



City of Atlantic Beach

# Procurement Manual

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## SECTION 1 INTRODUCTION

The purpose of this Purchasing Manual (“Manual”) is to establish specific directions and guidelines for all City Departments, Employees and Agents of the City of Atlantic Beach (City) to use in procuring goods and services for a public purpose. The provisions of this Manual shall apply to every purchase of goods and services by the City, unless an alternative purchasing procedure is required by federal or state law, grant provisions or the purchase of any goods or services obtained by or provided to the City. In accordance with Chapter 73C-23.0051 (1), Florida Administrative Code (FAC) this manual contains written procurement policy that complies with 2 Code of Federal Regulation (CFR) 200.317-.326 and sections 255.0525. Any requirement of this Manual may be modified on a case-by-case basis by a majority vote of the City Commission.

## SECTION 2 DEFINITIONS

The words defined in this section shall have the meanings set forth below whenever they appear in this Manual, unless; (1) the context in which they are used clearly requires a different meaning; or (2) a different definition is prescribed for particular part or provision.

**Bid.** A price offered by a vendor to furnish specific Goods, Services and/or Construction in response to a Request for Bids (RFB).

**Certified Minority Business Enterprise.** A business enterprise which has been certified by the State of Florida Department of Management Services as a minority business enterprise in accordance with the provisions of the “Small and Minority Business Assistance Act of 1985”.

**Change Order.** A contract modification that changes the specifications, statement of work, drawings, contract value or the contract performance time.

**City.** City of Atlantic Beach, Florida

**City Commission.** Governing board of the City of Atlantic Beach

**City Manager.** The City Administrator of the City of Atlantic Beach, Florida or such person’s designee.

**Construction.** The process, usually requiring the professional services of an architect and/or engineer, of building, altering, repairing, improving, abating or demolishing any structure or building or other improvements of any kind to any real property. This does not include routine repair, operation or maintenance of existing real property.

**Consultant's Competitive Negotiation Act (CCNA)** State law governing the procurement of Professional Services performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional practice (287.055 Fla. Stat). Consultant Services. Any narrow discipline wherein a known practitioner has, through education and experience, developed expert advisory and/or programming skills as a vocation; or any service performed primarily by vocational personnel which requires the analysis or certification of a professional before the services are acceptable to the user of the service; or any other advisory, study or programming activity, where the provider of any such consultant service is ordinarily obtained by means other than lowest price. This term shall not include construction or employment agreements.

**Continuing Contract.** A contract that allows for incremental execution using individual task orders.

**Contract.** Means (a) a deliberate verbal or written agreement between two or more competent parties to perform a specific act or acts; (b) any type of agreement regardless of what it is called for the procurement of goods, services, consultant services, or construction; and (c) a purchase order. Contractor. Any person having a contract with the City

**Department Director.** The duly appointed Director of any department of City. For the purposes of this Manual, the term Department Director shall include the Deputy City Manager.

**Design-Build Firm.** A partnership, corporation, or other legal entity that (1) is certified under s. 489.119 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or (2) is certified under s. 471.023 FS to practice or to offer to practice engineering; certified under s. 481.219 FS to practice or to offer to practice architecture; or certified under s. 481.319 FS to practice or to offer to practice landscape architecture.

**Design-Build Contract.** A single contract with a design-build firm for the design and construction of a public construction project.

**Design Criteria Package.** Concise, performance-oriented drawings or specifications for a public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, and parking requirements applicable to the project.

**Design Criteria Professional.** A firm who holds a current certificate of registration under chapter 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under chapter 471 to practice engineering and who is employed by or under

contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

**Designee.** A duly authorized representative of a person holding a superior position.

**Emergency Purchase.** An expeditious purchase of goods, services, consultant services and/or construction to reduce an imminent or existing threat to the health, safety or welfare of persons or property within the City.

**Family.** Parent, sister, brother, spouse, children, nieces, nephews, step-parent, step-children, step-brother, step-sister, half-brother, half-sister, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, aunts, uncles, grandchildren, and grandparents of a City employee, as well as members of the same household and their parent, sister, brother, children, nieces, nephews, step-parent, step-children, step-brother, step-sister, half-brother, half-sister. Daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, aunts, uncles, grandchildren and grandparents of a City employee.

**Goods.** Any tangible personal property other than real property.

**Item.** A single separate unit, article, product, material, or service.

**Minority Business Enterprise.** Any small business concern which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least fifty-one percent (51%) owned by minority persons, and whose management and daily operations are controlled by such persons. A minority business enterprise may primarily involve the practice of a profession.

**Minority Person.** A lawful permanent resident of Florida who is:

1. A Black American – a person having origins in any of the Black racial groups in Africa.
2. A Hispanic-American – a person of Spanish or Portuguese culture, with origins in Mexico, South
3. America, Central America, or the Caribbean, regardless of race.
4. An Asian American – a person having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778.
5. A Native American – a person having origins in any of the Indian Tribes of North America prior to 1835.
6. An American woman.
- 7.

**Non-local business.** A bidder which is not a local business as defined herein

**Personal Property.** Property consisting of movable articles both physical, such as furniture or computers, or non-physical, as stocks or bonds.

**Procurement.** Purchase of goods or services.

**Proposal.** An executed formal document submitted to the City stating the goods, consultant services, and/or services offered to satisfy the need as requested in a request for proposal.

**Public Record Exemptions.** Items which are exempt from Chapter 119 Florida Statutes pursuant to a specific statutory exemption.

**Purchase.** Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, materials, equipment, goods, consultant services, construction, and/or services required by the City for public purposes in accordance with the law and City procedures.

**Purchase Order (PO).** A City document used to authorize a purchase transaction with a vendor.

**Purchasing.** A Division of the Finance Department headed by the Director of Finance and managed by the Procurement Manager and is responsible for procurement of goods and services.

**Qualified Bidder, Offeror, Proposer, Quoter, or Respondent.** An individual or business entity that has submitted a bid, offer, proposal, quotation, or response and that has the capability in all respects to perform fully the contract requirements, and the integrity and reliability that gives reasonable assurance of good faith and performance. The City shall not require unreasonable qualifications and experience so as to not restrict competition.

**Quotation.** Any oral or written informal offer by a vendor to the City to furnish specific goods and/or services at a stated price.

**Real Property.** Property consisting of lands and all rights, privileges, or improvements belonging to and passing to lands, as buildings, crops, or mineral rights.

