

RFP 04-15 CITY OF KEY WEST

NAME: J. JEFFERSON OVERBY

ADDRESS: P.O. BOX 429, KEY WEST, FL 33041-0429

TEL NUMBER: 305-304-5900

EMAIL: [EYWLAWYER@AOL.COM](mailto:EYWLAWYER@AOL.COM)

FEBRUARY 10, 2015

## ***PROFILE and STATEMENT- J. JEFFERSON OVERBY***

Dear Mayor Cates, and Commissioners,

First, please accept my apologies for my not being present at the March 3<sup>rd</sup> meeting. I have a prior, longstanding, commitment outside the State of Florida and was unable to change it. I am available to answer any questions at the March 17 meeting.

I am honored to serve as the Special Magistrate for the City of Key West, a position I have held for over 16 consecutive years. I have litigated cases as an attorney for over 36 years including over 6 years as a Circuit Court Judge, here in Monroe County. I have literally presided over more than 1,000 cases as **YOUR** Special Magistrate, in addition to being the Special Magistrate for Monroe County for a number of years (also dealing with Code Compliance). I submit that I am the most qualified and most experienced candidate for the position. In fact, this is the first time in 16 years that anyone else has submitted a bid for this position.

I take great care in the fair and impartial hearings I conduct. I have provided numerous additional hearings to the City, in the past, for which I never sought compensation. I take the responsibilities of being the Special Magistrate very seriously and have forgone the full time practice of law since my first appointment. In that way, I have no former or current clients, nor clients of any firm, that could ever appear before me, that would cause any conflicts of interest or cause the public to question my impartiality. I have not had any disbarments or any disciplinary actions.

I have lived in Monroe County since 1982 and have owned and operated two small businesses here. Additionally, I have served our residents and visitors as Chief Assistant Public Defender, Chief Circuit Judge, Chief Assistant States Attorney, and Special Magistrate for both the Circuit Court and County Code Compliance. I have had the great pleasure as serving as the Past Chairman of the CFFK and on the boards of numerous, local, not -for - profits.

I am the only candidate that possesses Judicial experience, lengthy litigation experience, more than 15 years of quasi-judicial experience, and the institutional knowledge of Code Compliance for the City of Key West, as I was the first Special Magistrate to serve monthly here after the City revised its Code creating this position. By virtue of my Magistrate work here and with the County, I have "special training and experience with Florida local government law", and will require no "on the job training" to perform the duties and responsibilities of Special Magistrate.

I am always surprised when locals recognize me (while shopping or dining out here) and tell me: "*I love your TV show! We watch it all the time. How do you have so much patience?*" I hope and believe the shows help educate and inform the public.

In short, I enjoy the job. It is challenging and satisfying. I ask you to select me to be the next Special Magistrate per this RFP. Thank you for your consideration and vote.

## J. JEFFERSON OVERBY

**Name:** J. Jefferson Overby

**Age:** 61

**Business Address:** PO. Box 429, Key West, FL 33041-0429, 305-3045900, fax 305-296-02027. Email: [Eywlawyer@aol.com](mailto:Eywlawyer@aol.com)

**Education:** Bachelor of Arts-*cum laude*-Vanderbilt University, Juris Doctor, University of Florida College of Law

**Current Employment:** Special Magistrate of City of Key West ( since 1998), Mediator.( since I came off the Circuit Bench, I have mediated over 700 cases).

**Public Offices previously held:** Chief Circuit Judge, 16<sup>th</sup> Judicial Circuit, Monroe County, Florida, Chief Assistant States Attorney, Monroe County, Special Magistrate for Monroe County, Chief Assistant Public Defender, Monroe County, and Notary Public, State of Florida.

**Affiliations within Community:** Former Chair : Community Foundation of the Florida Keys (CFFK)

Former Board Member: Hospice/VNA of the Florida Keys  
Wesley House Community Center, Inc.  
Tennessee Williams Fine Arts Center  
Friends of the Monroe County Library  
Key West Art and Historical Society  
Monroe County Fine Arts Council  
AIDS HELP  
Rotary International (Paul Harris Fellow)  
Blue Ribbon Investigative Panel for Key West

**Professional Affiliations:** The Florida Bar (since 1979), U.S. District Court for the Southern District of Florida, American Bar Association, and Monroe County Bar Association.

