

ORDINANCE NO. 2004-01-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY MIAMI GARDENS, FLORIDA; ESTABLISHING PURCHASING PROCEDURES, TO PROVIDE GENERAL PROVISIONS; TO PROVIDE FOR A PURCHASING AGENT; TO PROVIDE FOR PURCHASING LIMITATIONS AND COMPETITIVE BIDDING; TO PROVIDE FOR A COMPETITIVE BIDDING PROCEDURE FOR PURCHASES UNDER \$25,000 AND PURCHASES OVER \$25,000; PROVIDING FOR BID AWARDS, RESPONSIBILITY OF BIDDERS OR OFFERORS; PROVIDING FOR THE EVENT OF ONLY ONE RESPONSIVE BID; PROVIDING FOR ALL BIDS TO BECOME THE PROPERTY OF THE CITY; PROVIDING FOR A WAIVER OF COMPETITIVE BIDDING PROCEDURES; PROVIDING FOR EXEMPTION FROM BIDDING; PROVIDING FOR CONTRACT ADMINISTRATION; PROVIDING FOR PROTEST PROCEDURES; PROVIDING FOR ETHICS IN PUBLIC CONTRACTING; PROVIDING FOR A REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council, has determined that purchasing guidelines and procedures are essential in the administration of the City's day to day activities; and

WHEREAS, the City's Charter requires that contracts for public improvements and purchases of supplies, materials, or services shall be awarded or made on the basis of specifications and competitive bids, except in cases where the City Council specifically determines it is impractical to do so; and

WHEREAS, the City Council wishes to establish its own purchasing procedures.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS;

PURCHASING PROCEDURES

ARTICLE 1. GENERAL PROVISIONS

Section 1-1. Purpose. The purpose of the Purchasing Procedures of the City of Miami Gardens, (hereinafter, "Ordinance") is to provide for the fair and equitable treatment of all persons involved in purchasing by the City, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

Section 1-2. Application. This Ordinance applies to contracts for the procurement of supplies, services and construction entered into by the City after the effective date of this Ordinance. It shall apply to every expenditure of public funds by the City for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or state

assistance of contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations or state law or regulations. Nothing in this Ordinance shall prevent the City from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

Section 1-3. Public Access to Procurement Information. Procurement information shall be in public record to the extent provided in Chapter 119, Florida Statutes, and shall be available to the public as provided in such statute.

ARTICLE 2. PURCHASING AGENT.

Section 2-1. Establishment of Purchasing Agent. The City Manager or his/her designee shall be the chief purchasing agent of the City. Subject to the terms of this Ordinance, and unless the City Clerk or City Attorney choose otherwise, the purchasing agent shall contract for, procure or so process the procurement, purchase, storage and distribution all supplies, materials, equipment and certain contractual services required by any office, department or agency of the City. The purchasing agent shall establish and enforce specifications, inspect or supervise the inspection of all deliveries and have full and complete charge of, and be responsible for, all supplies, materials, and equipment purchased for or belonging to the City. All expenditures pursuant to this Ordinance shall conform to the provisions of Section 3.10 of the City Charter.

Section 2-2. Unauthorized Purchases. Except as herein provided in this Ordinance, it shall be a violation of this Ordinance for any City officer, employee, or other person, to order the purchase of, or make any contract for, materials, supplies or services within the purview of this Ordinance, in the name of or on behalf of the City other than through the Purchasing Agent or a designee of the purchasing Agent, and the City shall not be bound by any purchase order or contract made contrary to the provisions herein.

ARTICLE 3. PURCHASING LIMITATIONS; COMPETITIVE BIDDING.

Section 3.1. (A) Purchases less than \$2,500. Purchases of, or contracts for, materials, supplies, equipment, improvements or services for which funds are provided in the budget, where the total amount to be expended is not in excess of \$2,500 may be made or entered into by the City Manager without submittal to the City Council and without competitive bidding. Single purchases or contracts in excess of \$2,500 shall not be broken down to amounts less than \$2,500 to avoid the requirements of this Section.

(B) Purchases more than \$2,500 but less than \$10,000. Purchases of or contracts for, materials, supplies, equipment, improvements or services for which funds are provided in the budget, where the total amount to be expended is in excess of \$2,500, but which do not exceed \$10,000 may be made, or entered into, by the City Manager without submittal to the City Council, but shall require compliance with the competitive bidding requirements set forth in Section 4.1 hereinbelow of this Ordinance. Single purchases or contracts in excess of \$10,000 shall not be broken down to amounts less than \$10,000 to avoid the requirements of this Section.

