

R5 AA AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ADMINISTRATION," BY AMENDING ARTICLE VI, ENTITLED "PROCUREMENT," BY AMENDING DIVISION 3, ENTITLED "CONTRACT PROCEDURES," BY AMENDING SECTION 2-367, ENTITLED "REJECTION OF BIDS; NEGOTIATION; SOLE SOURCE PURCHASES; WAIVER OF COMPETITIVE BIDDING," TO ESTABLISH NEW PROCEDURAL REQUIREMENTS IN CONNECTION WITH WAIVERS OF COMPETITIVE BIDDING, AND AMENDING SECTION 2-369, ENTITLED "AWARD OF CONTRACT," TO INCLUDE ADDITIONAL FACTORS TO BE CONSIDERED WHEN DETERMINING THE LOWEST AND BEST BIDDER; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.
Applicable Area:

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: City Attorney Ricardo J. Dopico

DATE: April 22, 2026 10:50 a.m. First Reading Public Hearing

TITLE: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ADMINISTRATION," BY AMENDING ARTICLE VI, ENTITLED "PROCUREMENT," BY AMENDING DIVISION 3, ENTITLED "CONTRACT PROCEDURES," BY AMENDING SECTION 2-367, ENTITLED "REJECTION OF BIDS; NEGOTIATION; SOLE SOURCE PURCHASES; WAIVER OF COMPETITIVE BIDDING," TO ESTABLISH NEW PROCEDURAL REQUIREMENTS IN CONNECTION WITH WAIVERS OF COMPETITIVE BIDDING, AND AMENDING SECTION 2-369, ENTITLED "AWARD OF CONTRACT," TO INCLUDE ADDITIONAL FACTORS TO BE CONSIDERED WHEN DETERMINING THE LOWEST AND BEST BIDDER; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

BACKGROUND/HISTORY

The attached Ordinance was prepared at the request of Commissioner Alex J. Fernandez.

The City of Miami Beach Code currently sets forth procedures for procurement under Chapter 2, Article VI, including requirements for competitive bidding and criteria for awarding contracts. Section 2-367 of the City Code governs the rejection of bids, negotiation, sole source purchases, and waivers of competitive bidding, while Section 2-369 addresses the award of contracts and factors considered in determining the lowest and best bidder.

Following an investigation into the City's no-bid contract with Poseidon Ferry, LLC, the Office of Inspector General ("OIG") issued a report recommending enhancements to the City's bid waiver process to ensure greater transparency, accountability, and consistency.

The Mayor and City Commission find it in the City's best interest to adopt certain recommendations from the OIG report by amending Section 2-367 and Section 2-369 of the City Code to establish new procedural requirements for waivers of competitive bidding, and expand the factors considered when determining the lowest and best bidder.

ANALYSIS

The Ordinance amends Sections 2-367 and 2-369 of the City Code as follows:

1. Additional Procedural Requirements for Bid Waivers
 - Requires the City Manager to provide a written analysis addressing factors considered in determining the lowest and best bidder whenever a waiver of competitive bidding is proposed.
2. Expanded Factors for Determining Lowest and Best Bidder
 - Adds new considerations beyond price, including: (i) the existence of significant prior litigation, governmental investigations, or administrative proceedings involving the bidder, and (ii) any other information the City Manager deems relevant to assess whether the entity is a responsible contracting party.

These additions aim to ensure that vendor selection reflects not only cost but also reliability, integrity, and risk mitigation.

FISCAL IMPACT STATEMENT

The sponsor of this item requests that the Administration be prepared to address the fiscal impacts of this proposed measure, if any, at the Commission meeting.

Does this Ordinance require a Business Impact Estimate? Yes
(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:
See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

Applicable Area

Citywide

Is this a “Residents Right to Know” item, pursuant to City Code Section 2-17?