RFP 04-15 CITY OF KEY WEST

PROPOSED FEE ARRANGEMENT:

I propose a flat monthly fee for attending one- half day of hearings totaling up to 6 hours, including preparation of orders, executing subpoena requests, reviewing Motions/Requests of Continuance, other pleadings filed by the City or the Respondents (in order to prepare for hearings or in order to issue rulings), and research in the amount of \$1530.00 per month\* and an annual City of Key West official parking pass. This is the same amount I have been paid for the last few years, after agreeing to a 25% pay cut a few years ago.

Should a party/respondent wish to schedule a special hearing date, I would propose that they pay \$400.00 per hour with a two and one half hour min. If the City requests an extra hearing, that hearing would be provided at any mutually convenient time, at the same rate. This is the same rate that I have charged for mediations since I left the bench in 1995.

\*For the past 17 years, the city has not requested or required malpractice insurance of its special magistrates, nor does anyone else require malpractice insurance for its special magistrate, as a special magistrate is not representing anyone. Per the new requirement in the RFP, I obtained coverage that started February 19, 2015, in order to meet the City requirements of the RFP. If the City wished to avoid this expense and determined that such coverage was not necessary, the monthly fee would be reduced to the current charge of \$1530.00 per month. The malpractice coverage is being billed at cost of \$71.75 additional per month. This cost would be added, otherwise to the bid of \$1530.00 per month.

# CITY OF KEY WEST, FLORIDA

## Business Tax Receipt

This Document is a business tax receipt  
Holder must meet all City zoning and use provisions.  
P.O. Box 1409, Key West, Florida 33040 (305) 809-3955

Business Name OVERBY, J. JEFFERSON, LAW OFFI CtlNbr:0003742  
Location Addr 1500 ATLANTIC BLVD 402  
Lic NBR/Class 15-00022236 SERVICE - PROFESSIONAL  
Issue Date: February 06, 2015 Expiration Date:September 30, 2015  
License Fee \$309.75  
Add. Charges \$0.00  
Penalty \$0.00  
Total \$0.00

Comments: ATTORNEY

### HOME OCCUPATION LICENSE

This document must be prominently displayed.  
OVERBY J. JEFFERSON

OVERBY, J. JEFFERSON, LAW OFFI  
POB 429

KEY WEST FL 33041

(5)

**2014 / 2015  
MONROE COUNTY BUSINESS TAX RECEIPT  
EXPIRES SEPTEMBER 30, 2015**

RECEIPT# 46112-98623

Business Name: OVERBY J JEFFERSON PA  
LAW OFFICE OF

Owner Name: JON JEFFERSON OVERBY  
Mailing Address: PO BOX 429  
KEY WEST, FL 33041

Business Location: 1500 ATLANTIC BLVD 402  
KEY WEST, FL 33040  
Business Phone: 305-304-5900  
Business Type: ATTORNEY (ATTORNEY)

0

Tax Amount	Transfer Fee	Sub-Total	Penalty	Prior Years	Collection Cost	Total Paid
30.00	0.00	30.00	0.00	0.00	0.00	30.00

Paid 114-13-00002947 09/17/2014 30.00

THIS BECOMES A TAX RECEIPT  
WHEN VALIDATED

**Danise D. Henriquez, CFC, Tax Collector**  
PO Box 1129, Key West, FL 33041

THIS IS ONLY A TAX.  
YOU MUST MEET ALL  
COUNTY AND/OR  
MUNICIPALITY PLANNING  
AND ZONING REQUIREMENTS.

