

ORDINANCE NO. 26-004

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, **REPEALING AND REPLACING CHAPTER 2 – ADMINISTRATION, ARTICLE VI – PURCHASING OF THE CODE OF ORDINANCES OF THE CITY OF FORT PIERCE WITH A NEWLY CREATED CHAPTER 2 – ADMINISTRATION, ARTICLE VI – PROCUREMENT CODE REGARDING CITY PROCUREMENT**; MAKING RELATED FINDINGS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City’s procurement rules are set forth in Article VI of Chapter 2 of the Code of Ordinances of the City of Fort Pierce; and

WHEREAS, the current procurement code dates to a 1983 ordinance which was last significantly updated in 1998, last partially updated in 2018; and

WHEREAS, since the City last revised its procurement rules, there have been a variety of changes to state law impacting local government procurement; and

WHEREAS, in addition to changes in the law, public procurement has evolved with respect to the use of technology and a greater use of non-traditional procurement methods; and

WHEREAS, the City Commission desires to update its procurement code to align with current laws, as well as current best practices, procedures, and methods of public procurement; and

WHEREAS, the City Commission finds that it is in the best interests of the City government, the vendor community, and the City’s taxpayers to adopt the provisions of this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the City Commission of the City of Fort Pierce, Florida, that:

SECTION 1. Chapter 2 – Administration, Article VI – Purchasing of the Code of Ordinances of the City of Fort Pierce is hereby repealed in its entirety, as follows:

~~ARTICLE VI. – PURCHASING~~

~~Sec. 2-437. General provisions.~~

~~(a) Purpose and application.~~

- ~~(1) Purpose.~~** The purpose of this article is to provide for the fair and equitable treatment of all persons involved in public 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.
- ~~(2) Application.~~** This article applies to contracts for the procurement of supplies, services, and construction, entered into by the city after the effective date of the ordinance from which this article is derived, unless the parties agree to its application to contracts entered into prior to the effective date; provided, however, that this article shall not apply to the obtaining of legal services. It shall apply to every expenditure of public funds by a public agency for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable

~~federal law and regulations. Nothing in this article shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.~~

~~(b) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:~~

~~*Architect-engineer and land surveying services* means those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the state.~~

~~*Blind trust* means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.~~

~~*Brand name or equal specification* means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.~~

~~*Brand name specification* means a specification limited to one or more items by manufacturers' names or catalogue numbers.~~

~~*Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.~~

~~*Change order* means a written order signed and issued by the purchasing director, directing the contractor to make changes which the changes clause of the contract authorizes the purchasing director to order without the consent of the contractor.~~

~~*Confidential information* means any information which is available to an employee only because of the employee's status as an employee of the city and is not a matter of public knowledge or available to the public on request.~~

~~*Construction* means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term "construction" does not include the routine operation, routing repair, or routing maintenance of existing structures, buildings, or real property.~~

~~*Contract* means all types of city agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.~~

~~*Contract modification (bilateral change)* means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.~~

~~*Contractor* means any person having a contract with the city or a using agency thereof.~~

~~*Cost analysis* means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.~~

~~*Cost data* means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.~~

~~*Cost-reimbursement contract* means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this article, and a fee or profit, if any.~~

~~*Direct or indirect participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.~~

~~*Disadvantaged business* means a small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.~~

~~*Employee* means an individual drawing a salary or wages from the city, whether elected or not; any noncompensated individual performing personal services for the city or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the city; and any noncompensated individual serving as an elected official of the city.~~

~~*Financial interest* means:~~

- ~~(1) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$1,000.00 per year, or its equivalent;~~
- ~~(2) Ownership of five percent of any property of business; or~~
- ~~(3) Holding a position in a business such as officer, director, trustee, partner, employee, or like, or holding any position of management.~~

~~*Gratuity* means a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.~~

~~*Immediate family* means a spouse, children, parents, brothers, and sisters.~~

~~*Invitation for bids* means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.~~

~~*Price analysis* means the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.~~

~~*Pricing data* means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The term "pricing data" refers to data relevant to both prime and sub-contract prices.~~

~~*Procurement* means the buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. The term "procurement" also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.~~

~~*Public agency* means a public entity subject to or created by the city.~~

~~*Qualified products list* means an approved list of supplies, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the city has determined will meet the applicable specification requirements.~~

~~*Request for proposals* means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.~~

~~*Responsible bidder or offeror* means a person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.~~

~~*Responsive bidder* means a person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.~~

~~*Services* means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term "services" does not include employment agreements or collective bargaining agreements.~~

~~*Small business* means a United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.~~

~~*Specification* means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. The term "specification" may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.~~

~~*Supplies* means all property, including, but not limited to, equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.~~

~~*Using agency* means any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this article.~~

~~(c) *Public access to procurement information.* Procurement information shall be a public record to the extent provided in F.S. ch. 119 and shall be available to the public as provided in such statute.~~

~~Sec. 2-438. Office of the purchasing director.~~

~~(a) *Establishment of the position of purchasing director.* There is hereby created the position of purchasing director, who shall be the city's principal public purchasing official.~~

~~(b) *Authority and duties.*~~

~~(1) *Principal public purchasing official.* Except as otherwise provided herein, the purchasing director shall serve as the principal public purchasing official for the city, and shall be responsible for the procurement of supplies, services, and construction in accordance with this article, as well as the management and disposal of supplies.~~

~~(2) *Duties.* In accordance with this article, and subject to the supervision of the city manager, the purchasing director shall:~~

~~a. Procure or supervise the procurement of all supplies, services, and construction needed by the city;~~

~~b. Exercise direct supervision over the city's central stores and general supervision over all other inventories of supplies belonging to the city;~~

~~c. Sell, trade, or otherwise dispose of surplus supplies belonging to the city; and~~

~~d. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services, and construction.~~

~~(3) *Operational procedures.* Consistent with this article, and with the approval of the city manager and the city commission, the purchasing director may adopt operational procedures relating to the execution of its duties.~~

~~(c) *Delegations to other city officials.* With the approval of the city commission and the city manager, the purchasing director may delegate authority to purchase certain supplies, services, or construction items to other city officials, if such delegation is deemed necessary for the effective procurement of those items. Notwithstanding the provisions of subsection (b) of this section (authority and duties), procurement authority with respect to certain supplies, services, or construction may be delegated to other city officials by the city manager with the approval of the city commission, when such delegation is deemed necessary for the effective procurement of these supplies, services, or construction.~~

~~Sec. 2-439. Source selection and contract formation.~~

~~(a) *Methods of source selection.*~~

~~(1) *Competitive sealed bidding.*~~

~~a. *Conditions for use.* All contracts of the city shall be awarded by competitive sealed bidding except as otherwise provided in subsections (a)(2) (competitive sealed proposals), (a)(3) (contracting for designated professional services), (a)(4) (small purchases), (a)(5) (sole source procurement), and (a)(6) (emergency procurements) of this section and section 2-442(d) (public announcement and selection process).~~

~~b. *Invitation for bids.* An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.~~

- c. ~~*Public notice.* Adequate public notice of the invitation for bids shall be given a reasonable time. Such notice will include publication in a newspaper of general circulation in the city, once a week for two consecutive weeks, the first issue thereof to be not less than ten days prior to the reception of such bids. The public notice shall state the place, date, and time of bid opening.~~
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- d. ~~*Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the purchasing director deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with section 2-437(c) (public access to procurement information).~~
- e. ~~*Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this article. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.~~
- f. ~~*Correction or withdrawal of bids; cancellation of awards.* 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 withdrawn by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price intended. 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 director.~~
- g. ~~*Award.* The contract shall be awarded 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. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the finance director, and such bid does not exceed such funds by more than five percent, the purchasing director is authorized, when time or economic considerations preclude resolicitation of work or a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids.~~
- h. ~~*Multi-step sealed bidding.* When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose~~

~~offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.~~

~~(2) Competitive sealed proposals.~~

- ~~a. Conditions for use. When the purchasing director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the competitive sealed proposals method.~~
- ~~b. Request of proposals. Proposals shall be solicited through a request for proposals.~~
- ~~c. Public notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in subsection (a)(1)c of this section (competitive sealed bidding, public notice).~~
- ~~d. Receipt of proposals. No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public viewing only after contract award.~~
- ~~e. Evaluation factors. The request for proposals shall state the relative importance of price and other evaluation factors.~~
- ~~f. Discussion with responsible offerors and revisions to proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.~~
- ~~g. Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.~~

~~(3) Contracting for designated professional services.~~

- ~~a. Authority. For the purpose of procuring the services of accountants, clergy, physicians, dentists, as defined by the laws of the state, any using agency requiring such services may procure them on its own behalf, in accordance with the selection procedures specified in this subsection (a)(3). A using agency procuring such services shall consult with the purchasing director. No contract for the services of legal counsel may be awarded without the approval of such officer as may be required by applicable law.~~
- ~~b. Selection procedure.~~
 - ~~1. Conditions for use. Except as provided under subsection (a)(5) (sole source procurement) or (a)(6) (emergency procurements) of this section, the professional services designated in subsection (a)(3)a of this section shall be procured in accordance with this subsection (a)(3)b.~~
 - ~~2. Statement of qualifications. Persons engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. A using agency using such professional services may specify~~

a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

- ~~3. *Public announcement and form of request for proposals.* Adequate notice of the need for such services shall be given by the using agency requiring the services through a request for proposals. The request for proposals shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.~~
- ~~4. *Discussions.* The head of a using agency procuring the required professional services or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.~~
- ~~5. *Award.* Award shall be made to the offeror determined in writing by the head of the using agency procuring the required professional services or a designee of such officer to be best qualified based on the evaluation factors set forth in the request for proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.~~
- ~~(4) *Small purchases.* Any contract not exceeding \$500.00 may be made in accordance with the small purchase procedures authorized in this article. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.~~
- ~~(5) *Sole source procurement.* A contract may be awarded without competition when the purchasing director determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The purchasing director shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item procured under each contract, and the identification number of each contract file.~~
- ~~(6) *Emergency procurements.* Notwithstanding any other provisions of this article, the purchasing director may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. 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 procured under the contract, and the identification number of the contract file.~~
- ~~(7) *Cancellation of invitations for bids or requests for proposals.* An invitation for bids, a request for proposals, or other solicitation may be canceled, 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 for good cause and 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 canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interest 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 resolicitation or any future procurements of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.~~

~~(b) Qualifications and duties.~~

~~(1) Responsibility of bidders and offerors.~~

- ~~a. Determination of nonresponsibility. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsive, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the purchasing director. The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the nonresponsive bidder or offeror. The final determination shall be made part of the contract file and be made a public record.~~
- ~~b. Right of nondisclosure. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the city outside of the office of the purchasing director, or using agency, without prior written consent by the bidder or offeror.~~

