



City of Miami

Legislation Ordinance

City Hall
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File Number: 15-00035

Final Action Date:

AN ORDINANCE OF THE MIAMI CITY COMMISSION AMENDING CHAPTER 18/ARTICLE III OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, ENTITLED "FINANCE/ CITY OF MIAMI PROCUREMENT ORDINANCE", REQUIRING RESPONSIBLE WAGE CONSTRUCTION CONTRACTS, UNDER NEW SECTION 18-120 OF THE CITY CODE; CONTAINING A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the public interest requires that contractors receiving municipal and other public funds for municipal projects be held to certain minimum standards that promote efficiency, ethics, transparency and accountability; and

WHEREAS, this ordinance will improve and enhance the standard of living and quality of life for City of Miami ("City") residents and provide for a better quality work product for municipal projects; and

WHEREAS, it is intended that responsible wage construction contracts will promote measures to foster and further good corporate citizenship by the City's contractors and will promote the City's best interests by establishing requirements that will benefit the contractor and the contractor's employees, and serve the interests of the public health, safety and general welfare; and

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

Section 1. The recitals and findings contained in the Preamble to this Ordinance are adopted and incorporated as if fully set forth in this Section.

Section 2. Chapter 18/Article III/ of the Code of the City of Miami, Florida, as amended, entitled "Finance/City of Miami Procurement Ordinance", is further amended in the following particulars:{1}

"CHAPTER 18

FINANCE

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ARTICLE III. CITY OF MIAMI PROCUREMENT ORDINANCE

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Sec. 18-120. Responsible Wage Construction Contracts.

(a) In addition to the other elements of the term "responsible bidder" in law or in the discretion of the City Commission, as defined per Section 18-73 of the City Code, and as applies to competitively bid City contracts in excess of one hundred thousand dollars (\$100,000.00) for the construction, alteration, and/or repair, including painting or decorating, of public buildings or public works, shall

mean a bidder who provides documented proof in its bid that the various classes of laborers and mechanics will be paid no less than the specified overall hourly rates as set forth in the contract specifications. All leases and contracts entered into after the effective date of this ordinance which provide for privately funded construction, alteration or repair of buildings or improvements located on City-owned land shall require laborers and mechanics performing such work be paid no less than the overall hourly rates required on competitively bid City construction contracts under this Section unless specifically exempted below. Fees for monitoring compliance with this Section shall be charged as provided in the most current City-wide Budget as follows: for City construction contracts, the Department of Capital Improvements and Transportation Projects ("CITP") shall charge the using department therefor; for leases and contracts which provide for privately funded construction, alteration or repair of buildings or improvements on City-owned land, the party contracting with the City shall be charged therefor.

- (b) The specifications for each competitively bid City contract in excess of one hundred thousand dollars (\$100,000.00) for the construction, alteration and/or repair, including painting or decorating, of public buildings or public works shall specify an initial overall per hour rate to be paid to each craft or type of employee necessary to perform the contract work as listed in local area nondiscriminatory negotiated contracts (hereinafter referred to for purposes of this subsection (b) as "negotiated contracts") between organizations which represent employees and contractors. In ascertaining the initial overall per hour rate to be paid, the minimum standard shall be the combined overall dollar value on an hourly basis of the wages (paid as set forth below) and of the hospitalization, medical, pension and life insurance benefits (paid as set forth below) for such craft or type of employee under negotiated contracts in effect as of January 1st of the calendar year in which said proposal bid is expected to be advertised, or, in the case of a lease or contract providing for privately funded construction on City-owned land subject to this Section, under the negotiated contracts in effect as of January 1st of the calendar year in which said proposed lease or contract is expected to be executed. Thereafter, the specifications shall provide that the overall per hour rate to be paid for work performed under the contract during each subsequent calendar year shall be the overall per hour rate in effect as of January 1st, of the year in which the work is performed. If a particular craft or type of employee is not listed in such negotiated contracts, in ascertaining the initial overall per hour rate to be paid those employees, the minimum standard shall be the combined overall dollar value on an hourly basis of the "basic hourly rate of pay" (as defined in 29 CFR 5.24) (paid as set forth below) and of the fringe benefits payments (paid as set forth below) for hospitalization, medical pension and life insurance benefits for such craft or type of employee under the Secretary of Labor's wage determination (made pursuant to the provisions of the Davis-Bacon Act) in effect for the City of Miami, Florida, as of the end of the calendar year in which the proposed bid is expected to be advertised. The foregoing and the provisions of Section 18-120(e) notwithstanding, where not otherwise precluded by state or federal law, the overall per hour rate shall be the higher rate under this Section 18-120 or the rate of wages to be paid under the requirements of the Davis-Bacon Act; provided, further, that the overall per hour rate shall not be the higher rate if the federal government requires the City as a condition of receiving federal funds for a project to pay no more than the wages as determined by the U.S. Department of Labor under the Davis-Bacon Act on project contracts. The

specifications for such contracts shall:

- (1) Include a sum certain in dollars and cents as an initial overall per hour rate for each craft or type of employee to be paid for work performed during the period commencing on the date of issuance of the notice to proceed and continuing through the calendar year (or, in the case of a lease or contract providing for privately funded construction on City-owned land subject to this Section, ending the last day of the calendar year in which the lease or contract was executed). The specifications shall further provide that the overall per hour rate to be paid for work performed during the year period commencing the next January 1st after the date of issuance of the notice to proceed (or, in the case of a lease or contract providing for privately funded construction on City-owned land subject to this Section after the date of execution of such lease or contract) shall be such rate (as determined in accordance with subsection (b) above) for that calendar year and shall be updated thereafter on each subsequent January 1st to the rate (as determined in accordance with subsection (b) above) for the ensuing calendar year until completion of the contract work; and
- (2) Mandate the contractor to whom the contract is awarded, and any of its subcontractors performing any of the contract work, pay not less than the specified overall per hour rate adjusted over the term of the contract as provided in subsection (1) above; and
- (3) Provide that the contractor, and any of its subcontractors, may fulfill the obligation to pay such specified overall per hour rate by payment to the employee of the hourly wage rate listed in the negotiated contracts (or, if applicable, under subsection (1) above, the "basic hourly rate of pay" as defined in 29 CFR 5.24 contained in the Secretary of Labor's wage determination) for such craft or type of employee plus either: (a) payment on the employee's behalf of the cost (on an hourly basis) of the hospitalization, medical, pension and life insurance benefits specified for such craft or type of employee; or, (b) payment to the employee (in addition to the listed hourly wage rate, or "basic hourly rate of pay" if applicable) of an amount equal to the hospitalization, medical, pension and life insurance benefits (on an hourly basis) contractors are required to provide under the negotiated contracts (or, if applicable, under subsection (1) above, an amount equal to the fringe benefit payments on an hourly basis for hospitalization, medical, pension and life insurance benefits contained in the Secretary of Labor's wage determination) for such craft or type of employee. Payments to employees shall be counted towards fulfillment of the above obligation only to the extent that such payments are made by check or money order; and
- (4) Provide that the contractor, and each subcontractor under the contractor, shall post in a conspicuous place on the site where such contract work is performed: (a) the schedule of the specified overall per hour rate for each applicable classification specified by such negotiated contracts; (b) the amount of liquidated damages for any failure to pay such rates; and (c) the name and address of the responsible official in the City to whom complaints should be given; and
- (5) Provide that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to employees employed by the contractor (or any subcontractor under the contractor) in the performance of the contract work the difference between the overall per hour rate required by the contract to be paid employees on the work and the amounts received

by such employees and not refunded to the contractor, and any of its subcontractors or their agents; and

(6) Require the contractor and each subcontractor under the contractor to keep, or cause to be kept, accurate written records signed under oath as true and correct showing the names, Social Security numbers, and craft classifications of all employees performing work on said contract, the hours and fractions of hours for every type of work performed by each employee, the combined dollar value of all wages, any contributions to benefit plans and payments made to each employee of the overall per hour rate required by this Section and further require the contractor to submit to the City a list of all subcontractors and the names and Social Security numbers of all employees thereof who performed work each day on the contract and further require each subcontractor to also submit to the City a list of the names and Social Security numbers of its employees who performed work each day on the contract; and

(7) Provide that no contractor (or subcontractor under the contractor) may terminate an employee performing work on the contract because of the employee's filing of a complaint regarding payment of required overall per hour rates.

(c) City shall periodically examine the records required to be kept under subsection (6) of subsection (b) of this section.

(d) The City Manager shall establish an administrative procedure for monitoring compliance with and enforcement of the requirements of this Section. Such procedure shall provide that:

(1) CITP may conduct investigations of compliance with the requirements of this Section and issue written notices to a contractor (or subcontractor under the contractor) when it determines based on such investigation that the contractor (or subcontractor) has not complied herewith;

(2) The contractor or subcontractor shall respond in writing to the notice of noncompliance;

(3) Based on the response, CITP may determine to rescind the notice of noncompliance or to conduct a Compliance Meeting with the affected contractor or subcontractor at which any additional evidence may be presented;

(4) CITP shall make a written compliance determination following any Compliance Meeting. A determination that the contractor or subcontractor has not complied with the requirements of this Section shall state the basis therefore and shall advise the contractor or subcontractor of its right to file a written request with the City Manager within thirty (30) calendar days to schedule an administrative hearing before a hearing officer to appeal the determination as provided below; and

(5) A contractor or subcontractor who fails to respond to a notice of noncompliance, fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by CITP after a Compliance Meeting shall be deemed not to have complied with the requirements of this ordinance as stated in the notice or determination of non-compliance and, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the employee and the contractor or subcontractor shall be fined the applicable penalty for such underpayment as provided in this subsection (d). A contractor or subcontractor who

does not make the required payment of the underpaid wages or who does not pay any fine imposed hereunder shall not be deemed responsible to perform subsequent City construction contracts and shall be ineligible to be awarded such contracts for so long as the identified underpayment or any penalties imposed therefor remain outstanding, not to exceed three (3) years.