(C) Purchases in excess of \$10,000. The City Council shall approve all purchases of or contracts for materials, supplies, equipment, public improvements or services where the total amount to be expended is more than \$10,000.

(D) Purchases in Excess of \$25,000. For purchases in excess of \$25,000 the City Manager or designee shall follow the formal provisions contained in Article 4.2 below.

(E) The City Manager may not purchase or contract for any item or service which exceeds any budget appropriation until such a time the City Council amends the budget to increase the appropriation to the applicable level.

ARTICLE 4. COMPETITIVE BIDDING PROCEDURE.

Section 4.1 Purchases Under \$25,000

(A) Whenever competitive bidding is required by this Ordinance, the City Manager shall direct that bid proposals which provide specifications for the purchase or contract be prepared.

(B) The City Manager shall solicit bids from at least three persons or entities engaged in the business of furnishing such materials, supplies, equipment and public improvements or rendering such services.

(C) The City Manager may publish a public invitation to bid items under \$25,000.

(D) Bids shall be awarded to the lowest, most responsive, responsible bidder, as determined by the City Council and/or the City Manager as the case may be, subject to the right of the City to reject any and all bids, to waive any irregularity in the bids or bidding procedures and subject also to the right of the City to award bids and contracts to bidders other than the low bidder. Until a formal contract is executed, the City reserves the right to reject all bids.

Section 4.2 Purchases Over \$25,000.

Bids for purchases over \$25,000 shall be awarded in the same manner as purchases as set forth in Section 4.1, except these additional requirements shall pertain:

(A) Conditions for Use. All contracts with the City in amounts over \$25,000 shall be awarded by competitive sealed bidding except as otherwise provided in Article 6, or, as otherwise approved by City Council.

(B) Invitation for Bids. An invitation for bids (including RFPs and RFQs) shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.

(C) Public Notice. Public notice of the invitation for bids shall be given not less than 14 calendar days prior to the date set forth in the notice for the opening of bids. Such notice may be given by publication in a subscription newspaper of general circulation in the City. The notice shall state the place, date, and time of bid opening. All bids shall be received in the City Manager's office on, or before, the date and time set forth in the notice.

(D) Bids: Bid Opening.

(1) Sealed Bids will be initialed on the outside of the envelope by the person receiving the package, the time and date will be stamped on the envelope which should be marked "IMPORTANT, BID ENCLOSED." The Bid package will be held in a secure place until the scheduled time for the Bid Opening.

(2) Bids shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the public notice of the invitation for bids. The amount of each bid and such other relevant information as the City Manager deems appropriate, together with the name of each bidder, shall be recorded.

(E) Cancellation of Invitations for Bids or Requests for Proposals. An invitation for bids, or request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole, or in part, as may be specified in the solicitation, when it is in the best interests of the City. The reasons therefor shall be made part of the contract file. Each solicitation issued by the City shall state that the solicitation may be cancelled and that any bid or proposal may be rejected, in whole or in part, in the best interests of the City. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.

(F) Correction or Withdrawal of Bids; Cancellation of Awards. In general, bids shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance. However, correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted, where appropriate. Mistakes discovered before bid opening may be modified, or the bid may be withdrawn by written or telegraphic notice received in the office designated in the invitation for bids prior to time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City, or fair competition, shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(1) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the

correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent.

(3) Notwithstanding the foregoing, the City Council shall have the authority to waive any and all irregularities in any and all proposals.

Section 4.3 Award.

(A) All contracts shall be awarded by the City Council and/or the City Manager, as stated above, to the lowest responsible and responsive bidder. In addition to price, there shall be considered the following:

- (1) the capacity, ability and skill of the provider to perform the contract;
- (2) whether the provider can perform the contract within the time specified without delay or interference;
- (3) the character, integrity, reputation, judgment, experience and efficiency of the provider;
- (4) professional licensure required when service of a skilled nature as required by law to perform such service and/or skill;
- (5) the quality of performance of previous contracts;
- (6) the previous and existing compliance by the provider with laws and ordinances relating to the contract;
- (7) the ability of the provider regarding future maintenance and service for the use of the subject of the contract;
- (8) the City Manager may, by Administrative Order, establish a set of criteria of a numerical nature that may be utilized in awarding contracts hereunder.

(B) The contract shall be awarded by the City Manager or the City Council, as the case may be, with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

(C) In the event the lowest, most responsive and responsible bid for a project exceeds available funds, and the City Council does not make available additional funds, the City

Manager is authorized, when time or economic considerations preclude re-solicitation of bids, to negotiate an adjustment of the bid price as long as the scope of work is not changed with the lowest, most responsive and responsible bidder, in order to bring the bid within the amount of available funds. Final negotiation shall be in written form as approved by the City Manager.