~~(2) Cost or pricing data.~~

- ~~a. Required submissions relating to the award of contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000.00 and is to be awarded by competitive sealed proposals, as provided for in subsection (a)(2) of this section (competitive sealed proposals), or by sole source procurement authority, as provided for in subsection (a)(5) of this section (sole source procurement).~~
- ~~b. Exceptions. The submission of cost or pricing data relating to the award of a contract is not required when:~~
 - ~~1. The contract price is based on adequate price competition;~~
 - ~~2. The contract price is based on established catalogue prices or market prices;~~
 - ~~3. The contract price is set by law or regulation; or~~
 - ~~4. It is determined in writing by the purchasing director that the requirements of section (b)(2)a of this section (cost or pricing data; required submissions relating to the award of contracts) may be waived, and the determination states the reasons for such waiver.~~
- ~~c. Required submissions relating to change orders or contract modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed \$100,000.00.~~
- ~~d. Exception. The submission of cost or pricing data relating to the pricing of a change order or contract modifications not required when:~~
 - ~~1. Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or~~
 - ~~2. It is determined in writing by the purchasing director that the requirement of subsection (b)(2)c of this section (cost or pricing data; required submission relating to change orders or contract modification) may be waived and the determination states the reason for such waiver.~~

- e. ~~*Certification required.* A contractor, actual or prospective, required to submit cost or pricing data, in accordance with this section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.~~
 - f. ~~*Price adjustment provision required.* Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including the profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.~~
- (3) ~~*Cost or price analysis.* A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under subsection (a)(1) of this section (competitive sealed bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file. In making a price analysis, consideration must be given to any differing terms and conditions.~~
- (4) ~~*Bid and performance bonds on supply or service contract.* Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing director or head of a using agency deems advisable to protect the city's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.~~
- (c) ~~*Types of contracts and contract administration.*~~
- (1) ~~*Types of contracts.*~~
- a. ~~*General authority.* Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the city may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.~~
 - b. ~~*Multi-term contracts.*~~
 - 1. ~~*Specified period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the city, provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.~~
 - 2. ~~*Determination prior to use.* Prior to the utilization of a multi-term contract, it shall be determined in writing that:~~
 - i. ~~Estimated requirements cover the period of the contract and are reasonably firm and continuing; and~~
 - ii. ~~Such a contract will serve the best interests of the city by encouraging effective competition or otherwise promoting economies in city procurement.~~
 - 3. ~~*Cancellation due to unavailability of funds in succeeding fiscal periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-recurring cost incurred but not~~

~~amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.~~

~~c. *Multiple source contracting.*~~

- ~~1. *General.* A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the city's actual requirements is limited by the provision of Uniform Commercial Code section 62-306(1).~~
- ~~2. *Limitations on use.* A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provision of subsections (a)(1) (competitive sealed bidding), (a)(2) (competitive sealed proposals), (a)(4) (small purchases), and (a)(6) (emergency procurements) of this section, as applicable. Multiple source awards shall not be made when a single award will meet the city's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier section to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.~~
- ~~3. *Contract and solicitation provisions.* All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:~~
 - ~~i. The city shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and~~
 - ~~ii. The city shall reserve the right to take bids separately if the purchasing director approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the city.~~
- ~~4. *Intent to use.* If a multiple source award is anticipated prior to issuing a solicitation, the city shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.~~
- ~~5. *Determination required.* The purchasing director shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.~~

~~(2) *Contract clauses and their administration.*~~

- ~~a. *Contract clauses.* All city contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing director, after consultation with the city attorney, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:~~
 - ~~1. The unilateral right of the city to order in writing changes in the work within the scope of the contract;~~
 - ~~2. The unilateral right of the city to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;~~
 - ~~3. Variations occurring between estimated quantities of work in contract and actual quantities;~~
 - ~~4. Defective pricing;~~
 - ~~5. Liquidated damages;~~

- ~~6. Specified excuses for delay or nonperformance;~~
- ~~7. Termination of the contract for default;~~
- ~~8. Termination of the contract in whole or in part for the convenience of the city;~~
- ~~9. Suspension of work on a construction project ordered by the city; and~~
- ~~10. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:~~
 - ~~i. When the contract is negotiated;~~
 - ~~ii. When the contractor provides the site or design; or~~
 - ~~iii. When the parties have otherwise agreed with respect to the risk of differing site condition.~~

~~b. Price adjustments.~~

- ~~1. Adjustments in price resulting from the use of contract clauses required by subsection (c)(2)a of this section shall be computed in one or more of the following ways:~~
 - ~~i. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;~~
 - ~~ii. By unit prices specified in the contract or subsequently agreed upon;~~
 - ~~iii. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;~~
 - ~~iv. In such other manner as the contracting parties may mutually agree; or~~
 - ~~v. In the absence of agreement by the parties, by a unilateral determination by the city of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the city, as accounted for in accordance with reference to cost principles, and subject to the provision of section 2-444 (appeals and remedies).~~
- ~~2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of subsection (b)(2) of this section (cost or pricing data).~~

~~c. Standard clauses and their modification. The purchasing director, after consultation with the city attorney, may establish standard contract clauses for use in city contracts. If the purchasing director establishes any standard clauses addressing the subjects set forth in subsection (c)(2)a of this section, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that any variations are supported by a written determination that states the circumstance justifying such variation, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.~~

~~(3) Contract administration. A contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.~~

~~(4) Approval of accounting system. Except with respect to firm fixed-price contracts, no contract type shall be used, unless it has been determined in writing by the purchasing director that:~~

- ~~a. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and~~
 - ~~b. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.~~
- ~~(5) *Right to inspect plant.* The city may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the city.~~
- ~~(6) *Right to audit records.*~~
 - ~~a. *Audit of cost or pricing data.* The city may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to subsection (b)(2) of this section (cost or pricing data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.~~
 - ~~b. *Contract audit.* The city shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the subcontract.~~
- ~~(7) *Reporting of anticompetitive practices.* When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the state attorney general and the appropriate legal officer for the jurisdiction conducting the procurement.~~
- ~~(8) *City procurement records.*~~
 - ~~a. *Contract file.* 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 purchasing director.~~
 - ~~b. *Retention of procurement records.* All procurement shall be retained and disposed of by the city in accordance with records retention guidelines and schedules approved by the city commission.~~
- ~~(9) *Fiscal responsibility.* In respect to any contract issued or entered into under the provisions of this section, the city manager shall have the power and authority to increase or decrease the same up to and including the sum of \$50,000.00 for extra service, work or labor to be performed or for the deletion thereof. Any charges in excess of said sum of \$50,000.00 may be made only when authorized by the commission. The commission may also otherwise alter or extend the terms of any such contract upon written recommendation of the city manager.~~

Sec. 2-440. Purchasing procedures.

~~(a) *Purchases not exceeding \$500.00.*~~

- ~~(1) Each department shall be responsible for purchases not exceeding \$500.00.~~
- ~~(2) Each department head shall designate the person or persons who will be responsible for the purchasing activity in the department and the department head will notify the purchasing director of the person so designated. Departmental purchases shall be conducted as follows:~~
 - ~~a. The department head must verify the availability of funds in the proper appropriation prior to placing an order.~~
 - ~~b. Two or more purchase orders for the same commodity may not be issued if the total of the purchase orders exceeds \$500.00.~~

- ~~c. Persons authorized by the department head to issue purchase orders will be responsible for correctly filling in the purchase order and providing supporting documentation from the vendor.~~
- ~~d. The copies of the purchase order issued shall be routed as follows:
 - ~~1. Original to vendor.~~
 - ~~2. First copy to purchasing director.~~
 - ~~3. Second copy to be held by the ordering department for their records.~~
 - ~~4. Third copy is to be held by the ordering department until the material ordered is received. Upon receipt of the material this copy is to be signed by the person receiving the material and forwarded to the finance department to match with the fourth copy as verification of delivery.~~
 - ~~5. Fourth copy to finance department.~~~~
- ~~(3) The purchasing director will review and monitor the purchasing activities, offer advice on selection of proper vendors, and will meet with departments at least quarterly to review the procedures being followed.~~
- ~~(b) Purchases from \$500.01 through \$2,500.00. Purchases expected to exceed \$500.00 but be less than \$2,500.01 are to be handled by the purchasing department. Departments are to submit a requisition for purchase in a format prescribed by the purchasing director. The requisition for purchase request will include three comparative quotes for purchases over \$500.00 through \$2,500.00 if they can be obtained by the department. The purchasing director, or his designee, will review and verify information and/or obtain quotes, then select the bid/quote that is the most responsive and responsible. Purchase order is processed. All purchase orders exceeding \$500.00 but less than \$2,500.01 must be signed by both the purchasing director and the finance director.~~
- ~~(c) Purchases from 2,500.01 through \$50,000.00. Purchases expected to exceed \$2,500.01 but be less than \$50,000.01 are to be handled by the purchasing director or designee. Departments are to submit a requisition for purchase in a format prescribed by the purchasing director along with specifications. The purchasing department will prepare the bid documents for an informal bid. After bids are received, they are forwarded to the user department for evaluation and recommendation. After recommendation purchase order is processed. All purchase orders exceeding \$2,500.00 but less than \$50,000.01 must be signed by both the purchasing director and finance director.~~
- ~~(d) Purchases exceeding \$50,000.00. Purchases which exceed \$50,000.00 are handled in the same manner as purchases from \$2,500.01 through \$50,000.00, except that all bids are sealed and formal, and will require approval from the city commission.~~
- ~~(e) Surplus sales.
 - ~~(1) The purchasing director is responsible for the declaration and disposal of all surplus material and equipment.~~
 - ~~(2) Material and equipment having an estimated value of \$1,000.00 or less may be declared as surplus by the purchasing director and the department head. Material and equipment having an estimated value in excess of \$1,000.00 must be declared surplus by the city commission.~~~~
- ~~(f) Procedures for disposition of materials and equipment to surplus are as follows with no exceptions.
 - ~~(1) Complete the asset disposition form.~~
 - ~~(2) Contact the purchasing director or designee to make arrangements for delivery of material or equipment (561-460-2200, ext. 122).~~
 - ~~(3) If it is some type of equipment that has a license plate, please remove the license plate and submit to the purchasing director or designee t along with asset disposition form.~~~~

- (4) ~~If it is equipment that has a city I.D. sticker, please remove and submit to the purchasing director or designee along with asset disposition form.~~

~~(g) *Violations of purchasing procedures (employees).*~~

- (1) ~~No officer, department, employee or agency shall, during any fiscal year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money for any purposes in excess of the amounts appropriated for that general classification of expenditure pursuant to this article. Any contract, verbal or written, made in violation of this article shall be null and void. Any officer or employee of the city who shall be guilty of a misdemeanor and, upon conviction thereof, shall cease to hold his office or employment and he and his sureties shall be liable to the city by reason of corrupt or improper approval of any claim or account against the city.~~
- (2) ~~Nothing in this section shall prevent the making of contracts or the spending of money for capital improvements to be financed in whole or in part by the issuance of bonds, nor the making of contracts of lease or for services for a period exceeding the budget in which such contract is made, when such contract is permitted by law.~~

Sec. 2-441. Specifications.

