

Chapter 30 - CONTRACTS, PURCHASING, AND ACQUISITION OR DISPOSAL OF PERSONAL PROPERTY^[1]

Footnotes:

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Editor's note— Ord. No. 12-121, § 1, adopted April 18, 2012, changed the title of Ch. 30 from "Contracts and Purchasing" to read as herein set out.

Cross reference— Any ordinance approving, authorizing or otherwise relating to any contract, agreement, lease, deed or other instrument saved from repeal, § 1-8(5); administration, ch. 2; businesses, ch. 26.

ARTICLE I. - IN GENERAL

Sec. 30-1. - Applicability.

- (a) Article II of this chapter applies to all expenditures and contracts for the acquisition of goods and services.
- (b) Article III of this chapter applies to the disposal of goods or personal property.
- (c) The city commission may waive compliance with any provision of this chapter by resolution where it determines that such waiver is in the best interests of the city.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-2. - Risk manager review required.

All bonds and insurance required by this chapter are subject to review by the risk manager.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-3. - City attorney approval required.

The City Charter requires city attorney approval of all contracts before the same will become effective. Approval will be indicated by signature of the city attorney on the contract. The city attorney may approve certain form contracts for purchase orders and small purchases.

(Ord. No. 12-121, § 1, 4-18-2012)

Secs. 30-4—30-24. - Reserved.

ARTICLE II. - PURCHASE OF GOODS OR SERVICES^[2]

Footnotes:

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Editor's note— Ord. No. 12-121, § 1, adopted April 18, 2012, amended Art. II in its entirety to read as herein set out. Former Art. II pertained to contracts and purchases, and derived from Code 1970, §§ 13½-0.1, 1—8, 15, 16; Ord. No. 00-352, 8-16-2000; Ord. No. 02-352, 7-3-2002; Ord. No. 06-72, 2-15-2006;

Ord. No. 08-155, 7-2-2008; Ord. No. 09-117, 5-6-2009; Ord. No. 09-242, 9-9-2009; Ord. No. 10-09, 1-6-2010; Ord. No. 10-63, 3-17-2010. See also the Code Comparative Table.

DIVISION 1. - GENERALLY

Sec. 30-25. - Title.

The provisions of this article will be known and may be referred to as the "Purchasing Code."

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-26. - Purpose.

The purpose of this article is to provide for the fair and equitable treatment of all persons involved in the procurement of goods and services by the city, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-27. - Federal and state law requirements.

- (a) Procurement procedures authorized or required by federal or state law are deemed authorized by this article.
- (b) Where the procurement involves the expenditure of federal assistance or contract funds, the procurement will be conducted in accordance with applicable federal law and regulations.
- (c) If there is any conflict between the provisions of this purchasing code and any applicable provision of federal or state law, the provisions of the federal or state law apply.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-28. - Definitions.

Addenda means written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the solicitation documents or contract documents.

Bid means the base amount and any alternates which are part of the bid and which may be included in the awarded contract.

Bid bond means a form of bid security executed by the bidder as principal and by a surety to guarantee that the bidder will enter into the contract within a specified time and furnish any required performance and payment bonds.

Bid deposit means a sum of money, a certified or cashier's check, an irrevocable letter of credit, or other form of deposit expressly authorized by the invitation to bid, submitted by a bidder to guarantee that the bidder will enter into the contract within a specified time and furnish any required performance bond.

Bid security means either a bid bond or bid deposit.

Competitive selection means procurement via competitive sealed bid or competitive sealed proposal.

Consultants' Competitive Negotiations Act or *CCNA* means F.S. § 287.055, as it may be amended from time to time.

Contract means an agreement to purchase goods or services or both, regardless of whether the agreement is reduced to a single written document.

Cooperative organization means an organization of governmental agencies, or an organization representing governmental interests (such as the Florida Sheriff's Association or Florida League of Cities), that enters into a procurement contract for the benefit of the organization's members.

Cooperative contract means a contract between a vendor or contractor and a cooperative organization for the purchase of goods or services by members of the organization.

Expenditure means an outlay of city funds, or the application of funds that would otherwise be received by the city, in exchange for goods or services.

Florida Prompt Payment Act means F.S. §§ 255.0705—255.078, as amended from time to time.

Goods include but are not limited to supplies, equipment, materials, and printed matter.

Indefinite quantity contract means a written contract for a fixed term obligating the vendor to provide supplies or services in such quantities as the city may from time to time order at prices or rates set forth in the contract.