**Request for Bids (RFB)/Advertisement.** The solicitation document used for competitive sealed bidding for the purchase of goods, services, and/or construction, for which the City has adequate funding. The invitation for bid is used when the City is capable of specifically defining the scope of work for which the contractual service is required or when the City is capable of establishing precise specifications defining the actual commodity or group of commodities required. A written solicitation includes a solicitation that is electronically posted.

**Request for Proposals (RFP).** A written solicitation for competitive sealed proposals responses for goods, consultant services, and/or other services, including solutions or alternative solutions for the scope of work, specifications, or contractual terms and conditions as defined, for which the City has adequate funding. The request for proposals is used when it is not practicable for the City to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the City is requesting that a responsible vendor propose a commodity, group of commodities or contractual service to meet the specifications of the solicitation document. A written solicitation includes a solicitation that is electronically posted. Evaluation of a proposal or response is based on prior established criteria which involves more than price. The RFP shall state the relative importance of price and other evaluation criteria.

**Request for Quotation.** An informal request either oral or written to solicit prices for specific goods and/or services.

**Responsible.** A vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance including but not limited to:

- The appropriate financial, material, equipment, facility and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;
- The capability to comply with the required delivery schedule considering all their existing business commitments;
- A satisfactory record of performance;
- A satisfactory record of integrity;
- Is neither debarred nor suspended from federal programs under DOT regulations;
- Legal qualification to contract with the City and has supplied all necessary information in connection with the inquiry concerning responsibility.

**Responsive.** A vendor that has submitted a bid, offer, proposal, quotation or response that conforms in all material respects to the solicitation.

**Services.** The furnishing primarily of labor, time, and/or effort by a Vendor, wherein the provision of goods or other specific end products other than documents relating to the required performance is incidental or secondary. This term shall not include construction or employment agreements.

**Services Rendered Contract.** A contract used for the provision of services from an individual/person (not a legally formed entity).

**Single Project Contract.** A contract for a single defined project.

**Single Source.** Goods and/or services which may be available from more than one source but for a justifiable reason, needs to be acquired from a particular vendor.

**Small Business.** An independently owned and operated business concern which employs fifty (50) or fewer full-time employees, and which has a net worth of not more than one million dollars (\$1,000,000.00). As applicable to sole proprietorships, the one million dollars (\$1,000,000.00) net worth requirement shall include both personal and business investments.

**Small Purchase.** Any budgeted purchase of goods, services or commodities in an amount of \$25,000 or less.

**Sole Source.** Goods and/or services which are proprietary, or available from only one source, and for which there are no competitive alternate sources

**Solicitation.** Request for information, expression of interest, request for bids, request for qualifications, request for proposal, request for quotation, or a multi-step bidding procedure.

**Vendor.** An actual or potential consultant, supplier or contractor of construction, goods, services, and/or consultant services.

## SECTION 3 PURCHASE AUTHORIZATION

3.1 The City Manager shall have the authority to:

- A. Award contracts within the purview of this section. Provided, that no purchase order or contract for an amount in excess of twenty-five thousand dollars (\$25,000) be executed without City Commission approval unless there is an emergency involving public health, safety or where immediate expenditure is necessary for repairs to City property in order to protect against further loss of or damage to the City property to prevent or minimize serious destruction of City property to prevent or minimize serious destruction of City services. In that event, the City Manager shall report the action taken and the expense incurred to the City Commission;
- B. Prepare purchase procedures necessary for the function of purchasing;
- C. Act or procure for the City the highest quality in supplies and contractual services at least expense to the City;
- D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales;
- E. Establish all rules and regulations authorized by this division and any others necessary to its operation;
- F. Prescribe and maintain such forms necessary for the operation of this division;
- G. Prescribe and adopt standard purchasing nomenclature for using agencies and suppliers;
- H. Exploit the possibilities of buying in bulk so as to take full advantage of discounts;
- I. Sign on behalf of the City any contract authorized by the City Commission, excepting where the City Commission directs that some other officer or officers shall do so.
- J. Approve purchase orders and contracts in excess of twenty-five thousand dollars (\$25,000) when the services or goods are related to items also exempted to the formal bid procedures as listed in Section 8 except for professional, artistic skills or insurance, which are in excess of twenty-five thousand dollars (\$25,000).

3.2 Any purchase made contrary to the provisions of the Purchasing Manual shall not be binding on the City unless approved by the Board or designee and may be subject to disciplinary action. All procurements shall comply with Florida Statute if applicable.

## SECTION 4 ETHICAL STANDARDS

Violations of ethical standards shall be handled in accordance with applicable state statute and the City Human Resources Manual. The Purchasing Division complies with the National Institute of Government Purchasing (NIGP) Code of Ethics.

## SECTION 5 REVISION TO PROCUREMENT MANUAL

The Purchasing Manual will be reviewed no less than every two years by the Director of Finance. Any revisions must be approved by the City Commission by resolution.

## SECTION 6 CONFLICT OF INTEREST/ CODE OF STANDARDS

6.1 The following standards of conduct apply generally to all transactions and specifically to all federally supported grant projects. Violations of these standards of conduct may result in disciplinary action as set forth in 2CFR 200.318(c) and Section 112.371317, Florida Statutes provided that such disciplinary action does not conflict with the jurisdiction of the State of Florida Commission on Ethics.

6.2 No elected official, employee, or agent of the City shall participate in the selection, nor in the award, nor administration of a contract, nor the procurement of goods or services, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the elected official, employee, or agent, any member of his/her immediate family, his/her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected or considered for award. The City's elected official, employees, or agents shall neither solicit nor accept gratuities, favors, or anything regardless of value from contractors, potential contractors, or parties to sub-agreements.

6.3 Vendors shall not allow City employees or former City employees to work on City projects or provide services to the City under agreements or sub-agreements without express written consent from the City.

6.4 Section 112.313, Florida Statutes prohibits contracts with companies owned in full or part by a City employee, officer or advisory board member. Advisory Board Members may qualify for an exemption by submitting Commission on Ethics Form 3A with bid and filing such form with the Supervisor of Elections in accordance with Section 112.313(12)(b), FS.

6.5 An organizational conflict of interest occurs when any of the following circumstances arise:

- a. A lack of impartiality or impaired objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
- b. Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- c. Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

6.6 Contractors are required to perform in accordance with the terms, conditions, and specifications of their contracts. 2 CFR 200.318 prohibits contractors who develop or draft specifications, requirements, statements of work, or invitation for bids or request for proposals from competing for such procurements.