**MONROE COUNTY BUSINESS TAX RECEIPT**  
P.O. Box 1129, Key West, FL 33041-1129  
EXPIRES SEPTEMBER 30, 2015

RECEIPT# 46112-98623

Business Name: OVERBY J JEFFERSON PA  
LAW OFFICE OF

Owner Name: JON JEFFERSON OVERBY  
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Business Location: 1500 ATLANTIC BLVD 402  
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Business Phone: 305-304-5900  
Business Type: ATTORNEY (ATTORNEY)

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30.00	0.00	30.00	0.00	0.00	0.00	30.00

Paid 114-13-00002947 09/17/2014 30.00

⑥

Proof of Insurance



541 E. Mitchell Hammock Road Oviedo, Florida 32765  
Phone: 800-633-6458 Fax: 800-781-2010  
www.flmic.com

Created by The Florida Bar for its members

**Lawyers Professional Liability Policy**  
**This is a Claims Made and Reported Policy. Please read it carefully.**

**Declarations**

**Policy Number: 72658**

**Item 1. Named Insured:** Law Office of J. Jefferson Overby  
**Mailing Address:** 1500 Atlantic Boulevard, #402  
Key West, FL 33040

**Item 2. Policy Period: From** 02/19/2015 **to** 02/19/2016 **at 12:01 A.M.**  
*Standard Time at Your Address Shown Above*

**Item 3. Limit of Liability:** \$500,000 *Per Claim*  
\$1,000,000 *Total Limit*

**Item 4. Deductible:** \$5,000 *Annual Aggregate*

**Item 5. Policy Premium:** \$861.00 *Annual Premium*

**Item 6. Forms and Endorsements Attached at Policy Issuance:**

FLPL-101 (R.08/01/2011)      FLPL-200 (R.03/01/2014)      FLPL-103 (R.08/01/2011)

**The Policy is not valid until signed by Our authorized representative.**

February 12, 2015  
Date Issued

  
Authorized Representative

FLPL-100 (R.08/01/2011)

Page 1 of 1

7

Anti-Kickback Affidavit

STATE OF FLORIDA

SS

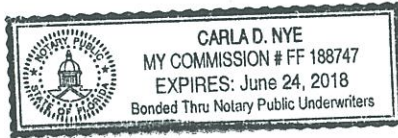
COUNTY OF MONROE

I, the undersigned, hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employee of the City of Key West as a commission, kickback, reward or gift, directly or indirectly by me or any member of my family or by an officer of the business or corporation.

BY: [Signature]

sworn and prescribed before me this 3rd day of February, 2015

[Signature]  
Notary Public, State of Florida



My commission expires 6/24/18



LOCAL VENDOR CERTIFICATION PURSUANT TO CKW ORDINANCE 09-22 SECTION 2-798

The undersigned, as a duly authorized representative of the vendor listed herein, certifies to the best of his/her knowledge and belief, that the vendor meets the definition of a "Local Business." For purposes of this section, "local business" shall mean a business which:

- a. Principle address as registered with the FL Department of State located within 30 miles of the boundaries of the city, listed with the chief licensing official as having a business tax receipt with its principle address within 30 miles of the boundaries of the city for at least one year immediately prior to the issuance of the solicitation.
- b. Maintains a workforce of at least 50 percent of its employees from the city or within 30 miles of its boundaries.
- c. Having paid all current license taxes and any other fees due the city at least 24 hours prior to the publication of the call for bids or request for proposals.

- Not a local vendor pursuant to Ordinance 09-22 Section 2-798
- Qualifies as a local vendor pursuant to Ordinance 09-22 Section 2-798

If you qualify, please complete the following in support of the self certification & submit copies of your County and City business licenses. Failure to provide the information requested will result in denial of certification as a local business.

Business Name

LAW OFFICE OF J. JEFFERSON OVERBY

Phone: 305-304-5900

Current Local Address: 1500 ATLANTIC BLVD, #402, RYLANDT FL 33040 Fax: 305-296-0207  
(P.O Box numbers may not be used to establish status)

Length of time at this address

Approx 38 yrs.

[Signature]  
Signature of Authorized Representative

Date

STATE OF FLORIDA

COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 3rd day of February, 2015.

By Jon JEFFERSON OVERBY, of Law office of J. JEFFERSON Overby

(Name of officer or agent, title of officer or agent)

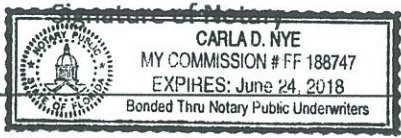
Name of corporation acknowledging)

Personally Known

or has produced \_\_\_\_\_ as identification

(type of identification)

[Signature]



Print, Type or Stamp Name of Notary

Return Completed form with

Supporting documents to:

City of Key West Purchasing

Title or Rank

for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or any entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on the information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement (indicate which statement applies).