Local vendor means a person or business entity which has maintained a permanent place of business with full-time employees within the city limits for a minimum of six months prior to the date bids or proposals were received for the purchase or contract at issue, which generally provides from such permanent place of business the kinds of goods or services solicited, and which at the time of the solicitation fully complies with state and local laws, including city zoning and licensing ordinances.

Multi-year procurement contract means any procurement contract for a term extending beyond the fiscal year in which the contract becomes effective, or any single-year procurement contract that provides for automatic renewal unless terminated.

Non-responsive means not in conformity with all of the requirements of the invitation to bid or request for proposals, except minor irregularities.

Piggyback contract means a city procurement contract, the terms and conditions of which are the same as or better than a procurement contract between the same supplier and another governmental entity.

Procurement or purchase means any acquisition of goods or services or both, including acquisition by lease.

Purchasing authority means the city commission or city officer authorized by this Code to make an expenditure for the purpose of procurement.

Responsive means conforming in all respects to the invitation to bid or request for proposals, except minor irregularities.

Service means the furnishing of labor, time, or other form of effort.

Small purchase means a procurement for \$25,000.00 or less. The term excludes any purchasing contract where the consideration provided by the city is non-monetary.

(Ord. No. 12-121, § 1, 4-18-2012)

Secs. 30-29—30-50. - Reserved.

DIVISION 2. - PURCHASING AUTHORITY

Sec. 30-51. - City commission.

Except as specifically provided otherwise, all procurements are subject to approval by the city commission and will be made in accordance with the competitive selection provisions of this article. No procurement will be artificially subdivided to avoid these requirements.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-52. - City manager.

- (a) *Small purchases.* The city manager may authorize expenditures and enter into contracts for small purchases; however, where more than one purchase or expenditure is made or entered into in connection with and directly related to the same project, the cumulative value of such purchases or expenditures will not exceed \$25,000.00 without approval of the city commission. Expenditures for normal maintenance and operational expenses for city facilities and departments are not expenditures for "projects" subject to the cumulative value spending limitation. Small purchases may be made without competitive selection; however, the city manager will adopt written guidelines for use of informal procedures to insure cost efficiency.
- (b) *Emergency purchases.* The city manager is authorized to procure goods and services as necessary to effect emergency repair or replacement of city equipment, facilities, and property; or to preserve public property or to protect the peace during public emergencies such as conflagrations, floods, riots, and storms. Emergency purchases will be made in the most efficient and effective means possible, as determined by the city manager. Abbreviated bidding or lowest and best quote procedures may be used where feasible, but competitive selection is not required. The city manager may approve and execute a written contract or change order to an existing contract for an emergency purchase. As soon as practical, the city manager will submit the emergency purchase, contract, or change order to the city commission for ratification by resolution.
- (c) *Entertainment services at designated cultural facilities.* The city manager is authorized to contract for professional entertainment at Daisy Stocking Park, the Oceanfront Bandshell, Peabody Auditorium, and any other facility designated by city commission resolution, in a manner and under terms and conditions that are in the best interest of the city, up to a maximum amount of \$150,000.00 for any individual entertainment contract. The city manager may contract for the performance of ancillary services such as advertising and stage labor necessary for performances provided no such individual contract exceeds a cost of \$75,000.00. Informal quotes should be obtained for such services where feasible, but competitive selection is not required.
- (d) *Housing assistance.* The city manager is authorized to contract for and expend up to \$125,000.00 for the reconstruction and rehabilitation of residential dwelling units that are eligible for program assistance pursuant to the city's adopted affordable housing assistance plans, using the competitive bid procedures.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-53. - City attorney.

The city attorney is hereby authorized to expend funds, purchase, and approve and execute written contracts as necessary for the following matters, and competitive selection is not required:

- (1) Litigation costs and expenses, including but not limited to filing fees, services of court reporters, and retention of expert witnesses; and

- (2) Retention of special outside legal counsel to advise, represent, and defend the city as necessary, including for litigation of cases covered by the city's self insurance program, in a manner and under terms and conditions that are in the best interest of the city and within budgeted amounts.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-54. - Cooperative and piggyback procurements.

- (a) Goods and services may be procured without competitive selection pursuant to a current, valid cooperative contract, provided that the prices and other terms of the city procurement must be fair and reasonable.
- (b) Goods and services may be procured without competitive selection pursuant to a piggyback contract subject to the following conditions:
 - (1) Where the contract being piggybacked is another local government entity's contract, the contract being piggybacked must have been the result of a competitive solicitation. Where the contract being piggybacked is with a state or federal entity, the contract being piggybacked must not have been an emergency or sole source procurement.
 - (2) The contract being piggybacked must contain a firm unit price or rates for each type of good or service being procured by the city. Piggyback contracts will not be used to make purchases based on state or federal contracts that merely contain prequalified lists of vendors without also setting forth rates or other form of firm pricing.
 - (3) All terms and conditions of the city's contract, including unit prices and rates, must be equal to or better than the terms and conditions of the contract being piggybacked.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-55. - Sole source procurements.