(D) The City retains the right to reject all bids should negotiations fail. This negotiation may not be used to ascertain the lowest responsive and responsible bid.

(E) Until a formal contract is executed, the City reserves the right to reject all bids.

Section 4.4 Responsibility of Bidders or Offerors.

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding shall be prepared by the City Manager or the Purchasing Agent. Grounds for determination of non-responsibility may include, but are not limited to, the unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to non-responsibility. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be a public record.

Section 4.5 One Response.

If only one responsive bid or proposal for commodity or contractual service is received, in response to an Invitation for Bid/Proposal, an award may be made to the single Bidder/Proposer, if the City Council/or the City Manager finds the price submitted is fair and reasonable, and that other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Further, the City Manager reserves the right, if it is in the best interests of the City, to negotiate with the sole Bidder/Proposer for the best terms, conditions and price. The City Manager shall document the reasons that such action is in the best interest of the City. Otherwise, the bid/proposal may be rejected and:

1. new bids or offers may be solicited;
2. the sole bid/proposal may be rejected.
3. If the City Manager determines in writing that the need for the supply or service continues, but that the price of the one bid/proposal is unreasonable and there is not time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted under Section 6(D) or Section 6(F), as appropriate.

Section 4.6 Property of City.

All bids and accompanying documentation received from bidders in response to the invitation to bid shall become the property of the City and will not be returned to the bidders. In the event of contract

award, all documentation and work product produced as part of the contract shall become the exclusive property of the City. This subsection is applicable to request for proposal and request for letter of interest documents, which also become property of the City.

ARTICLE 5 WAIVER OF COMPETITIVE BIDDING PROCEDURES.

The City Council may authorize the waiver of competitive bidding procedures upon the recommendation of the City Manager or designee that it is in the City's best interest to do so, to obtain goods and services which cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors.

ARTICLE 6 EXEMPTIONS FROM COMPETITIVE BIDDING.

The following shall be exempt from the competitive bidding procedures outlined in this ordinance:

- (A) Transactions described in Section 3.1(A) of this Ordinance.
- (B) Contracts for professional services, except for those contracts of more than \$10,000 for professional services governed by Florida Statutes Section 287.055 (the Consultants Competitive Negotiations Act).
- (C) Other contracts as provided by state law, or, those entered into prior to the enactment of this Ordinance.
- (C) Purchases made under state general service administration contracts, federal, county or other governmental contracts or competitive bids with other governmental agencies.
- (D) Purchases arising out of or because of emergencies which shall be defined as a situation, occurrence or matter necessitating immediate or quick action and not permitting adequate time to utilize the competitive bidding process. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.
- (E) Under circumstances where time constraints do not permit the preparation of clearly drawn specifications or situations where, after competitive bidding, no bids meeting bid requirements are received, all compliant bids received are too high, or all bids are rejected for failure to meet bid requirements (i.e., bids are non-compliant).
- (F) Supplies, equipment or services available from a sole source only may be exempted from the bidding requirements of this Ordinance by the City manager upon the filing of a written request by a department head to the City Manager outlining the conditions and

circumstances involved, after conducting a good faith review of available sources, a contract may be awarded without competition when the City Manager or Purchasing Agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, brand, service, or construction item capable of fulfilling the needs of the City. The City Manager or Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be available as a public record and shall identify each purchase order and/or contract.

(G) Exempt Contractual Services and Products. Other exempt contractual services and products not subject to the competitive procurement requirements of this Code are listed as follows:

- (1) Academic program reviews or lectures or seminars by individuals
- (2) Artistic services which are original and creative in character and skill in a recognized field of artistic endeavor such as music, dance, drama, painting, sculpture and the like. However, contracts for artistic instructors, coaches and assistants are deemed contractual services subject to the requirements of competitive procurement.
- (3) Performing artists and entertainers as approved by the City Manager/Purchasing Agent when deemed in the City's best interests, for the benefit of the citizens of Miami Gardens and the general public at any City function.
- (4) Advertising
- (5) Utilities, including but not limited to, electric, water and telephone
- (6) Items purchased for resale to the public

(H) Competitive proposals shall not be required when a purchase is made for materials, equipment, prefabricated elements and components, appliances, fixtures and supplies, bought under a sales tax saving procedure constituting part of a construction project award, which construction contract has been awarded in accordance with this Ordinance.