Neither the entity submitting this sworn statement, or any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

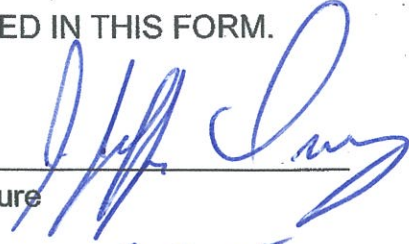
The entity submitting this sworn statement, or any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach copy of final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH ONE ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO

UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR THE CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Signature

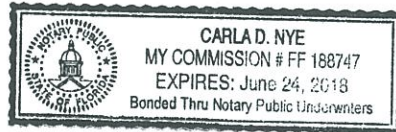
Date



2-3-15

STATE OF FLA.  
COUNTY OF MONROE

PERSONALLY APPEARED BEFORE ME, Jefferson Overby  
Who after first being sworn by me, affixed his/her signature in the space  
Above this 3rd day of February, 2015



**Conflict of Interest Affidavit**

By the signature below, the firm (employees, officers and/or agents) certifies, and hereby discloses, that, to the best of their knowledge and belief, all relevant facts concerning past, present, or currently planned interest or activity (financial, contractual, organizational, or otherwise) which relates to the proposed work; and bear on whether the firm (employees, officers and/or agents) has a possible conflict have been fully disclosed.

Additionally, the firm (employees, officers and/or agents) agrees to immediately notify in writing the Finance Director, or designee, if any actual or potential conflict of interest arises during the contract and/or project duration.

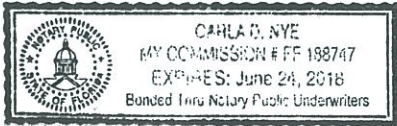
Law Office of J. JEFFERSON OVERBY  
Firm  
[Signature]  
Signature  
2-3-15  
Date  
JOHN JEFFERSON OVERBY  
Name Printed

\_\_\_\_\_  
Title of Person Signing Affidavit

State of Florida  
City of MONROE

SUBSCRIBED AND SWORN to before me this 3rd day of February, 2015, by Jefferson Overby, who is personally known to me to be the \_\_\_\_\_ for the Firm, OR who produced the following identification: \_\_\_\_\_

[Signature]  
\_\_\_\_\_  
Notary Public



My Commission Expires: \_\_\_\_\_

CONE OF SILENCE

STATE OF FLORIDA

SS:

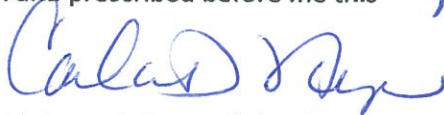
COUNTY OF MONROE

I the undersigned hereby duly sworn, depose and say that all owner(s), partners, officers, directors, employees and agents representing the firm of LAW Office of J. JEFFERSON O'NEAL <sup>OVER BY</sup> have read and understand the limitations and procedures regarding communications concerning City of Key West issued competitive solicitations pursuant to City of Key West Ordinance Section 2-773 Cone of Silence (attached).

BY: \_\_\_\_\_

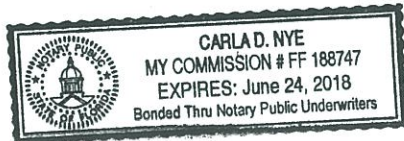


sworn and prescribed before me this 3rd day of Feb, 2015



NOTARY PUBLIC, State of Florida

My commission expires:



Sec. 2-773. Cone of silence.

(a) Definitions. For purposes of this section, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

(1) *Competitive Solicitation* means a formal process by the City of Key West relating to the acquisition of goods or services, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. Competitive Solicitation shall include request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), invitation to bid ("ITB") or any other advertised solicitation.

(2) *Cone of Silence* means a period of time during which there is a prohibition on communication regarding a particular Competitive Solicitation.