- (a) Purchases may be made from a sole source without competitive selection. Documentation will be provided stating that the goods or services are not available from any other source and explaining why the goods or services are the only goods or services meeting the needs of the city. For sole source procurement of materials for construction, modification, alteration, or repair of public facilities, the city will comply with the provisions of F.S. § 255.04, where applicable.
- (b) Sole source procurement is expressly authorized where maintenance services are required to be provided by a specific vendor in order to maintain product warranties or to ensure system standardization, or particular goods are required in order to maintain standardization or where standardization is likely to reduce financial investment or simplify administration.
- (c) Sole source procurement is not authorized based only on price differences where the same goods or services are available from multiple vendors.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-56. - City direct purchase of materials for use in a contracted public works project.

Procurement of supplies or materials may be made without competitive selection where the supplies or materials are procured by the city as an owner direct purchase for incorporation into a public work as defined by applicable state law, and the contract for the project was previously awarded by the city and included the cost of the supplies or materials. In such event, the city will procure the supplies or materials in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-57. - Other procurements authorized without competitive selection.

- (a) The following goods and services may be procured without competitive selection:
- (1) Goods that are in their nature unique, such as works of art for public places.
 - (2) Contracted personal services that due to required special skill, ability, training, or expertise, are in their nature unique, original, or creative, such as artistic services, accounting services, actuarial services, land use planning, academic or training programs by individuals, appraisal services, health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration, and performances by professional entertainers.
 - (3) Electric and other utility services that are offered only on a competitive basis or pursuant to tariffed rates.
 - (4) Goods or services provided by other governmental entities.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-58. - Waiver of competitive selection requirements.

- (a) If the city commission elects to waive the competitive selection requirements of this article for a procurement in any instance, the commission will state its findings as to why the waiver is in the city's best interest.
- (b) A waiver of the competitive selection requirements of this article does not constitute a waiver of competitive selection requirements for public works projects governed by F.S. §§ 255.103 or 255.20. Any required waivers from the application of F.S. §§ 255.103 or 255.20 will be in strict accordance with those statutory provisions unless the city commission adopts an emergency ordinance.

(Ord. No. 12-121, § 1, 4-18-2012)

Secs. 30-59—30-80. - Reserved.

DIVISION 3. - SOURCE SELECTION AND CONTRACT FORMATION

Sec. 30-81. - Source selection.

- (a) Except as specifically provided otherwise in this purchasing code, all purchases of goods and services will be made by competitive sealed bidding or competitive sealed proposals in accordance with this division.
- (b) The preferred method of procurement will be competitive sealed bidding. Competitive sealed proposals may be used when sealed bidding is determined to be not practical or not advantageous to the city due to existing market conditions or the type of goods or service required.
- (c) Where competitive selection is required and only one bid or proposal is received in response to an invitation to bid or request for proposals, an award may be made to the sole bidder or proposer only upon a determination that:
- (1) The price submitted or negotiated is fair and reasonable;
 - (2) Other prospective bidders or proposers had a reasonable opportunity to respond; and

- (3) There is not adequate time for a re-solicitation due to conditions such as market volatility or project deadlines, or re-solicitation would not be likely to result in additional bids or proposals.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-82. - Competitive sealed bidding.

Solicitation and award of competitive sealed bids will be conducted as follows:

- (1) Invitations to bid may be issued administratively without prior city commission approval. Each invitation to bid will include specifications including a description of the proposed purchase and the contractual terms and conditions applicable to the purchase. The specifications will be drafted in a manner that avoids unduly restricting competition. Every invitation to bid is subject to the city's right to reject all bids, whether or not such right is expressly stated in the invitation to bid.
- (2) Except where prospective bidders have been prequalified as provided in section 30-84, public notice of invitations to bid will be provided in a newspaper of general circulation within the city. Such notice may be a general notice referring bidders to the purchasing agent or a website for specific bid information. Except where notice for construction contracts is required pursuant to F.S. § 255.0525 or other federal or state laws or regulations, newspaper notice will be published at least seven days prior to the date set forth for the bid opening.

In addition, the city may post notice of the invitation to bid at a designated location in city hall and on the city's web site, and may directly solicit bids from prospective bidders in order to foster competition.