The City shall analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

## **SECTION 7 PROCUREMENT DIVISION**

7.1 General. The Procurement Division is headed by the Director of Finance and managed by the Procurement Manager.

The goals of the Procurement Division and the responsibilities of the Procurement Manager are to provide high quality, professional service to internal and external customers and to establish a centralized purchasing function that accomplishes the following:

- A. Assures compliance with the laws and regulations that govern public procurement in the State of Florida;
- B. Provides uniformity in the procurement of goods and services by employees and agents of the City;
- C. Provides an open, fair, and competitive process for obtaining goods and services; E. Promotes cost efficiency in the procurement of goods and services; and
- D. Makes expert assistance available to City employees and agents of the City.

7.2 Function. The functions of the Procurement Division are:

- A. Procurement, including, but not limited to:
  - 1. Identifying department needs for goods and services and assisting in/or preparation of bidding documents;
  - 2. Researching and evaluating specified goods and services to establish vendor sources for required commodities;
  - 3. Acquiring goods and services;
  - 4. Maintaining a fair and open arena for all vendors;
  - 5. Assisting in preparation of unit price contracts for City Departments that have an on-going need for various commodities;
  - 6. Researching past, current and future market trends of various markets to include new sources of supply, pricing, serviceability and other factors which can assist management in making buying decisions;
  - 7. Assisting in-City municipalities, contiguous counties/cities, vendors, Constitutional Officers, and State Agencies, as needed;
  - 8. Promoting positive aspects of “doing business” with City in order to further encourage and maintain a fair and open arena for competition,
  - 9. Providing or coordinating training applicable to procurement functions,

10. Interoffice mail courier and US mail processing,
11. Fixed asset inventory control,
12. Contract management.

7.3      Procurement Files Record Keeping.

- A. Any and all procurement determinations relating to the solicitation, award or performance evaluation of bids or proposals shall be maintained in Procurement files by the Procurement Division except those procurements subject to the Small Procurement exceptions which shall be maintained by those Departments.
- B. All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules approved by the Division of Archives of the State of Florida. If a contract is funded, in part or in whole, by a federal agency, then all procurement records pertaining to that contract shall be maintained for the time specified in the funding contract.
- C. The City will maintain records sufficient to detail the history of procurement including rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price; 2 CFR 200.318(i).
- D. Any procurement record containing personally identifiable information, proprietary or copyrighted materials and financial statements exempt from public record disclosure per Chapter 119 F.S. shall be secured in the City's records management repository in a segregated file marked "confidential".

**SECTION 8**  
**TRANSACTIONS EXEMPT FROM COMPETITIVE PROCUREMENT**

8.1      The formal bid procedure is not required in the following cases:

1. When the City Commission, by a vote of the majority of those members present, waives a formal bid procedure;
2. When the goods or services to be procured are procurable from only one source, such as contracts for telephone service, electrical energy and other public utility services; books, pamphlets, periodicals, specifically designed business and research equipment and related supplies;
3. Where the services required are for professional, artistic skills or insurance, pursuant to a written contract;
4. In emergencies involving public health, safety or where immediate expenditure is necessary for repairs to City property in order to protect against further loss or damage to the City property to prevent or minimize serious destruction of City services;
5. Contracts for the maintenance or servicing of equipment which are made with the manufacturer or authorized service agent of equipment when the maintenance or servicing

can best be performed by the manufacturer or authorized service agent where such a contract would otherwise be advantageous to the City;

6. When the goods or services are procured from other governmental agencies or at or below the cost of their competitively bid contracts;
7. Purchase and contracts for the use or purchase of data processing equipment or data processing systems software and reproduction equipment;
8. When the goods or services are procured from government-related state-wide or national associations.

8.2 The above exemptions do not apply to procurements involving Federal funds. Procurements utilizing Federal funds will follow 2 CFR 200 guidance.

## **SECTION 9 PAYMENT FOR GOODS & SERVICES**

9.1 Prompt Payment Act. In accordance with Chapter 218, F.S., local governments are required to pay vendors for goods and services in a timely fashion. Departments are required to date stamp invoices upon receipt and shall make payment within:

1. 45 days for goods or services other than construction services, and
2. 20 days for construction services.

9.2 All purchases of goods and services will have a properly completed PO. All PO overages in excess of \$10.00 shall be processed via a written change to the PO.

## **SECTION 10 AUTHORIZATION TO AMEND PROCUREMENT PROCEDURES FOR STATE OR FEDERALLY FUNDED GRANT PROCUREMENTS**

10.1 The Commission recognizes that certain procurement procedures for state or federally funded grant programs may conflict with standard City procedures. The City Manager is authorized to modify City procurement procedures in order to comply with procurement procedures for state or federally funded grant programs.

## **SECTION 11 COOPERATIVE PURCHASING AND OTHER GOVERNMENT CONTRACTS**

11.1 Other Government Contracts.

A. In lieu of bids or quotes, the City may utilize contracts of other governments and agencies (also known as “piggybacking”) to procure goods and services if the following conditions are present:

1. The bid documents and selection procedures used by the other government or agency are consistent with the City’s purchasing regulations; and

2. The vendor is willing to sign an Authorization of Contract Rights issued by Martin
3. City; and
4. The vendor is willing to offer to the City the same unit prices submitted in the original contract/bid; and
5. The unit prices in the original contract(s) include every item that the City intends to purchase from the vendor.

B. Piggyback of contracts governed by Section 287.055, Florida Statutes, and the Consultants Competitive Negotiation Act (CCNA) is prohibited.