Upon timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of non-compliance, the City Manager shall appoint a hearing officer and fix a time for an administrative hearing thereon. A notice of hearing (together with a copy of CITP's determination of non-compliance) shall be served upon the contractor (or subcontractor). Upon completion of the hearing, the hearing officer shall submit proposed written findings and recommendations together with a transcript of the hearing to the City Manager within a reasonable time. The City Manager shall determine whether the contractor (or subcontractor) failed to comply with the requirements of this ordinance. If the Manager's determination is that the contractor (or subcontractor) failed to comply, and that such failure was pervasive, the Manager may order that the contract work be suspended or terminated, and that the noncomplying contractor (or subcontractor) and the principal owners thereof be prohibited from bidding on or otherwise participating in City contracts for the construction, alteration and/or repair, including painting or decorating of public buildings or public works for a period of up to three (3) years. In addition, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the affected employees and the contractor or subcontractor shall be fined the penalties provided below. If the Manager's determination is that the contractor (or subcontractor) failed to comply and that such failure was limited to isolated instances and was not pervasive, the City Manager may, in the case of underpayment of the required overall per hour rate, order an amount equal to the amount of such underpayment be withheld from the contractor and remitted to the employee, and may also fine the contractor or subcontractor for such noncompliance as follows: for the first underpayment, a penalty in an amount equal to ten percent (10%) of the amount thereof; for the second underpayment, a penalty in an amount equal to twenty percent (20%) thereof; for the third and successive underpayments, a penalty in an amount equal to thirty percent (30%) thereof. A fourth violation shall constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the City. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray CITP's costs of administering this ordinance. If the required payment is not made within a reasonable period of time, the noncomplying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in City contracts for the construction, alteration, and/or repair, including painting or decorating of public buildings or public works for a period of three (3) years.

(e) This section shall not apply to City contracts for construction or alteration which are federally funded or which are otherwise subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)).

(f) This section shall not apply to any contract for which authority to advertise for bids has been obtained prior to the effective date of this section.

(g) This ordinance shall not apply to contracts designed to consolidate an indeterminate number of individual smaller construction, repair/replacement or alteration activities which may be needed

over a fixed period of time throughout the City's facilities and which are addressed by building specialty/trades contractors pre-qualified to provide such services to the City.

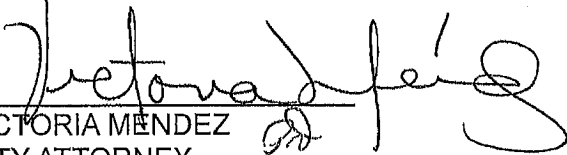
- (h) As used in the construction of this section, references to the masculine shall include the feminine and references to the singular shall include the plural, and vice-versa.
- (i) Exemption for certain privately funded construction. This Section shall not apply to leases and contracts entered into after the effective date of this ordinance which provide for privately funded construction, alteration or repair of buildings or improvements located on City-owned lands whose estimated cost is equal to or less than five million dollars (\$5,000,000.00) which are financed:
- (1) Solely through private sources, without one dollar (\$1.00) or more of financing provided through any federal, state, county, city, local governmental entity or bond sources; or
 - (2) by entities which meet all three (3) of the following conditions: exemption from federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, not-for-profit status and community-based.
- (j) The foregoing notwithstanding, any lease or contract entered into after the effective date of this ordinance which provides for privately funded construction, alteration or repair of buildings or improvements located on County-owned land whose estimated cost is equal to or less than five million dollars (\$5,000,000.00), receives bond financing and also receives State and/or local development incentives (including but not limited to: waiver of or reduced impact or permit fees and reduced property or other taxes) based on job creation shall not require payment of the overall hourly rates provided by this Section. Such lease or contract shall provide that in the event the job creation requirements on which the foregoing development incentives were conditioned are not fulfilled, the lessee shall be required to pay a penalty of up to twenty percent (20%) of the cost of such construction, alteration or repair. Said penalty shall be in addition to any rental or other payments required in each lease or contract to which this subsection applies. Said penalty shall be paid to the City of Miami and shall be used to cover the costs of monitoring compliance with this Section.

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Section 3. If any section, part of a section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 4. This Ordinance shall become effective thirty (30) days after final reading and adoption thereof.{2}

APPROVED AS TO FORM AND CORRECTNESS:


VICTORIA MENDEZ
CITY ATTORNEY

Footnotes:

{1} Words/and or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.

{2} This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten (10) days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the City Commission or upon the effective date stated herein, whichever is later.