No

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

City Attorney

Sponsor(s)

Commissioner Alex J. Fernandez

Co-sponsor(s)

Condensed Title

NR- 10:50 a.m. 1st Rdg, Amend Procurement Procedures Waivers/Bid/Award Criteria. (AF)
CA

Previous Action (For City Clerk Use Only)

Not reached on 3/18/2026 - R5 J; Not reached on 2/25/2026 - R5 V

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ADMINISTRATION," BY AMENDING ARTICLE VI, ENTITLED "PROCUREMENT," BY AMENDING DIVISION 3 ENTITLED "CONTRACT PROCEDURES," BY AMENDING SECTION 2-367, ENTITLED "REJECTION OF BIDS; NEGOTIATION; SOLE SOURCE PURCHASES; WAIVER OF COMPETITIVE BIDDING," TO ESTABLISH NEW PROCEDURAL REQUIREMENTS IN CONNECTION WITH WAIVERS OF COMPETITIVE BIDDING, AND AMENDING SECTION 2-369, ENTITLED "AWARD OF CONTRACT," TO INCLUDE ADDITIONAL FACTORS TO BE CONSIDERED WHEN DETERMINING THE LOWEST AND BEST BIDDER; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach Office of Inspector General ("OIG") is an independent municipal oversight agency created to investigate, review and audit any City program, contract or expenditure for the purpose of identifying fraud, waste, abuse of power, mismanagement and inefficiency; and

WHEREAS, the OIG issued a report following an investigation of the City's no-bid contract with Poseidon Ferry, LLC, reviewing the process for waivers of competitive bidding; and

WHEREAS, in its report, the OIG recommends that the City strengthen its procedures for waivers of competitive bidding by requiring additional documentation and analysis to ensure transparency, accountability, and consistency in the bid waiver process; and

WHEREAS, the Mayor and City Commission find it in the best interest of the City to implement certain recommendations from the OIG report by establishing new procedural requirements for waivers of competitive bidding, and by expanding the factors considered when determining the lowest and best bidder; and

WHEREAS, this Ordinance strengthens the integrity of the City's bid waiver process and ensures proper due diligence and vetting of vendors prior to the award of a contract.

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

SECTION 1. Section 2-367 of Division 3 of Article VI of Chapter 2 of the Code of the City Miami Beach is hereby amended as follows:

**CHAPTER 2
ADMINISTRATION**

* * *

ARTICLE VI. PROCUREMENT

* * *

DIVISION 3. – CONTRACT PROCEDURES

* * *

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

- (a) Except as further provided under subsections 2-367(b) and (c), generally, if a bid is equal to or less than the amount established in this article for formal bids, the city manager shall have the authority to reject any and all bids.
- (b) Where only one responsive bid response is received, or the responsive bid(s) received exceed(s) the budgeted amount, the city manager, without any action by the city commission, shall have the power to select one of the following options:
 - (1) Reject the bid(s) and, if he determines that same is in the best interest of the city, re-advertise the item for bidding; or
 - (2) Request that the city commission make additional funds available and proceed to negotiate an agreement with the sole or lowest responsive bidder, and the award of the final negotiated contract shall be subject to the prior approval of the city commission.
- (c) Notwithstanding subsection 2-367(b), in bids for municipal construction projects, where the lowest and best bid exceeds the budgeted amount allocated toward the construction cost of the project, the city manager, without any action by the city commission, shall have the power to negotiate an agreement with the lowest and best bidder exceeding the budgeted amount of the work. If the city manager is unable to successfully negotiate an agreement with the lowest and best bidder, the city manager may terminate negotiations with such bidder and commence negotiations with the second lowest and best bidder. If the city manager is unable to successfully negotiate an agreement with the second lowest and best bidder, the city manager may terminate negotiations with the second bidder and commence negotiations with the third lowest and best bidder. The award of the final negotiated contract shall be subject to the prior approval of the city commission.
- (d) The city commission, by simple majority vote, for goods or services in excess of the amount established in this article for formal bids, shall have the power to negotiate those contracts and purchases where only one source for the product or service is evident.
 - (1) Before any sole-source purchase can be made, the using agency shall submit justification in writing, together with all supporting documentation, to the procurement director, stating that the proposed supplier is the only source of supply of the desired goods or services, and that there is no other supplier or authorized repair/service center (as applicable). The supporting documentation shall include a written quotation with terms and conditions of sale. In addition, the using agency shall obtain the written determination from an industry expert or consultant that the item or service is the only one available to fulfill the city's need.