(3) *Evaluation or Selection Committee* means a group of persons appointed or designated by the City to evaluate, rank, select,

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\*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

or make a recommendation regarding a Vendor or the Vendor's response to the Competitive Solicitation. A member of such a committee shall be deemed a city official for the purposes of subsection (c) below.

(4) Vendor means a person or entity that has entered into or that desires to enter into a contract with the City of Key West or that seeks an award from the City to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a Competitive Solicitation for compensation or other consideration.

(5) Vendor's Representative means an owner, individual, employee, partner, officer, or member of the board of directors of a Vendor, or a consultant, lobbyist, or actual or potential subcontractor or sub consultant who acts at the behest of a Vendor in communicating regarding a Competitive Solicitation.

(b) Prohibited Communications.

A Code of Silence shall be in effect during the course of a Competitive Solicitation and prohibit:

(1) Any communication regarding a particular Competitive Solicitation between a potential Vendor or Vendor's Representative and the City's administrative staff including, but not limited to, the city manager and his or her staff;

(2) Any communication regarding a particular Competitive Solicitation between a potential Vendor or Vendor's Representative and the Mayor, City Commissioners, or their respective staff;



(3) Any communication regarding a particular Competitive Solicitation between a potential Vendor or Vendor's Representative and any member of a City evaluation and/or selection committee therefore; and

(4) Any communication regarding a particular Competitive Solicitation between the Mayor, City Commissioners, or their respective staff, and a member of a City evaluation and/or selection committee therefore.

(c) Permitted Communications

Notwithstanding the foregoing, nothing contained herein shall prohibit:

(1) Communication between members of the public who are not Vendors or a Vendor's representative and any city employee, official or member of the City Commission;

(2) Communications in writing at any time with any city employee, official or member of the City Commission, unless specifically prohibited by the applicable Competitive Solicitation.

(A) However, any written communication must be filed with the City Clerk. Any City employee, official or member of the City Commission receiving or making any written communication must immediately file it with the City Clerk.

(B) The City Clerk shall include all written communication as part of the agenda item when publishing information related to a particular Competitive Solicitation;

(3) Oral communications at duly noticed pre-bid conferences;

(4) Oral presentations before publically noticed evaluation and/or selection committees;

(5) Contract discussions during any duly noticed public meeting;

(6) Public presentations made to the City Commission or advisory body thereof during any duly noticed public meeting;

(7) Contract negotiations with city staff following the award of a Competitive Solicitation by the City Commission; or

(8) Purchases exempt from the competitive process pursuant to section 2-797 of these Code of Ordinances;

(d) Procedure

(1) The Cone of Silence shall be imposed upon each Competitive Solicitation at the time of Public Notice of such solicitation as provided by section 2-826 of this Code. Public notice of the Cone of Silence shall be included in the notice of the Competitive Solicitation. The city manager shall issue a written notice of the release of each Competitive Solicitation to the affected departments, with a copy thereof to each Commission member, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.

(2) The Cone of Silence shall terminate at the time the City Commission or other authorized body makes final award or gives final approval of a contract, rejects all bids or responses to the Competitive Solicitation, or takes other action which ends the Competitive Solicitation.

(3) Any City employee, official or member of the City Commission that is approached concerning a Competitive Solicitation while the Cone of Silence is in effect shall notify such individual of the prohibitions contained in this section. While the Cone of Silence is in effect, any City employee, official or member of the City Commission who is the recipient of any oral communication by a potential Vendor or Vendor's Representative in violation of this section shall create a written record of the event. The record shall indicate the date of such communication, the persons with whom such communication occurred, and a general summation of the communication.

(e) Violations/penalties and procedures.

(1) A sworn complaint alleging a violation of this ordinance may be filed with the City Attorney's office. In each such instance, an initial investigation shall be performed to determine the existence of a violation. If a violation is found to exist, the penalties and process shall be as provided in section 1-15 of this Code.

(2) In addition to the penalties described herein and otherwise provided by law, a violation of this ordinance shall render the Competitive Solicitation void at the discretion of the City Commission.

(3) Any person who violates a provision of this section shall be prohibited from serving on a City of Key West advisory board, evaluation and/or selection committee.

