
Fw: Proposed Procurement Ordinance Objections & Copy of State Statutes Highlighted for protests

From Chris Dzadovsky <cdzadovsky@cityoffortpierce.com>

Date Mon 7/6/2026 4:01 PM

To Linda Cox <lcox@cityoffortpierce.com>; Richard Chess <rchess@cityoffortpierce.com>; Sara Hedges <shedges@cityoffortpierce.com>

Cc Purchasing Division <purchasing@cityoffortpierce.com>

 2 attachments (687 KB)

Florida State Statute - Purchasing and bid protest Highlighted.pdf; Against Proposed Procurement Ordinance.pdf;

Clerk Cox, City Manager Chess and City Attorney Hedges

Please accept the attached memorandum and this email as a constituent's public comment regarding **Agenda Item – Proposed Ordinance 26-004, Procurement Code**, scheduled for consideration at tonight's City Commission meeting.

I respectfully request that this correspondence and the attached memorandum be included in the public record for this agenda item. If the Mayor and Commissioners have not already received this memorandum through other means, I would appreciate it being distributed to them in advance of the second reading so that it may be considered as part of their deliberations.

Thank you for your attention to this request.

Respectfully

Chris Dzadovsky
City of Fort Pierce Commissioner
cdzadovsky@cityoffortpierce.com
Work Cell - 772-710-7405
772 834 8539

From: Kris Einstein <Kris@entertainair.com>

Sent: Monday, July 6, 2026 3:27 PM

To: Chris Dzadovsky <cdzadovsky@cityoffortpierce.com>

Subject: Proposed Procurement Ordinance Objections & Copy of State Statutes Highlighted for protests

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Commissioner Dzadovsky,

I know this memo is long, but I hope you'll take the time to read it (or at least the suggested important sections & review the highlighted portion of the State Statute document attached. Every section is there for a reason, and I believe the concerns raised are valid and deserve careful consideration.

What troubles me most is that when this ordinance was first presented on September 8, 2025, there was considerable discussion about making the protest process fair, balanced, and transparent. Almost none of those discussions seem to have made it into this draft. Instead, the ordinance has become even more restrictive.

As I worked through it, it almost felt like every issue we personally experienced during the Little Jim's RFP protest was turned into another procedural hurdle that favors the City instead of creating a fair process for everyone. Rather than addressing the problems that were exposed, it seems to codify them.

I also question whether this truly reflects the independent advice of outside counsel. If it does, I think the City should seriously re-evaluate that relationship. The draft reads more like it was heavily influenced by internal direction than by an objective legal review of what is fair, appropriate, and consistent with Florida law.

My concern is that if this ordinance moves forward in its current form, it won't solve the City's procurement issues—it will likely create more disputes, invite additional legal challenges, and further erode public confidence. Some of the provisions also raise questions, in my opinion, about whether they are consistent with due process principles and Florida law.

Please don't focus only on the technical changes, such as defining "days." I encourage you to look at the ordinance as a whole and compare it to the applicable Florida statutes governing procurement, protests, and administrative procedures. The bigger picture is where the real concerns lie.

As always, thank you for taking the time to consider my thoughts. I appreciate your willingness to look beyond the surface and ask the hard questions.

Sincerely,

-kris

--

Kris Einstein

President

FAA Licensed Dispatcher

EntertainAir, LLC

4532 W. Kennedy Blvd • 422

Tampa • FL • 33609

C: 386.302.9510

F: 888.848.JETS (5387)

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The 2025 Florida Statutes

[Title X](#)
PUBLIC OFFICERS, EMPLOYEES, AND
RECORDS

[Chapter 120](#)
ADMINISTRATIVE PROCEDURE
ACT

[View Entire
Chapter](#)

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(a) Except as provided in ss. [120.80](#) and [120.81](#), an administrative law judge assigned by the division shall conduct all hearings under this subsection, except for hearings before agency heads or a member thereof. If the administrative law judge assigned to a hearing becomes unavailable, the division shall assign another administrative law judge who shall use any existing record and receive any additional evidence or argument, if any, which the new administrative law judge finds necessary.

(b) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel or other qualified representative. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut the material.

(c) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(d) Notwithstanding s. [120.569\(2\)\(g\)](#), similar fact evidence of other violations, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity. When the state in an administrative proceeding intends to offer evidence of other acts or offenses under this paragraph, the state shall furnish to the party whose substantial interests are being determined and whose other acts or offenses will be the subject of such evidence, no fewer than 10 days before commencement of the proceeding, a written statement of the acts or offenses it intends to offer, describing them and the evidence the state intends to offer with particularity. Notice is not required for evidence of acts or offenses which is used for impeachment or on rebuttal.

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

2. In a matter initiated as a result of agency action proposing to determine the substantial interests of a party, the party's timely petition for hearing may challenge the proposed agency action based on a rule that is an invalid exercise of delegated legislative authority or based on an alleged unadopted rule. For challenges brought under this subparagraph:

- a. The challenge may be pled as a defense using the procedures set forth in s. [120.56\(1\)\(b\)](#).
- b. Section [120.56\(3\)\(a\)](#) applies to a challenge alleging that a rule is an invalid exercise of delegated legislative authority.
- c. Section [120.56\(4\)\(c\)](#) applies to a challenge alleging an unadopted rule.
- d. This subparagraph does not preclude the consolidation of any proceeding under s. [120.56](#) with any proceeding under this paragraph.

3. Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules if the administrative law judge determines that rulemaking is neither feasible nor practicable and the unadopted rules would not constitute an invalid exercise of delegated legislative authority if adopted as rules. An unadopted rule shall not be presumed valid. The agency must demonstrate that the unadopted rule:

- a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority vested in the agency by the State Constitution, is within that authority;
- b. Does not enlarge, modify, or contravene the specific provisions of law implemented;
- c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;
- d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;
- e. Is not being applied to the substantially affected party without due notice; and
- f. Does not impose excessive regulatory costs on the regulated person, county, or city.

4. The recommended and final orders in any proceeding shall be governed by paragraphs (k) and (l), except that the administrative law judge's determination regarding an unadopted rule under subparagraph 1. or subparagraph 2. shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney fee for the initial proceeding and the proceeding for review.

5. A petitioner may pursue a separate, collateral challenge under s. 120.56 even if an adequate remedy exists through a proceeding under this section. The administrative law judge may consolidate the proceedings.

(f) The record in a case governed by this subsection shall consist only of:

1. All notices, pleadings, motions, and intermediate rulings.
2. Evidence admitted.
3. Those matters officially recognized.
4. Proffers of proof and objections and rulings thereon.
5. Proposed findings and exceptions.
6. Any decision, opinion, order, or report by the presiding officer.

7. All staff memoranda or data submitted to the presiding officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records.

8. All matters placed on the record after an ex parte communication.

9. The official transcript.

(g) The agency shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost.

(h) Any party to a proceeding in which an administrative law judge has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order.

(i) When, in any proceeding conducted pursuant to this subsection, a dispute of material fact no longer exists, any party may move the administrative law judge to relinquish jurisdiction to the agency. An order relinquishing

jurisdiction shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting and opposing affidavits, if any, that no genuine issue as to any material fact exists. If the administrative law judge enters an order relinquishing jurisdiction, the agency may promptly conduct a proceeding pursuant to subsection (2), if appropriate, but the parties may not raise any issues of disputed fact that could have been raised before the administrative law judge. An order entered by an administrative law judge relinquishing jurisdiction to the agency based upon a determination that no genuine dispute of material fact exists, need not contain findings of fact, conclusions of law, or a recommended disposition or penalty.

(j) Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.

(k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

(l) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(m) If a recommended order is submitted to an agency, the agency shall provide a copy of its final order and any exceptions to the division within 15 days after the order is filed with the agency clerk.

(n) Notwithstanding any law to the contrary, when statutes or rules impose conflicting time requirements for the scheduling of expedited hearings or issuance of recommended or final orders, the director of the division shall have the authority to set the proceedings for the orderly operation of this chapter.

(2) **ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.**—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.
2. Give parties or their counsel the option, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.
3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) An agency may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority.

(c) The record shall only consist of:

1. The notice and summary of grounds.
2. Evidence received.
3. All written statements submitted.
4. Any decision overruling objections.
5. All matters placed on the record after an ex parte communication.
6. The official transcript.
7. Any decision, opinion, order, or report by the presiding officer.

(3) **ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT SOLICITATION OR AWARD.**—Agencies subject to this chapter shall use the uniform rules of procedure, which provide procedures for the resolution of protests arising from the contract solicitation or award process. Such rules shall at least provide that:

(a) The agency shall provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. This notice shall contain the following statement: “Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes.”

(b) Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time periods provided by this paragraph.

(c) Upon receipt of the formal written protest that has been timely filed, the agency shall stop the solicitation or contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d)1. The agency shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of a formal written protest.

2. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of the formal written protest, and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to subsection (2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

3. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of the formal written protest, and if there is a disputed issue of material fact, the agency shall refer the protest to the division by electronic means through the division’s website for proceedings under subsection (1).

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the director of the division shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written protest by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the administrative law judge, whichever is later. Each party shall be allowed 10 days in which to submit written exceptions to the recommended order. A final order shall be entered by the agency within 30 days of the entry of a recommended order. The provisions of this paragraph may be waived upon stipulation by all parties.

(f) In a protest to an invitation to bid or request for proposals procurement, no submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered. In a protest to an

invitation to negotiate procurement, no submissions made after the agency announces its intent to award a contract, reject all replies, or withdraw the solicitation which amend or supplement the reply shall be considered. Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended agency action to reject all bids, proposals, or replies, the standard of review by an administrative law judge shall be whether the agency's intended action is illegal, arbitrary, dishonest, or fraudulent.

(g) For purposes of this subsection, the definitions in s. [287.012](#) apply.

(4) **INFORMAL DISPOSITION.**—Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

(5) **APPLICABILITY.**—This section does not apply to agency investigations preliminary to agency action.

History.—s. 1, ch. 74-310; s. 7, ch. 75-191; s. 8, ch. 76-131; s. 1, ch. 77-174; s. 5, ch. 77-453; ss. 6, 11, ch. 78-95; s. 6, ch. 78-425; s. 8, ch. 79-7; s. 7, ch. 80-95; s. 4, ch. 80-289; s. 57, ch. 81-259; s. 2, ch. 83-78; s. 9, ch. 83-216; s. 2, ch. 84-173; s. 4, ch. 84-203; ss. 1, 2, ch. 86-108; s. 44, ch. 87-6; ss. 1, 2, ch. 87-54; s. 5, ch. 87-385; s. 1, ch. 90-283; s. 4, ch. 91-30; s. 1, ch. 91-191; s. 22, ch. 92-315; s. 7, ch. 94-218; s. 1420, ch. 95-147; s. 1, ch. 95-328; s. 19, ch. 96-159; s. 1, ch. 96-423; s. 8, ch. 97-176; s. 5, ch. 98-200; s. 3, ch. 98-279; s. 47, ch. 99-2; s. 6, ch. 99-379; s. 2, ch. 2002-207; s. 5, ch. 2003-94; s. 7, ch. 2006-82; s. 12, ch. 2008-104; s. 12, ch. 2011-208; s. 4, ch. 2016-116.

MEMORANDUM

Review of the Proposed Procurement Ordinance

Lessons Learned from Recent Redevelopment Procurements

***Recommendations for Strengthening Transparency, Fairness
& Stewardship of Public Assets***

Prepared for
City Commission
City of Fort Pierce

Prepared by
Kris Einstein
July 6, 2026

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Reader's Guide

This memorandum is intended to be read as a whole. However, Commissioners with limited time may wish to begin with the **bolded portions of the Executive Summary and Introduction (on pages 1 & 2)**, followed by:

- **Section II – Governing Florida Law ... Page 2**
- **Section IV – Importance of Independent Review ... Page 5**
- **Section V – Review of the Proposed Procurement Ordinance ... Page 6-26**
- **Section VII – Side-By-Side Comparison of the Proposed Ordinance and Florida’s Procurement Framework ... Page 36-38**

EXECUTIVE SUMMARY:

This memorandum is respectfully submitted to assist the City Commission in evaluating the proposed revisions to the City's Procurement Ordinance. The observations and recommendations contained herein are based upon firsthand participation in the two Little Jim Requests for Proposal (RFP) procurements, **a review of Florida's procurement framework**, City procurement documents, public records, and the practical lessons learned throughout those procurements.

The City should be commended for undertaking a comprehensive review of its procurement ordinance. This presents an important opportunity not only to modernize the ordinance, but also to incorporate the practical lessons learned from recent redevelopment procurements.

While the proposed ordinance contains several positive improvements, several of the underlying issues identified during the Little Jim procurements appear to remain only partially addressed. In some instances, the proposed revisions add procedural requirements or restrictions without fully addressing the circumstances that gave rise to many of the concerns experienced during those procurements.

Rather than viewing the Little Jim procurements simply as isolated events, they should be viewed as a valuable case study. They provide the Commission with a practical opportunity to evaluate how the proposed ordinance would function during an actual redevelopment procurement and whether the proposed revisions adequately address the issues they are intended to resolve.

The Little Jim procurements highlighted several recurring concerns, including:

- Material deficiencies within solicitation documents.
- The absence of a clearly defined procedure for challenging material defects before proposals are submitted.
- Uncertainty regarding protest procedures, filing deadlines, and available remedies.
- Communication limitations that prevented the timely resolution of procurement concerns.
- Limited and inconsistent opportunities for prospective proposers to conduct due diligence, access City-owned property, and obtain the information necessary to prepare informed redevelopment proposals, while the existing leaseholder possessed substantially greater familiarity with the property and its operations.
- An uneven competitive environment in which proposals could be developed using different assumptions, varying levels of due diligence, and unequal access to material information.
- Repeated procurement cancellations after substantial public and private resources had already been expended.
- Significant costs incurred by both taxpayers and prospective proposers.
- The absence of clearly defined procedures for identifying, correcting, and learning from procurement deficiencies before those deficiencies result in canceled procurements, unnecessary expense, or avoidable delays.
- Missed opportunities to incorporate lessons learned before reissuing subsequent solicitations.

The recommendations contained in this memorandum are intended to strengthen—not complicate—the City's procurement process. Their purpose is to encourage earlier identification and resolution of procurement issues, improve the quality and completeness of solicitation documents, promote meaningful competition, enhance stewardship of public assets, and reduce the likelihood of unnecessary protests, canceled procurements, and avoidable public expense.