- (2) In the alternative to the requirements of subsection 2-367(d)(1), the procurement department may establish that an item or service is a sole source purchase by issuing a public notice of the city's intent to enter a sole source contract, to permit a prospective bidder to rebut the proposed sole source determination. A contract may be awarded as a sole source purchase pursuant to this section if no responses to the notice of intent to enter into a sole source contract are received, or if the procurement director determines, at the procurement director's discretion, that no other supplier or vendor is capable of providing the requested goods or services. For the purposes of this article, and commodity type products, lacking differentiating characteristics from similar products, shall not be considered for sole-source purchases, and the fact that a good or service is trademarked shall not alone serve as a basis for a sole source purchase.
- (e) Unless prohibited by law, the city commission, upon written recommendation of the city manager may, by resolution adopted by a five-sevenths vote of the city commission, waive competitive bidding requirements for goods and services when the city commission finds such waiver to be in the best interest of the city. In the event of such a waiver the city commission may authorize the execution of a negotiated contract for such goods or services. The city commission shall not waive the competitive bidding requirement, and shall not award a contract for goods or services, without first providing the city manager with the opportunity to submit an advisory written recommendation with respect to the proposed waiver of competitive bidding. Notwithstanding the preceding, following receipt of the city manager's non-binding written recommendation, the city commission may waive the competitive bidding requirement if it determines the waiver is in the best interest of the city. In connection with any waiver of competitive bidding, (A) the city manager shall provide to the city commission a written analysis addressing the factors considered in determining the lowest and best bidder set forth in section 2-369, and (B) the item to approve the waiver shall be placed on the regular meeting agenda.

SECTION 2. Section 2-369 of Division 3 of Article VI of Chapter 2 of the Code of the City Miami Beach is hereby amended as follows:

**CHAPTER 2
ADMINISTRATION**

* * *

ARTICLE VI. PROCUREMENT

* * *

DIVISION 3. – CONTRACT PROCEDURES

* * *

Sec. 2-369. Award of contract.

All contracts, when the sum is equal to or less than the amount established in section 2-366 of this article for formal bids shall be awarded by the city manager, or his designee, to the lowest and best bidder. When the amount of a contract is in excess of the amount established by this article for formal bids, the city commission shall award the contract to the lowest and best bidder,

or may delegate to the city manager the power to award such contract to the lowest and best bidder; however, the purchase of goods and services on a continuing basis from Miami-Dade County; from the School Board of Miami-Dade County; from the U.S. Communities Government Purchasing Alliance; from state or federal general services administration bid lists; or awards from cooperative alliances or public entities that have utilized a public procurement process may be approved by the city manager without any action by the city commission, even though the total cost of such goods and services may exceed the amount established in this article for formal bids; provided that prior to approval of such purchases, the city manager shall prepare, or cause to be prepared, a written analysis, in such form and manner as shall be determined by the city manager, which shall include a justification as to why it is in the city's best interest to purchase the goods and services on a continuing basis from the entities set forth in this section 2-369. In determining the lowest and best bidder, in addition to price, ~~there~~the following shall be considered ~~the following~~:

- (1) The ability, capacity and skill of the bidder to perform the contract.
- (2) Whether the bidder can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality of performance of previous contracts.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- (6) The existence of any significant prior litigation, governmental investigations or administrative proceedings.
- (7) Any other information the city manager deems relevant in determining whether the entity is a responsible contracting party.

SECTION 3. REPEALER.

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

SECTION 4. SEVERABILITY.

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

SECTION 5. 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 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 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days after adoption.

PASSED and **ADOPTED** this _____ day of _____, 2026.

ATTEST:


Steven Meiner, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Alex J. Fernandez)

Underline denotes additions
~~Strike-through~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney *ESP* 3/23/2026
Date