C. If federal funds are used, the City may exercise the option to utilize other government contracts provided that;

1. the original contract was procured in compliance with 44 C.F.R. § 13.36,
2. an assignability clause is included in the originating government's contract,
3. the terms and conditions are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded,
4. the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous,
5. the original contract contains appropriate assignability provisions that permit the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions,
6. the contract price is fair and reasonable,
7. the contract provisions are adequate for compliance with all Federal requirements,
8. the scope of work to be performed falls within the scope of work under the original contract and there are no cardinal changes to the contract,
9. The scope of the assigned contract originally procured by the assigning party does not exceed the amount of property and services required to meet the assigning party's original, reasonably expected needs. The regulation at 44 C.F.R. § 13.36 requires the grantee or subgrantee to have procurement procedures that preclude it from acquiring property or services it does not need. Therefore, a contract would have an improper original scope if the original party added excess capacity in the original procurement primarily to permit assignment of those contract rights to another entity. Moreover, an assignable contract with an overbroad scope of work may lead to unreasonable pricing and thus should not be used. For example, a statewide debris removal contract that does not have pricing that accounts for variables in the actual scope of work required by a local government subgrantee or the specific conditions of that local market may lead to unreasonable pricing,
10. the quantities the assigning party acquired, coupled with the quantities the acquiring grantee or subgrantee seeks, do not exceed the amounts available under the assigning entity's contract.

11.2 State Contracts. The State of Florida, Department of Management Services, Division of State Purchasing, administers statewide contracts and agreements for use by Florida local governments. Statewide contracts and agreements enable eligible users to pool their buying power to lower total costs and reduce administrative burden while complying with Chapter 287 Florida

Statutes governing the purchase of products and services. Information is available at [www.dms.myflorida.com](http://www.dms.myflorida.com).

## **SECTION 12** **PETTY CASH**

12.1 Petty Cash purchases are limited to immediate need, small cash purchases which do not exceed \$50.00 (with the exception of vehicle registration fees).

12.2 Petty Cash funds cannot be used for:

1. advertising
2. alcoholic beverages and tobacco
3. automotive repairs (accident-related)
4. chemicals
5. clothing
6. controlled substances
7. cylinder gases and liquid nitrogen
8. donations
9. flowers
10. hazardous materials
11. leases and rentals
12. maintenance agreements
13. City letterhead, business cards, and envelopes
14. personal items
15. Florida sales tax
16. any items that are intended to be used or consumed by City employees for other than City use
17. professional services
18. renovations or remodeling
19. seminars and memberships
20. weapons and ammunition
21. hospitality expenses greater than \$5, such as meals or entertainment

12.2 Misuse of petty cash funds is subject to non-reimbursement and personal liability.

## **SECTION 13** **MICRO AND SMALL PURCHASES**

13.1 No purchase of goods, consultant services, services and/or construction shall be artificially divided so as to fall within the small or micro purchase exemption.

13.2 Micro purchases include purchases of any item, service or commodity which adds up to \$10,000 or less

13.3 Small purchases include purchase of any item, service or commodity which adds up to more than \$10,000 but less than \$25,000. Micro and small purchases are separated into three categories: Up to \$1,000; \$1,001 to \$5,000; \$5,001 to \$25,000.

- A. Purchases of up to \$1,000 do not require quotes.
- B. Purchases of \$1,001 - \$5,000 require two additional documented quotes
- C. Purchases of \$5,001 - \$25,000 require three additional formal, written quotes.

## **SECTION 14**

### **SOLE AND SINGLE SOURCE PURCHASES**

14.1 A determination of sole source or single source may be made by the Procurement Manager, as designee of the Director of Finance, after conducting a good faith review of available sources, which demonstrates there is only one source for the required supply, service, or item. A record of the determination of the sole source shall be maintained by the Procurement Manager. A sole source procurement involving contracts or purchase of materials for the construction, modification, alteration, or repair of any publicly owned facility shall be governed by Section 255.20, Florida Statutes. Sole source and single requests must be renewed every two (2) years including justification and reaffirmation that a good faith effort has been made to find other available sources.

The Department Director shall provide written justification citing the reason for sole/single source purchase. A letter from the vendor may also be included with the justification for request. The justification for sole/single source procurements must document that a good faith effort has been made in seeking other sources.

14.2 Sole Source. For a commodity or service to be deemed a sole source procurement, the department must provide the appropriate documentation proving at least one of the following:

- A. A different brand, make, or specifications would be incompatible with currently owned equipment or systems.
- B. The purchase is a component, repair, or replacement part of existing equipment or system for which no commercially available substitute exists and the purchase can only be made from the manufacturer, sole distributor or service provider.
- C. Additional unanticipated commodities or services are needed to complete an ongoing task.

14.3 Single Source. In order for a vendor to be deemed a single source, the department must provide a justification that:

- A. No other source can meet the City's requirements (a specific reason must be cited); or
- B. the commodity or services may be available from more than one source but there are advantages to the City for choosing that vendor such as qualifications, past experience, uniqueness, location or timeliness.

The Procurement Manager shall review and approve single source purchase requests under \$25,000. For purchases of \$25,000 or more, a Notice of Intent to Single Source shall be posted on the City's website and third party third-party bidding site for at least 7 business days in accordance with s.287.057(3)(c), Florida Statutes. The Notice will include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined after reviewing information received from prospective vendors that the commodities or contractual services are available only from a single source, a notice of the intended decision to enter a single-source purchase contract shall be posted.

## SECTION 15 EMERGENCY PURCHASES

An emergency procurement is the purchase of goods, services, consultant services and/or construction made non-competitively because, in the sole judgment of the City Manager, a Department Director, or the Procurement Manager such acquisition is necessary to remedy or mitigate the harmful effects of any actual or threatened occurrence which may interfere with the conduct of normal operations or remedy or correct a condition which may pose an imminent or existing threat to the health, safety or welfare of persons or property within the City. Approval for other emergency purchases may be approved by the City Manager or designee on a case by case basis. Unless time does not permit, the end user must document that a good faith effort has been made in seeking other sources.

## SECTION 16 CONE OF SILENCE

16.1 A cone of silence shall be established on all City competitive selection processes. The cone of silence prohibits any communication regarding a RFB, RFP, RFQ or other competitive solicitation between any bidder (or its agents or representatives) or other entity with the potential for a financial interest in the award (or their respective agents or representatives) regarding such competitive solicitation, AND any City Commissioner or City employee, selection committee member or other persons authorized to act on behalf of the Board including the City's Architect, Engineer or their subconsultants, or to provide a recommendation to award a particular contract, other than Purchasing Division staff. The cone of silence shall be in effect from the time of advertisement until contract award. Each competitive solicitation shall provide notice of the cone of silence requirements.

16.2 The cone of silence shall not apply to:

- A. Communications at any public proceeding or meeting, including pre-bid conferences, selection committee presentations or pre-award meetings.
- B. Communications during contract negotiations between City employees and the intended contract awardee as designated with the notice of recommendation of award as set forth herein.