The goal is not to encourage more bid protests—it is to encourage better procurements that reduce the need for protests in the first place.

Guiding Principle

“The best procurement system is not the one with the fewest protests—it is the one that gives qualified businesses the fewest legitimate reasons to protest because the process is fair, transparent, well-administered, and worthy of public confidence.”

I. INTRODUCTION

The City of Fort Pierce's efforts to modernize its procurement ordinance present an important opportunity to strengthen transparency, fairness, accountability, stewardship of public assets, and public confidence in the City's procurement process.

The purpose of this memorandum is not to criticize past procurement decisions or encourage additional bid protests. Rather, it is to recommend practical improvements based upon the lessons learned during recent redevelopment procurements and to identify opportunities to improve future procurement practices.

A procurement ordinance should not only be legally sound—it should also be written in clear, understandable language that allows businesses, contractors, City staff, and members of the public to readily understand their rights, responsibilities, filing deadlines, and available remedies without unnecessary ambiguity or reliance on legal interpretation.

Public procurement should be viewed as a continuous process of improvement rather than a series of isolated transactions. Each major procurement provides an opportunity to identify lessons learned, strengthen procedures, and improve future solicitations. Procurement policies should likewise be periodically reviewed and refined to reflect evolving laws, redevelopment practices, technology, and practical experience so that future procurements become more efficient, transparent, and effective.

The following sections compare key provisions of the proposed ordinance with Florida's procurement framework, discuss practical implications of the proposed revisions, summarize lessons learned from recent redevelopment procurements, and offer recommendations for the Commission's consideration.

II. FLORIDA'S PROCUREMENT FRAMEWORK

Although municipalities are not required to adopt the State of Florida's procurement procedures, Florida's procurement framework provides a well-established model for promoting fairness, transparency, procedural due process, and public confidence in public contracting.

The State's procurement framework recognizes that procurement disputes may arise at different stages of the procurement process and establishes procedures for addressing those disputes before substantial public and private resources have been expended. Among other things, Florida's procurement framework recognizes the importance of:

- Providing clear procedures for *challenging both material defects in a solicitation and procurement decisions following award.*
- Clearly defining protest procedures, filing deadlines, available remedies, and the method for preserving protest rights.
- *Excluding Saturdays, Sundays, and legal holidays from protest deadlines*, where applicable, *to ensure fair and practical compliance.*
- Providing for a *stay of the procurement process upon the timely filing of a protest*, unless continuation is justified in accordance with applicable law.
- Providing an opportunity for prospective proposers to *be represented by legal counsel or another authorized representative throughout the protest process.*
- *Providing notice and an opportunity to be heard before a final decision is rendered, consistent with principles of procedural fairness and due process.*
- Providing for independent review by an Administrative Law Judge through the Division of Administrative Hearings (DOAH) when disputed issues of material fact exist.

- Promoting transparency, consistency, and fairness throughout the procurement process.
- Encouraging the early resolution of procurement disputes before substantial public and private resources have been unnecessarily expended.
- Providing procedures that allow procurement issues to be identified and resolved before proposals are prepared, evaluated, and awarded whenever reasonably possible.

The purpose of referencing Florida's procurement framework is not to suggest that Chapter 120, Florida Statutes, directly governs municipal procurements or that the City must duplicate the State's procedures. Rather, it provides a well-established benchmark against which the Commission may evaluate whether the proposed ordinance contains adequate procedural safeguards, clearly defines the rights and responsibilities of participants, and promotes a procurement process that is fair, transparent, balanced, and understandable.

During the City Commission's September 8, 2025 discussion of the proposed ordinance, the City Attorney acknowledged that certain matters not expressly addressed within the City's procurement code are already governed by applicable Florida statutes and explained that the proposed ordinance was intended to codify some of those principles while adding additional internal procedures for the City.

*That observation is significant because it recognizes that the **City's procurement ordinance should not be viewed in isolation. Where the ordinance does not expressly address a particular issue, applicable Florida law may provide guidance regarding recognized procurement principles and procedures unless the City has lawfully established a different procedure.***

Accordingly, this memorandum references Florida's procurement framework as a source of well-established procurement principles and best practices—not to suggest that the City's ordinance must mirror Chapter 120, but to provide a useful benchmark for evaluating the proposed revisions.

III. BACKGROUND – LESSONS LEARNED FROM THE LITTLE JIM PROCUREMENTS

The concerns discussed throughout this memorandum are not theoretical. *The two Little Jim procurements provide a practical case study demonstrating how incomplete solicitation documents, unresolved bidder questions, communication limitations, **and unclear procurement procedures** can result in repeated procurements, unnecessary public and private expense, delays in redevelopment, and diminished public confidence.*

The City issued two separate Requests for Proposals (RFPs) for the Little Jim Restaurant property. Both solicitations were ultimately canceled after significant bidder participation, resulting in substantial expenditures of time, professional resources, and out-of-pocket costs by prospective proposers, as well as additional administrative costs and delays for the City.

*During the first RFP, numerous material questions were raised regarding zoning, permitted uses, environmental compliance, flood mitigation, operational feasibility, site conditions, and supporting documentation. **Many of those questions remained unanswered, were only partially answered, or were not addressed until after critical stages of the procurement process.***

*The cancellation of the first RFP presented an opportunity to incorporate the lessons learned into a revised solicitation. **It would have been reasonable to expect that the material questions raised by prospective proposers—and the issues that contributed to the cancellation of the first procurement—would be addressed before a second solicitation was issued.***

***Instead, many of the same issues remained unresolved.** In several respects, the second RFP introduced additional uncertainty. Documents that had been included in the first solicitation were omitted*

from the second and had to be specifically requested. Other information remained incomplete, inconsistent, or inaccurate, requiring continued requests for clarification throughout the procurement process.

Throughout the second procurement, I repeatedly communicated concerns that the solicitation continued to contain material deficiencies and respectfully recommended that the City suspend the procurement, address the outstanding issues, and reissue a complete solicitation rather than continue under circumstances where prospective proposers were still working with incomplete or inconsistent information.

Despite those concerns, the procurement continued and was ultimately canceled as well.

Impact on Proposal Preparation

As the solicitation deficiencies became more apparent, we concluded that we could not responsibly prepare a proposal based upon information we believed to be incomplete, inaccurate, or internally inconsistent. Preparing conceptual plans, financial analyses, architectural concepts, environmental evaluations, and other proposal materials would have required substantial professional expense while relying on information that could not support an accurate or responsive redevelopment proposal.

Before reaching that decision, we repeatedly explained that the deficiencies in the solicitation created an uneven competitive environment. Prospective proposers were being asked to prepare redevelopment concepts without reliable information regarding zoning, permitted uses, environmental constraints, site conditions, operational requirements, and other material aspects of the property.

As a practical matter, ***proposers willing to rely upon incomplete or inaccurate information could submit larger or more ambitious redevelopment concepts that might appear more attractive during evaluation***, even though portions of those concepts could ultimately prove infeasible or incapable of receiving the necessary approvals. Conversely, a proposer attempting to ***prepare a realistic proposal based upon known constraints*** would likely submit a more conservative concept that could appear less competitive, despite being more likely to be successfully permitted, financed, and constructed.

A fair procurement process should evaluate competing proposals using the same accurate, complete, and reliable information. It should not require prospective proposers to speculate regarding material facts or reward assumptions that may later prove to be incorrect.

Our objective was never to avoid participating in the procurement. Rather, it was to obtain sufficient accurate information to prepare a responsible, competitive, and buildable proposal. Without that information, submitting a proposal would have required speculation rather than informed planning.

Ultimately, we were placed in the position of choosing between submitting a proposal we did not believe could be prepared responsibly or foregoing the opportunity to compete altogether. A well-designed procurement process should never place qualified proposers in that position.

The City's Cone of Silence serves an important purpose by protecting the integrity of the procurement process and preventing inappropriate communications during an active solicitation. However, our experience also demonstrated that when a proposer identifies significant deficiencies within the procurement itself, the ordinance provides no clearly defined mechanism for escalating those concerns beyond the Purchasing Division without risking a violation of the procurement rules. In those circumstances, procurement issues may remain unresolved even when they could materially affect the fairness or integrity of the solicitation.

A procurement process should not force participants to choose between protecting their rights and protecting their eligibility.

The practical result is that procurement issues capable of being corrected early may instead remain unresolved until they ultimately contribute to protests, delays, or cancellation of the procurement. In the Little Jim procurements, the City ultimately expended additional public resources administering two procurement processes that did not result in an award, while prospective proposers invested substantial time, money, and professional resources responding to solicitations that were ultimately withdrawn.

Lesson Learned

*The Little Jim procurements demonstrate that procurement quality is determined long before proposals are evaluated. A canceled solicitation should not simply be reissued—it should be improved. **Before a revised solicitation is released, known deficiencies should be corrected, material bidder questions addressed, supporting documentation verified, and the solicitation should undergo comprehensive interdisciplinary review and quality control.***

The repeated cancellations of the Little Jim procurements also demonstrate the importance of resolving procurement disputes as early as possible, before they result in canceled solicitations, unnecessary public and private expense, and avoidable delays in redevelopment.

IV. THE IMPORTANCE OF EARLY AND INDEPENDENT RESOLUTION OF PROCUREMENT DISPUTES

*One of the most significant lessons learned from the Little Jim procurements is that procurement disputes are most effectively resolved **before** proposals are evaluated, awards are made, or substantial public and private resources have been expended. When meaningful concerns regarding solicitation defects or disputed issues of material fact cannot be resolved through the City's internal procurement process, an independent review mechanism provides an important safeguard for both the City and prospective proposers.*

***The purpose of a procurement ordinance is to establish fair, transparent, and balanced procedures that protect the integrity of the procurement process—not to make protests more difficult or create procedural barriers to raising legitimate procurement concerns.** Effective procurement procedures should encourage the early identification and resolution of issues while they can still be corrected, rather than allowing those issues to remain unresolved until they result in protests, canceled solicitations, unnecessary expense, or avoidable delays.*

*The Little Jim procurements demonstrate why early and independent review can benefit everyone involved. Many of the concerns raised during those procurements involved the adequacy of the solicitation itself rather than the merits of any individual proposal. **Resolving those issues before proposals were prepared would likely have reduced costs for both the City and prospective proposers and may have avoided repeated procurements altogether.***

Based upon my review of the proposed ordinance and my experience participating in the Little Jim procurements, I am concerned that several proposed revisions appear to increase procedural requirements for prospective proposers while leaving unresolved many of the underlying issues that contributed to the difficulties experienced during those procurements. Strengthening procedural requirements without providing equally clear avenues for resolving legitimate procurement concerns may increase disputes rather than reduce them.

*For these reasons, I respectfully **encourage the Commission to consider obtaining an independent review of the proposed ordinance by a procurement attorney or consultant with substantial experience in Florida public procurement law who was not involved in the Little Jim procurements or other recent City redevelopment procurements.***

*Such a review would provide the Commission **with an objective assessment of whether the proposed ordinance reflects recognized procurement best practices, appropriately balances the interests of the City and prospective proposers, and adequately addresses the practical issues identified through recent redevelopment procurements. It would also provide an opportunity to compare the proposed ordinance with procurement ordinances adopted by other Florida municipalities and identify additional best practices that could further strengthen the City's procurement process.***

*Most importantly, an independent review would **help ensure that the ordinance reflects current procurement law and best practices, is informed by lessons learned from recent redevelopment procurements, and is viewed***

*as a thoughtful, long-term modernization of the City's procurement process **rather than a response to the circumstances of any single procurement.***

V. REVIEW OF THE PROPOSED PROCUREMENT ORDINANCE

The following comments are offered in the spirit of improving the proposed ordinance. Where appropriate, observations are based upon lessons learned during the Little Jim procurements and other City redevelopment procurements. The examples discussed are intended to illustrate broader procurement principles rather than revisit the merits of any individual procurement.

A. Section 2-439 - Definitions

Practical Concern

Definitions establish the foundation for interpreting and consistently applying the procurement ordinance. Undefined, ambiguous, or inconsistently used terms can create unnecessary uncertainty for City staff, evaluation committees, prospective proposers, and members of the public.

Although the proposed ordinance adds several useful definitions, several important procurement terms remain undefined or could benefit from additional clarification. For example, the ordinance uses the terms "**notice of intent to protest**," "**protest**," and "**written protest**" without clearly distinguishing between those filings or defining their respective purposes. Because each serves a different function within the protest process and carries different procedural requirements, those terms should be clearly defined and used consistently throughout the ordinance.

Likewise, the ordinance refers to "**calendar days**," "**business days**," and, in some instances, simply "**days**," without providing a general definition governing how those terms are calculated throughout the procurement code. The distinction is significant because protest deadlines are strictly enforced and determine whether a proposer preserves or waives the right to protest. Participants should not be required to infer whether "days" means calendar days, business days, or another method of calculation.

Additional procurement terminology could also benefit from clarification where necessary. For example, if the City intends to distinguish between challenges to **material solicitation defects** and challenges to **procurement decisions following award**, those concepts should be clearly identified within the ordinance so prospective proposers understand what types of issues may be raised, when they may be raised, and under what procedures.

Clear definitions reduce ambiguity, promote consistent administration, minimize misunderstandings, and help ensure that procurement decisions are based on the merits rather than differing interpretations of undefined or inconsistently applied terminology.

Little Jim Procurement Experience

Our experience during the Little Jim procurements demonstrates why clearly defined terminology is essential.

One of the primary procedural questions concerned the calculation of protest deadlines because the ordinance did not clearly define the meaning of "**days**." We repeatedly sought clarification regarding whether deadlines were measured using calendar days or business days and how weekends and legal holidays affected those calculations. Those questions remained unresolved throughout much of the procurement.

The importance of clearly defined terminology was further demonstrated during the City Commission's September 8, 2025 discussion of the proposed ordinance. Commissioners, the City Manager, and the City Attorney publicly discussed many of these same issues—including whether protests could be submitted by email,

how filing deadlines should be calculated, and whether weekends and legal holidays should extend filing deadlines. **The discussion itself illustrates that these procedural terms and filing requirements were not as clear as they should be within the ordinance.**

When fundamental procedural terms require interpretation after a procurement has begun, both the City and prospective proposers face unnecessary uncertainty. **Participants should not have to rely on informal interpretations or Commission discussions to understand how critical procurement procedures operate.** The ordinance itself should provide that guidance.