- ~~(a) *Maximum practicable competition.* All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the city's needs, and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications, including but not limited to, those prepared for the city by architects, engineers, designers, and draftsmen.~~

~~(b) *Brand name or equal specification.*~~

- (1) ~~*Use.* Brand name or equal specifications may be used when the purchasing director determines in writing that:~~
- ~~a. No other design or performance specification of qualified products list is available;~~
 - ~~b. Time does not permit the preparation of another form of purchase description, not including a brand name specification;~~
 - ~~c. The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or~~
 - ~~d. Use of a brand name or equal specification is in the city's best interests.~~
- (2) ~~*Designation of several brand names.* Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.~~
- (3) ~~*Required characteristics.* Unless the purchasing director determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.~~
- (4) ~~*Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.~~

~~(c) *Brand name specification.*~~

- (1) ~~*Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing director makes a written determination that only the identified brand name item or items will satisfy the city's needs.~~
- (2) ~~*Competition.* The purchasing director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such~~

~~sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under subsection (a)(5) of this section (sole source procurement).~~

~~Sec. 2-442. Procurement of construction, architect-engineer and land surveying services.~~

~~(a) Management of construction contracting; responsibility for selection of methods of construction contracting management. The purchasing director and the city engineer shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the city engineer shall consider the city's requirements, its resources, and the potential contractor's capabilities. The city engineer shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.~~

~~(b) Bid security and performance bonds.~~

~~(1) Bid security.~~

~~a. Requirement for bid security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the purchasing director to be \$50,000.00 or more. Bid security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the city. Nothing herein shall prevent the requirement of such bonds on construction contracts under \$50,000.00 when the circumstances warrant.~~

~~b. Amount of bid security. Bid security shall be in an amount equal to at least ten percent of the amount of the bid.~~

~~c. Rejection of bids for noncompliance with bid security requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected, unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirements.~~

~~d. Withdrawal of bids. If a bidder is permitted to withdraw its bid before award as provided in section 2-439(a)(1)f (competitive sealed bidding; correction or withdrawal of bids; cancellation of awards), no action shall be had against the bidder or the bid security.~~

~~(2) Contract performance and payment bonds.~~

~~a. When required; amounts. When a construction contract is awarded in the amount of \$50,000.00 or more, the following bonds or security shall be delivered to the city and shall become binding on the parties upon the execution of the contract:~~

~~1. A performance bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, in an amount equal to 100 percent of the price specified in the contract; and~~

~~2. A payment bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract.~~

~~b. Reduction of bond amounts. After notice to the city commission, the purchasing director is authorized to reduce the amount of performance and payment bonds to 50 percent of the contract price for each bond when a written determination is made that it is in the best interests of the city to do so.~~

- ~~c. *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (b)(2)a of this section.~~
- ~~d. *Suits on payment bonds; right to institute.* Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this section, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bonds, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.~~
- ~~e. *Suits on payment bonds; where and when brought.* Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.~~
- ~~(3) *Copies of bond forms.* Any person may request and obtain from the city a copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.~~
- ~~(c) *Fiscal responsibility.* In respect to any contract issued or entered into under the provisions of this section, the city manager shall have the power and authority to increase or decrease the same up to and including the sum of \$50,000.00 for extra service, work or labor to be performed or for the deletion thereof. Any charges in excess of said sum of \$50,000.00 may be made only when authorized by the commission. The commission may also otherwise alter or extend the terms of any such contract upon written recommendation of the city manager. Any charges in excess of \$25,000.00 shall be communicated to the city commission.~~
- ~~(d) *Architect-engineer and land surveying services; public announcement and selection process.*~~
 - ~~(1) *Public announcement.* It is the policy of the city to announce publicly all requirements for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of architect-engineer and land surveying services, the purchasing director shall request firms to submit a statement of qualifications and performance data.~~
 - ~~(2) *Selection process.* A selection committee composed of at least three members, including the purchasing director, another officer with appropriate professional experience and the head of a using agency in need of the architect-engineer or land surveying services shall conduct discussions with no less than three firms regarding the proposed contract and the relative utility of alternative methods of approach for furnishing the required services and shall select from among them no less than three of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the selection committee.~~
 - ~~(3) *Negotiations.* The purchasing director or appointed official shall negotiate a contract with the firm considered to be the most qualified for architect-engineer or land surveying services at compensation which the purchasing director determines in writing to be fair and reasonable to the city. In making this~~

~~decision, the purchasing director shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the purchasing director be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the purchasing director determines to be fair and reasonable to the city, negotiations with that firm shall be formally terminated. The purchasing director shall then undertake negotiation with the second most qualified firm. Failing accord with the second most qualified firm, the purchasing director shall formally terminate negotiations. The purchasing director shall then undertake negotiations with the third most qualified firm. Should the purchasing director be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the selection committee shall select additional firms in order of their competence and qualifications, and the purchasing director shall continue negotiations in accordance with this section until an agreement is reached.~~

Sec. 2-443. Debarment or suspension.

- ~~(a) *Authority to debar or suspend.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing director, after consulting with the city attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. After consultation with the city attorney, the purchasing director is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:~~
- ~~(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;~~
 - ~~(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a city contractor;~~
 - ~~(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;~~
 - ~~(4) Violation of contract provisions, as set forth below, of a character which is regarded by the purchasing director to be so serious as to justify debarment action:~~
 - ~~a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or~~
 - ~~b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.~~
 - ~~(5) Any other cause the purchasing director determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this article; and~~
 - ~~(6) For violation of the ethical standards set forth in section 2-446 (ethics in public contracting).~~
- ~~(b) *Decision to debar or suspend.* The purchasing director shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review.~~
- ~~(c) *Notice of decision.* A copy of the decision required by subsection (b) of this section (decision to debar or suspend) shall be mailed or otherwise furnished immediately to the debarred suspended person.~~

- ~~(d) *Finality of decision.* A decision under subsection (b) of this section (decision to debar or suspend) shall be final and conclusive, unless fraudulent, or the debarred or suspended person within ten days after receipt of the decision taken an appeal to the city commission or commences a timely action in accordance with applicable law.~~

~~Sec. 2-444. Appeals and remedies.~~

~~(a) *Bid protests.*~~

- ~~(1) *Right to protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the city commission. Protestors are urged to seek resolution of their complaints initially with the purchasing director. If a bidder or interested bidder wishes to protest either the results of or intended disposition of any bid, the bidder or interested bidder must:~~
- ~~a. File a notice of intent to protest in writing 72 hours after posting of bid tabulation or posting of intended disposition.~~
 - ~~b. A formal written protest must be filed within ten days after notice of protest has been filed.~~
 - ~~c. After receipt of a formal protest, the purchasing director consults with city attorney. Following consultation with city attorney, the purchasing director shall attempt to resolve the protest. This process must be completed within seven working days.~~
 - ~~d. If protest is not resolved by mutual agreement between the protesting vendor and purchasing director, the purchasing director shall consult with city manager and city attorney, and issue a final written decision of the protest. This decision shall state the following:~~
 - ~~1. Reasons for decision.~~
 - ~~2. Inform the protesting vendor of his right to administrative hearing before the city commission. If he chooses not to appear, then all final decisions stand and the protest is said to be null and void.~~
- ~~(2) *Stay of procurements during protests.* In the event of a timely protest under subsection (a)(1) of this section, the purchasing director shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the city commission makes a determination on the record that the award of a contract without delay is necessary to protect substantial interest of the city.~~

~~(b) *Contract claims.*~~

- ~~(1) *Decision of the purchasing director.* All claims by a contractor against the city relating to a contract, except bid protests, shall be submitted in writing to the purchasing director for a decision. The contractor may request a conference with the purchasing director on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.~~
- ~~(2) *Notice to the contractor of the purchasing director's decision.* The decision of the purchasing director shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under subsection (b)(3) of this section.~~
- ~~(3) *Finality of purchasing director's decision; contractor's right to appeal.* The purchasing director's decision shall be final and conclusive unless, within ten days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the city commission or commences an action in a court of competent jurisdiction.~~
- ~~(4) *Failure to render timely decision.* If the purchasing director does not issue a written decision regarding any contract controversy within ten days after written request for a final decision, or within such longer period as may be agreed upon~~

~~between the parties, then the aggrieved party may proceed as if an adverse decision had been received.~~

~~(c) *Authority of the purchasing director to settle bid protests and contract claims.* The purchasing director is authorized to settle any protest regarding the solicitation or award of a city contract, or any claim arising out of the performance of a city contract, prior to an appeal to the city commission or the commencement of an action in a court of competent jurisdiction.~~

~~(d) *Remedies for solicitations or awards in violation of law.*~~

~~(1) *Prior to bid opening or closing date for receipt of proposals.* If prior to the bid opening or the closing date for receipt of proposals, the purchasing director, after consultation with the city attorney, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be canceled.~~

~~(2) *Prior to award.* If after bid opening or the closing date for receipt of proposals, the purchasing director, after consultation with the city attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be canceled.~~

~~(3) *After award.* If, after an award, the purchasing director, after consultation with the city attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:~~

~~a. If the person awarded the contract has not acted fraudulently or in bad faith:~~

~~1. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the city; or~~

~~2. The contract may be terminated.~~

~~b. If the person awarded the contract has fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of the city.~~

~~Sec. 2-445. Cooperative purchasing.~~

~~Any governmental purchasing authority may participate in this purchase for services and commodities from any successful award.~~

~~Sec. 2-446. Ethics in public contracting.~~

~~(a) *Criminal penalties.* To the extent that violations of the ethical standard of conduct set forth in this article constitute violations of the state criminal code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanction set forth in this part. Criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of this article shall not be impaired.~~

~~(b) *Employee conflict of interest.* It shall be unethical for any city employee to participate directly or indirectly in a procurement contract when the city employee knows that:~~

~~(1) The city employee or any member of the city employee's immediate family has a financial interest pertaining to the procurement contract; or~~

~~(2) Any other person, business, or organization with whom the city employee or any member of a city employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.~~

~~A city employee or any member of a city employee's immediate family who holds a financial interest in a disclosed blinded trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.~~

~~(c) *Gratuities and kickbacks.*~~

~~(1) *Gratuities.* It shall be unethical for any person to offer, give, or agree to give any city employee or former city employee, or for any city employee or former city employee to solicit, demand, accept, or agree to accept from another person, a~~

~~gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.~~

- ~~(2) *Kickbacks.* It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.~~
- ~~(3) *Contract clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefore.~~
- ~~(d) *Prohibition against contingent fees.* It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.~~
- ~~(e) *Contemporaneous employment prohibited.* It shall be unethical for any city employee who is participating directly or indirectly in the procurement process to become or to be, while such a city employee, the employee of any person contracting with the governmental body by whom the employee is employed.~~
- ~~(f) *Waivers from contemporaneous employment prohibition and other conflicts of interest.* The city commission may grant a waiver from the employee conflict of interest provision, as provided for in subsection (b) of this section (employee conflict of interest), or the contemporaneous employment provision, as provided for in subsection (e) of this section (contemporaneous employment prohibited), upon making a written determination that:
 - ~~(1) The contemporaneous employment or financial interest of the city employee has been publicly disclosed;~~
 - ~~(2) The city employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and~~
 - ~~(3) The award will be in the best interests of the city.~~~~
- ~~(g) *Use of confidential information.* It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.~~
- ~~(h) *Sanctions.*
 - ~~(1) *Employees.* The city manager may impose any one or more of the following sanctions on a city employee for violations of the ethical standards in this article:
 - ~~a. Oral or written warnings or reprimands;~~
 - ~~b. Suspension with or without pay for specified periods of time; or~~
 - ~~c. Termination of employment.~~~~
 - ~~(2) *Nonemployees.* The city commission may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:
 - ~~a. Written warnings or reprimands;~~
 - ~~b. Termination of contracts; or~~
 - ~~c. Debarment or suspension as provided in section 2-443(a) (authority to debar or suspend).~~~~~~
- ~~(i) *Recovery of value transferred or received in breach of ethical standards.*~~

- ~~(1) *General provisions.* The value of anything transferred or received in breach of the ethical standard of this article by a city employee or a nonemployee may be recovered from both city employee and nonemployee.~~
- ~~(2) *Recovery of kickbacks by the city.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.~~

SECTION 2. A new Chapter 2 – Administration, Article VI – Procurement Code of the Code of Ordinances of the City of Fort Pierce is hereby created, as follows:

ARTICLE VI. – PROCUREMENT CODE

Sec. 2-437. – Title and purpose.