ARTICLE 7. CONTRACT ADMINISTRATION

(A) A contract administration system designed to ensure that a bidder/offeror/contractor is performing in accordance with the solicitation under which a contract was awarded and the terms and conditions of the contract shall be maintained by the City Manager.

(B) All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the City in a contract file by the City Manager and be retained and disposed of in accordance with the records retention guidelines and schedules approved by the City Clerk.

ARTICLE 8. PROTEST PROCEDURES

This Article shall govern any protest made by a participant in any competitive process utilized for the selection of a person or entity in regard to any response to a City Request for Proposal/Invitation to Bid and/or Request for Qualification (“Request for Proposals”).

(A) Protest of any City recommendation for an award in response to a Request for Proposals shall be filed with the City Clerk and mailed by the protesting to all participants in the competitive process within seven (7) days of the City’s recommendation for an award or the City’s actual award whichever comes first. Such protest shall be in writing, shall state the particular grounds on which it is based, shall include all pertinent documents and evidence and shall be accompanied by a cashier’s check in the amount of \$250.00 to reimburse the City for all administrative costs associated with the appeal process. Any grounds not stated shall be deemed waived.

(B) Protests shall be referred by the City Clerk to the City Attorney who shall select a hearing examiner who shall hold a hearing and submit written findings and recommendations within fifteen (15) days of the filing of the protest. The hearing examiner shall consider the written protests, supporting documents in evidence, the City’s recommendations and supporting documentation and all evidence presented at the hearing. Such finding and recommendation shall be filed with the City Clerk.

(C) Hearing examiners may be retired judges, certified mediators or other impartial parties as selected by the City Attorney.

(D) The hearing examiner’s findings and recommendations shall be presented to the City Council for final action at the next regular or specially scheduled meeting. Notice shall be mailed to all participants in the competitive process at least seven (7) days in advance of any final action by the City Council. The Notice shall include the hearing examiner’s findings and recommendations.

(E) Failure to follow the protest procedures set forth herein shall automatically nullify any protest or claim brought by an aggrieved bidder, offeror or contractor.

ARTICLE 9. ETHICS IN PUBLIC CONTRACTING

In addition to all ethical rules and guidelines set forth by the Council on Ethics and the Miami-Dade County Code, as applicable to the City of Miami Gardens and the State of Florida, the City Manager may impose any one or more of the following sanctions on a City Employee for violations of ethical standards set forth by Miami-Dade County or the State of Florida including, but not limited to: oral or written warnings or reprimands, suspension with or without pay for specified

periods of time or termination of employment. For non-employees, for violations of ethical standards, the City Council may terminate any contract with the City of Miami Gardens.

ARTICLE 10. TRANSITION PROVISION.

Until a City Manager is employed by the City of Miami Gardens, the City Council or its designee shall be the chief purchasing agent of the City. Subsequent to his/her employment, Article 2 shall apply.

ARTICLE 11. REPEAL OF CONFLICTING PROVISIONS.

All provisions of the Code of Metropolitan Dade County as made applicable to the City by Article VIII, Sections 8.3 of the City Charter which are in conflict with this Ordinance are hereby repealed.

ARTICLE 12. SEVERABILITY.

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

ARTICLE 13. INCLUSION IN THE CODE.

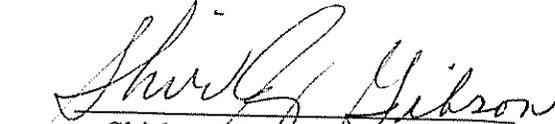
It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the City of Miami Gardens Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

ARTICLE 14. EFFECTIVE DATE.

This Ordinance shall be effective upon adoption on second reading.

PASSED on first reading this 10th, day of December, 2003.

PASSED and ADOPTED on second reading this 14th day of January, 2004.


Shirley Gibson, Mayor

Attest:


Ronetta Taylor, CMC
City Clerk

APPROVED AS TO FORM:
AND LEGAL SUFFICIENCY:


Hans Ottinet
Interim City Attorney

MOVED BY Vice Mayor Campbell
SECONDED BY Councilman Braynon

VOTE: 5-0

Mayor Gibson	<u> x </u> (Yes)	___ (No)
Vice Mayor Campbell	<u> x </u> (Yes)	___ (No)
Councilman Melvin L. Bratton	<u> x </u> (Yes)	___ (No)
Councilman Oscar Braynon, II	<u> x </u> (Yes)	___ (No)
Councilwoman Audrey J. King	___ (Yes)	___ (No) Out of town
Councilwoman Sharon Pritchett	___ (Yes)	___ (No) Not present
Councilwoman Barbara Watson	<u> x </u> (Yes)	___ (No)