Lesson Learned

A procurement ordinance functions most effectively when fundamental procedural terms are clearly defined and consistently used throughout the document. Participants should not be required to interpret undefined terminology, reconcile inconsistent language, or rely upon informal explanations to determine how critical procurement procedures and filing deadlines operate. Clear definitions promote consistent administration, reduce unnecessary disputes, and improve public confidence in the procurement process.

Recommendation

The City should periodically review the definitions section to ensure that:

- All material procurement terms used throughout the ordinance are clearly defined.
 - Defined terms are used consistently throughout the ordinance.
 - Terminology is used consistently throughout the ordinance so that the same procedural step is not described by different terms in different sections.
 - The ordinance clearly distinguishes between a **Notice of Intent to Protest** and a **Formal Written Protest**, including the purpose, content requirements, filing requirements, and applicable deadlines for each.
 - The terms "**day**," "**calendar day**," and "**business day**" are expressly defined and applied consistently throughout the procurement code.
 - Protest-related terminology clearly identifies the events that trigger protest rights, applicable filing deadlines, and the procedures necessary to preserve those rights.
 - Terms affecting a participant's procedural rights or filing obligations are expressly defined rather than left to interpretation.
 - Terms commonly used in redevelopment procurements and evaluation procedures are appropriately defined where necessary.
 - Definitions are written in clear, plain language that promotes consistent interpretation and application.
 - Definitions remain consistent with recognized Florida procurement terminology where appropriate, unless the City intentionally adopts a different definition and clearly explains that distinction.
-

B. Plain Language Drafting

Proposed Language (Summary)

Although Sections 2-438(b) and 2-459(c)(1) illustrate these concerns, the recommendations below apply throughout the proposed ordinance.

Section 2-438(b) - Application:

"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."

Section 2-459(c) (1) - Protest procedure and requirements:

“The protest shall be made in writing 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 fifth (5th) 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. A notice of intent to protest nor a protest may be sent via text or email. 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.”

Practical Concern

An effective procurement ordinance should not only be legally sound—it should also be written in clear, straightforward language that is readily understandable to businesses, contractors, City staff, and members of the public who must rely upon it.

Public procurement is intended to encourage broad participation by qualified businesses—not just those with specialized legal knowledge. While legal precision is important, unnecessary legal jargon, undefined terms, overly complex drafting, and ambiguous language can create confusion, discourage participation, and increase the likelihood of disputes over procedural requirements rather than the merits of a procurement.

Section 2-438(b) illustrates this concern. Although the provision appears intended to explain the relationship between the City's procurement ordinance and applicable state law, its intended meaning may not be readily apparent to the average reader. Instead, participants are left to interpret complex legal language to determine when state law applies, when the City's ordinance controls, and when one may supersede the other.

The need for clearer drafting was illustrated during the City Commission's September 8, 2025 discussion of the proposed ordinance. While discussing provisions that were not expressly addressed in the City's procurement code, the City Attorney explained:

“...while it may not be specifically in our code, there are state statutes that already regulate the vast majority of what we're talking about...”

Although that explanation provided helpful context during the public meeting, participants should not have to rely upon statements made during Commission discussions to understand how the ordinance operates.

Wherever practical, the ordinance should use commonly understood terminology, define technical terms, and clearly explain filing deadlines, protest procedures, notice requirements, participant responsibilities, and the relationship between the City's ordinance and applicable state law so that participants can readily understand their rights and obligations without unnecessary reliance on legal interpretation.

Practical Concern – Organization and Readability

In addition to using plain language, procurement procedures should be organized in a logical sequence that allows participants to readily determine what must be done, when it must be done, where it must be filed, and how it must be submitted.

For example, Section 2-459(c)(1) combines multiple procedural requirements governing two separate filings into a single paragraph while using the terms “notice of intent to protest,” “protest,” and “written protest” interchangeably. As drafted, it is not immediately apparent which requirements apply to the Notice of Intent to Protest and which apply to the Formal Written Protest.

Because procurement protest deadlines are strictly enforced, participants should not be required to parse lengthy paragraphs or infer which procedural requirements apply to each filing. Breaking complex

procedures into clearly labeled steps or bullet points would significantly improve readability while reducing the potential for misunderstanding.

Little Jim Procurement Experience

During the Little Jim procurements, prospective proposers repeatedly sought clarification regarding protest procedures, filing deadlines, the interaction between the protest process and the Cone of Silence, the procedure for challenging solicitation defects before proposals were submitted, how protest deadlines were calculated, acceptable methods of filing protests, and when a **Notice of Intent to Protest** or **Formal Written Protest** would be considered received.

Those questions were further compounded by inconsistent terminology and uncertainty regarding how the ordinance should be interpreted. As a result, considerable time and effort were spent attempting to determine procedural requirements that should have been readily apparent from the ordinance itself.

The City Commission's September 8, 2025 discussion of the proposed ordinance further illustrates this point. Commissioners, the City Manager, and the City Attorney publicly discussed many of these same issues—including whether protests could be submitted by email, how filing deadlines should be calculated, whether weekends and legal holidays should extend filing deadlines, and the acceptable methods of filing. The discussion itself demonstrates that these procedural requirements were not as clear as they should be within the ordinance.

Participants should not have to rely upon informal guidance, Commission discussions, or legal interpretation to determine how fundamental procurement procedures operate. *Many of these issues could have been avoided through clearer drafting, defined terminology, improved organization, and more precise procedural guidance within the ordinance itself.*

Lesson Learned

A procurement ordinance is most effective when participants can readily determine what is required without unnecessary legal interpretation or repeated requests for clarification. Clear language, logical organization, and consistent terminology promote fairness, reduce procedural disputes, and improve confidence in the procurement process.

Recommendation

The City should:

- Use plain, straightforward language wherever practical without sacrificing legal accuracy.
- Define technical or legal terms that may not be readily understood by the average reader.
- Avoid unnecessary legal jargon or ambiguous terminology when simpler language conveys the same meaning.
- Organize procurement procedures in a logical, chronological sequence so participants can readily determine what must be filed, when it must be filed, where it must be filed, and how it must be submitted.
- Present protest procedures in chronological order so participants can readily determine each required step in the process.
- Where a procurement procedure involves multiple filings, address each filing in its own clearly labeled subsection rather than combining multiple procedural requirements into a single paragraph.
- Clearly distinguish throughout the ordinance between a **Notice of Intent to Protest** and a **Formal Written Protest**, including the purpose, filing requirements, content requirements, and applicable deadlines for each.

- Clearly explain procurement procedures, filing deadlines, protest rights, notice requirements, methods for calculating deadlines, and acceptable methods of filing.
 - Where practical, use bullet points, numbered steps, tables, or other formatting techniques to improve readability for complex procedures.
 - Periodically review the ordinance from the perspective of businesses, contractors, and members of the public to ensure it remains understandable, accessible, and user-friendly.
-

C. Section 2-444 - Minimum Solicitation Requirements

Proposed Language (Summary)

Section 2-444 establishes the minimum information that must be included within City solicitations. Among other things, it provides that:

- Solicitations shall include specifications, performance requirements, and other information sufficient to allow vendors to respond to the solicitation;
- Solicitations shall identify the standards and conditions upon which responses will be evaluated and selected; and
- For negotiated procurements, solicitations shall identify the manner in which negotiations toward a final contract will be conducted.

These provisions represent a positive step toward improving the quality and consistency of City solicitations. However, based upon the City's recent redevelopment procurements, several additional safeguards may further strengthen the ordinance.

1. Equal Access to Material Information

Practical Concerns

Section 2-444 appropriately requires solicitations to contain sufficient information for vendors to respond. However, redevelopment procurements involving City-owned real property present unique considerations that differ significantly from the procurement of ordinary goods or services.

For redevelopment procurements, fairness requires more than providing all prospective proposers with the same Request for Proposals. Equal competition also requires that proposers have access to the same known material property information upon which responsive proposals will be prepared and evaluated. Although prospective proposers remain responsible for conducting their own independent due diligence, the City is generally in the best position to assemble and provide known information concerning its own property. Providing a common factual foundation promotes fair competition by reducing differing assumptions, varying professional studies, unequal access to information, and unnecessary costs.

Where specialized technical studies are necessary to evaluate a property, the City should determine whether those studies should be provided as part of the solicitation or whether standardized assumptions, methodologies, or minimum requirements should be established so proposals are prepared and evaluated on a comparable basis.

Little Jim Procurement Experience

Our experience during the Little Jim procurements illustrates why this distinction is important.

Certain information necessary to evaluate the redevelopment potential of the property was unavailable, incomplete, or required prospective proposers to independently obtain information from outside regulatory agencies. In other instances, specialized studies—such as seagrass evaluations—could vary significantly in scope,

methodology, and cost. Estimates obtained during the procurement ranged from several thousand dollars to well over \$10,000 depending upon the level of analysis performed.

The solicitation did not establish a standardized environmental baseline or identify which environmental studies were required, who was responsible for obtaining them, or the methodology to be used. Consequently, different proposers could reasonably prepare proposals using different environmental assumptions and differing levels of due diligence. Likewise, the evaluation committee was not provided with a common environmental baseline regarding issues such as seagrass, even though those conditions could materially affect the design, permitting, feasibility, and cost of repairing or constructing docks and other waterfront improvements.

Based upon the information available during the procurement, prospective proposers were not required to perform the same environmental investigations or rely upon the same baseline information. As a result, proposals could reasonably have been based upon materially different assumptions regarding what could ultimately be permitted or constructed, making it more difficult for the evaluation committee to compare proposals using a common factual foundation.

Similarly, information regarding manatee considerations and other environmental matters was not initially included in the solicitation and had to be specifically requested. That information was material because it could affect the permitted use of the property, including limitations on vessel operations and the overall redevelopment concept.

The solicitation also required proposers to incorporate dedicated dock space for a proposed water taxi service, yet provided little or no information regarding the operational requirements for that component. For example, proposers were not provided information regarding the type or size of the vessel, accessibility requirements, anticipated passenger volumes, parking, frequency of operations, insurance requirements, or other operational information necessary to meaningfully evaluate how the water taxi would affect the design, permitting, operation, and overall feasibility of the redevelopment.

Without this information, proposers were expected to design around a mandatory operational requirement without knowing the assumptions upon which that requirement was based. As a result, different proposers could reasonably make different assumptions regarding the same required component of the redevelopment, resulting in proposals that were not truly comparable.

We repeatedly requested clarification regarding these matters but were generally advised that no additional information was available. As a result, prospective proposers were expected to design and evaluate a significant component of the redevelopment without access to information that could materially affect site planning, permitting, operations, and overall project feasibility.

In our case, we believed it was necessary to investigate these issues because they could materially affect what could realistically be designed, permitted, financed, and constructed. Consequently, our proposal would likely have reflected more conservative design assumptions than a proposal prepared without the benefit of the same information. In other words, performing additional due diligence could make a proposal appear less ambitious, even though it was more likely to be realistically permitted and constructed.

This experience also demonstrates the importance of interdisciplinary review before a solicitation is issued. Had Planning, Engineering, Environmental, Utilities, Legal, and Purchasing collectively reviewed the redevelopment requirements beforehand, many of these issues could likely have been identified and addressed before the solicitation was released.

Providing all prospective proposers with the same known material property information improves proposal quality, reduces unnecessary expense, promotes meaningful competition, increases confidence that proposals are being evaluated on an equal basis, and helps ensure that evaluation committees compare proposals using a common factual foundation.

Lesson Learned

A fair redevelopment procurement requires not only equal access to the solicitation, but also equal access to the material information reasonably necessary to prepare informed, responsive, and comparable proposals.

Likewise, when the City requires proposers to incorporate a specific operational component into a redevelopment proposal, the solicitation should provide sufficient information regarding that component to allow all proposers to prepare informed and comparable proposals.

Finally, redevelopment solicitations should establish objective submission requirements and evaluation standards that allow evaluation committees to compare competing proposals using a common factual foundation rather than differing assumptions, varying levels of due diligence, or unequal access to information.

Recommendation

Information Provided by the City

- Provide all known material property information that could reasonably affect redevelopment.
- Clearly identify which reports, studies, surveys, environmental documents, and technical information will be provided by the City.
- Clearly identify which investigations remain the responsibility of the proposer.
- Promptly distribute newly discovered material information through formal addenda and provide reasonable time for incorporation into proposals.

Standardized Information

- Where specialized technical studies are necessary, either provide those studies to all proposers or establish standardized assumptions, methodologies, or minimum requirements.
- Provide standardized environmental studies, surveys, and technical reports when they are likely to materially affect redevelopment design, permitting, or evaluation.
- Clearly identify all operational assumptions, design criteria, regulatory requirements, and performance expectations for any City-required program, amenity, transportation service, or public-use component.

Evaluation Integrity

- Require interdisciplinary review of redevelopment solicitations before issuance.
- Clearly specify the documentation required to demonstrate qualifications, financial capacity, and development experience.
- Require respondents to identify their specific role in representative projects.
- Verify material qualifications and experience before proposals are scored.
- Require evaluation committees to evaluate proposals only on the information required by the solicitation and submitted before the proposal deadline, unless supplemental information is expressly authorized and provided equally to all proposers.
- Design evaluation criteria to compare proposals using standardized information rather than differing assumptions, varying levels of due diligence, or unequal access to material property information.

2. Evaluation of Qualifications and Accountability for Awarded Redevelopment Proposals

Practical Concerns

Section 2-444 requires solicitations to identify the standards upon which responses will be evaluated and selected. For major redevelopment procurements, those standards should evaluate not only the conceptual vision presented, but also the respondent's demonstrated qualifications, financial capacity, regulatory readiness,

operational capability, constructability, and overall likelihood of successfully completing the proposed redevelopment.

The integrity of the procurement process depends upon selecting proposals that can reasonably be implemented—not simply those that present the most ambitious concepts or visually compelling renderings. Evaluation committees should be equipped to distinguish between aspirational concepts and proposals supported by verifiable experience, financial capability, and a realistic path to completion.