- C. Communication with a vendor by a City employee following bid opening to clarify the vendor's bid or intended scope of services.
- E. Any communication following the filing of a protest between the protesting party and any City employee, including, but not limited to, during the dispute resolution process provided herein.
- F. Purchases exempt from competitive selection, small purchases, sole source procurements, G. and emergency procurements, as defined by this manual.

16.3 The cone of silence shall terminate when the Board or City employee authorized to act on behalf of the Board, awards or approves the contract, rejects all bids or responses or otherwise takes action to end the selection process.

16.4 Vendors may request information, clarification and guidance from the City's Procurement Manager which may issue a response to any inquiry received prior to the close of the solicitation period, which changes, adds or clarifies the terms, provisions or requirements of the solicitation.

## SECTION 17 REQUEST FOR BID

17.1 A Request for Bid (RFB) will be required for the procurement of goods and services with an annual value over the small purchase threshold where:

- 1. Complete, adequate and precise specifications of the needed product are available and can be described in an invitation to bid;
- 2. Two or more responsible bidders are willing and able to compete effectively;
- 3. The procurement lends itself to a firm, fixed price and/or cost is the only variable;
- 4. The successful bidder can be selected on the basis of price and price related factors listed in the RFB;
- 5. Discussions with one or more bidders after bids are submitted is expected to be unnecessary;
- 6. It is in the City's best interest to do so.

A. Specifications must include a clear and accurate description of the technical requirements for the material, product, or service to be procured in order to ensure that all potential bidders are given equal knowledge of the City's requirements.

B. Advertisement. Purchasing shall provide public notice, at least once, in the form of an advertisement in a newspaper of general circulation in the City a minimum of 21 calendar days prior to bid opening for construction and at least 5 calendar days prior to any scheduled pre-bid conference. All other procurements shall be advertised on the City website for a minimum of fourteen (14) calendar days and notices may be transmitted by third parties which specialize in this service. Bids for roadway construction shall be advertised once a week for two (2) consecutive weeks in accordance with Section 336.44, Florida Statutes

- C. Bids shall be received and opened at the location, date, and time established in the bid or proposal advertisement. If the location, date or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made via formal addendum.
- D.** RFBs shall indicate that award will be to the lowest, responsive, responsible bidder per Section 17.5.
- E. A construction project may not be divided into more than one project for the purpose of evading the advertising requirements.

17.2 Domestic Preference. Whenever appropriate and consistent with law, the City will give preference to purchase those goods, materials, and products produced in the United States.

17.3 Late Bids. All bids must be received on or before the time and date indicated in the bid document or submitted through the City's third party bidding site using an e- bidding process. The responsibility for submitting a bid to the City is solely that of the bidder. The City will not be responsible for delays in mail delivery or delays caused by any other occurrence including technical problems that may arise with e-bidding through a third party website. Late bids may not be accepted.

17.4 Bid Security. Bid Security shall be required for, construction bids over \$200,000 (over the small purchase threshold for federally funded projects), and other bids as determined by the Purchasing Manager, and must comply with the provisions of the established standard contract. Appropriateness shall be determined by the written standards for sureties developed and approved by the Purchasing Manager.

#### 17.5 Contract Award

- A. Bids shall only be awarded to the qualified, responsive and responsible bidder who submits the lowest bid price. When a bidder is unable to provide goods and services at the awarded contract pricing and terms, the City may re-award to the next low, qualified, responsive and responsible bidder. Bid options or alternates shall be considered in award if included in the RFB and if the City intends to award such options.
- B. For the purpose of award, the City will consider as the bid the correct summation of each unit price multiplied by the estimated quantities or the correct total of all line items in the case of lump sum bids. The City may award based on the basis of quantities included in the base bid or quantities included in the base bid plus bid alternatives, if any, and/or number of days to complete, at the City's sole discretion.
- C. The City shall at all times, except when expressly waived in writing, reserve the right to reject all bids and rebid; or to elect not to proceed with approval of the City Administrator. .

- D. If only one response is received, or if the low, responsive, responsible bidder has submitted a price higher than the City's budgeted amount, the City Administrator may authorize negotiations with the bidder to obtain a lower price.
- E. In the case of a tie, the bid shall be awarded in the following priority order:
  - 1. Bidder qualified as a Disadvantage Business Enterprise (DBE), Minority Business Enterprise (MBE), Woman-owned Business Enterprise (WBE), Veteran Owned Business (VOB) or Small Business Enterprise (SBE) (must provide written documentation);
  - 2. Bidder with primary office located in Duval County.

17.5 Rejection of Bids. All bids may be rejected only when:

- 1. All bids exceed the budgeted amount; or
- 2. There are no responsive bidders; or
- 3. There are no responsible bidders; or
- 4. The project is abandoned; or
- 5. The specifications, scope and/or terms and conditions are substantially revised for rebidding.
- 6. There is an irregularity in the bid process and/or it is in the City best interest to do so.

## SECTION 18 REQUEST FOR PROPOSAL (RFP)

18.1 A Request for Proposal (RFP) is appropriate when:

- 1. The procurement is described in a performance or functional specification;
- 2. or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present;
- 3. An uncertain number of sources is available;
- 4. The Contract award need not be based on price or price-related factors alone;
- 5. Discussions are expected with the offeror after receipt of proposals.

Staff may receive input from the Commission on the scope of services for RFPs related to strategic goals or City-wide objectives prior to advertisement of the RFP in order to provide direction to staff as to the intent of the RFP.

Advertisement. RFP's shall be advertised for a minimum of fourteen (14) calendar days on the City website and notices may be transmitted by third parties which specialize in this service. If the location, date or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made via formal addendum. The RFP at a minimum shall include:

1. A request for specific and general information on how the Proposer will proceed with the project including written documentation of expertise and ability to perform the requested service;
2. Cost analysis will be performed when change orders are submitted or when only one bid/proposal was received. All costs will be documented as allowable (2 CFR 200.403) and reasonable (2CFR 200.404).
3. A statement that award will be made to the firm whose proposal is most advantageous to the City with price and other factors considered that offer the best value to the City;
4. The criteria that will be used to select the number one ranked firm including the score that will be assigned to each criterion;
5. Specific instructions on how, when, and where the proposals shall be submitted including the date the proposal will be opened;
6. A requirement that the proposal be submitted as a sealed package;
7. A statement that the Board reserves the right to reject any non-responsive proposals or to reject all proposals if it is deemed by the Commission to be in the best interest of the City.