This article shall be known and may be cited as the Fort Pierce procurement code. The purpose of this article is to provide for the fair and equitable treatment of all persons involved in public procurement activities of 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.

Sec. 2-438. – Application.

- (a) This article applies to solicitations and contracts entered into for the purchase of commodities, services, and construction. Unless otherwise expressly provided, any subsequent amendment to the procurement code shall only apply to solicitations and contracts issued or entered by the city after the effective date of such amendment.
- (b) This article is to be construed in a manner consistent with any applicable provision of the general and special laws of the state and shall not apply to the extent any provision is in conflict therewith, provided, however, the provisions of this article may supersede such general or special law where the general or special law permits such an application or interpretation.
- (c) The city may, from time to time, receive funding to support a procurement activity from the state or federal government. In that event, then, to the extent required by any related grant agreement or state or federal procurement regulations tied to the use of grant funds, any such applicable state or federal regulations shall take precedence over any provision of this article or any city administrative procurement regulation to the contrary.
- (d) Except as provided in this article, it shall be unlawful for any employee to order the purchase of, or make a commitment to purchase, materials, goods, commodities or services other than through the provisions of this article.
- (e) Wherever used in this article, the term city manager includes that official's designee.

Sec. 2-439. – Definitions.

The following words, terms, and phrases shall have the meanings ascribed to them in this article except where the context clearly indicates a different meaning:

Bid means an offer by a bidder to provide materials or to perform specified work under specified conditions for a specified price. Bids may be written or electronic, and may, in the city's sole discretion, require contemporaneous submission of a bid bond. Bids must not contain any exceptions or conditions which would preclude the city from accepting the bid and forming a contract. Conditional bids shall be deemed non-responsive.

Bidder means any business that offers commodities or services to the city for a given price and specified terms. The term shall include offerors and respondents to solicitations or request for quotes.

Business means any sole proprietor, corporation, partnership, joint venture or other entity that is duly licensed or registered, if required, and is authorized to transact business in the state.

Change order means any adjustment to the original quantities or scope of work of a solicited material or service. A contract amendment is not a change order.

Cooperative procurement means the combining of requirements of two or more public procurement entities to leverage the benefits of volume purchases, delivery and supply chain advantages, best practices, and the reduction of administrative time and expenses.

Emergency means a state of emergency as declared under the provisions of article II of chapter 14 of the code, or as declared by the St. Lucie County Commission, the Governor of the State of Florida, or the President of the United States.

Invitation to bid (ITB) means a solicitation for competitive sealed bids and is typically used when the city is capable of specifically defining the scope of work for which a contractual service is required or of establishing precise specifications defining the actual commodity or group of commodities required.

Invitation to negotiate (ITN) means a competitive negotiation process that is used when the procurement authority deems it is in their best interest to negotiate with proposers to achieve "best value." An ITN is a form of source selection that is similar to the request for proposals process, wherein a short list of acceptable proposers is created and the city may negotiate with responders sequentially or concurrently.

Materials/goods/commodities means and includes anything that is a tangible product, including but not limited to vehicles, food, computers, computer software, and building materials. The term does not include services.

P3 means a public-private partnership, which is an agreement between the city and a private entity that involves the private sector taking on additional risks of a P3 qualifying project, such as design, construction, finance, long-term operation, and traffic revenue.

P3 proposal review fee means the fee paid by the private entity submitting a P3 unsolicited proposal or by the private entity submitting a P3 detailed proposal to compete with a P3 unsolicited proposal.

P3 qualifying project means a facility or project that serves a public purpose or a facility or infrastructure that is used or will be used by the public or in support of a public purpose or activity, as defined in the P3 statute.

P3 solicitation means a city-initiated procurement process seeking offers (bids, proposals, or otherwise) for city projects, which may include processes authorized by: (1) Chapter 2, Article VI of the Code of the City of Fort Pierce; (2) F.S. § 255.20 or F.S. § 287.055; or (3) any other law or the city's home rule powers.

P3 statute means F.S. § 255.065.

P3 unsolicited proposal means a P3 valid proposal a private entity submits to the city on its own initiative and not in response to a P3 solicitation.

Piggyback means a form of acquisition wherein a governmental entity has awarded a contract using competitive solicitation methods as good or better than the city's, where the contract entered by the original entity has not expired and where its terms permit other entities to use the contract under the same core terms and conditions as in the original contract. Where the city engages in piggybacking, it may not significantly alter the price and scope of the original contract (except that it may negotiate lower prices), but it may require its own insurance, delivery, invoicing, and similar terms. Where a piggybacked contract allows for one or more extensions or renewals, the city manager is authorized to exercise such provisions even if those provisions are not exercised by the original contracting entity.

Private entity means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity.

Professional or consultant means those contractors who, as individuals or duly organized business entities, have been or will be retained by the city for the purpose of providing recommendations or advice related to planning level or policy level decisions or who will be engaged in the collection of data or research that will provide the basis for such decisions or future plans and actions of the city, as well as those who will be retained to supervise and monitor the performance of contractors or subcontractors of any nature.

Purchase order means a document issued by the procurement official that memorializes the city's acceptance of a quote or bid for the provision of materials, goods, commodities, or services. A purchase order sets forth the descriptions, quantities, prices, discounts, payment terms, date(s) of performance or shipment, and any other associated terms and conditions, and will identify the vendor. Purchase orders may be in either paper or electronic form, and may contain standard terms and conditions which may be incorporated by reference in city solicitation documents or as a hyperlinked reference to a page of the city's website. Vendors submitting bids, quotes, or other offers to the city are deemed to have reviewed the city's standard purchase order terms and conditions. Unless the city elects to contract with a business by way of a stand-alone contract, the purchase order's standard terms and conditions shall be deemed to have been accepted by such vendors as evidenced by the submission of a quote or bid.

Quote means a flat or unit price provided by a vendor for any service or material being sought by the city where a formal procurement method is not being used. For purposes of this section, it shall also mean a price list, publicly advertised price, web-based price list, or any other means by which the business communicates its prices to potential customers. Quotes may be provided to city staff verbally, in writing, or via electronic means.

Responsible vendor means a vendor which is fully capable to meet all of the requirements of the city's solicitation standards and requirements, and the obligations as may be set forth in the city's purchase order terms and conditions or proposed alternative form of contract. A responsible vendor must possess the full capability, including financial, legal, logistical, and technical, to perform as contractually required, and be able to fully document the ability to provide good faith performance. The city's assessment of vendor responsibility will include consideration of all relevant information bearing on a vendor's qualifications, including the historical performance record of the vendor and the vendor's named subcontractors or proposed joint venturers, past performance of similar work, or provision of similar materials, goods, commodities, or services to the city, the vendor's experience on similar projects, the vendor's references, potential conflicts of interest based on existing business or contractual relationships, the vendor's history of having been suspended or debarred by any governmental agency, whether the vendor has been sued for breach of contract or criminally charged for fraud, bribery, collusion, or similar public corruption or business-related crimes, within a prior time period relevant to the

solicitation. Vendor responsibility shall be determined in the city's sole judgment and is not a subject for protest.

Responsive vendor means a vendor which has submitted a response to a city solicitation which fully conforms in all material respects to all of the solicitation's minimum specifications and requirements, including providing responses to each question or request for information, and the provision of any supplemental documents, forms, bonds, proof of insurance, or other records or materials required by the solicitation to be included in the response.

Request for proposals (RFP) means the solicitation of proposals usually from providers of services or of a mix of services and related materials, goods, or commodities. Price is usually not a primary evaluation factor. An RFP provides for the negotiation of all terms, including price, prior to contract award. An RFP may include a provision for the negotiation of best and final offers. An RFP may be a single-step or multistep process.

Request for qualifications (RFQ) means a solicitation seeking statements of the qualifications of potential responders (development teams, consultants, financial services providers, etc.) to gauge potential competition in the marketplace prior to issuing an RFP or ITN.

Sealed competitive bid means a bid, containing the bidder's offered price and terms, submitted to the city in response to an invitation to bid process, whereby all responses remain sealed until a specific date and time, after which no more bids may be received, and the bids received are then opened for tabulation and evaluation for bidder responsibility and bid responsiveness. A bid which purports to alter minimum qualifications or specifications set forth in a solicitation shall be deemed to be non-responsive.

Service means intangible labor products including but not limited to accounting, cleaning, consultancy, training, instruction, entertainment, engineering, and maintenance.

Sole sources means only one vendor is capable of providing for the procurement needs of the city.

Sole source procurement means a non-competitive form of acquisition wherein only one vendor is capable of providing for the particular procurement needs of the city.

Sole brand means the only known brand or the only brand reasonably capable of fulfilling a particular procurement need of the city.

Sole brand procurement means a competitive form of acquisition wherein the city determines only one brand or manufacturer is capable of fulfilling a particular procurement need of the city.

Solicitation means the act of obtaining firm prices for materials, goods, commodities, or services, and/or proposals or qualifications from vendors to address the operational needs of the city. A solicitation may include informal requests for price quotes, the formal issuance of an ITB, RFP, ITN, RFQ, or any other form of competitive solicitation the city may use when seeking to acquire materials, goods, commodities, or services.

Specifications means any description of a good's physical or functional characteristics, or the nature of materials or services being solicited. The term may include a description of equipment performance or characteristics, the quality, origin, or functionality of goods, the means and methods of the provision of services, engineered drawings or construction plans, warranty requirements, as well as any requirements for inspecting, testing, or preparing a good or service for delivery.

Sec. 2-440. Exemptions.