Likewise, once a proposal has been selected, the successful proposer should be expected to substantially perform the redevelopment concept upon which the award was based. While reasonable modifications may become necessary as a project advances through permitting, engineering, financing, or regulatory review, material deviations from the proposal that formed the basis of the award should be subject to an appropriate public review and approval process.

King's Landing Example

The King's Landing procurement illustrates why these principles are important.

During the procurement, considerable emphasis was placed upon conceptual renderings and the overall redevelopment vision presented by the successful proposer. While conceptual illustrations can assist evaluation committees in understanding a proposal, they should not outweigh demonstrated qualifications, financial capability, redevelopment experience, and the likelihood that the proposed project can realistically be financed, permitted, constructed, and operated.

Our review of the procurement also raised broader concerns regarding the verification of material representations made during the evaluation process. Major redevelopment procurements often rely upon a respondent's stated qualifications, representative projects, financial capacity, and redevelopment experience. Those representations should be verified before proposals are scored or award recommendations are made, particularly when they materially influence the evaluation process.

Evaluation committees should also distinguish between conceptual presentations and demonstrated ability to perform. Attractive renderings and ambitious redevelopment concepts are valuable only if they are supported by the experience, financial resources, and implementation capability necessary to successfully complete the project.

Finally, once a redevelopment proposal has been selected, the successful proposer should remain substantially accountable for the commitments that formed the basis of the award. Public confidence in the procurement process is strengthened when the project ultimately delivered substantially reflects the redevelopment proposal that was evaluated, while allowing reasonable modifications that become necessary during permitting, engineering, financing, or regulatory review.

Lesson Learned

Major redevelopment procurements should evaluate not only the quality of the proposed redevelopment concept, but also the respondent's demonstrated qualifications, financial capacity, redevelopment experience, and ability to successfully implement the project.

Likewise, procurement integrity is strengthened when the successful proposer is held accountable for substantially performing the redevelopment proposal upon which the award was based, subject to reasonable modifications approved through a transparent public process.

Recommendation

For major redevelopment procurements, the City should:

Evaluation of Qualifications

- Clearly identify the documentation required to demonstrate qualifications, financial capacity, redevelopment experience, and implementation capability.
- Require respondents to identify their specific role in representative projects, including whether they served as the developer, owner, investor, contractor, consultant, or in another capacity.
- Verify material representations regarding qualifications, financial capacity, representative projects, and redevelopment experience before proposals are scored or award recommendations are made.
- Require evaluation committees to consider demonstrated qualifications, financial feasibility, regulatory readiness, constructability, operational capability, and long-term viability in addition to conceptual design.
- Require evaluation committees to score proposals based solely upon the evaluation criteria established in the solicitation and the information timely submitted by the respondents, unless supplemental information is expressly authorized and provided equally to all proposers.

Accountability After Award

- Clearly identify which proposal elements constitute material commitments upon which the award is based.
 - Require successful proposers to substantially perform the redevelopment presented during the procurement unless material modifications are approved through a transparent public process.
 - Clearly establish the process for reviewing and approving material changes to an awarded redevelopment proposal.
 - Consider incorporating measurable performance milestones and appropriate contractual remedies when material commitments are not substantially fulfilled without approved justification.
-

D. Section 2-459 - Protests of Solicitation Defects Before Proposal Submission

Proposed Language (Summary)

- The proposed ordinance creates an administrative protest process that arises in connection with a Notice of Intent to Award.
- It ***does not*** establish a clear administrative procedure for challenging material defects within a solicitation before proposals are due.

Comparison to Florida's Procurement Framework

- Florida's procurement framework recognizes that procurement disputes may arise at different stages of the procurement process and provides a procedure for ***challenging material defects in a solicitation before proposals are submitted***, allowing those issues to be addressed before the procurement proceeds to evaluation and award.
- By providing a mechanism for resolving material solicitation defects early in the procurement process, Florida's framework seeks to ensure that proposals are prepared and evaluated using complete and accurate solicitation documents rather than requiring deficiencies to be addressed after substantial public and private resources have already been expended.

Practical Concerns

Section 2-459(b) limits protests to grievances arising in connection with a **Notice of Intent to Award**. However, *Section 2-459(c)(3)* **expressly excludes challenges** to solicitation requirements, procurement methods, minimum qualifications, scope of services, evaluation criteria, the relative weight of evaluation criteria, and scoring formulas.

Read together, these provisions appear to create a protest process that arises only after a Notice of Intent to Award while simultaneously excluding challenges to many aspects of the solicitation itself. As a practical matter, a proposer who identifies significant deficiencies in an RFP before proposals are due may have no meaningful administrative mechanism for obtaining a formal review of those issues before proposals are prepared and evaluated. As a result, material solicitation deficiencies may remain unresolved until after substantial public and private resources have already been invested in the procurement process.

That approach is inconsistent with the objective of identifying and resolving procurement issues as early as practicable. It increases the likelihood that material solicitation defects will remain uncorrected until substantial public and private resources have been expended.

The purpose of allowing protests of solicitation defects is not to encourage more protests—it is to improve solicitations before proposals are prepared, evaluated, and awarded.

Early review allows material deficiencies to be corrected before prospective proposers invest significant time, professional resources, and expense preparing proposals, while also reducing unnecessary costs, delays, the potential for protests, and the need to cancel and restart procurements.

This also raises an important practical question for the Commission's consideration:

If a prospective proposer identifies a material defect in a solicitation before proposals are due, where within the proposed ordinance is the procedure for raising that issue?

If the Commission intends for such a procedure to exist, the ordinance should identify it expressly. If no such procedure is intended, the Commission should carefully consider whether the absence of a clearly defined mechanism for resolving material solicitation defects before proposal submission adequately serves the City's long-term interests.

Little Jim Procurement Experience

The Little Jim procurements provide a practical example of why a clearly defined procedure for challenging material solicitation defects before proposals are due is essential.

As the solicitation deficiencies became more apparent, we concluded that we could not reasonably prepare a proposal based upon information we believed to be incomplete, inaccurate, or internally inconsistent. Preparing conceptual plans, financial analyses, architectural concepts, and other proposal materials would have required substantial additional professional expense while relying upon information that we did not believe could support an informed and responsive proposal.

In effect, we were placed in the position of choosing between submitting a proposal we did not believe could be prepared responsibly and reliably or foregoing the opportunity to compete altogether. *A well-designed procurement process should never place qualified proposers in that position.*

Because these deficiencies existed at the outset of the procurement, we believed they should be addressed before proposers invested substantial time and expense preparing proposals. Our objective was not to delay the procurement, but to improve the solicitation by correcting material defects before the procurement continued.

However, the City's ordinance did not clearly explain whether, when, or how a proposer could challenge material defects in the solicitation itself. We repeatedly requested clarification regarding the appropriate procedure but were generally referred back to the City's procurement ordinance—even though the ordinance itself did not answer the questions being asked.

In the absence of clear local guidance, we consulted Florida's procurement framework—not because we believed Chapter 120 directly governed the procurement, but because it reflects well-established procurement principles for identifying solicitation defects, preserving protest rights, and resolving procurement disputes before proposals are evaluated and awarded.

Despite our efforts to preserve our rights, we were ultimately advised that our protest had been filed too early and that we should have familiarized ourselves with the City's protest procedures. **This placed us in an impossible position.** We identified significant deficiencies at the beginning of the procurement, yet were effectively told we could not formally challenge those issues until after a Notice of Intent to Award. When we attempted to preserve our rights before reaching that point, we were advised that our protest was premature. Throughout that process, we were attempting to identify and resolve procurement issues before additional public and private resources were unnecessarily expended.

The Little Jim procurements demonstrate the practical consequences of that uncertainty. Numerous material questions were raised concerning zoning, environmental permitting, flood mitigation, required studies, operational requirements, and supporting documentation before proposals were due. Many of those issues could have been addressed before proposers invested substantial professional time and expense preparing redevelopment concepts.

Instead, the procurement continued despite repeated requests for clarification. Ultimately, the first solicitation was canceled after significant public and private resources had already been expended. Rather than fully addressing the known deficiencies, the City issued a second solicitation that repeated many of the same issues, including omitted documents, unresolved questions, and incomplete information. The second procurement was likewise canceled after additional public and private resources had been invested.

Had the ordinance contained a clearly defined procedure for challenging material solicitation defects before proposals were due, many of the issues identified during the Little Jim procurements could likely have been resolved before proposers invested substantial professional resources preparing redevelopment concepts and before the City expended significant public resources administering two procurements that were ultimately canceled.

Earlier resolution of those issues may also have reduced delays, improved the quality of the solicitation, and increased confidence in the procurement process. The objective is not to create additional opportunities for protest, but to provide a meaningful opportunity to identify and correct material solicitation defects before they result in unnecessary expense, repeated procurements, and avoidable delays..

Lesson Learned

Material solicitation defects should be identified and corrected as early as practicable in the procurement process. Providing a clearly defined procedure for challenging solicitation defects before proposals are submitted benefits the City, taxpayers, and prospective proposers by improving solicitation quality, reducing unnecessary expense, minimizing protests, avoiding repeated procurements, and increasing confidence in the integrity of the procurement process.

Recommendation

Revise Section 2-459 to:

- Expressly establish a procedure for challenging material solicitation defects before proposals are due.
- Clearly distinguish between protests of solicitation defects and protests of award decisions, recognizing that each serves a different purpose and occurs at a different stage of the procurement process.
- Clearly identify who may file a protest of solicitation defects, the applicable filing deadline, the required contents, and the method of submission.
- Establish a procedure for reviewing and resolving material solicitation defects before proposals are evaluated.
- Require the City to issue a written determination addressing the merits of any timely challenge to a material solicitation defect before proposal submissions are due.
- If the City determines that a material solicitation defect exists, require the City to issue an addendum or take other appropriate corrective action before proposals are due.

- Extend proposal deadlines whenever material revisions to the solicitation require proposers to revise their submissions.
- Clearly explain how a proposer preserves protest rights when challenging a solicitation defect before proposals are submitted.

Guiding Principle

A canceled solicitation should not simply be reissued—it should be improved.

E. Section 2-459 – Protest Deadlines

Proposed Language (Summary)

- Notice of Intent to Protest must be filed within 72 hours following the Notice of Intent to Award.
- Formal Written Protest must be filed by 4:00 p.m. on the fifth (5th) calendar day after the Notice of Intent to Protest.
- Notices and protests may not be submitted by email or text and are considered filed only when received by the City Clerk through the prescribed delivery methods
- The Formal Written Protest must include a detailed factual statement of every ground for protest, identify the applicable statutes, ordinances, laws, or other legal authorities relied upon, and include every basis upon which the protest is asserted. Any basis omitted from the Formal Written Protest may not later be added, and a protest that does not satisfy these requirements is deemed non-compliant and will not be processed.
- The ordinance requires the Formal Written Protest to be signed by an authorized officer of the protestor and expressly provides that **legal counsel is not authorized to sign the protest on the protestor's behalf.**

Comparison to Florida's Procurement Framework

- Florida's procurement framework clearly establishes how protest deadlines are calculated and distinguishes between the Notice of Intent to Protest and the Formal Written Protest.
- Florida's framework **generally excludes Saturdays, Sundays, and legal holidays** from applicable protest filing deadlines.
- After filing a Notice of Intent to Protest, Florida's procurement framework **generally provides ten (10) days to prepare and file the Formal Written Protest**, allowing sufficient time to investigate the issues, obtain legal counsel if desired, prepare supporting factual and legal arguments, and submit a complete protest.
- These procedures promote fairness, reduce uncertainty, and encourage procurement disputes to be resolved on their merits rather than through procedural technicalities.

Practical Concerns

The proposed ordinance requires a Formal Written Protest to be filed within **five (5) calendar days** while prohibiting filing by email or text and requiring delivery through specified physical methods.

When combined, these requirements create practical challenges for businesses located outside Fort Pierce, outside Florida, or outside the United States. Within that five-calendar-day period, a proposer may need to investigate the issues, obtain procurement records through a public records request, consult legal counsel, research applicable law, prepare a comprehensive protest identifying every factual and legal basis, obtain the required signature of an authorized representative, and ensure timely physical delivery before the filing deadline expires.

The proposed ordinance also requires the Formal Written Protest to identify every factual basis for the protest, cite the applicable legal authority, and include every ground upon which the protest is based. Given the significance of those requirements, an extremely compressed filing period increases the risk that procedural deadlines—not the merits of the protest—will determine whether legitimate concerns receive administrative review.

These requirements become even more significant when a protestor must obtain additional information through a public records request in order to prepare a complete Formal Written Protest. Procurement records, evaluation materials, communications, and other relevant documents may not already be publicly available. If a protestor must rely upon Florida's public records process to obtain information necessary to identify every factual and legal basis for the protest, a five-calendar-day filing period may provide insufficient time for the City to process the request, produce responsive records, review those materials, and prepare a complete protest. This concern is particularly significant when the filing period includes weekends or legal holidays. As a practical matter, the ordinance may require a protestor to submit a comprehensive protest before the information necessary to prepare that protest is reasonably available.

The September 8, 2025 Commission discussion further illustrates these concerns. During that meeting, Commissioners, the City Manager, and the City Attorney specifically discussed:

- whether protest deadlines should be calculated using calendar days or business days;
- whether weekends and legal holidays should extend filing deadlines;
- whether Notices of Intent to Protest and Formal Written Protests should be permitted by email; and
- the need to clearly define those procedures within the ordinance itself.

The City Attorney explained that, as a general legal principle, when a filing deadline falls on a weekend or legal holiday, the deadline typically extends to the next business day. Commissioner Broderick specifically suggested that language be added to the ordinance to address that issue.

Although portions of that discussion appear to have influenced the proposed ordinance, several important procedural concerns remain unresolved. The proposed ordinance still requires the Formal Written Protest to be filed by **4:00 p.m. on the fifth calendar day**, prohibits filing by email or text, and provides that the protest is considered filed only when received by the City Clerk through the prescribed delivery methods.

This creates an unnecessary procedural barrier. A five-calendar-day filing period that includes weekends and holidays, combined with a prohibition on electronic filing and a requirement for physical delivery, can make timely filing extremely difficult—particularly for proposers located outside Fort Pierce, outside Florida, or outside the United States.

For example, if a Notice of Intent to Protest is filed immediately before a holiday weekend, the protestor may effectively have only one or two ordinary business days in which to investigate the issues, obtain public records if necessary, consult legal counsel, prepare a comprehensive protest, obtain the required signature, and ensure timely delivery.

