amended by creating Section 2-378 as follows:

**CHAPTER 2
ADMINISTRATION**

* * *

ARTICLE VI. PROCUREMENT

Sec. 2-378 – Inspector General Contract Fee Allocation.

- a. The inspector general may, on a random basis, perform reviews, audits, inspections, or investigations of any past, present, or proposed city contracts. ~~The cost of random reviews, audits, inspections and investigations shall, except as provided in subsection (1) through (15) below, be incorporated into the contract price of all city contracts, and shall consist of one and one half percent (1.50%) of the contract price (hereinafter the "IG contract fee").~~ The IG contract fees shall not apply to the following contracts: All appropriations of city funding for city contracts shall include an allocation of funding to the office of inspector general ("OIG") fund, as provided herein. Monies placed in the OIG fund shall be exclusively dedicated for the operations and activities of the office of inspector general, and for no other purposes; provided, however, that such monies shall not be expended, except as approved by the city commission pursuant to a budgeted appropriation in accordance with Florida law and section 2-256(i) of the city code.
- b. The amount allocated to the OIG fund shall consist of one half of one percent (.5%) of the contract amounts expended by the city pursuant to all city contracts, including contract amendments or change orders, except as provided herein. The total amount allocated to the OIG fund for any individual city contract shall be capped, and shall not exceed \$50,000. The requirements of this subsection (b) shall not apply to the following city contracts:
- (1) auditing contracts;
 - (2) insurance contracts;
 - (3) contracts for legal services;
 - (4) contracts for financial advisory services;
 - (5) leases and facility rental agreements;
 - ~~(6) concession agreements;~~
 - (6) ~~(7)~~ management agreements;
 - (7) ~~(8)~~ revenue-generating contracts, including, without limitation, concession agreements;
 - ~~(8) ~~(9)~~ purchase orders or other including, without limitation, concession agreements for the purchase of goods and services under the amount established for formal bids in section 2-366(a) of the city code, typically referred to as open market purchases;~~

- (8) ~~(10)~~ federal, state and local government agreements, including grants;
- (9) ~~(11)~~ interlocal agreements;
- (10) ~~(12)~~ grant agreements; and
- (11) ~~(13)~~ independent contractor agreements; and
- (14) ~~contracts awarded pursuant to section 2-391 of the city code, based on awards by cooperative alliances or public entities that have previously utilized a competitive procurement process ("piggyback" contracts); and~~
- (12) ~~(15)~~ contracts for emergency purchases pursuant to section 2-396 of the City code.

Notwithstanding the foregoing, the city commission may by resolution specifically authorize the inclusion of the IG contract fee in an allocation of funds to the OIG fund for any contract.

~~c. b.~~ Nothing contained in this subsection shall in any way limit the powers of the inspector general to perform audits, inspections, reviews and investigations on all city contracts including, but not limited to, those contracts specifically exempted from an allocation of funding to the IG contract fee OIG fund.

~~d. e.~~ All city contracts and competitive solicitations shall disclose the requirements of this section and shall include the following contract language:

1. Pursuant to Section 2-256 of the code of the city of Miami Beach, the city has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all city contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on on behalf of the city. ~~To pay for the functions of the Office of Inspector General, all payments to be made under this contract will be assessed one and one half percent (1.50%) of the total amount of the payment (the "IG contract fee"), to be deducted from each progress payment as the same becomes due, unless this contract is exempt from the payment of the IG contract fee pursuant to Section 2-378 of the City Code. The contractor, vendor, or consultant (hereinafter, the "contractor") shall, in stating its agreed prices, be mindful of the IG contract fee assessment, which will not be separately identified, calculated or adjusted in the proposal or bid form or on behalf of the city.~~

2. The Office of the Inspector General is authorized to investigate city affairs and empowered to review past, present and proposed city programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor city projects and programs. Monitoring of an existing city project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the contractor, its officers, agents and employees, lobbyists, city staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
3. Upon ten (10) days written notice to the contractor, the contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the contractor, its officers, agents and employees, lobbyists, city staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
4. The Inspector General shall have the right to inspect and copy all documents and records in the contractor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
5. The contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by

statute or by other clauses of this contract. In addition:

- i. If this contract is completely or partially terminated, the contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. The contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
6. The provisions in this section shall apply to the contractor, its officers, agents, employees, subcontractors and suppliers. The contractor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the contractor in connection with the performance of this contract.
7. Nothing in this section shall impair any independent right to the city to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the contractor or third parties.
- e. The provisions of this section shall not apply to any contract entered into prior to ~~March~~ April 1, 2020, or to any competitive solicitation issued prior to ~~March~~ April 1, 2020, provided, however, that the contract provisions set forth in subsection (d) may be incorporated in contracts or competitive solicitations prior to April 1, 2020, at the city manager's discretion.

SECTION 2. REPEALER.

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

SECTION 3. SEVERABILITY.

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

SECTION 4. CODIFICATION.