RFPs shall indicate that award will be based on criteria outlined in the RFP per Section 18.3. Proposal options or alternates shall be considered in award if included in the RFP and if the City intends to award such options.

Solicitations for initial work (conceptual phase, feasibility study, etc.) resulting in subsequent work (i.e. design, development, master planning) shall include language advising firms, “Performing initial work on this effort may preclude your firm from working on subsequent work which goes beyond the initial scope of work”.

When it is impractical initially to prepare a purchase description to support an award based on price, the City may conduct multi-step sealed bidding, whereby an initial request for proposal is issued requesting the submission of un-priced offers, or information relating to the experience and capabilities of the prospective bidders, to be followed by request for bid limited to those bidders whose offers or experience and capabilities have been determined to be acceptable under the criteria set forth in the initial RFP.

**18.2 Late Submittals.** All proposals must be received on or before the time and date indicated in the RFP or submitted through the City’s third party bidding site using an e- bidding process. The responsibility for submitting a proposal to the City is solely that of the submitter. The City will not be responsible for delays in mail delivery or delays caused by any other occurrence including technical problems that may arise with e-bidding through a third party website. Late proposals, not based solely on price, received after the time and date stated in the RFP advertisement may be accepted if such acceptance is in the best interest of the City.

### 18.3 Contract Award

A contract shall be awarded based on the requirements set forth in the RFP to the proposer determined to be the most advantageous to the City. No criteria may be used for evaluation that

has not been set forth in the RFP. The score that will be assigned to each criterion shall be published in the RFP.

The City shall at all times, except when expressly waived in writing, reserve the right to reject all proposals and re-advertise; or to elect not to proceed.

In the event only one responsive proposal is received, the City reserves the right to award to the sole proposer, negotiate with the sole proposer, re-advertise the request for proposal, with or without making changes to the evaluation factors, or elect not to proceed.

The recommendation for award shall consider whether the proposal meets the standards of qualification. Factors to be considered shall include whether the proposer has:

1. The appropriate financial, material, equipment, facility, and personnel resources and expertise, available or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
2. A satisfactory record of performance;
3. A satisfactory record of integrity;
4. The legal ability to contract with the City; and
5. Supplied all necessary information in connection with the inquiry concerning responsibility including, but not limited to, any licenses, permits, or organization papers required.

## SECTION 19 CONSULTANT'S COMPETITIVE NEGOTIATION ACT (CCNA)

19.1 The selection of a consultant under the Consultant's Competitive Negotiation Act (CCNA), is primarily based on qualifications. Professional Services within the scope of the practice of architecture, professional engineering, landscape architecture, registered surveying or mapping as defined by Florida law will be acquired in accordance with Section 287.055, Florida Statutes, the Consultant's Competitive Negotiation Act (CCNA).

Per 2 CFR 200.320(b)(2)(iv) competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

Staff may receive input from the Commission on the scope of services for RFQs related to strategic goals or citywide objectives prior to advertisement of the RFQ in order to provide direction to staff as to the intent of the RFQ.

- A. The RFQ at a minimum shall include:

1. A request for specific and general information on how the Proposer will proceed with the project including written documentation of expertise and ability to perform the requested service;
2. The criteria that will be used to select the number one ranked firm including the score that will be assigned to each criterion;
3. Specific instructions on how, when, and where the proposals shall be submitted including the date the proposal will be opened;
4. A requirement that the proposal be submitted as a sealed package;
5. A statement that the Proposer shall not include proposed compensation as part of the proposal;
6. A statement that the City reserves the right to reject any non-responsive proposals or to reject all proposals if it is in the best interest of the City.

19.2 Late Submittals. All submittals must be received (clocked-in) at the City Administrative Center, 1st Floor Information Desk, 2401 SE Monterey Road, Stuart, Florida 34996 on or before the time and date indicated in the RFQ or submitted through the City's third party bidding site using an e- bidding process. The responsibility for submitting a proposal to the City is solely that of the submitter. The City will not be responsible for delays in mail delivery or delays caused by any other occurrence including technical problems that may arise with e-bidding through a third party website. Late submittals, not based on price, received after the time and date stated in the RFQ may be accepted if such acceptance is in the best interest of the City.

19.3 Contract Award. Upon approval, Procurement will forward a Notice of Award to the successful firm notifying them of the award and requesting all insurance, bonding and contract requirements.

19.4 Continuing Contract. A continuing contract for professional services may be entered into in accordance with Section 287.055, Florida Statute (CCNA) between the City and a firm to provide continuing professional services in response to Task Orders. Continuing contracts shall have a termination date and a total maximum value that may not be exceeded.

## **SECTION 20 BID PROTEST PROCEDURE**

20.1 Any protest concerning bid or request for proposal specifications or requirements must be made within seventy-two (72) hours from the time the aggrieved person knew or should have known of the facts giving rise to the protest, in any case, at least twenty-four (24) hours prior to the bid opening. Failure to timely protest bid specifications or requirements constitutes a waiver of the ability to protest specifications or requirements.

20.2 Any unsuccessful bidder (the "Appellant") who is allegedly aggrieved in connection with the bid solicitation or the proposed award of a contract, task order or work assignment by the City may file a written protest with the City provided the Appellant complies, as a condition precedent to consideration of such protest, with the following procedures:

- A. The written protest must be submitted in writing to the Purchasing Manager, within seven (7) calendar days after the Appellant is made aware of the intent to award the contract either by phone or e-mail or when the Purchasing Division posts the notice of recommendation of Award or intent to award the contract on the City's website and/or third party bidding website.
- B. If the Board or the City Administrator or designee chooses not to accept the recommendation of award and awards the contract to an alternate, a protest may be filed in accordance with this procedure by the entity originally recommended for award within seven (7) calendar days after the Purchasing Division posts the notice of award on the City's website and/or third party bidding website.
- C. The written protest shall contain, at a minimum, the following information:
  1. Bid Project identification and title,
  2. The name and address of the Appellant and the title or position of the person submitting the bid protest,
  3. A statement describing in detail all of the issues being protested and the reasons the award of the contract should not be made as proposed by the City,
  4. A statement describing in detail how the issues being protested adversely affect the
  5. Appellant's bid submitted to the City,
  6. A statement describing the relief sought by the Appellant, and
  7. Such other information as the Appellant deems to be material.
- D. The Appellant shall provide such additional information requested by the City, which it deems pertinent to the consideration of the protest. The written protest shall identify all of the issues and arguments which support the Appellant's claim that the award of the contract should not be made as proposed by the City, and any and all subsequent appeals of the decision rendered upon the protest shall be limited solely to the issues and arguments set forth therein and shall not include any new or additional issues or arguments.
- E. With receipt of the written protest, the Procurement Manager will review the protest and, if the protest is not resolved by mutual agreement forward it to the Director of Finance to, render a decision. If the Appellant does not accept the decision of the City's Director of Finance, an appeal may be made to the City Manager provided such appeal is requested in writing within 3 business days of receipt by the Appellant of the decision by the Director of Finance.
- F. The City Manager will review the protest and issue a final decision. No Award will be made of the contract while a protest or appeal is pending before the City, unless the City Manager deems the procurement to be an emergency.
- G. The City will not consider any appeal unless it complies with this procedure. Neither the City, nor its employees will be liable for any costs, expenses or damages incurred by the