These practical difficulties are further compounded by the ordinance's requirement that legal counsel may prepare the protest but may not sign it on behalf of the protestor, requiring additional time to obtain an authorized signature before the filing deadline expires. Although the ordinance requires detailed factual allegations, statutory analysis, and preservation of legal issues, it simultaneously restricts the role of legal counsel by prohibiting counsel from signing the protest on behalf of an authorized client.

The proposed ordinance also creates a significant imbalance between the time afforded to prospective proposers and the time afforded to the City. Under the current procurement code, the Purchasing Director is required to consult with the City Attorney and attempt to resolve a formal protest within seven (7) working days. By contrast, the proposed ordinance extends the City's response period to thirty (30) days, with additional extensions permitted whenever the issues are deemed complex or resources are unavailable.

While the City is afforded additional time to investigate and prepare its response, prospective proposers are simultaneously required to investigate the facts, consult legal counsel if desired, prepare a comprehensive protest, obtain required signatures, and physically deliver the protest within only five (5) calendar days. The ordinance provides flexibility for the City, yet significantly reduces the practical flexibility available to prospective proposers.

A balanced procurement process should provide both parties a reasonable opportunity to prepare and present their respective positions. Procurement disputes should be resolved on their merits whenever reasonably possible—not because one party was unable to satisfy compressed procedural deadlines.

Little Jim Procurement Experience

Our experience during the Little Jim procurement illustrates why clearly defined protest deadlines are essential.

The City's procurement ordinance did not clearly define how protest deadlines were to be calculated, including whether "days" meant calendar days or business days. Because the ordinance lacked that guidance, we looked to Florida's procurement framework and other provisions of the City's Code for direction regarding how similar deadlines were calculated.

Recognizing the uncertainty, we repeatedly requested clarification from the City regarding the applicable protest deadlines and how the ordinance should be interpreted. Despite those requests, we never received a clear answer. Instead, the responses we received did not directly address the question, leaving proposers without meaningful guidance on how to preserve their rights.

Faced with an approaching deadline and an unclear protest procedure, we were placed in an impossible position. If we interpreted the ordinance incorrectly and waited too long, our protest could have been rejected as untimely. If we filed too early, we risked being told the protest was premature—which is ultimately what occurred.

After the protest was filed, the City literally advised that we should have ***“familiarized ourselves with the City's protest procedures.”*** That response underscores the very concern addressed in this memorandum: *the City's ordinance did not clearly explain when or how a proposer could challenge material defects in the solicitation, which is precisely why we relied on Florida's procurement framework for guidance in the first place.*

As the uncertainty continued and no clear guidance was provided, I advised the City that these unresolved procedural issues would likely result in litigation if they were not addressed. My intent was not to threaten legal action, but rather to emphasize the importance of obtaining timely clarification so the procurement could proceed fairly and in accordance with clearly understood procedures. Shortly thereafter, my ability to communicate with City staff was significantly restricted.

This experience demonstrates why protest procedures must be clearly written and consistently administered. A procurement ordinance should never require proposers to guess how deadlines are calculated or risk losing their rights because fundamental procedural questions remain unanswered.

Lesson Learned

Protest deadlines and filing procedures should be clearly defined, reasonably achievable, and consistently administered. Procurement disputes should be resolved on their merits whenever reasonably possible—not through uncertainty regarding filing procedures, methods of submission, or deadline calculations

Recommendation

Revise Section 2-459 to:

- Clearly define the terms "day," "calendar day," and "business day."
- Clearly distinguish between the Notice of Intent to Protest and the Formal Written Protest, including the filing deadline, required contents, method of submission, and legal effect of each.
- Provide that when a filing deadline falls on a Saturday, Sunday, legal holiday, or City closure, the deadline extends to the next business day.
- Reevaluate the overall balance of the protest process, including whether the five-calendar-day deadline for filing a Formal Written Protest provides a reasonable opportunity for prospective proposers to investigate the issues, obtain public records, consult legal counsel if desired, prepare a complete protest, obtain required signatures, and comply with the ordinance's filing requirements, while remaining reasonably proportionate to the time afforded to the City to investigate and resolve the protest.
- Permit Notices of Intent to Protest and Formal Written Protests to be submitted by email, hand delivery, mail, courier service, or another clearly defined filing method.
- Expressly recognize the right of a protestor to be represented by legal counsel throughout the protest process, including authorizing counsel to prepare, sign, and submit protest documents on behalf of an authorized client when acting in a representative capacity.
- Provide sufficient time for prospective proposers to obtain and review relevant public records necessary to prepare a complete Formal Written Protest when such records are not already publicly available.
- Require the City to acknowledge receipt of all protest filings in writing, including the date and time received.
- Require all protest filings and supporting documents to be date-stamped, time-stamped, logged, and preserved as part of the procurement file.
- Clearly explain how protest deadlines are calculated and when protest rights are preserved.

Guiding Principle

Procurement disputes should be decided on their merits—not by uncertainty regarding filing deadlines or procedural technicalities.

F. Section 2-459 – Stay of Procurement and Scope of Administrative Review

Proposed Language (Summary)

- The proposed ordinance states that protest proceedings are intended to provide an administrative remedy and are not judicial or quasi-judicial proceedings.
- Filing a protest does not automatically stay the procurement process.
- The Procurement Official has discretion to determine whether the procurement should continue during the protest.
- The Procurement Official investigates the protest and issues the initial written decision.
- Review by the City Manager is limited to whether the Procurement Official's decision complied with the procurement ordinance or applicable law.
- Disputed issues of material fact and the Procurement Official's judgment calls are not proper subjects for review.
- The City Manager's decision is final.

Comparison to Florida's Procurement Framework

- Florida's procurement framework generally provides for a stay of the procurement process following a timely protest unless continuation is justified under applicable law.
- Florida's framework also provides an independent forum for resolving disputed issues of material fact through the Division of Administrative Hearings (DOAH) when appropriate.
- These safeguards help ensure that procurement disputes are resolved before contracts are awarded and before substantial additional public and private resources are expended.

Practical Concerns

The proposed ordinance concentrates substantial authority within the Procurement Official. The Procurement Official determines whether a protest is timely and compliant, investigates the protest, issues the initial written decision, and determines whether the procurement should continue while the protest remains pending.

The ordinance further provides that the procurement process will not be stayed unless the Procurement Official, in his or her discretion, determines that doing so is in the City's best interests. As a result, the procurement may continue through evaluation, recommendation, or award while the protest remains unresolved.

A temporary stay of the procurement process should not be viewed as an obstacle to efficient procurement. Rather, it serves as an important safeguard by allowing significant procedural issues to be resolved before additional public and private resources are expended. Resolving legitimate procurement disputes early often avoids the far greater costs associated with canceling solicitations, repeating procurements, or defending avoidable litigation after substantial work has already been completed.

In addition, review by the City Manager is narrowly limited. The proposed ordinance expressly provides that disagreements over disputed issues of material fact or the Procurement Official's judgment calls are not proper subjects for review. Consequently, the review process appears to focus primarily on whether the Procurement Official correctly applied the ordinance and applicable law, rather than providing an independent review of disputed issues of material fact.

The ordinance also states that protest proceedings are not intended to be judicial or quasi-judicial. However, when considered as a whole, the detailed pleading requirements, limited scope of review, restrictions on supplementing the record, and finality of the City's internal decisions collectively resemble many of the characteristics of a formal adjudicative process, while providing fewer procedural safeguards than are typically associated with such proceedings. If the City intends the protest process to remain an informal administrative remedy, the Commission may wish to consider whether the procedural requirements and available safeguards are appropriately balanced.

This also raises an important practical question for the Commission's consideration:

If the Procurement Official determines whether a protest is compliant, investigates the protest, issues the initial decision, and decides whether the procurement continues during the protest, what independent safeguard exists to ensure the protest process remains objective and impartial?

Similarly, if disputed issues of material fact are not subject to review by the City Manager, what meaningful administrative review remains when a protest turns on disputed facts rather than solely legal interpretation?

The proposed ordinance concentrates every stage of the protest process within the same governmental organization responsible for administering the procurement. The City prepares the solicitation, responds to bidder questions, issues addenda, evaluates proposals, recommends an award, investigates protests, issues the initial protest decision, and conducts the administrative review. Although City officials are expected to act fairly and professionally, procurement procedures should also be structured to promote public confidence through objective and independent review whenever significant factual disputes arise. Concentrating these responsibilities within the same administrative structure may create the appearance that procurement decisions are being reviewed by individuals involved in the very process being challenged.

The level of procedural safeguards should be proportionate to the complexity and public significance of the procurement. While streamlined procedures may be appropriate for routine purchases, procurements involving City-owned real property, long-term leases, public-private partnerships, or significant redevelopment projects often warrant additional procedural safeguards because of the substantial public assets and long-term community interests involved.

Public confidence in the procurement process is strengthened when significant procurement disputes are reviewed by a neutral decision-maker who was not directly involved in preparing, administering, or evaluating

the procurement being challenged. Independent review not only protects the rights of prospective proposers, but also helps assure taxpayers that procurement decisions are being evaluated objectively and fairly.

Lesson Learned

An effective protest process should provide meaningful administrative review and appropriate procedural safeguards that promote confidence in the fairness and impartiality of procurement decisions.

The cancellation of both Little Jim procurements illustrates that resolving significant procurement issues before the procurement proceeds may ultimately save considerably more time, expense, and public resources than allowing a flawed procurement to continue.

Recommendation

Revise Section 2-459 to:

- Provide for an automatic stay of the procurement process upon the timely filing of a compliant protest unless the City makes written findings that continuation is necessary.
 - Clearly identify the circumstances under which a procurement may proceed during a pending protest.
 - Provide an independent mechanism for reviewing disputed issues of material fact when those issues cannot be adequately resolved through the City's administrative review process.
 - For major redevelopment procurements involving City-owned real property, long-term leases, or other significant public assets, consider utilizing an independent hearing officer, special magistrate, or other neutral decision-maker when disputed issues of material fact exist.
 - Ensure that the scope of administrative review extends beyond purely legal questions when material factual disputes exist.
 - Consider whether additional checks and balances would strengthen public confidence in the City's procurement process.
 - Reevaluate whether the time afforded to prospective proposers to prepare and file a protest is reasonably proportionate to the time afforded to the City to investigate, respond to, and resolve that protest.
 - Require written findings of fact and conclusions supporting the City's final protest decision.
-

G. Posting Dates, Addenda, and City Compliance with Procurement Deadlines

Proposed Language (Summary)

The proposed ordinance establishes strict filing deadlines for prospective proposers but does not clearly address:

- The effect of late-posted addenda or material clarifications;
- Inconsistent posting dates or times;
- Material information issued after stated deadlines;
- Missed procurement deadlines by the City; or
- Whether proposal or protest deadlines should be extended when the City's actions reduce the time available for prospective proposers to respond.

Comparison to Florida's Procurement Framework

Florida's procurement framework recognizes that all prospective proposers should have equal and timely access to material procurement information. Procurement best practices seek to ensure that material changes to a

solicitation are communicated in sufficient time to allow prospective proposers to review the information and revise their proposals when necessary.

Practical Concerns

The proposed ordinance imposes strict deadlines and procedural requirements upon prospective proposers but does not establish corresponding standards governing the City's own compliance with procurement deadlines.

If prospective proposers are expected to strictly comply with proposal deadlines, protest deadlines, and submission requirements, the City should likewise be expected to timely publish complete, accurate, and readily accessible procurement documents.

The proposed ordinance does not address the effect of:

- material addenda issued after stated deadlines;
- inconsistent posting dates or times between procurement platforms;
- material procurement information released after proposal preparation has substantially progressed;
- procurement documents that are incomplete, difficult to read, improperly scanned, or incorrectly posted; or
- missed procurement deadlines by the City.

Without clearly established procedures, prospective proposers may be required to comply with strict filing deadlines while simultaneously attempting to calculate those deadlines from inconsistent or uncertain procurement postings.

Little Jim Procurement Experience

The Little Jim procurements illustrate why these issues should be addressed within the ordinance.

During the procurement process, questions arose regarding the publication dates and timing of procurement documents, including bid tabulations and addenda.

In one instance, Addendum No. 6 was issued after the stated addenda response deadline, yet the proposal submission deadline was not correspondingly extended to allow prospective proposers adequate time to review and incorporate the additional information.

Questions also arose regarding the posting dates of procurement documents on different platforms, creating uncertainty regarding when certain procurement deadlines began to run.

In addition, several procurement documents were difficult to review because they were scanned too dark, partially cut off, improperly oriented, or otherwise difficult to read. While these may appear to be minor administrative issues, they become significant in a procurement process governed by strict deadlines and formal procedural requirements.

Just as prospective proposers are expected to comply with strict procedural requirements, the City should likewise ensure that procurement documents are complete, accurate, legible, consistently posted, and made available in sufficient time for meaningful review.

Lesson Learned

Strict deadlines imposed upon prospective proposers should be accompanied by equally clear standards governing the City's publication of procurement documents. Transparency, fairness, and meaningful competition depend upon all participants having timely access to complete and accurate procurement information.

Recommendation

Revise the ordinance to:

- Clearly establish the effect of late-posted addenda, material clarifications, and missed City procurement deadlines.
- Require procurement postings to identify the official publication date and time used to calculate procurement deadlines.
- Require procurement documents to be posted consistently across all official procurement platforms.
- Require procurement documents to undergo basic quality-control review before publication to ensure they are complete, legible, properly oriented, correctly dated, and readily readable.
- Require proposal and protest deadlines to be extended whenever the City issues material information after a stated deadline or otherwise materially reduces the time available for prospective proposers to respond.
- Require material addenda issued after a stated addenda deadline to be accompanied by a reasonable extension of the proposal submission deadline.
- Establish procedures addressing the effect of inconsistent posting dates, posting errors, or other publication errors on procurement deadlines.

Guiding Principle

The City should be held to the same standards of timeliness, accuracy, transparency, and accountability that it expects of prospective proposers.

H. Section 2-459 – Protest Content Requirements

Proposed Language (Summary)

The proposed ordinance requires a formal protest to:

- Include all grounds for protest;
- Contain detailed factual allegations supporting each claim; and
- Include citations to applicable statutes and legal authority.

The ordinance further provides that issues not raised in the initial protest may be deemed waived.