- (a) The following are exempt from the competitive procurement requirements set forth in this article:
- (1) Inter-governmental agreements entered pursuant to F.S. § 163.01;
 - (2) Purchases made with the proceeds from any grant, gift, bequest, or donation to the extent the application of this article would conflict with the requirements, conditions, or limitations attached to the grant, gift, bequest, or donation;
 - (3) Payment of dues and memberships in trade or professional organizations, professional licenses, and trade publications;
 - (4) Subscriptions to periodicals and newspapers;
 - (5) Acquisition of real property by easement, lease, license, or purchase;
 - (6) Acquisition of legal advertisements, postage, shipping, and courier services;
 - (7) Legal services, including but not limited to, the acquisition of the services of law firms or other outside counsel for any reason, expert witnesses, appraisal services, consultants, special magistrate services, or similar persons or firms deemed by the city commission or city attorney as necessary to address the city's legal needs. Such services, firms, or persons shall be selected by the city commission or, when authorized by commission, the city attorney;
 - (8) Water, sewer, gas, electrical, and other utility services;
 - (9) Funds expended by the city in the form of grants to non-profit entities performing economic development, social services, or serving similar public purposes;
 - (10) Fees and costs incurred in authorized professional development activities including registration, lodging, travel, and meal costs to attend trade or professional seminars, trainings, and conferences;
 - (11) Purchase of insurance brokerage service and related insurance policies to protect the property and other interests of the city;
 - (12) Any purchase governed by explicit provisions of general law, city code, or other city commission resolutions unless the solicitation indicates the applicability of this article, and then this article shall apply only to the extent set out in the solicitation;
 - (13) Lobbyist services;
 - (14) Professional medical services;
 - (15) Professional services required for the issuance of city bonds and city investments related thereto;
 - (16) Artistic services, music entertainment, visual artists, performers, and other entertainment providers associated with city sponsored events or the proprietary operation of city owned entertainment facilities;
 - (17) Acquisition of items purchased for resale to the public;
 - (18) Certified public accountants (except for auditing services as set forth in F.S. § 218.391);
 - (19) Employment agreements for persons to be regular or short-term employees of the city;

- (20) Funds to acquire instructional materials or copyrighted materials being purchased from the owner of the copyright or the owner's authorized agent;
 - (21) Owner-direct purchases of construction materials included in the scope of an awarded construction contract in order to realize sales tax savings, in accordance with F.S. § 212.08(6) and Florida Administrative Code Rule 12A-1.094;
 - (22) Real property appraisal services;
 - (23) Abstracts and academic research;
 - (24) Expenses related to existing agreements to maintain or service proprietary equipment or software previously acquired by the city;
 - (25) Consulting services related to financial planning, financial management, or financial policy and program development;
 - (26) Used equipment where procurement staff have determined there is a significant cost difference between such equipment and new equipment of substantially the same specifications and performance characteristics;
 - (27) Sale, conveyance, or other disposition of real property owned by the city, or disposition of any interest therein including the granting of an easement, lease or license, as well as services for real property title abstracts or title insurance related to such conveyances. Such transactions shall be governed by code § 2-425.
- (b) Notwithstanding the foregoing, with the exception of the acquisition of utility services with rates established by the Florida Public Service Commission, a contract for the purchase of commodities or services exempted in this section must be approved by the city commission if the resulting contract is for an amount which requires city commission approval as provided for in this article.
- (c) Notwithstanding the provisions of subsection (a) above, the city reserves the right to conduct a competitive solicitation regarding an exempt commodity or service if the city determines doing so is in the best interest of the city.

Sec. 2-441. – Procurement categories.

- (a) Purchases of materials, goods, commodities, or services shall be made in accordance with the following threshold amounts and processes:
- (1) Category One (direct purchase): \$0.01 to \$2,500.00.
 - a. Department directors are authorized to procure, with budgeted funds, materials, goods, commodities, or services with a delivered value up to \$2,500.00 without competition. Notwithstanding this authorization, department directors shall act with fiscal responsibility and in the best interest of the city.
 - b. If a purchase under this subsection is not accomplished through the use of a standard city contract or standard terms set forth in a city-approved purchase order, the procurement official must examine the vendor's contract terms (including contract terms set forth by way of online links incorporated by reference) to ensure such terms are acceptable to the city.
 - c. While the acquisition of small dollar commodities or services do not usually carry significant risk of loss, to the extent the nature of the materials, goods, commodities, or services being acquired under this subsection or

subsection (2) below generate a significant risk of loss, the department director must first consult with the appropriate city insurance and risk management providers to ascertain whether there is a need to require the vendor to provide enhanced insurance coverage.

- d. Single purchases or contracts shall not be broken down to lesser amounts to avoid the requirements of competitive solicitation set forth in subsections (a)(2) and (3) below.

(2) Category Two (informal solicitations): \$2,500.01 to \$50,000.00.

- a. The procurement official is authorized to procure, with budgeted funds, materials, goods, commodities, or services with a delivered value up to \$50,000.00 through informal solicitation. Notwithstanding this authorization, the procurement official shall act with fiscal responsibility and in the best interest of the City.
- b. Three quotes must be solicited from vendors prior to a request for purchase order or contract. Such quotes may be solicited by the procurement official or department staff. However, if quotes are obtained by department staff, the procurement official will retain the right to independently review and verify the quotes.
- c. Purchases shall not be completed prior to a purchase order being issued by the procurement official or a separate contract is approved by the parties.
- d. The procurement official may authorize the reduction of the minimum number of quotes required if it is shown that the party requesting the purchase made a concerted effort to obtain quotes, but due to lack of market response was not able to obtain the minimum required quotes.
- e. Nothing herein shall preclude the city commission, city manager, or procurement official from requiring the use of a formal competitive solicitation process for purchases within this category if the city commission, city manager, or procurement official determines doing so would be in the city's best interests.

(3) Category Three (formal procurement): \$50,000.01 and greater.

- a. A formal solicitation must be approved by the procurement official and issued for the acquisition of materials, goods, commodities, or services within this category. Where the selection will be made based on the lowest price submitted by a responsive, responsible vendor, an ITB seeking sealed bids shall be used. Where the selection will be made based on vendor qualifications or experience as well as price, an RFP, ITN, RFQ or similar alternative solicitation method may be used.
- b. The solicitation shall include the detailed specifications, minimum qualifications, and instructions to vendors as to how to respond. The solicitation document shall be approved by the procurement official prior to being issued, and shall state the dates of all relevant solicitation events including pre-submission conferences, deadlines for submission of vendor questions, method of posting responses to vendor questions, process for evaluation of bids, proposals or other submissions, and the expected award date.
- c. Where the solicitation involves construction, services, or a service component, the procurement official shall ensure the solicitation includes a detailed scope of work or scope of services outlining the needs of the city.
- d. Where the solicitation involves commodities, the procurement official shall review the specifications (with, as needed, the assistance of an engineer of

record or department personnel with relevant knowledge) to ensure that product specifications and warranty, service, training, maintenance and installation terms are sufficiently detailed so as to provide vendors with the ability to respond to the solicitation on a level playing field.

- e. Where the solicitation involves vehicles or mechanical equipment, performance attributes (towing capacity, pump pressure, stress tolerances) shall be set forth wherever possible. To ensure full and fair competition, specifying specific manufacturers or model names, numbers, or suppliers, should be avoided unless there is a compelling justification.
 - f. Procurements under this subsection shall be accomplished by use of a city approved purchase order form or an alternative form of agreement approved by the city attorney.
- (b) The city manager or the procurement official are authorized to approve contracts within categories one and two to be paid from available budgeted funds without further action of the city commission. The city commission must approve all non-emergency category three procurement agreements.
- (c) The categories established in this section may be periodically reviewed by the city commission and revised to address the effects of inflation or the operational needs of the city.
- (d) The city manager is authorized to approve renewals or extension periods which are authorized by the terms of an approved contract (including piggybacked contracts), except that if exercising a renewal or extension would, or is reasonably expected to result in the expenditure of \$50,000.01 or more, such renewal or extension shall be approved by the city commission.

Sec. 2-442. – Emergency procurement.

Subject to requirements of chapter 14 (emergency management) of the code, emergency purchases may be made from any unencumbered funding source as follows:

- (a) In the event of a federal, state, or local declaration of emergency, normal procurement procedures and requirements shall be suspended, and the following procedures shall apply:
 - (1) The city manager shall be authorized to make any purchases she or he finds necessary to the continued operations of the city.
 - (2) Waiver of purchasing procedures shall only pertain to purchases related to the emergency and associated restoration operations. At the time the declaration of emergency is lifted, normal purchasing procedures will resume.
- (b) In the event of a situation the city manager determines is likely to have a detrimental impact on operations of the city or the public health, welfare, or safety if not rectified immediately:
 - (1) The city manager shall be authorized to make purchases she or he finds necessary to alleviate the safety or operational issue.
 - (2) Such purchases are limited to those directly associated with the specific issue or risk.
- (c) All emergency purchases shall be made with as much competition as is practicable under the circumstances.
- (d) If the cost of any purchases made pursuant to this section would have normally fallen within Category Three, a report of such purchases shall be made to the city

commission at the earliest available city commission meeting after the emergency subsidies.

Sec. 2-443. – Procurement official.

The city manager may designate a city employee to perform the functions of procurement official with respect to any city procurement activities or matters. The procurement official shall oversee the city's procurement office and shall be responsible for the performance of and supervision of any subordinate procurement staff. The procurement official shall be the primary point of contact for all current or prospective city vendors up until a purchase order or contract is awarded. The procurement official shall, with assistance from the city attorney as needed, be responsible for ensuring the city's solicitation and contract forms and administrative procedures are in compliance with all applicable state and federal laws, city codes, and public procurement best practices.

Sec. 2-444. – Minimum solicitation requirements.

- (a) Solicitations shall include product specifications, service performance requirements, and other information sufficient to allow vendors to successfully respond to such solicitations. Solicitations shall also inform vendors of the non-negotiable contractual terms and conditions the city will require the successful vendor to accept upon award. Such terms and conditions may be set forth in the solicitation or incorporated by reference.
- (b) Pursuant to F.S. § 787.06(14), every vendor under any city services contract shall provide the procurement official with a no-coercion affidavit in the form set forth in the statute.
- (c) Pursuant to F.S. § 287.05701(3), all prospective responders to city solicitations are notified that the city will not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor, nor will it give preference to a vendor based on the vendor's social, political, or ideological interests.
- (d) Notwithstanding any provision in a solicitation to the contrary, responding vendors shall, upon award, be required to comply with all provisions of this article. Solicitations shall incorporate, directly or by reference to, the standards and conditions upon which the responses will be evaluated and selected, and, in solicitations for other than sealed bids, shall include the manner in which negotiations toward a final contract shall be conducted.

Sec. 2-445. – Cancellation of solicitations.

An ITB, an RFP, an RFQ, or other solicitation may be canceled, or any or all bids, proposals or offers may be rejected in whole or in part, when it is for good cause and in the best interests of the city. The reasons therefore shall be made part of the city's files. Each solicitation issued by the city should state that the solicitation may be canceled and that any bid, proposal, or offer may be rejected in whole or in part when the city determines, in its sole discretion, doing so is in the city's best interests. Notice of cancellation or rejection shall be published or posted in the same manner as notice of the solicitation. The notice shall identify the solicitation, explain the reason for cancellation or rejection and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar items.

Sec. 2-446. - Source selection and waiver of competition.

- (a) The methods and policies governing the selection of sources shall be those established in this article, or by administrative procedures and standards approved by the city manager, and may include, but shall not be limited to, competitive sealed bids, proposals, requests for qualifications, invitations to negotiate, noncompetitive purchases, purchases with limited competition, emergency purchases, sole source purchases, sole brand purchases, piggyback and

cooperative purchases, and any adopted exceptions to the competitive selection procedure.