Appellant such as, but not limited to, attorney fees, loss of income, bid proposal preparation costs or bid protest costs.

## SECTION 21 MINORITY, DISADVANTAGED AND VETERAN BUSINESS PARTICIPATION

21.1 All contractors are encouraged to assist Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), Women-owned Business Enterprises (WBE), Small Business Enterprises (SBE) and Veteran Owned Businesses (VOB) in doing business with the City. Each contractor in assisting DBE, MBE, WBE, SBE, VOB will help to expand and develop the DBE, MBE, WBE, SBE, VOB and minority business sector of City. In accordance with 2 CFR 200.321 Contracting with small and minority businesses, women's business enterprises and labor surplus area firms.

### 21.2 City Selection Procedures

- A. The City shall make a good faith effort to provide interested minority business enterprises or minority persons with adequate information about the plans, specifications and requirements of contracts or the availability of jobs.
- B. The City shall make a good faith effort to effectively use services and resources of available minority community organizations, minority contractors' groups, local, state, and federal minority business assistance officers, and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons; and
- C. The City shall make a good faith effort to provide written notice to a reasonable number of minority business enterprises that their interest in contracting with the City is being solicited in sufficient time to allow the minority business enterprises to participate effectively.

21.3 The City shall take all necessary affirmative steps to assure that DBE, MBE, WBE, SBE, and labor surplus area firms are used when possible including but not limited to:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

21.4 Veteran's Preference. The City shall ensure that contractors working on a capital project funded by federal funds give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

## SECTION 22 AUTHORIZATION TO DEBAR VENDOR

The following is the procedure for the debarment of vendors. Debarment means that a vendor is prohibited from submitting bids or proposals to perform or otherwise contract with City.

### 22.1 Causes for Debarment.

- A. Entry of a plea of guilty, no contest or nolo contender to or conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in performance of such contract.
- B. Entry of a plea of guilty, no contest or nolo contender or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property, or any other offense indicating lack of business integrity of business honesty which currently, seriously, and directly affects responsibility as a City contractor.
- C. Entry of a plea of guilty, no contest or nolo contender or conviction under state or federal anti-trust statutes rising out of submission of bids or proposals.
- D. Violation of provisions of contracts as follow:
  1. Failure without good cause to perform in accordance with specifications or within the time limits provided in the contract;
  2. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contract within the previous three (3) years, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for Debarment;
  3. Refusal to enter into a contract with the City by failing to provide bonds, insurance, or other required certificates within the time periods as specified in bid/RFP response;
  4. Refusal to accept a PO, agreement or contract, or to perform thereon provided such order was issued timely and in conformance with the offer received;
  5. Presence of principals or corporate officers in the business or concern who were principals within another business at the time when the other business was suspended within the last three (3) years under the provisions of this section;
  6. Violation of the ethical standards set forth in state law;

7. Providing anything of value, including but not limited to, a gift, loan, reward, promise of future employment, favor or service to any employee to influence the award of contract or purchase of items from a contract; or
8. Any other cause the Purchasing Manager determines to be as serious and compelling as to affect the credibility as a City vendor, including debarment by another government entity for any cause listed in this section.

22.2 Recommended Decision. The Procurement Manager shall issue a notice letter which advises a vendor that recommendation will be made to the City Manager to debar. The notice shall state the reasons for the action taken and inform the vendor of its rights to an appeal to the City Manager.

22.3 Appeals to City Manager.

- A. Any person dissatisfied or aggrieved with the notification of the Procurement Manager's determination regarding a debarment must, within ten (10) calendar days of such notification, appeal the determination in writing in accordance with the hearing procedures contained in the section.
- B. Upon receipt of the request for hearing, the City Manager shall give all parties prior notice of a hearing date and time at least five (5) days before the hearing date. The vendor shall be given the opportunity at such hearing to demonstrate why the recommendation of the Purchasing Manager should be denied.
- C. The City Manager shall render a written decision within thirty (30) days of the hearing. Any decision to debar a contractor shall be in effect for a period not to exceed three (3) years.

22.4 Appeals to the City Commissioners. An aggrieved party may appeal the decision of the City Manager to the Commission. The appeal shall be filed within ten (10) days of the notification of the written decision by the City Manager. The Commission's decision to debar a person or business shall be final and conclusive unless the debarred person files a timely appeal of the Commission's decision pursuant to the Florida Rules of Appellate Procedure.

22.5 Reinstatement. A person or corporation may be reinstated to do business with the City under the following conditions:

1. Discovery of new and material evidence not previously available;
2. Dismissal of indictment or reversal of conviction; or
3. Bonafide change in ownership or management sufficient to justify a finding of present responsibility.

The request for reinstatement shall be forwarded in writing to the Director of Finance. The City Manager shall determine whether to reinstate based on written submission of evidence to the above referenced office, without further hearing. Upon consideration of the written submission and any recommendation from the Procurement Manager, the City Manager shall render the decision in writing within thirty (30) days from the receipt of a recommendation from the

Procurement Manager. The decision of the City Manager may be appealed to the Commission as provided in this Section.