Comparison to Florida's Procurement Framework

Florida's procurement framework recognizes that procurement protests often involve complex legal and factual issues that continue to develop as additional information becomes available. When disputed issues of material fact exist, the administrative hearing process allows the factual record to be developed through the presentation of evidence, testimony, and legal argument before a final decision is rendered.

The proposed ordinance, by contrast, requires a proposer to identify every factual allegation, every legal issue, and every statutory basis for protest at the outset of the process, without providing a comparable mechanism to develop or supplement the record. This distinction is significant because procurement issues often continue to evolve after a protest is filed as additional documents are produced, factual questions are clarified, and legal issues become more fully developed.

Practical Concerns

The proposed ordinance requires the Formal Written Protest to identify every factual allegation, every legal basis, and every statutory ground for protest at the outset of the proceeding. These pleading requirements

further demonstrate why the protest process should facilitate meaningful participation by legal counsel when complex procurement disputes require legal analysis and statutory interpretation. It further provides that issues omitted from the initial protest may not later be added.

Unlike many administrative proceedings, however, the ordinance does not clearly provide a mechanism for:

- amendment of the protest when new material facts become known;
- clarification of factual allegations;
- supplementation of legal authority;
- development of the factual record; or
- addressing material information that was unavailable when the protest was filed.

As a result, procurement disputes may be resolved based upon technical pleading requirements rather than their substantive merits. Because procurement disputes frequently evolve as additional information becomes available, protest procedures should preserve a protestor's rights by allowing legitimate issues to be supplemented when material information could not reasonably have been known at the time the initial protest was filed.

Little Jim Procurement Experience

The Little Jim procurements demonstrate why these requirements are significant. Material information continued to emerge throughout the procurement process as bidder questions were answered, omitted documents were later produced, zoning information was clarified, and inconsistencies within the solicitation became apparent. Some of that information was not reasonably available when protest decisions had to be made.

Under the proposed ordinance, however, a protestor would be expected to identify every factual allegation, every legal issue, and every applicable statutory basis for protest at the outset of the process, even though material information was still evolving and, in some instances, remained in the City's possession. This places prospective proposers in the position of either filing an incomplete protest and risking waiver of legitimate issues or delaying the protest while awaiting additional information and risking dismissal as untimely.

A well-designed protest process should recognize that procurement disputes often evolve as additional information becomes available. Legitimate issues should be capable of reasonable supplementation when material facts could not reasonably have been known at the time of the initial filing.

Lesson Learned

A procurement protest should preserve a protestor's rights—not require perfect knowledge of every material fact and legal issue before the factual record has been fully developed. Protest procedures should provide reasonable flexibility to address newly discovered information while ensuring disputes are resolved on their merits rather than on technical procedural deficiencies.

Recommendation

Revise Section 2-459 to:

- Permit amendment of a protest when material information is first disclosed through public records requests, subsequent procurement documents, or other information that was not reasonably available at the time the original protest was filed.
- Allow reasonable supplementation of factual allegations and legal authority as the administrative record develops.
- Avoid automatic waiver of legitimate protest issues when the supporting information was not reasonably available at the time of the initial filing.

- Provide a reasonable opportunity for the factual record to be developed before a final administrative decision is rendered.
 - Ensure that procurement protests are resolved on their substantive merits rather than technical pleading requirements.
 - Permit correction of technical or non-substantive deficiencies that do not prejudice the procurement process rather than automatically deeming the protest non-compliant.
-

I. Section 2-445 – Authority to Cancel Solicitations

Proposed Language (Summary)

The proposed ordinance authorizes the City to reject all proposals or cancel a solicitation whenever it determines doing so is **"in the City's best interest."**

Comparison to Florida's Procurement Framework

Public procurement authorities commonly retain the discretion to cancel a solicitation when circumstances warrant. That discretion is an important procurement tool and should be preserved. However, cancellation decisions should be exercised reasonably, supported by legitimate public purposes, and implemented in a manner that promotes transparency, accountability, and public confidence in the procurement process. When a solicitation is canceled after prospective proposers have invested substantial time, professional resources, and expense preparing proposals, the reasons for cancellation should be clearly documented and communicated. Doing so helps maintain confidence in the procurement process and demonstrates responsible stewardship of both public resources and the private investment made by businesses responding to City solicitations.

When a solicitation is canceled after proposers have invested substantial time and resources, the reasons for cancellation should be clearly documented and communicated. Doing so helps maintain confidence in the procurement process and demonstrates responsible stewardship of both public resources and the private investment made by businesses responding to City solicitations.

Practical Concerns

The authority to cancel a solicitation is an important procurement tool and should remain available when circumstances genuinely require it. However, cancellation should be the exception—not the expected outcome of an inadequately prepared solicitation. Every canceled procurement represents not only the loss of private investment by prospective proposers, but also the expenditure of additional public resources administering a procurement that ultimately produces no award.

Preparing proposals for major redevelopment projects often requires substantial financial investment, including engineering, surveying, environmental studies, conceptual plans, architectural drawings, legal review, financial analysis, and other project-specific due diligence. Many of these expenses cannot simply be carried forward if a solicitation is canceled and later reissued. Some studies have expiration dates, while others must be prepared specifically for a particular solicitation.

When the City becomes aware that a solicitation contains material deficiencies that cannot reasonably be corrected through addenda, continuing the procurement may unnecessarily increase costs for both taxpayers and prospective proposers. In those circumstances, suspending the procurement, correcting the deficiencies, and issuing a revised solicitation may better serve the City's long-term interests than continuing a procurement that is unlikely to result in a successful award.

Just as the City expects proposers to exercise diligence, professionalism, and accuracy in preparing proposals, prospective proposers should reasonably expect the City to exercise the same diligence when preparing solicitation documents.

Little Jim Experience

The Little Jim procurements illustrate the practical consequences of continuing a procurement after significant deficiencies become apparent. Both solicitations were ultimately canceled after prospective proposers had invested substantial professional time, consultant fees, legal expenses, environmental reviews, and other project-specific costs preparing redevelopment proposals.

The cancellation of the first solicitation provided the City with an opportunity to correct known deficiencies before issuing a second solicitation. **The purpose of canceling a solicitation should be to correct the problems that necessitated the cancellation—not simply to restart the procurement process.** Instead, many of the same concerns remained unresolved, several supporting documents included in the first solicitation were omitted from the second and had to be specifically requested, and proposers incurred additional expense responding to a second procurement that was ultimately canceled as well.

Throughout the second procurement, I repeatedly recommended suspending the solicitation, correcting the outstanding deficiencies, and issuing a complete and accurate solicitation before requiring proposers to incur additional expense. Despite those concerns, the procurement continued, requiring prospective proposers to invest additional professional resources in a solicitation that was ultimately canceled. **Had those concerns been addressed earlier, significant public and private resources may have been avoided.**

A procurement process should not continue simply because it has already begun. When material deficiencies become apparent, the City's responsibility should be to minimize unnecessary costs, protect taxpayer resources, and avoid requiring businesses to incur additional expenses responding to a solicitation that cannot reasonably proceed to a successful award.

A canceled solicitation should not simply be reissued—it should be improved.

Lesson Learned

Businesses responding to City solicitations invest substantial time, money, and professional resources in good-faith reliance on the City's solicitation documents. The City should exercise the same level of diligence, preparation, transparency, and accountability that it expects from the businesses competing for those opportunities. When material deficiencies become apparent, the City's objective should be to correct them promptly—not continue a procurement that unnecessarily increases costs for both taxpayers and proposers.

Recommendations

Revise Section 2-445 to:

- Require written findings explaining the reasons for canceling a solicitation.
- Encourage prompt suspension of a procurement when material deficiencies are identified that cannot reasonably be corrected through addenda.
- Require a formal determination of whether identified deficiencies can reasonably be corrected through addenda before continuing a procurement.
- Require known deficiencies identified in a canceled solicitation to be addressed before the solicitation is reissued.
- Establish a formal post-cancellation review to identify lessons learned and improve future procurements.
- Evaluate whether an equitable reimbursement mechanism may be appropriate in limited circumstances where a solicitation is canceled because of significant, preventable deficiencies in the City's solicitation

documents, particularly for major redevelopment procurements requiring substantial professional expenses.

Guiding Principle

A canceled solicitation should not simply be reissued—it should be improved.

VI. ADDITIONAL PROCUREMENT IMPROVEMENTS

The recommendations discussed throughout this memorandum primarily address procurement protest procedures. Many of these recommendations were identified through the practical lessons learned during the Little Jim and Kings Landing procurements. Others reflect generally recognized procurement best practices intended to improve the administration of future redevelopment procurements involving City-owned property. The Little Jim procurements also identified broader opportunities to strengthen the planning, preparation, and administration of major redevelopment procurements before solicitations are issued.

A. Interdisciplinary Review Prior to Issuing Major Redevelopment Solicitations

For complex procurements involving City-owned real property, waterfront facilities, long-term leases, public-private partnerships, or significant redevelopment projects, the City should establish a formal interdisciplinary review process before an RFP is released.

That review should include, as appropriate:

- Planning
- Building
- Engineering
- Utilities
- Environmental
- Legal
- Purchasing
- Finance
- Any other department with regulatory or operational responsibility for the property.

The purpose of this review should be to verify that all material information contained in the solicitation—including zoning, permitted uses, surveys, environmental information, lease documents, property restrictions, referenced exhibits, supporting reports, and technical requirements—is accurate, complete, internally consistent, and suitable for reliance by prospective proposers.

Little Jim Procurement Experience

During the Little Jim procurements, several questions arose regarding zoning, planning, environmental permitting, engineering, lease requirements, and regulatory approvals. Many of those issues crossed departmental responsibilities, suggesting that a coordinated interdisciplinary review before the solicitation was issued may have identified and resolved many of the inconsistencies before proposers began preparing redevelopment concepts.

Lesson Learned

Major redevelopment procurements are multidisciplinary by nature. They should likewise be prepared through a multidisciplinary review process.

Recommendation

Require documented interdisciplinary review and certification by all affected City departments that the material information contained in the solicitation has been reviewed for accuracy, completeness, and internal consistency before issuance.

B. Fair and Informed Competition

A competitive procurement process should ensure that all proposers compete on a fair and level playing field using the same accurate, complete, and reliable information. When solicitation documents contain inaccurate, incomplete, or inconsistent information, proposers are forced to make assumptions regarding zoning, permitted uses, environmental constraints, site conditions, infrastructure, and other material issues. *Those assumptions can significantly affect both the concepts submitted and the committee's evaluation of competing proposals.*

Little Jim Procurement Experience

One of the principal concerns we identified during the Little Jim procurements was that *the solicitation did not provide a reliable foundation upon which all proposers could prepare comparable redevelopment concepts.*

As we conducted our own due diligence, we repeatedly identified information that differed from the information contained in the solicitation, including questions regarding zoning, permitted uses, environmental constraints, and other material aspects of the property. We raised these concerns with the Purchasing Division because we believed they affected not only our proposal, but every proposal being prepared.

We explained that this created an uneven playing field. *A proposer relying on incomplete or inaccurate information could prepare a larger or more ambitious redevelopment concept that might appear more attractive during the evaluation process, even though portions of that concept might ultimately prove incapable of receiving the necessary approvals. Conversely, a proposer attempting to prepare a realistic proposal based upon known regulatory and site constraints would likely submit a more conservative concept that could appear less competitive, despite being more likely to be successfully permitted and constructed.*

During our due diligence, we met with representatives from the Planning Department to discuss our concerns. *Planning staff advised that they had not been involved in preparing the solicitation and acknowledged that several of the issues we identified warranted further review.* They indicated they would communicate those concerns internally.

Ultimately, we concluded that we could not responsibly prepare conceptual plans based upon information we believed to be incomplete or inaccurate. Rather than invest substantial additional resources preparing plans that might later prove invalid, we made the difficult decision not to submit a proposal.

A procurement process should never place qualified proposers in the position of choosing between submitting a proposal they do not believe can be responsibly prepared or foregoing the opportunity to compete altogether.

Additional Example – Kings Landing

The importance of fair and informed competition is not unique to the Little Jim procurements.

The Kings Landing procurement similarly illustrates why evaluation committees should consider not only the conceptual vision presented by a proposal, but also whether the supporting market analysis, financial assumptions, regulatory considerations, and development program demonstrate that the proposed project can reasonably be implemented.

Following the selection process, independent reviews prepared for the Fort Pierce Redevelopment Agency identified significant concerns regarding the supporting market information and financial assumptions underlying the selected proposal. Among other observations, the independent consultant concluded that the submitted market information did not constitute a detailed market or feasibility study, identified numerous areas where supporting information and analysis were lacking, and ultimately stated that it could not recommend proceeding with negotiations until those issues were resolved. A separate review of the project's financial pro forma likewise identified significant questions regarding assumptions, supporting documentation, and financial feasibility before recommending that negotiations proceed.

These examples demonstrate the importance of ensuring that evaluation committees are provided sufficient information to distinguish between conceptual renderings and proposals that are supported by realistic regulatory, technical, and financial assumptions.

Additional Observation

The Commission may also find it helpful to review the recordings of the evaluation committee meetings for the second Little Jim RFP. In my view, those meetings illustrate several of the challenges discussed throughout this memorandum, including the information provided to committee members, the committee's preparation for evaluating a complex redevelopment procurement, and opportunities to strengthen the evaluation process for future procurements.

For example, one committee member indicated during the meeting that they had only recently received the proposal materials and expressed concern about their ability to meaningfully evaluate them. Regardless of the reason, comments of that nature underscore the importance of ensuring evaluation committee members receive proposal materials with sufficient time to conduct a thorough and informed review before scoring proposals.

Because evaluation committees play a critical role in selecting the proposal that best serves the City's interests, committee members should receive appropriate orientation regarding the solicitation, evaluation criteria, known property constraints, and their responsibilities before beginning the evaluation process.

If the recordings are not readily available, I would be pleased to provide copies for the Commission's review.

Lesson Learned

A fair procurement process requires more than equal access to the solicitation—it requires that all proposers compete using the same accurate and complete information.

Evaluation committees should be provided with sufficient information to evaluate not only the conceptual vision presented by competing proposals, but also whether those concepts are reasonably capable of being permitted, financed, and constructed. The objective should be to select the proposal that provides the greatest realistic long-term benefit to the City—not simply the proposal that presents the most ambitious concept.