(4) In addition to any other penalty provided by law, violation of any provision of this ordinance by a City of Key West

employee shall subject said employee to disciplinary action up to and including dismissal.

(5) If a Vendor is determined to have violated the provisions of this section on two more occasions it shall constitute evidence under City Code section 2-834 that the Vendor is not properly qualified to carry out the obligations or to complete the work contemplated by any new Competitive Solicitation. The City's Purchasing Agent shall also commence any available debarment from city work proceeding that may be available upon a finding of two or more violations by a Vendor of this section.

**EQUAL BENEFITS FOR DOMESTIC PARTNERS AFFIDAVIT**

STATE OF FLORIDA )

: SS

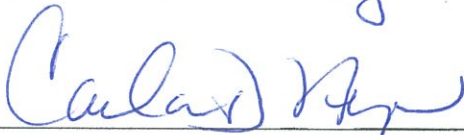
COUNTY OF MONROE )

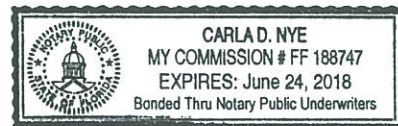
I, the undersigned hereby duly sworn, depose and say that the firm of LAW OFFICE OF JEFFERSON OVERBY provides benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses per City of Key West Ordinance Sec. 2-799.

By: 

Sworn and subscribed before me this

3rd day of February, 2015

  
NOTARY PUBLIC, State of Florida at Large



My Commission Expires: 6/24/18

City Ordinance Sec. 2-799

Requirements for City Contractors to Provide Equal Benefits for Domestic Partners

(a) Definitions. For purposes of this section only, the following definitions shall apply:

- (1) **Benefits** means the following plan, program or policy provided or offered by a contractor to its employees as part of the employer's total compensation package: sick leave, bereavement leave, family medical leave, and health benefits.
- (2) **Bid** shall mean a competitive bid procedure established by the city through the issuance of an invitation to bid, request for proposals, request for qualifications, or request for letters of interest.
- (3) **Cash equivalent** means the amount of money paid to an employee with a domestic partner in lieu of providing benefits to the employee's domestic partner. The cash equivalent is equal to the employer's direct expense of providing benefits to an employee for his or her spouse.

The cash equivalents of the following benefits apply:

- a. For bereavement leave, cash payment for the number of days that would be allowed as paid time off for the death of a spouse. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.
  - b. For health benefits, the cost to the contractor of the contractor's share of the single monthly premiums that are being paid for the domestic partner employee, to be paid on a regular basis while the domestic partner employee maintains such insurance in force for himself or herself.
  - c. For family medical leave, cash payment for the number of days that would be allowed as time off for an employee to care for a spouse who has a serious health condition. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.
- (4) **Contract** means any written agreement, purchase order, standing order or similar instrument entered into pursuant to the award of a bid whereby the city is committed to expend or does expend funds in return for work, labor, professional services, consulting services, supplies, equipment, materials, construction, construction related services or any combination of the foregoing.
  - (5) **Contractor** means any person or persons, sole proprietorship, partnership, joint venture, corporation, or other form of doing business, that is awarded a bid and enters into a covered contract with the city, and which maintains five (5) or more full-time employees.

- (6) **Covered contract** means a contract between the city and a contractor awarded subsequent to the date when this section becomes effective valued at over twenty thousand dollars (\$20,000).
- (7) **Domestic partner** shall mean any two adults of the same or different sex, who have registered as domestic partners with a governmental body pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least one of the domestic partners. A contractor may institute an internal registry to allow for the provision of equal benefits to employees with domestic partner who do not register their partnerships pursuant to a governmental body authorizing such registration, or who are located in a jurisdiction where no such governmental domestic partnership registry exists. A contractor that institutes such registry shall not impose criteria for registration that are more stringent than those required for domestic partnership registration by the City of Key West pursuant to Chapter 38, Article V of the Key West Code of Ordinances.
- (8) **Equal benefits** mean the equality of benefits between employees with spouses and employees with domestic partners, and/or between spouses of employees and domestic partners of employees.

(b) Equal benefits requirements.