(b) Where not otherwise prohibited by law, the city commission may, by affirmative vote, provide for the limited or complete waiver of competitive source selection policies and procedures, when doing so is in the best interest of the city. Recommendations for all such determinations must be made in writing by the procurement official, with all necessary supporting documentation. Recommendations for all such determinations by the procurement official and the determination to waive competitive source selection policies and procedures by the city commission shall be based on a determination that the waiver is in the best interest of the city utilizing the following considerations:

(1) Whether the likely, non-speculative cost of competitive purchasing would exceed any potential savings and benefit to the city;

(2) Whether the acquisition of the materials, goods, commodities or services should be provided by a unique source or provider based upon particular skills, expertise, or needs of the city; and

(3) Whether there are specialized or particular needs of the city that outweigh the potential savings and benefits of competitive purchasing; and

Sec. 2-447. – Construction contracts.

(a) If a contract for construction of buildings or infrastructure is estimated, in accordance with generally accepted cost accounting principles, to cost more than the threshold amounts set forth in F.S. § 255.20, such contract shall be competitively awarded to a licensed contractor fully legally authorized to conduct business in the state by use of the competitive solicitation rules set forth in that statute.

(b) The selection procedures shall be consistent with this article and any administrative procurement procedures adopted by the city manager. In addition to such other solicitation publication methods used by the city, construction projects projected to cost more than \$200,000 must be advertised in the manner set forth in F.S. § 255.0525(2)-(5).

(c) Solicitations for construction projects shall set forth the permit fee disclosures required by F.S. § 218.80(3).

(d) Projects shall not be divided so as to evade the threshold amounts listed in F.S. § 255.20. Unless otherwise defined by law, as used in that subsection, the term “project” shall not include those portions of multiyear capital improvement projects not funded beyond the current fiscal year. The term shall also not include any series of construction activities on a new or existing city facility which, if aggregated, would exceed the threshold amounts, but which were not undertaken contemporaneously with each other, were not part of an overall coordinated construction or renovation effort, and which were not performed under the same construction permit.

Sec. 2-448. – Certain professional services.

(a) Unless prevented from doing so based on a valid public emergency, when the city procures architecture, professional engineering, landscape architecture, or registered surveying and mapping services, it shall, when such services must be procured for a project the basic construction cost of which is estimated by the city to exceed the category five threshold amount, or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in category two, as those categories are set forth in F.S. § 287.017, engage in the competitive solicitation process set forth in F.S. § 287.055.

- (b) Nothing in subsection (a) above shall be construed to prohibit a continuing contract, as defined by F.S. § 287.055(2)(g), between an architecture, professional engineering, landscape architecture, or registered surveying and mapping services firm and the city.

Sec. 2-449. – Design-build procedures.

- (a) Public announcement. The city shall publicly advertise in a uniform and consistent manner on each occasion when design-build services are required except in cases of public emergencies. The advertisement shall include a general description of the project and shall indicate how, and the time within which, interested design-build firms may apply for consideration.
- (b) Legal qualification. Any firm or individual desiring to provide design-build services to the city must first be determined legally qualified. To be legally qualified:
 - (1) Firms must be properly certified to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent;
 - (2) Firms must be properly certified to practice or to offer to practice engineering, architecture, or landscape architecture; and
 - (3) The firm shall be duly qualified to perform its proposed service under any other applicable law.
- (c) Evaluation committee. An evaluation committee appointed by the city manager shall be used to evaluate and rank the design-build firms and their responses for recommendation to the city manager or city commission depending on procurement category.
- (d) Solicitation. The procurement official shall develop an RFP to solicit proposals from interested, qualified design-build firms. Except as otherwise provided in F.S. § 287.055(9)(c), with the use of a qualifications-based selection process, the RFP shall contain as a minimum the following:
 - (1) The design criteria package defined in F.S. § 287.055(2)(j).
 - (2) The criteria, procedures, and standards for the evaluation of design-build contract proposals, based on price, technical and design aspects of the public construction project, weighted for the subject.
 - (3) Requirements for determining qualifications of firms proposing, such as license, list of subcontractors, architect and engineer, and references.
 - (4) Terms and conditions of proposed agreement.
 - (5) Other items as required by procedures, laws, ordinances, or prevailing circumstances.
- (e) Selection.
 - (1) All information required by the RFP shall be submitted in a sealed manner (which may include sealed envelope if the submission is required to be in that form or via an online proposal submission system if the city requires submission in that manner). Except as otherwise provided in F.S. § 287.055(9)(c), with the use of a qualifications-based selection process, all proposed designs and price proposals shall be submitted separately via the same sealed submission process, with the design and price proposals opened and considered by the selection committee for shortlisted firms only.

- (2) The selection committee shall review all proposals, except the separately-submitted proposed designs and price proposals, and shall create a shortlist of no less than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof. In evaluating the proposals and preparing the shortlist, the committee shall consult with the design criteria professional concerning the evaluation of the responses submitted by the design-build firms. Once the committee has shortlisted, except as otherwise provided in F.S. § 287.055(9) (c), with the use of a qualifications-based selection process, the committee shall open the separate envelopes containing the proposed design solutions and the price submitted by the shortlisted firms. The committee shall then rank the shortlisted firms based upon the evaluation criteria and procedures set forth within the request for proposal. The committee may, if necessary, require verbal presentations from all firms in order that the qualifications and/or proposals may be clarified.
 - (3) After the committee has ranked the shortlisted firms based upon the award criteria set forth within the request for proposal, the ranking shall be presented to the city commission which may approve, disapprove, or request modifications to the recommended rankings be brought back at a subsequent meeting. Following the ranking by the city commission, the city's procurement official, assisted as needed by relevant city staff and professional consultants, shall attempt to negotiate a contract within the parameters of the design criteria package or the results of the qualifications-based selection process and in accordance with city commission's ranking.
- (f) Contract.
- (1) Under the oversight of the city manager, the procurement official, assisted as needed by relevant city staff and professional consultants, shall negotiate a design-build contract at a price which the manager determines is fair, competitive and reasonable. If the city is unable to negotiate a satisfactory contract with the first ranked firm, then it shall formally terminate negotiations with such firm and then undertake negotiations with the second ranked firm and shall continue this process until a satisfactory contract is negotiated.
 - (2) The contract negotiated by the staff shall be submitted to the city commission for consideration and approval.
- (g) Public emergencies. If a public emergency is declared and a design-build procurement must proceed during such emergency, a negotiating committee may be formed by the manager and authorized to negotiate with the best qualified design-build firm available at that time for the design and construction of a capital project. To the extent practical, the city shall solicit letters of interest in order to determine the best qualified design-build firm available at the time. The contract negotiated by such committee shall be subject to ratification by the city commission.
- (h) Conflict between procedure and law. In the event F.S. § 287.055 is subsequently amended such that its requirements conflict with the provisions of this procedure, the provisions of the statute shall prevail, and the city manager or city attorney shall make such recommendations for revision to these procedures as to conform them to the law.

Sec. 2-450. – Sole source procurement.

- (a) Commodities or contractual services. When the city believes that desired materials, goods, commodities, or contractual services are available only from one vendor, the procurement official shall electronically post a description of the materials, goods, commodities, or contractual services sought for a period of at least five (5) business days. The description must include a request that prospective vendors provide information regarding their ability to supply the

materials, goods, commodities, or contractual services described. Posting shall not be required for desired materials, goods, commodities, or contractual services for category 1 purchases. If it is determined in writing by the procurement official after reviewing all relevant information, including information received from prospective vendors as a result of a required posting, that the materials, goods, commodities, or contractual services are in fact available only from a single source, the city may enter into a sole source agreement.

- (b) *Construction materials.* In any case where the city seeks to purchase materials for the construction, modification, alteration, or repair of any city-owned facility from a sole source, the city commission must first make the written findings required by F.S. § 255.04.

Sec. 2-451. – Sole brand procurement.

When desired materials, goods, commodities, or contractual services are available from only one brand or there is only one brand reasonably capable of fulfilling a particular need of the city, the city may engage in sole brand procurement if the procurement official determines in writing no other manufacturer can meet the operational needs of the city, no other manufacturer's materials, goods, commodities, or contractual services can substitute for the needs of the city, and the sole brand procurement is in the best interest of the city. The city shall follow the competition requirements for category 1, category 2, and category 3 purchases in a sole brand procurement. The sole brand procurement must be consistent with applicable law, including, but not limited to, F.S. §§ 255.20 and 287.055.

Sec. 2-452. – Cooperative procurement; piggybacking.

- (a) *Cooperative procurement.* Unless otherwise prohibited by law or grant agreement terms, the procurement official is authorized to negotiate with other public procurement officials for the conduct of a joint procurement on behalf of each participating public agency where, in the judgment of the city manager, doing so would leverage the benefits of volume purchases, create clear delivery or supply chain advantages, and/or create a demonstrable and substantial reduction of administrative time and expense.

- (b) *Piggybacking.*

- (1) In any agreement for the acquisition of materials, goods, commodities, or services between the city and a vendor which has resulted from a competitive solicitation process, such agreement may be utilized by other public agencies to acquire the same goods or services, on condition that the contracting vendor consents to enter into a piggyback agreement with such other public agencies. In such instances, the city shall not be a party to such agreements.
- (2) The procurement official is authorized to acquire materials, goods, commodities, or services by use of an existing agreement between a vendor and another public agency where such agreement has resulted from a competitive solicitation process. Purchases made in this manner should not substantially differ in specification, scope, quality, or price from the terms of the initial agreement. The piggybacking agreement must be consistent with the parameters, requirements, and restrictions of the initial agreement. In the event the initial agreement provides for options to extend or renew, the city may exercise such rights irrespective of whether the original public agency exercises such rights.
- (3) To the extent required by law, any other public agency is authorized to piggyback on any current executory contract between the city and a vendor where that contract has resulted from a competitive solicitation by the city.

Sec. 2-453 – Public records compliance.

- (a) Pursuant to F.S. § 119.0701, in any agreement entered into by the city wherein the contractor is acting on behalf of the city, the contractor must:
- (1) Keep and maintain public records that ordinarily and necessarily would be required by the city in order to perform the service.
 - (2) Provide the public with access to public records on the same terms and conditions that the city would provide the records and at a cost that does not exceed the cost provided in F.S. Chapter 119 or as otherwise provided by law.
 - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - (4) Meet all requirements for retaining public records and transfer, at no cost, to the city all public records in possession of contractor upon termination of the agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the city in a format that is compatible with the city's information technology systems.
- (b) The agreement must contain the requirements set forth in subsection (a) above, and include a statement, in substantially the following form, identifying the contact information of the city's custodian of public records in at least 14-point boldfaced type:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (insert: TELEPHONE NUMBER, E-MAIL ADDRESS, AND MAILING ADDRESS FOR THE CITY'S CUSTODIAN OF RECORDS).

Sec. 2-454. – Trade secrets.