Recommendations

For major redevelopment procurements, the City should:

- Verify zoning, permitted uses, and material site constraints before issuing the solicitation.
 - Clearly identify known regulatory, environmental, and physical limitations affecting the property.
 - Clearly identify which studies, surveys, reports, and environmental documents will be provided by the City and which are the responsibility of the proposer.
 - Provide reasonable access to City-owned property for due diligence when appropriate.
 - Ensure evaluation committee members receive information regarding known regulatory, environmental, financial, and site constraints that could materially affect redevelopment proposals.
 - Select evaluation committee members whose experience and qualifications are appropriate for the complexity of the procurement.
 - Extend proposal deadlines whenever material information is released after the original proposal schedule to allow all proposers a reasonable opportunity to incorporate that information into their submissions.
 - Provide evaluation committee members with orientation regarding the solicitation, evaluation criteria, procurement procedures, and known regulatory and site constraints before the evaluation process begins.
 - Encourage evaluation committees to evaluate redevelopment proposals based on demonstrated feasibility, regulatory compliance, financial capacity, and the respondent's demonstrated ability to perform—not solely on conceptual design.
-

C. Procurement Quality Control and Continuous Improvement

Major redevelopment procurements should incorporate a formal quality-control process ***both before and after*** issuance of a solicitation. Quality control should not end once an RFP is released. As material issues are identified during the procurement, the City should continually evaluate whether those issues can be reasonably addressed through addenda or whether the solicitation should be suspended, corrected, and reissued.

Little Jim Procurement Experience

The cancellation of the first Little Jim RFP provided the City with an opportunity to evaluate the deficiencies identified during that procurement and incorporate those lessons into a revised solicitation.

Instead, many of the same issues remained unresolved. Several documents that had been included in the first solicitation were omitted from the second and had to be specifically requested. Other information remained incomplete or inaccurate, requiring additional clarification throughout the procurement process.

As additional deficiencies were identified during the second procurement, we repeatedly communicated our concerns and respectfully recommended that the City suspend the procurement, correct the outstanding issues, and issue a complete solicitation before requiring proposers to incur additional professional expense. Those concerns were based on the belief that continuing the procurement would unnecessarily increase costs for both the City and prospective proposers if the solicitation ultimately had to be canceled.

Despite those concerns, the procurement continued and was ultimately canceled as well.

Major redevelopment procurements often require proposers to retain architects, engineers, environmental consultants, surveyors, attorneys, financial advisors, and other professionals. Many of those costs cannot simply be reused if a solicitation is canceled and later reissued. When material deficiencies become apparent, the City's responsibility should be to minimize unnecessary costs, protect taxpayer resources, and avoid requiring businesses to continue investing in a procurement that cannot reasonably proceed to a successful award.

Lesson Learned

Every canceled procurement provides an opportunity to improve future procurements. Those lessons should be documented, incorporated into future solicitations, and used to strengthen the City's procurement process.

A canceled solicitation should not simply be reissued—it should be improved.

Recommendations

For major redevelopment procurements, the City should:

- Conduct a formal quality-control review before issuing the solicitation.
 - Continue quality-control review throughout the procurement whenever material issues are identified.
 - Promptly evaluate whether significant deficiencies can reasonably be corrected through addenda or whether the procurement should be suspended and reissued.
 - Document lessons learned whenever a solicitation is canceled.
 - Require known deficiencies to be corrected before a solicitation is reissued.
 - Clearly identify which studies, reports, surveys, environmental documents, and supporting materials will be provided by the City and which are the responsibility of the proposer.
 - Extend proposal deadlines whenever material information is released after the original schedule so all proposers have a reasonable opportunity to incorporate that information into their submissions.
 - *Consider establishing a formal post-procurement review process for major redevelopment procurements to identify lessons learned and improve future solicitations, regardless of whether the procurement results in an award or is canceled.*
-

D. Evaluation of Qualifications and Financial Capacity

Practical Concerns

Major redevelopment procurements require the evaluation of complex financial, technical, legal, planning, engineering, and operational issues. Evaluation committees should rely upon objective, verifiable information demonstrating a respondent's qualifications, financial capacity, development experience, and ability to successfully complete the proposed redevelopment.

Although conceptual renderings and development vision are valuable presentation tools, they should supplement—not replace—objective evidence demonstrating a respondent's qualifications, financial capacity, demonstrated experience, and ability to perform.

The procurement process should produce the best decision based on objective evidence—not the most attractive presentation.

Kings Landing Procurement Experience

The Kings Landing procurement demonstrates the importance of verifying the experience and qualifications presented by respondents.

The RFQ required respondents to provide detailed qualifications and experience, representative development projects, documentation demonstrating financial capacity, references, and evidence of their ability to secure financing. It also required respondents to identify the specific role they served in representative projects.

These requirements existed for an important reason—to enable the City to evaluate a respondent's actual qualifications, demonstrated experience, and ability to successfully complete a major redevelopment project.

Although the RFQ permitted respondents to submit conceptual graphics illustrating the character of a proposed redevelopment, it also recognized that visual presentations alone do not establish experience or financial capability.

Because illustrative graphics were expressly permitted—even depicting concepts from projects in which the respondent was not involved—the evaluation process necessarily required greater emphasis on verified qualifications, documented experience, financial capacity, and the respondent's actual role in representative projects.

The procurement also illustrates the importance of resolving and documenting material questions regarding qualifications, project experience, and financial capability before proposals are scored or award recommendations are presented. Procurement decisions are strengthened when those questions are objectively evaluated and documented within the procurement record before negotiations proceed.

Lesson Learned

Major redevelopment procurements should be evaluated using verified qualifications, standardized financial information, objective evaluation criteria, and documented findings. Conceptual renderings and development vision are valuable presentation tools, but they should supplement—not outweigh—objective evidence demonstrating a respondent's qualifications, experience, financial capability, and ability to perform the proposed redevelopment.

Recommendation

The City should:

- Independently verify material representations regarding a respondent's qualifications, representative project experience, ownership interests, financial capacity, organizational structure, and other information that materially affects the evaluation process before making an award recommendation.
- Require respondents to clearly identify the specific role they served in each representative project submitted for evaluation.
- Establish standardized financial submission requirements whenever financial capability is an evaluation criterion so all respondents are evaluated using comparable financial information.
- Ensure evaluation committees assess proposals based upon objective evidence of qualifications, financial capacity, project feasibility, and demonstrated ability to perform—not solely upon conceptual renderings or presentation materials.
- Document how material questions identified during the evaluation process are resolved before negotiations or award recommendations proceed.
- Maintain a complete procurement record that accurately reflects all materials submitted before the applicable deadline and documents any permitted corrections or clarifications.
- Utilize qualified subject matter experts whenever redevelopment proposals involve specialized financial, engineering, environmental, planning, hospitality, or other technical issues.

E. Protection of City-Owned Historic Assets

When the City solicits proposals for the redevelopment of historic or iconic public properties, the solicitation should clearly identify the ownership and permitted use of existing trade names, trademarks, branding, websites, social media accounts, domain names, and other intellectual property associated with the property.

Where proposers are asked to submit marketing plans, branding strategies, or business concepts, the solicitation should clearly explain whether existing names or branding may continue to be used, whether they are protected intellectual property, and whether proposers are expected to preserve the property's historic identity or develop a new brand.

Lease agreements should likewise clearly address the ownership, use, and disposition of intellectual property created during the lease term to protect the City's long-term interests, preserve the historical identity of significant public assets where appropriate, and avoid future uncertainty regarding ownership or use of those assets.

Lesson Learned

Historic properties often derive substantial value from their identity, reputation, historical significance, and public recognition. Clearly defining the ownership and permitted use of intellectual property associated with City-owned assets promotes fair competition, protects valuable public assets, and reduces uncertainty for both the City and prospective proposers.

Recommendation

For redevelopment procurements involving historic or iconic City-owned properties, the City should clearly identify the ownership and permitted use of all intellectual property associated with the property—including trade names, trademarks, branding, websites, domain names, social media accounts, and other marketing assets—and clearly define those rights within both the solicitation and any resulting lease agreement.

F. Oversight of City-Owned Assets

Successful redevelopment begins long before a solicitation is issued. Before offering City-owned property for redevelopment, the City should complete thorough due diligence to assemble and verify material information concerning the property so that all prospective proposers begin the procurement process using the same accurate and reliable information.

Little Jim Procurement Experience

Our experience also demonstrated the importance of maintaining accurate information regarding City-owned property before it is offered for redevelopment.

Because critical information was unavailable or incomplete, proposers were required to independently contact outside regulatory agencies, conduct their own investigations, and verify matters that ordinarily should have been addressed before the solicitation was issued.

During that process, our discussions with regulatory agencies ultimately led to additional questions regarding submerged land leases, permitting, and other regulatory matters affecting the property.

Those inquiries ultimately expanded beyond the procurement itself and resulted in additional regulatory review of matters affecting the property. Had comprehensive due diligence been completed before the solicitation was issued, many of those issues may have been identified and addressed much earlier by the City, rather than through the procurement process itself.

Although independent due diligence is an important part of any redevelopment project, proposers should not be required to discover fundamental information about City-owned property that materially affects the procurement itself. Providing accurate and complete property information at the outset promotes fairness, improves the quality of proposals, and reduces the likelihood of unnecessary disputes or delays.

The City expects prospective proposers to exercise thorough due diligence before submitting proposals. Likewise, the City should exercise the same level of diligence in preparing solicitations involving valuable public assets.

Lesson Learned

The stewardship of City-owned assets begins long before proposals are submitted. Comprehensive due diligence before issuing a solicitation benefits both prospective proposers and the City by reducing uncertainty, improving proposal quality, and helping avoid costly delays or repeated procurements.

Recommendation

For major redevelopment procurements involving City-owned property, the City should:

- Complete appropriate due diligence before issuing the solicitation.
- Verify material regulatory, environmental, permitting, and property information prior to publication.
- Assemble and provide material documents necessary for proposers to prepare responsive proposals.
- Clearly identify any information that remains unknown or that proposers will be expected to independently verify.
- Periodically inspect and review City-owned properties to identify outstanding permitting, regulatory, environmental, maintenance, lease compliance, and other issues before redevelopment opportunities are offered to the public.

G. Procurement Document Quality Control

Practical Concern

Procurement documents should be complete, legible, properly scanned, consistently dated, and easy for prospective proposers and members of the public to review. During recent procurements, certain materials were difficult to read, overly dark, cut off, printed in extremely small font, or scanned sideways or upside down. In other instances, posting dates and publication times differed between platforms.

Although these may appear to be minor administrative issues, they can have significant consequences in a procurement process governed by strict filing deadlines and procedural requirements. Accurate and accessible procurement records are essential to transparency, fairness, and public confidence.

Little Jim Procurement Experience

During the Little Jim procurements, several solicitation documents and exhibits were difficult to read or incomplete. Certain zoning matrices contained text that was cut off or too small to read, some scanned documents were improperly oriented, and posting dates and publication times became the subject of dispute. Because procurement deadlines are calculated from publication dates, even minor inconsistencies in document posting or accessibility can create unnecessary confusion and procedural disputes.

Lesson Learned

Administrative accuracy is a fundamental component of a fair procurement process. Well-organized, legible, and consistently posted procurement documents reduce confusion, improve transparency, and help ensure that all participants have equal access to the same information.

Recommendation

The City should implement procurement document quality-control procedures before publication, including:

- Confirming that all solicitation documents are complete, legible, correctly oriented, and free from formatting errors.
- Verifying that posting dates and publication times are accurate and consistent across all publication platforms.

- Ensuring that all addenda, exhibits, bid tabulations, notices, and supporting documents are posted in a timely and consistent manner.
- Maintaining a publication log documenting when procurement documents are posted, revised, and distributed.
- Promptly correcting publication or formatting errors and providing appropriate notice to all prospective proposers.

VII. SIDE-BY-SIDE COMPARISON OF THE PROPOSED ORDINANCE AND FLORIDA'S PROCUREMENT FRAMEWORK

Issue	Florida Procurement Framework	Proposed Ordinance
Protest of Solicitation Defects	Clearly provides a mechanism to challenge the terms, conditions, and specifications of a solicitation before an award is made.	Does not clearly establish a procedure for challenging material defects in a solicitation before proposals are due.
Protest Timing	Allows solicitation issues to be raised and resolved early in the procurement process before significant public and private resources are expended.	Protest rights are generally triggered only after the Notice of Intent to Award, requiring issues to be raised after the procurement has largely concluded rather than when they are first identified.
Protest Deadline Calculation	Clearly defines how protest deadlines are calculated, generally excludes weekends and legal holidays where applicable, and provides additional time to prepare a Formal Written Protest.	Uses compressed calendar-day deadlines without comparable clarification or flexibility, while requiring a detailed legal protest to be completed within five calendar days.
Access to Information	Protest procedures generally allow sufficient time to obtain and review procurement records necessary to prepare a complete protest.	Provides no accommodation when a protestor must obtain procurement records through public records requests before preparing a Formal Written Protest.
Methods of Filing	Administrative filings are generally permitted through practical filing methods, including electronic submission where authorized.	Prohibits Notices of Intent to Protest and Formal Written Protests from being submitted by email or text and requires physical delivery through specified methods.
Legal Representation	Expressly permits parties to be represented by legal counsel or another qualified representative throughout the protest process.	Requires a technically complex legal protest while limiting the role of legal counsel by prohibiting counsel from signing the protest on behalf of an authorized client.
Protest Content Requirements	Allows the factual record to develop through evidence, testimony, and legal argument before a final decision is rendered.	Requires every factual allegation, legal authority, and protest ground to be asserted at the outset, with little opportunity to amend or supplement the protest as additional information becomes available.