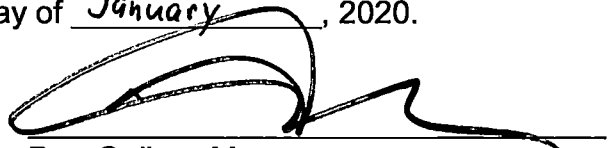
It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and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

SECTION 5. EFFECTIVE DATE.

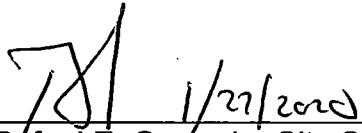
This Ordinance shall take effect on the 25 day of January 2020.

PASSED AND ADOPTED this 15 day of January, 2020.

ATTEST:



Dan Gelber, Mayor



Rafael E. Granado, City Clerk

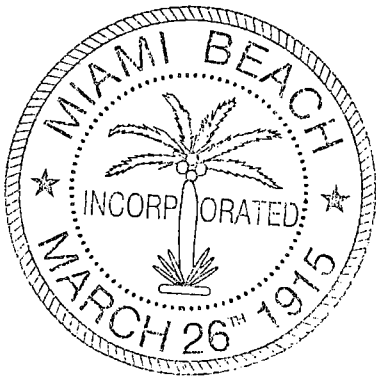
Underline denotes additions

~~Strikethrough~~ denotes deletions

~~Double Strikethrough~~ denotes deletions at Second Reading

Double Underline denotes additions at Second Reading

(Sponsored by Commissioner Mark Samuelian)



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney RAP 1-2-20
Date

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Raul J. Aguila, City Attorney
DATE: January 15, 2020

10:20 a.m. Second Reading Public Hearing

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CITY CODE, ENTITLED ADMINISTRATION, BY AMENDING ARTICLE VI THEREOF, ENTITLED PROCUREMENT, BY AMENDING DIVISION 3 THEREOF, ENTITLED CONTRACT PROCEDURES, BY CREATING SECTION 2-378, ENTITLED "INSPECTOR GENERAL CONTRACT ALLOCATION," TO PROVIDE FOR DEDICATED FUNDING FOR THE ACTIVITIES AND OPERATIONS OF THE CITY'S OFFICE OF INSPECTOR GENERAL, BASED ON A PERCENTAGE OF THE CONTRACT AMOUNTS EXPENDED BY THE CITY UNDER CERTAIN CITY CONTRACTS, AND TO ESTABLISH MANDATORY CONTRACT PROVISIONS RELATING TO THE INSPECTOR GENERAL'S REVIEWS, AUDITS, INSPECTIONS AND INVESTIGATIONS OF CITY CONTRACTS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

BACKGROUND/HISTORY

The proposed ordinance, sponsored by Commissioner Samuelian, would create a framework for a dedicated City funding source to fund the activities and operations of the Office of the Inspector General.

On November 6, 2018, the City's voters approved an amendment to the City Charter, creating Article IX, which creates the City of Miami Beach Office of Inspector General ("OIG" or "Office of Inspector General"); establishes the functions of the office; provides the Inspector General with the power to subpoena witnesses, administer oaths, and require production of records, in order to conduct its investigations; and provides that the Inspector General's appointment, term, functions, authority, and powers shall be further established by Ordinance.

On February 23, 2019, the Mayor and City Commission adopted Ordinance No. 2019-4239, to implement the provisions of the newly created Article IX of the City Charter.

On October 16, 2019, pursuant to Section 2-256(b)(2) of the City Code, the Mayor and Commission appointed Joseph M. Centorino as the first Inspector General of the City of Miami Beach.

On December 11, 2019, the Mayor and City Commission approved the proposed ordinance on first reading and referred the item to the Finance and Economic Resiliency Committee for further discussion.

At first reading on December 11, 2019, Vice Mayor Richardson suggested that the ordinance be amended to clarify that the amounts generated for the OIG will be **exclusively dedicated** for the activities of the OIG, and that such funds may not be used for any other purpose. In addition, Commissioner Arriola requested a clarification that the ordinance creates a dedicated funding source only, and does not provide expenditure authority, as the annual budget for the OIG shall be determined through the City Commission's annual budget process, in the same manner as applicable to every other City department.

On December 18, 2019, the City's General Obligation Bond Oversight Committee considered the proposed ordinance. The GO Bond Oversight Committee adopted a motion supporting the proposed ordinance in concept, but urging the City Commission, in its final determination of the contract percentage to be allocated to the OIG Fund, to select an amount that would minimize scope impacts to G.O. Bond projects.

The Administration's proposal for the percentage of a contract price to be allocated to the OIG, including a proposal to minimize scope impacts via a cap on the amount assessed for individual contracts in excess of \$10 million, is discussed more fully below.

ANALYSIS

As noted above, the purpose of the proposed ordinance is to create a framework for a dedicated City funding source to fund the activities and operations of the Office of the Inspector General. By dedicating amounts that could only be used for the OIG, the ordinance would provide a measure of independence and predictability with regard to funding for the OIG. The proposed ordinance would provide for an allocation to an OIG Fund, based on a fixed percentage of the contract price of certain City contracts and purchase orders. The ordinance is similar to the IG Contract fee established by Miami-Dade County pursuant to Section 2-1076 of the County Code, to fund the operations of the County's inspector general. Miami-Dade County's IG contract fee is 0.25%.