- (a) Florida law provides that trade secret information, as defined in F.S. § 812.081(1)(f), is confidential and exempt from public records disclosure.
- (b) Upon receipt of a response to a procurement solicitation, the city will not be aware that a bid, proposal, or other response contains such information. Therefore, bidders, proposers, or other persons or entities responding to city solicitations must specifically and clearly identify all portions of their responses which are believed to be a trade secret, as defined by the law, and must, as to each such designation, provide the basis upon which the designated information is a trade secret. The mere designation of an entire submission as "confidential" will be insufficient to comply with this requirement. Absent some unusual justification, a bidder's or proposer's contract price shall not constitute a trade secret.
- (c) While the city will, to the extent possible, cooperate in any court action a bidder, proposer, or responder may bring against any third-party requesting to inspect and copy portions of a response asserted to be a trade secret, if a bidder, proposer, or responder fails, prior to the submission of their materials to the city, to specifically and clearly designate information therein as a trade secret and to provide the supporting explanation for the designation, the right to assert the exemption may be lost, and the information may be subject to inspection and copying as otherwise provided for under Florida's Public Records Act.
- (d) In the event any record designated as a trade secret is requested under the Act, the procurement official will consult with the city attorney and, if the city attorney agrees with the designation, the city will assert the exemption and redact the

relevant materials. If the city attorney disagrees with the designation, the bidder, proposer, or responder may file an injunctive or declaratory judgment action and seek such emergency orders as desired to protect the information.

Sec. 2-455 Unauthorized purchases, ethical conduct, sanctions.

- (a) *Prohibition.* Except as provided in this article, it shall be a violation of this article for any city officer, employee, or other person, to knowingly and willingly order the purchase of any materials, goods, commodities, or services or make any contract for materials, goods, commodities, or services, sell, trade, or dispose of material within the purview of this article in the name of or on behalf of the city, except as provided by policies of the city commission and any administrative procurement procedures promulgated by the city manager, and the city shall not be bound by any purchase order or contract made contrary to this article.
- (b) *Employee conflict of interest.* It shall be unethical for any city employee to participate directly or indirectly in a procurement contract when the city employee knows that:
 - (1) The city employee or any member of the city employee's immediate family has a financial interest pertaining to the procurement process or contract; or
 - (2) Any other person, business, or organization with whom the city employee or any member of a city employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement process or contract.
 - (3) A city employee or any member of a city employee's immediate family who holds a financial interest in a disclosed blinded trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (c) *Gratuities and kickbacks.*
 - (1) *Gratuities.* It shall be unethical for any person to offer, give, or agree to give any city employee or former city employee, or for any city employee or former city employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
 - (2) *Kickbacks.* It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
 - (3) *Contract clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefore.
- (d) *Prohibition against contingency fees.* It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

- (e) Contemporaneous employment prohibited. It shall be unethical for any city employee who is participating directly or indirectly in the procurement process to become or to be, while such a city employee, the employee of any person contracting with the governmental body by whom the employee is employed.
- (f) Employee intending to bid. Any city employee intending to submit a bid, proposal, or response for any solicitation shall notify their department head, the procurement official, and the city manager, in writing, within ten (10) calendar days of the solicitation release. The city employee shall not participate directly or indirectly in any part of the procurement process as a city employee, at any point in time, either before or after the notification. Failure of the city employee to follow any requirements herein, as determined by the procurement official, shall result in the employee's bid, proposal, or response being disqualified from further consideration, and may also result in the suspension or debarment of the city employee.
- (g) Use of confidential information. It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.
- (h) Recovery of kickbacks by the city. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.
- (i) Sanctions.
 - (1) In addition to any remedies set forth in contract or law, if the procurement official finds any non-employee person or entity has violated the provisions of this section, such person or entity may be suspended or debarred in accordance with this article, any executory contract such person or entity has with the city may be immediately terminated, referrals for misconduct or unlawful activities may be made to the appropriate regulatory or law enforcement authorities, and the city may seek civil recovery of any improperly-gained city funds.
 - (2) If the city manager finds any city employee has violated the provisions of this section, such employee shall be subject to disciplinary measures set forth in the city's personnel policies, to include potential termination of employment.

Sec. 2-456. – Consultant conflicts of interest.

- (a) Prohibiting contracts where conflicts are found to exist. The city shall not engage in contracts with consultants or professionals whose prior record, work history, and experience indicate ongoing business relationships that may be substantially in conflict with the duties and services that will be required by the city.
- (b) Standards and regulations for the determination of potential conflicting contractual obligations. The city manager or designee is authorized to develop standards and regulations for the prospective determination of potential conflicting contractual obligations that may impair the performance of the professionals or consultants solicited by the city. The standards and regulations shall set forth appropriate requirements based upon the nature and scope of the services that are to be procured and shall be narrowly tailored so as to not unduly restrict competition, while assuring the city of undivided loyalty and services of the highest quality. The standards and regulations may require, but shall not be limited to, the inclusion of the following in an RFP, an ITB, announcement, or other solicitation or contract for professional or consulting services:

- (1) An affidavit providing that the professional or consultant is not currently engaged or will not become engaged in any obligations, undertakings, or contracts that will require the professional to maintain an adversarial role against the city or that will impair or influence the advice or recommendations provided to the city;
- (2) The disclosure of all potentially conflicting contractual relationships and the full disclosure of contractual relationships deemed to raise a serious question of conflicts.
- (c) *Consequences for violation of ethical standards.* In addition to any other penalty or consequence provided for in law or this article, any professional or consultant submitting false information to or on behalf of the city, disclosing, or releasing information concerning an actual or planned procurement activity which information is deemed confidential, or is otherwise not known to the general public, or otherwise repeatedly failing to comply with the city's ethical standards and regulations, shall be deemed to be in violation of this article and shall be subject to prosecution, state ethics complaints, reporting to professional or licensing authorities, contract cancellation, suspension, and/or debarment, as the city deems appropriate.

Sec. 2-457. – Lobbying limitations; cone of silence.

After the issuance of any solicitation, or during renegotiation of an existing contract, no prospective offerors/proposers or their agents, representatives, or persons acting at the request of such offerors/proposers shall contact, communicate with, or discuss, either in person, by phone, email, or text message, any matter relating to the solicitation or the renegotiation with any city officers, agents, or employees (including the city commission and city manager) other than the procurement official or procurement agent designated in the solicitation, unless otherwise provided for in the solicitation or otherwise directed by the procurement official. This prohibition includes copying such persons on written communications with the procurement agent but does not apply to presentations made to evaluation committees or at a city commission meeting where the city commission is considering approval of a proposed contract. The prohibition ends upon issuance of a purchase order or execution of the final contract, or when the solicitation has been canceled or the renegotiation efforts are terminated. Renegotiation will be deemed to have commenced upon vote of the city commission directing renegotiation or on issuance of a written notice from the procurement official to the existing contractor instituting a renegotiation process. Failure of vendors seeking to conduct or potentially interested in conducting business with the city to strictly adhere to this section will result in the offender's/proposer's bid, proposal, or response being disqualified from further consideration, and may also result in the suspension or debarment of the offending vendor.

Sec. 2-458. – Prohibition against award to certain persons or entities.

- (a) No person or business entity shall be awarded a contract by the city for the provision of materials, goods, commodities, or services if that person or entity:
 - (1) Has been convicted of bribery or attempting to bribe a public officer or employee of the city, or any other public entity, including but not limited to the Government of the United States, any state, or any local government authority in the United States; or
 - (2) Has been convicted of a conspiracy or collusion among prospective offerors in restraint of freedom of competition, by agreement to offer a fixed price, or otherwise; or
 - (3) Has been convicted of a violation of an environmental law that, in the reasonable opinion of the city manager, establishes reasonable grounds to believe the person or business entity will not conduct business in an environmentally responsible manner; or

- (4) Has made an admission of guilt of such conduct described in subsections (a), (b) or (c) above, which is a matter of record, but has not been prosecuted for such conduct, or has made an admission of guilt of such conduct, which is a matter of record, pursuant to formal prosecution, but which results in adjudication being withheld; or
 - (5) Is on either the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or on the list of Scrutinized Companies that Boycott Israel; or
 - (6) Fails to register with and use the E-Verify system to verify the work authorization status of all newly hired employees in compliance with F.S. § 448.095(5).
- (b) The city reserves the right to disqualify any vendor from consideration for future procurement opportunities if the vendor has failed to comply with the terms and conditions of any previous agreement with the city. Such disqualification may be imposed at the sole discretion of the city manager, based on documented evidence of non-compliance, including but not limited to:
- (1) Failure to deliver materials, goods, commodities, or services as agreed; or
 - (2) Breach of contract terms; or
 - (3) Repeated performance deficiencies; or
 - (4) Failure to meet regulatory or reporting requirements.

Sec. 2-459. – Protests.

- (a) *Purpose and intent.* The purpose of this section is to provide an expedient administrative remedy for those participating in the city's procurement process. The proceedings under this section are not intended to be, and shall not be interpreted as, judicial or quasi-judicial, unless otherwise clearly specified. It is not the intent of the city to provide any rights to protesters not otherwise required by law. Rather, the city's intent in creating a process for administrative review of solicitation award protests is to allow for legal or procedural errors in the solicitation process to be raised for the benefit of the taxpayers. Successful participation in any protest review does not ensure an award of a contract, and the city expressly reserves all rights it has under law.
- (b) *Opportunity to protest.* Any actual bidder, proposer, or solicitation responder (protestor) who is aggrieved in connection with a notice of intent to award a contract, where such grievance is asserted to be the result of a violation of the requirements of this procurement code or any applicable provision of law by the officers, agents, or employees of the city, or by the successful bidder, proposer, or responding business, may file a protest with the procurement official. The protest process may only be used as a result of a formal solicitation. The process may not be used where the method of procurement is informal quote solicitations, or where a non-competitive procurement method such as piggybacking is used.
- (c) *Protest procedure and requirements.*
 - (1) The protest shall be made in writing, manually or electronically, to the city manager and a copy filed with the city clerk. A notice of intent to protest must be filed within 72 hours of the electronic posting of the notice of intent to award or, if no notice of intent is issued, then following the date the protestor is informed of the award. The protest must then be filed no later than 4:00 p.m. on the seventh (7th) calendar day after the notice of intent to protest. The notice of intent to protest and protest are considered filed when the city clerk is

provided a copy of the document by mail or courier service, or electronic submission. Failure to file the notice of intent to protest or a written protest within the time period specified shall constitute a waiver of the opportunity to protest.