Issue	Florida Procurement Framework	Proposed Ordinance
Stay of Procurement During Protest	Procurement is generally suspended following a timely protest unless continuation is supported by written findings demonstrating necessity.	Procurement continues unless the Procurement Official determines, in his or her discretion, that a stay is in the City's best interests.
Independent Review	Disputed issues of material fact may be heard by a neutral Administrative Law Judge through the Division of Administrative Hearings (DOAH).	Protest decisions remain entirely within the City's administrative structure, with no comparable independent review mechanism for disputed issues of material fact.
Scope of Administrative Review	Administrative review permits development of the factual record and consideration of disputed factual issues where appropriate.	Review by the City Manager is limited primarily to legal compliance and expressly excludes review of disputed issues of material fact and the Procurement Official's judgment calls.
Authority to Cancel Solicitations	Cancellation authority exists but is generally exercised with documented justification and procedural safeguards.	Broad authority to cancel a solicitation whenever deemed to be in the City's best interest, with limited procedural safeguards or post-cancellation accountability.
Correction of Known Deficiencies	Procurement best practices encourage correcting known deficiencies before a solicitation is reissued.	No requirement to correct deficiencies identified in a canceled solicitation before issuing a revised solicitation.
Posting Dates and Addenda	Procurement procedures generally provide clear rules regarding posting dates, addenda, and deadline extensions when material changes occur.	Does not clearly address inconsistent posting dates, late addenda, missed City deadlines, or automatic deadline extensions when material information is issued after established deadlines.
Quality Control of Procurement Documents	Procurement best practices emphasize complete, accurate, and internally consistent solicitation documents before publication.	No comparable quality-control requirements to ensure solicitation documents are complete, accurate, legible, properly oriented, or internally consistent before issuance.
Major Redevelopment Procurements	Complex redevelopment procurements typically involve enhanced planning, interdisciplinary coordination, extensive due diligence, and procedural safeguards proportionate to the significance of the public assets involved.	Applies essentially the same protest procedures regardless of whether the procurement involves routine purchases or long-term redevelopment of significant City-owned real property.
Overall Procurement Philosophy	Emphasizes early identification and resolution of procurement issues, transparency, meaningful procedural safeguards, independent review where appropriate, and protection of both public and private resources.	Focuses primarily on post-award protest procedures while providing fewer procedural safeguards and less clarity regarding early identification and resolution of solicitation deficiencies

This comparison is not intended to suggest that the City must adopt Florida's procurement procedures verbatim. Rather, it illustrates how Florida's procurement framework addresses many of the procedural issues discussed throughout this memorandum and identifies opportunities for the City to strengthen its own procurement ordinance. The recommendations contained in this memorandum are intended to improve transparency, promote fairness, reduce unnecessary disputes, protect both public and private resources, and strengthen public confidence in the City's procurement process.

VIII. STEWARDSHIP OF PUBLIC ASSETS

Financial Impact

The effectiveness of a procurement process should not be measured solely by whether a lease is ultimately awarded. It should also be evaluated by how effectively the process protects public resources, encourages meaningful competition, minimizes unnecessary costs, and maximizes the long-term value of City-owned assets.

Repeated procurements, canceled solicitations, delayed redevelopment, extended vacancies, and below-market lease revenues all carry real financial consequences for the City and its taxpayers. Likewise, prospective proposers often invest significant professional time and financial resources responding to complex redevelopment procurements with no assurance that those investments can be recovered if a solicitation is canceled because of preventable deficiencies.

When evaluating future procurement policies, the Commission may wish to consider the cumulative costs associated with procurements that require substantial revision or repeated solicitation, including:

- Staff time devoted to preparing, administering, and evaluating multiple procurements.
- Legal and administrative costs.
- Professional consultant expenses.
- Delays in redeveloping valuable City-owned property.
- Lost or deferred lease revenue while City-owned property remains vacant, underutilized, or subject to temporary occupancy.
- Opportunity costs associated with delayed economic development.
- Professional costs incurred by prospective proposers responding to materially deficient solicitations.

The Little Jim procurements also raise a broader stewardship question. The Commission may wish to evaluate not only the direct administrative costs associated with two canceled procurements—including staff time, legal review, consultant services, procurement administration, and other direct and indirect costs—but also the cumulative financial impact of delayed redevelopment and the continued use of City-owned waterfront property under short-term arrangements while competitive procurement remained unresolved.

Understanding those costs may help quantify the value of implementing stronger procurement procedures that identify and resolve material deficiencies before significant public and private resources are expended.

Many of these costs may not appear as a single line item within the City's budget. Nevertheless, they represent taxpayer dollars, private investment, lost economic opportunities, and delayed public benefit that can often be avoided through more complete solicitation documents, earlier identification of material issues, improved interdisciplinary coordination, and more effective procurement administration.

Just as the City expects prospective proposers to exercise diligence before submitting proposals, proposers should reasonably expect the City to exercise the same level of diligence when preparing solicitations involving valuable public assets.

Stewardship of Public Assets

Stewardship extends beyond maintaining City-owned property. It also includes protecting the integrity of the procurement process through transparent procedures, consistent evaluation standards, independent verification of material qualifications, objective financial review, accurate solicitation documents, meaningful accountability, and equal treatment of all prospective proposers.

Public confidence is strengthened when procurement decisions are transparent, supported by objective documentation, and based upon demonstrated qualifications and the long-term interests of the City rather than avoidable procedural deficiencies.

Lesson Learned

Procurement policies should not be evaluated solely by whether they withstand legal challenge. They should also be evaluated by whether they encourage qualified businesses to compete, protect taxpayer resources, promote public confidence, and maximize the long-term value of public assets.

The Little Jim procurements demonstrate that procurement procedures influence far more than the selection of a successful proposer. They directly affect the stewardship of public assets, the efficient use of taxpayer resources, the willingness of qualified businesses to participate in future City procurements, and ultimately the value the public receives from City-owned property.

IX. Need for Comprehensive Code Modernization

Background

The City's procurement code traces back to a 1983 ordinance, with significant revisions adopted in 1998 and only limited amendments since that time. While many of the underlying procurement principles remain sound, public procurement practices have evolved substantially over the past several decades.

Today's procurement environment involves increasingly complex redevelopment projects, public-private partnerships, environmental permitting, technological advances, electronic procurement platforms, heightened public expectations for transparency, and significantly greater financial and regulatory complexity than existed when much of the current code was originally drafted.

The City's recent effort to modernize portions of the procurement code is both timely and appropriate. However, the issues identified throughout this memorandum suggest that procurement reform may be most effective when approached as a comprehensive review rather than a series of isolated amendments addressing individual issues as they arise.

Practical Considerations

The experiences discussed throughout this memorandum—including the Little Jim, Kings Landing, Cobbs Landing, Crabbies, and other waterfront redevelopment procurements—demonstrate that procurement challenges often extend beyond protest procedures alone. They involve solicitation preparation, interdisciplinary coordination, evaluation procedures, contract administration, regulatory due diligence, and long-term stewardship of valuable public assets.

Addressing only one portion of the procurement process may leave related issues unresolved. A comprehensive review provides an opportunity to ensure that all components of the procurement system operate together in a clear, consistent, and coordinated manner.

The Commission may therefore wish to consider whether a comprehensive modernization of the City's procurement code would provide greater long-term value than continuing to address procurement issues through incremental revisions after disputes arise.

Lesson Learned

A procurement code should evolve proactively as procurement practices, redevelopment projects, technology, and public expectations change. Periodic comprehensive review can help identify outdated provisions, improve clarity, reduce unnecessary disputes, and strengthen public confidence before problems arise.

Recommendation

The City should consider:

- Retaining an experienced independent public procurement consultant or municipal procurement attorney to conduct a comprehensive review of the procurement code and related redevelopment procedures.
 - Evaluating the procurement process as an integrated system rather than addressing individual provisions in isolation.
 - Establishing a periodic review schedule to ensure the procurement code remains current, internally consistent, and reflective of recognized procurement best practices.
 - Incorporating lessons learned from prior redevelopment procurements into future ordinance revisions.
 - Seeking input from departments involved in redevelopment projects, including Procurement, Planning, Building, Engineering, Legal, Finance, and Economic Development, before adopting significant procurement revisions.
-

X. BROADER IMPACT ON PROCUREMENT PARTICIPATION

Procurement procedures influence far more than the administration of protests. They shape how qualified businesses view the City as a partner in future redevelopment opportunities.

Businesses are more willing to invest substantial professional resources preparing proposals when they have confidence that procurement procedures are transparent, consistently administered, and supported by complete and accurate solicitation documents. Conversely, procurement processes perceived as unclear or unpredictable may discourage qualified participation, ultimately reducing competition and limiting the City's ability to maximize the value of its public assets.

The objective of the recommendations contained in this memorandum is not to encourage additional protests, but to improve procurement administration so that protests become less necessary.

XI. Executive Summary of Recommendations

Based upon the observations, comparisons, and lessons learned discussed throughout this memorandum, I respectfully recommend that the Commission consider the following revisions to the proposed procurement ordinance and related procurement practices:

Procurement Procedures

1. **Establish a clearly defined procedure for challenging material solicitation defects before proposals are due**, allowing deficiencies to be identified and corrected before substantial public and private resources are expended.
2. **Clarify protest procedures**, including filing deadlines, calculation of time, acceptable filing methods, representation by legal counsel, and reasonable opportunities to supplement protests when material information becomes available.
3. **Provide meaningful procedural safeguards** by establishing appropriate standards for stays of procurement, independent review of disputed issues of material fact, and balanced administrative review procedures proportionate to the complexity of the procurement.
4. **Strengthen procedures governing canceled solicitations** by requiring written findings, correction of known deficiencies before reissuance, post-cancellation reviews, and timely suspension of procurements when significant deficiencies cannot reasonably be corrected through addenda.
5. **Improve administrative transparency** by clearly addressing posting dates, addenda, missed City deadlines, public records considerations, and consistent publication of procurement documents across official platforms.

Procurement Administration

6. **Strengthen quality control before solicitations are issued** through interdisciplinary review, verification of material information, and coordination among affected City departments.
7. **Clearly identify the due diligence responsibilities of both the City and prospective proposers**, including which studies, reports, permits, environmental documents, surveys, and other materials will be provided by the City and which must be obtained independently.
8. **Strengthen evaluation procedures** by:
 - verifying material qualifications and representative project experience before award;
 - utilizing qualified subject matter experts when appropriate;
 - standardizing financial documentation;
 - documenting the factual basis for significant scoring decisions; and
 - ensuring evaluation committees receive adequate orientation and sufficient time to review proposal materials before scoring.
9. **Establish a formal procedure for obtaining procedural clarification during procurements**, including an appropriate escalation process for significant procurement concerns while preserving the integrity of the Cone of Silence.

Long-Term Procurement Improvements

10. **Periodically review and modernize the procurement code** to reflect current procurement practices, lessons learned from prior redevelopment projects, and recognized procurement best practices.
11. **Consider utilizing an independent procurement consultant or municipal procurement attorney** when undertaking comprehensive procurement code revisions or major redevelopment procurements involving significant public assets.
12. **Promote procurement practices that emphasize transparency, accountability, equal treatment of proposers, objective evaluation standards, early resolution of legitimate concerns, and responsible stewardship of public assets.**

Guiding Principles

The recommendations contained in this memorandum are guided by the following principles:

- Complete and accurate solicitation documents.
- Equal access to material information.
- Objective and transparent evaluation procedures.
- Independent verification of material qualifications.
- Qualified and well-informed evaluation committees.
- Meaningful procedural safeguards.
- Accountability and stewardship of public resources.
- Fair competition and equal treatment of all prospective proposers.

Closing Statement

Collectively, these recommendations are intended to strengthen—not complicate—the City's procurement process. The objective is not to encourage additional bid protests, but to reduce the need for protests by improving the quality, clarity, transparency, fairness, and consistency of the procurement process. Strong procurement practices benefit everyone involved—the City, its taxpayers, and the qualified businesses that invest significant time and resources competing for public opportunities.

XII. CONCLUSION

The City's ongoing effort to modernize its procurement ordinance presents an important opportunity to strengthen not only the protest process, but the procurement system as a whole. The recommendations contained in this memorandum are offered respectfully and constructively, based upon both the practical lessons learned during recent redevelopment procurements and generally recognized procurement principles.

The experiences involving Little Jim, Kings Landing, Cobbs Landing, Crabbies, Fisherman's Wharf, and other redevelopment projects demonstrate that successful procurement reform extends well beyond bid protest procedures. Effective procurement begins with complete and accurate solicitation documents, meaningful due diligence, objective evaluation standards, transparent administration, timely resolution of material issues, and responsible stewardship of public assets throughout the life of a redevelopment project.

The objective of these recommendations is not to encourage additional protests, but to improve the procurement process so that protests become less necessary. A procurement system that promotes transparency, accountability, meaningful competition, and early resolution of legitimate concerns benefits everyone involved—the City, taxpayers, prospective proposers, and the community that depends upon the successful redevelopment of valuable public assets.

Ultimately, the strongest procurement system is one that inspires public confidence by encouraging qualified businesses to compete, protecting public resources, promoting fair and objective decision-making, and maximizing the long-term value of City-owned assets.

Final Request

I respectfully encourage the Commission to carefully review the proposed ordinance in light of Florida's procurement framework and the lessons learned from the City's recent redevelopment procurements before adopting these proposed revisions.

I would also welcome the opportunity to meet with the Commission, the City Attorney, the Purchasing Division, or any interested City staff to discuss our experience during the Little Jim procurements and the recommendations contained in this memorandum. My goal is not to revisit past procurements, but to assist the City in developing a procurement process that is clearer, fairer, more transparent, and more effective for everyone involved.

The recommendations offered throughout this memorandum are intended to strengthen—not complicate—the City's procurement process. A procurement system that encourages early identification and resolution of issues, provides clear procedures, and promotes meaningful competition ultimately benefits the City, its taxpayers, prospective proposers, and the long-term stewardship of public assets.

This memorandum is respectfully submitted in the hope that the lessons learned from recent redevelopment procurements will help strengthen future procurement practices for the benefit of the City, its taxpayers, and all prospective proposers.

The best procurement system is not the one with the fewest protests—it is the one that gives qualified businesses the fewest legitimate reasons to protest because the process is fair, transparent, well-administered, and worthy of public confidence.

Supporting Documentation

The observations and recommendations contained in this memorandum are supported by extensive contemporaneous documentation, including procurement records, public records, correspondence with City staff, Planning Department communications, Requests for Proposal, addenda, protest filings, evaluation materials, City Commission records, and other related documents accumulated throughout the two Little Jim procurements.

To maintain the readability and focus of this memorandum, those supporting materials have not been attached. However, they are available upon request, and I would be pleased to provide documentation supporting any observation, example, or recommendation contained in this memorandum.

Respectfully submitted,



Kris Einstein

"A canceled solicitation should not simply be reissued—it should be improved."