- (1) Except where otherwise exempt or prohibited by law, a Contractor awarded a covered contract pursuant to a bid process shall provide benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses.
- (2) All bid requests for covered contracts which are issued on or after the effective date of this section shall include the requirement to provide equal benefits in the procurement specifications in accordance with this section.
- (3) The city shall not enter into any covered contract unless the contractor certifies that such contractor does not discriminate in the provision of benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees.
- (4) Such certification shall be in writing and shall be signed by an authorized officer of the contractor and delivered, along with a description of the contractor's employee benefits plan, to the city's procurement director prior to entering into such covered contract.
- (5) The city manager or his/her designee shall reject a contractor's certification of compliance if he/she determines that such contractor discriminates in the provision of benefits or if the city manager or designee determines that the certification was created, or is being used for the purpose of evading the requirements of this section.
- (6) The contractor shall provide the city manager or his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this section, and upon request shall provide evidence that the contractor is in compliance with the provisions of this section upon each new bid, contract renewal, or when the city manager has received a complaint or has reason to believe the contractor may not be in compliance with the provisions of this section. This shall include but not be limited to

providing the city manager or his/her designee with certified copies of all of the contractor's records pertaining to its benefits policies and its employment policies and practices.

- (7) The contractor may not set up or use its contracting entity for the purpose of evading the requirements imposed by this section.
- (c) Mandatory contract provisions pertaining to equal benefits. Unless otherwise exempt, every covered contract shall contain language that obligates the contractor to comply with the applicable provisions of this section. The language shall include provisions for the following:
- (1) During the performance of the covered contract, the contractor certifies and represents that it will comply with this section.
  - (2) The failure of the contractor to comply with this section will be deemed to be a material breach of the covered contract.
  - (3) If the contractor fails to comply with this section, the city may terminate the covered contract and all monies due or to become due under the covered contract may be retained by the city. The city may also pursue any and all other remedies at law or in equity for any breach.
  - (4) If the city manager or his designee determines that a contractor has set up or used its contracting entity for the purpose of evading the requirements of this section, the city may terminate the covered contract.
- (d) Enforcement. If the contractor fails to comply with the provisions of this section:
- (1) The failure to comply may be deemed to be a material breach of the covered contract; or
  - (2) The city may terminate the covered contract; or
  - (3) Monies due or to become due under the covered contract may be retained by the city until compliance is achieved; or
  - (4) The city may also pursue any and all other remedies at law or in equity for any breach;
  - (5) Failure to comply with this section may also subject contractor to the procedures set forth in Division 5 of this article, entitled "Debarment of contractors from city work."
- (e) Exceptions and waivers.

The provisions of this section shall not apply where:

- (1) The contractor does not provide benefits to employees' spouses.



- (2) The contractor is a religious organization, association, society or any non-profit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.
- (3) The contractor is a governmental entity.
- (4) The sale or lease of city property.
- (5) The provision of this section would violate grant requirement, the laws, rules or regulations of federal or state law (for example, The acquisition services procured pursuant to Chapter 287.055, Florida Statutes known as the "Consultants' Competitive Negotiation Act").
- (6) Provided that the contractor does not discriminate in the provision of benefits, a contractor may also comply with this section by providing an employee with the cash equivalent of such benefits, if the city manager or his/her designee determines that either:
  - a. The contractor has made a reasonable yet unsuccessful effort to provide equal benefits. The contractor shall provide the city manager or his/her designee with sufficient proof of such inability to provide such benefit or benefits which shall include the measures taken to provide such benefits or benefits and the cash equivalent proposed, along with its certificate of compliance, as is required under this section.
- (7) The city commission waives compliance of this section in the best interest of the city, including but not limited to the following circumstances:
  - a. The covered contract is necessary to respond to an emergency.
  - b. Where only one bid response is received.
  - c. Where more than one bid response is received, but the bids demonstrate that none of the bidders can comply with the requirements of this section.
- (f) City's authority to cancel contract. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity prequalification, or otherwise deny a person or entity city business.
- (g) Timing of application. This section shall be applicable only to covered contracts awarded pursuant to bids which are after the date when this section becomes effective.