## **SECTION 23** **RECEIVING OF GOODS**

### **23.1 Receiving and Inspection.**

- A. It shall be the responsibility of each department to have an individual, immediately upon receipt of a product or service, to inspect that product or service to ensure that it meets the specifications as set forth in the PO. The person should inspect for proper quantities, proper quality, and no damage and prompt delivery. The receiving person should have available a copy of the PO for verification purposes. Any deviations should be immediately documented and sent to the supplier and to Purchasing.
- B. Signing a delivery slip does not necessarily constitute acceptance of an order. Any problems with an order should be documented and reported to purchasing as soon as possible. The requesting department will contact the vendor to resolve any and all issues. Time is of the essence when dealing with problems on an order. Failure to timely advise the vendor and/or freight carrier may limit remedies. Also if an item is delivered damaged, the receiving party has the responsibility to protect it and all packing materials from any further damage, and to make it available to the vendor and/or freight carrier for inspection.
- C. Materials, equipment or supplies shall be inspected upon receipt and, if possible, in the presence of the vendor or shipper and shall include the following:
  1. Verification of the correct quantities and units of issue;
  2. Verification of PO number;
  3. Verification of pricing;
  4. Inspection for damage or defects;
  5. Verification that all items meet the specifications or description defined in the PO;
  6. Verification of correct vendor;
  7. All packages shall be checked against the Bill of Lading;
  8. Make note of any damage on the Bill of Lading and on the receiving copy of the PO; and
  9. The signature shall be that of the person actually receiving and inspecting the materials.

If unable to perform the above, the notation “Subject to Inspection” shall be written on Bill of Lading.

When goods, materials, or supplies either fail the inspection criteria or are damaged upon receipt, the receiving or requesting department shall immediately refuse the order. If the vendor or

shipper is not on site, the receiving or requesting department shall contact the vendor to arrange shipment return and replacement. When a vendor has two deliveries refused, the department will coordinate corrective action with Purchasing.

23.2 Testing. Any department or the Procurement Department may request any testing necessary of samples submitted with bids and/or samples of deliveries to determine their quality and conformance with specifications. This testing may be conducted by the laboratory facilities of any agency of the City or of any outside laboratory. Sometimes where testing regularly is required (such as asphalt) the purchasing manager may request the services of an outside testing firm be placed under contract to conduct the testing.

## SECTION 24 FEDERALLY FUNDED PROCUREMENTS

24.1 Purchases utilizing Federal Emergency Management Agency (FEMA) or other Federal funds must conform to applicable Federal law, including: 2 CFR Appendix II to Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” specifically §200.318 through §200.327.

24.2 **Solicitation Prohibitions.** Solicitation requirements may not contain features that unduly restrict competition including but not limited to:

- a. Imposing unreasonable business requirements/qualifications for bidders or offerors.
- b. Imposing unnecessary experience requirements for bidders and offerors.
- c. Using prequalification procedures (except in the case of qualification based procurement for Architect/Engineer services)
- d. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
- e. Excessive Bonding shall not be permitted. Bid bonds and payment performance bonds shall be required for construction projects in excess of the federal small purchase threshold only.
- f. Specifying only a “brand name” product without allowing offers of “an equal” product, or allowing “an equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- g. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by State or local laws or regulations.
- h. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies including acceptance of submission of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.
- i. Taking any arbitrary action in the procurement process.

24.3 Procurement

- A. A review of proposed procurements shall be conducted to avoid purchase of unnecessary or duplicative items and to ensure economic purchase. This may include breaking out or combining purchases, or using annual contracts and performing a lease versus buy analyses to ensure the most economical approach.
- B. Whenever practical, the City shall utilize the use of Federal excess and surplus equipment and property in lieu of purchasing new equipment and property in order to reduce the overall project costs.
- C. The City will utilize value engineering for construction projects wherever possible.
- D. The City shall comply with the requirements of §6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act.
- E. The City shall comply with the requirements of 2 CFR 200.320(c) Noncompetitive procurement, where it specifically requests, in writing, approval from the Federal awarding agency or pass-through entity to expressly approve the noncompetitive procurement.
- F. The City shall ensure that adequate competition exists by confirming that two or more responsible bidders are willing and able to compete effectively for the business. The City may use competitive proposal procedures for qualifications-based procurement of architectural/engineering professional services whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation and only used in procurement of A/E professional services.
- G. Non-competitive procurement requires the approval of the Finance Department/Director.
- H. A Cost Analysis, Price Analysis and/or Fair and Reasonable Price Determination shall be completed prior to purchase. The City shall rely on FAR Part 31, Contract Cost Principles and Procedures when conducted analyses. Project costs must conform to applicable Federal cost principles for allowable costs 2 CFR 200.403e. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.
- I. Advertisement shall be once in a newspaper of general circulation in the City not later than the fourteenth day before the day set for receipt of bids. 255.0525, FS advertising for competitive bids or proposals projected to cost more than \$200,000 shall be publicly advertised once in the Florida Administrative Register at least 21 days prior to the bid opening. Stat construction projects projected to cost more than \$500,000 must be published at least 30 days prior to bid opening.

24.4 Procurement by Sealed Bids – Bids will be publicly solicited and firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid,

conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

24.5 Procurement by Competitive Proposals are used when conditions are not appropriate for the use of sealed bids and must follow the requirements of 2 CFR 200.320 (d).

24.6 Post-Bidding and Contract Award

- A. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- B. Contract Award will only be allocated to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement and describe the factors that will be considered in evaluation a contractor’s level of responsibility including contractor integrity, compliance with public policy, record of past performance and financial and technical resources.
- C. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- D. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- E. Persons needing accessibility of electronic information regarding procurement documents pursuant to Section 508 should contact compliance officer, Cathy Varian, (904) 247-5890; [cvarian@coab.us](mailto:cvarian@coab.us).
- F. Florida Statues Chapter 119.0701.3 3. Ensures that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- G. Cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be allowed.
- H. Time and Materials contracts shall not be allowed.
- I. Contract Termination. Subject to a thirty (30) written notice, the City reserves the right to terminate the contract for the following causes:
  - a. The Contractor fails to perform the work in a satisfactory manner as determined by the City.
  - b. The contractor fails to perform the work in a timely manner as determined by the City.
  - c. *For Convenience.* By the City, in whole or in part at any time by giving written notice at least thirty (30) days in advance. In such event, the Contractor shall be paid under the terms of the contract for all services up to the termination date.

24.5 Agency Review. The City upon request of the Federal awarding agency will provide all documents related to the funded project for review. These documents include but are not limited to pre-procurement documents such as specifications, request for bid, request for proposal and request for qualifications, and post-bid documents.