A draft of the proposed ordinance, as amended to incorporate feedback provided by the City Commission at first reading, is attached as an exhibit to this Memorandum. As discussed at first reading and as reflected in the revised draft of the ordinance, the proposed ordinance only provides the mechanism for identifying a dedicated funding source for the OIG. The actual appropriation of funds for the OIG, and the final budget for the department, is subject to an annual appropriation by the City Commission as part of the annual budget process. If the amounts generated by the IG Contract Allocation in any given year are insufficient to fund the budget the City Commission has proposed for the OIG in the next fiscal year, the City Commission would need to identify other sources of funding through the annual budget process to make up the difference.

Similarly, if the amounts generated by the IG Contract Allocation in any given year exceed the amounts required to fund the OIG budget in the next fiscal year, such "surplus" amounts would be carried forward until appropriated by the City Commission. In this regard, it should be noted that the OIG budget includes contributions from City's resort tax and enterprise funds, so if the

OIG Fund balance had a surplus in any given year, the City Commission may elect to use the OIG Fund balance and reduce the contributions from resort tax or enterprise funds. Ultimately, the City Commission could also elect to amend the ordinance to change the percent allocation, or to increase the contract thresholds.

Similar to the Miami-Dade County ordinance, the ordinance includes a number of exemptions for categories of contracts to which an IG contract allocation should not apply, such as contracts with governmental agencies, including grants that may only be used for restricted purposes; contracts for specialized services, such as insurance, financial advisory services, legal, or audit services, leases, and management agreements, or revenue-generating contracts (as the allocation to the fund is based on expenditures only).

Finally, the ordinance requires that after April 1, 2020, each competitive solicitation and covered City contract include mandatory contract language regarding the Office of Inspector General's audit and investigatory powers as a matter of contract. The mandatory contract language would serve to place every contractor on notice as to the applicability of the OIG to the contract, and to each contractor's performance of work on behalf of the City. The contract language would also provide the City with an additional remedy (i.e., a breach of contract action) for a contractor's failure to comply with the broad right of access afforded to the OIG to review, audit, inspect and investigate all City contracts under the City Charter and City Code.

ANALYSIS SINCE FIRST READING REGARDING PROPOSED PERCENTAGE

The City's FY2020 General Fund budget for the Office of Inspector General is approximately \$1.45 million. The Administration initially estimated that an IG Contract Fee of one half of one percent (0.5%) would generate approximately \$550,000. Accordingly, in order to cover the \$1.45 million budget covered by the General Fund, the ordinance initially proposed a contract fee of 1.5%.

Since first reading, staff further evaluated the proposed percent allocation, not only by focusing on historical expenditures, but by taking into account certain anticipated expenditures that were not fully incorporated in the estimates, including future G.O. Bond projects and stormwater/resiliency projects. In addition, the Administration considered the impacts on large capital projects, which could result in individual projects disproportionately contributing to the OIG Fund. For instance, the 72nd Street Civic Complex, with a budget of \$64.4 million, would generate an OIG contract allocation of \$322,000 (@ 0.5%) if no cap is put in place.

The IG Contract Allocation will be estimated at the beginning of each fiscal year by fund for each applicable department or capital project and set aside in a contingency account, with the final amounts contributed to the OIG fund to be based on the actual amounts expended by the City under covered City contracts in each fiscal year. Through a true-up process taking place at least annually, the IG Contract Allocation will be recorded as revenue in the new OIG fund.

Accordingly, based on staff's updated projections, and the desire to generate funds to cover the OIG's \$1.45 million General Fund budget while also mitigating major scope impacts on large projects, **the Administration proposes an allocation of one half of one percent (0.5%) of**

covered City contracts, provided that there be a cap on individual contracts so that no allocation would be made to any portion of a contract in excess of \$10 million. In other words, the amount allocated to the OIG Fund for any individual contract shall be capped and shall not exceed \$50,000.

If the City Commission adopts the proposed allocation above (with the cap on individual contracts), the Administration estimates that approximately \$1.5 million would be generated annually for the OIG Fund.

FINANCIAL INFORMATION

Pursuant to Section 2-12 of the City Code, the proposed ordinance would not result in an anticipated increase in budgeted revenues or expenditures of the City in this fiscal year, or in the next fiscal year, as this ordinance provides the framework for funding for the Office of Inspector General based on a percentage of City's contract expenditures, and does not authorize any specific expenditure or appropriation of funds. Rather, any appropriation of funding for the Office of Inspector General shall be subject to separate City Commission approval as part of the annual budget process.

Applicable Area

Citywide

Is this a Resident Right to Know item?

Yes

Does this item utilize G.O. Bond Funds?

Yes

Legislative Tracking

Office of the City Attorney

Sponsor

Commissioner Mark Samuelian

ATTACHMENTS:

Description

- 2nd Reading Ordinance