- (2) Counting Calendar Days to File a Protest: When counting days for filing a protest, begin counting from the next day that is not a Saturday, Sunday, or legal holiday declared by the city and count every day including Saturdays, Sundays, and legal holidays that fall in between the first day counted and last day counted. If the last day to file falls on a Saturday, Sunday, or legal holiday, then such time to file shall extend to the first day that is not a Saturday, Sunday, or legal holiday.
- (3) The written protest must be signed by the protester and an authorized officer of the protestor, if applicable, and shall identify the protesting party and the solicitation involved. Protests must include a specific detailed factual statement of the grounds on which the protest is based and shall cite the applicable statutes, laws, ordinances, or other legal authorities which the protestor deems applicable to the grounds for the protest. Every basis for protest must be set forth in the protest. If a basis for protest is not included in the written protest, the protestor may not subsequently add the omitted basis to the protest. A protest which does not contain all of the content set forth above shall be deemed non-compliant and will not be processed.
- (4) The protest shall not include challenges to the procedural solicitation requirements, chosen procurement method, the minimum qualifications, the scope of services sought, the evaluation criteria, the relative weight of the evaluation criteria, or the formula specified for assigning points to the evaluation criteria. The protest may not be used as a vehicle to argue the protester's opinion regarding its qualifications or the qualifications of other responding vendors.
- (5) The procurement process shall not be stayed during the protest process unless the procurement official, in his or her discretion, deems it to be in the best interests of the city to stay the process.
- (6) The procurement official shall decide whether the written protest is timely, complete, and compliant, with assistance from the city attorney, as needed.
- (d) Authority to resolve protests. The procurement official shall have the authority to settle and resolve a protest concerning the intended award of a contract. The procurement official will promptly investigate a timely, complete, and compliant protest, and issue a written decision within thirty (30) days of the date the protest is received, unless the complexity of the issues raised or lack of resources requires a longer period.
- (e) Review of the procurement official's protest decision.
 - (1) Following the procurement official's written decision on the protest, the protestor may file a request for a review of the procurement official's decision by the city manager. The request for review shall be made in writing and filed with the city clerk by 4:00 p.m. on the fifth business day following the procurement official's transmission of the decision to the protestor.
 - (2) The request for review shall be solely limited to the protestor's argument that the procurement official's decision was not in accord with this article, city code, or applicable state or federal laws. Disagreements over disputed facts or judgment calls made by the procurement official are not proper subjects for a review request.

- (3) The city manager will strive to issue a written decision within thirty (30) days of the date the request for review is received.
- (f) *Final decision.* The decision of the city manager shall be final and conclusive as to the protest.
- (g) *Protest bond or security.* The city commission may, by separate resolution, establish a requirement for a protest bond. If a protest bond is required, the written protest must be accompanied by a security in the form of a protest bond (in a form and with such terms as approved by the city attorney) or cash in the amount set by the city commission. If the city manager determines that the protest does not require reversal of the city's initial decision, the city shall be entitled to recover the amount of the protest bond or security.

Sec. 2-460. – Authority to suspend or debar.

- (a) After consulting with the city attorney and relevant city department head as needed, and after providing reasonable notice and reasonable opportunity for a person or entity being considered for suspension or debarment to be heard by the procurement official, the procurement official is authorized to suspend or debar a person or entity from consideration for award of contracts for cause. Cause shall include the following:
 - (1) Conviction for commission of a criminal offense relating to the obtaining or attempt to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract, or a civil or criminal final judgment of violation of state or federal whistleblower laws; or
 - (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a city contractor; or
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals; or
 - (4) Violation of the city's anti-lobbying rules set forth in § 2-457 of this article; or
 - (5) Violation of contract provisions, as set forth below, of a character which is regarded by the procurement official to be so serious as to justify debarment action; or
 - (6) Deliberate failure without good cause to perform in accordance with specifications and/or budget or within the time limit provided in the contract; or
 - (7) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or
 - (8) A documented history of significant deviation from contract specifications, engineering standards, design or material requirements or safety regulations, where such history has first been presented to the contractor by the city, and who thereafter continues to engage in such deviations; or
 - (9) Any other cause the procurement official determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this section or provided for in general law; or

- (10) For violation of all applicable ethics standards, including the ethical standards set forth in this article, F.S. Chapter 112, or in relevant grant funding requirements.
- (b) Suspensions shall not exceed twelve (12) months per violation. Debarments shall not exceed five (5) years per violation, except that a vendor debarred for a third time shall be debarred for eight (8) years from the date of debarment.
- (c) Suspension or debarment may apply to all contracting opportunities or may be limited to certain types or categories of contracts and likewise may be directed only to one or more distinct operating divisions or units of the suspended or debarred person or entity, depending on the nature and severity of the underlying facts supporting the action.
- (d) Suspension or debarment may also be applied to any person or entity controlled by or affiliated with any suspended or debarred person or entity if the relationship or affiliation is such that, in the reasonable opinion of the procurement official, the person or entity, by reason of the relationship with the suspended or debarred person or entity, is likely not to conduct business in a responsible or lawful manner, or if the suspended or debarred person or entity is reasonably likely to benefit from contracts with such controlled or affiliated persons or entities. Factors the procurement official may consider in making such decisions include ownership interests, common board members, officers, facilities, or employees, and existing family or contractual relationships. The procurement official may, in lieu of suspending or debarring such affiliated persons or entities, develop restrictions or special conditions the affiliated persons or entities must agree to in order to conduct business with the city during the suspension or debarment period. To the extent the procurement official exercises the right to suspend or debar affiliated persons or entities under this subsection, he/she must provide those separate affiliates with the same notice and opportunity to be heard as is required in subsection (a) above.

Sec. 2-461. – Procedures related to suspension, debarment and reinstatement.

- (a) *Notice of intent.* When the procurement official is considering imposing a suspension or debarment, he or she shall first provide a written notice setting forth the facts and circumstances supporting the proposed action and setting a deadline by which the person or entity must submit a response. The response must, at a minimum, include detailed responses to the facts and circumstances set forth in the notice, copies of all relevant documents, and citation to any legal authorities or other cases the person or entity wants to have considered by the procurement official. Failure to timely file a response shall result in the procurement official's notice of intent to become final on the date of the deadline, or any extension thereof, set forth in the notice.
- (b) *Opportunity to be heard.* In addition to the opportunity to submit a written response, if, after receipt of the response, the procurement official determines that it would be helpful for a meeting on the matter, or if a meeting is requested by the person or entity under consideration for suspension or debarment, then the procurement official shall conduct a meeting to listen to any presentation the person or entity wishes to make. To ensure all relevant issues are identified, no meeting request may be made by a person or entity under consideration for suspension or debarment unless a timely written response as provided for in subdivision (a) above has first been filed.
- (c) *Final determination.* After considering the written response, and any presentation made during a subsequent meeting, the procurement official shall make a written decision to either withdraw the notice of intent, or to debar or suspend the person or entity. The final decision shall state the factual and legal reasons for the action taken and the term of the suspension or debarment.

- (d) Review of suspension or debarment. Final notices of suspension or debarment shall be final and binding unless the debarred or suspended person or entity, within five (5) calendar days of the decision, submits a written notice to the city manager requesting review. Upon receipt of a timely review request, the city manager may, in his or her discretion, request a written response from relevant city staff or other relevant persons or entities, or schedule the matter for an in-person or video conference discussion. In any review of a final determination, the review shall be limited to determining whether there was factual support for the decision taken, that the decision does not violate any statute or ordinance, and that all required notices and process were provided by city staff. Neither side may present any new evidence, issue, or legal argument not first presented to the procurement official.
- (e) Reinstatement. The procurement official shall have the authority to reinstate any person or entity under an existing suspension or debarment period. To request reinstatement, the person or entity must submit a written request to the city manager, which shall, at a minimum, include all relevant facts and documentation which the person or entity contends supports the early termination of the suspension or debarment. Relevant factors include, but are not limited to, demonstrated rehabilitation, a change in ownership or control to innocent owners, restitution payments, subsequent court rulings, changes in the law, or where, in the procurement official's sole judgment, the city's interests would be adequately protected, and the person or entity to be reinstated is not likely to again engage in similar conduct. The procurement official may also grant limited reinstatement to respond to emergency contracting needs. As a condition of reinstatement, the procurement official may limit the nature and scope of contractual undertakings that must be satisfactorily completed before seeking additional contracts from the city.
- (f) Copies of all suspension, debarment, and reinstatement decisions shall be maintained by the procurement official's office and posted in an appropriate area of the procurement page of the city's website.

Sec. 2-462. – Administrative procedures.

- (a) The city manager is authorized to develop, approve, publish, and enforce supplemental administrative procedures and forms not inconsistent with this article to facilitate implementation of these procedures and forms.
- (b) The administrative procedures established pursuant to this section shall be contained in procurement administrative procedures manual, which manual shall be organized by topic, and shall not be inconsistent with any provision of this article.
- (c) The administrative procedures established pursuant to this section shall not create new policies which are otherwise addressed in this article, including alteration of procurement thresholds, alteration of protest, debarment, or suspension procedures, or alteration of any ethical requirements. The administrative procedures shall have the focus of providing additional procedural detail to guide city staff involved in the procurement function but shall not contain provisions which purport to regulate the conduct of city vendors. Vendor instructions or directions related to participating in city procurement solicitations shall be published in the relevant solicitation materials so that vendors may know all deadlines, forms, procedures, and requirements related to a given solicitation.
- (d) To the extent the city commission or city manager has approved prior versions or portions of administrative procurement procedures, such approvals are revoked as of the adoption of this article. While the city manager is authorized to develop, approve, publish, and enforce supplemental administrative procedures pursuant to this section, the city commission reserves the right to direct the revision or rescission of any such procedures if the city commission determines either that the procedure in question conflicts with the policy set forth in this article or that the subject should best be addressed within this article.

Sec. 2-463. – Staff training.

To ensure the city’s procurement function occurs in a consistent, efficient, lawful, and ethical manner, the city manager shall ensure that all city personnel who are responsible for implementing or administering the provisions of this article or the related administrative procurement procedures, are periodically trained in the rules, procedures, forms, and legal and ethical considerations applicable to their respective functions.

Sec. 2-464 – Public-private partnerships.

In accordance with F.S. § 255.065(3), the city manager may require vendors who submit an unsolicited proposal for a public-private partnership to pay a reasonable application fee, set forth by ordinance by the city commission, to cover internal or external costs incurred by the city in its evaluation of the unsolicited proposal.

Secs. 2-465. – 2-470. - Reserved.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are and the same shall be repealed and shall be of no further force or effect whatsoever.

SECTION 4. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Commission would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

SECTION 5. This Ordinance is and the same shall become effective immediately upon final passage thereof.

APPROVED AS TO FORM
AND CORRECTNESS:

Sara K. Hedges
CITY ATTORNEY

**STATE OF FLORIDA
COUNTY OF ST. LUCIE**

WE, THE UNDERSIGNED, Mayor Commissioner and the City Clerk of the City of Fort Pierce, Florida, do hereby certify that the foregoing and above Ordinance No. 26-004 was duly advertised by title only in the St. Lucie News Tribune on ____; copy of said Ordinance was made available at the office of the City Clerk to the public upon request; said Ordinance was duly introduced, read by title only, and passed on first reading by the City Commission of the City of Fort Pierce, Florida, on July 6, 2026; and was duly introduced, read by title only, and passed on second and final reading on July 20, 2026, by the City Commission of the City of Fort Pierce, Florida.

IN WITNESS HEREWITH, we hereunto set our hands and affix the Official Seal
of the City of Fort Pierce, Florida on this 20th day of July, 2026.

Linda Hudson
MAYOR COMMISSIONER

ATTEST

Linda W. Cox
CITY CLERK

(CITY SEAL)