- (3) Bid security is required for all competitive sealed bids for construction projects. The security amount will be ten percent of the amount bid unless stated otherwise in the bid solicitation.
- (4) Bids must be submitted sealed, and must be identified as "sealed bid" on the envelope. Bids will be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation to bid. The amount of each bid, the name of the bidder, and any other pertinent information as specified in the invitation to bid, will be read aloud and tabulated. The bid file, including all bids and the tabulation, will be available for public inspection in accordance with state law. The bid file will also denote those bids that have been rejected as non-responsive.
- (5) Correction or withdrawal of inadvertently erroneous bids is permitted up to the time of bid opening. After bid opening, no changes in bid prices or other provisions is permitted; however, the city retains the right to waive minor irregularities.
- (6) The city will reject all non-responsive bids.
- (7) The city may terminate the bid process at any time prior to bid award. For those bids that are subject to city commission award, the city manager may terminate the bid process at any time prior to scheduling the matter for city commission determination unless directed otherwise by the city commission, and the city commission may also terminate the process at any time prior to bid award. Termination of the bid process after bids are received constitutes a rejection of all bids.
- (8) Unless the bid process is terminated, the city will award the contract to the responsible bidder submitting the lowest responsive bid, subject to application of any local preference granted. A bidder is responsible if it is determined that:
 - a. The bidder has the necessary ability and skill to perform the contract;
 - b. The bidder can provide the required quality and quantity of goods, services, or combination of goods and services promptly, without delay and within the time specified; and
 - c. The bidder has satisfactorily performed previous contracts of a comparable nature and scope.

For procurements requiring city commission approval, the determination as to whether a bidder is responsible will be made by the city commission.

- (9) Tie bids. If there are two or more low, responsive bids from responsible bidders that are identical in price, the tie will be awarded to the following, in order of preference:
- a. The bidder qualifying for a local preference under this Code;
 - b. The bidder in compliance with drug free workplace certification requirements set forth in F.S. § 287.087; or
 - c. If a tie remains after the application of the foregoing standards, the city commission shall award the bid to the bidder determined to be most responsible based upon the criteria for determining responsibility under section 30-82(8), in accordance with the following procedure:
 1. The city manager shall provide each bidder whose bid is tied written notice of the tie. The written notice shall provide the bidder five business days to submit to the city such additional information as the bidder deems to be appropriate or helpful to the city in determining the most responsible bidder.
 2. Based on a review of the information submitted by each tied bidder, the city manager shall make a recommendation to the city commission, in accordance with the criteria referenced, and schedule the proposed award for city commission review.
 3. The city commission shall hold a public hearing on the proposed award. Each of the tie bidders shall be invited to attend, and each shall be entitled to present evidence as to how the bidder meets the criteria in section 30-82(8). The commission shall make the award at the conclusion of the public hearing.

Nothing herein will be deemed to affect the commission's authority to reject all bids.

- (10) Where only one responsive bid is received, the city manager may negotiate with the bidder in order to obtain a fair and reasonable price. For those procurements subject to city commission approval, all such negotiations are subject to city commission approval. Bids are not subject to negotiation if more than one responsive bid is received.
- (11) Ten days after the formal opening of bids, the city will return the bid security to all bidders except the three bidders submitting the lowest responsive bids. The city will return the bid security of these three bidders within three days after the formation of the contract between the successful bidder and the city, or if the city rejects all bids, within three days after rejection.
- (12) Where the bid documents set forth conditions of a bid award such as the bidder's execution of a contract, provision of proof of insurance, provision of bonds, or completion of other specified actions within a time certain, the city commission may approve the award subject to the bidder's compliance with such conditions; and if the bidder fails to complete all such actions the city may cancel the bid award. Upon cancellation of bid award, the city may award the bid to the responsible bidder who submitted the next lowest and responsive bid, or the city may terminate the bid process and reject all bids.
- (13) Upon the termination of the bid process the city may re-solicit bids, solicit competitive proposals, or make the required purchase by any other legal means.

(Ord. No. 12-121, § 1, 4-18-2012; Ord. No. 16-27, § 1, 1-20-2016)

Sec. 30-83. - Competitive sealed proposals.

Solicitation, negotiation, and award of competitive sealed proposals will be conducted as follows:

- (1) Competitive sealed proposals will be solicited through a request for proposals. Requests for proposals may be issued administratively without prior city commission approval; however, at

least five days prior to issuance the city manager will provide a copy of the request for proposals to the mayor and each city commissioner.

- (2) The request for proposals will set forth in reasonable detail the nature of the procurement desired, the criteria to be used in evaluating proposals including how criteria will be weighted if applicable, the information which must be submitted, and the deadline for submittals. Every request for proposals is subject to the city's right to reject all proposals, and to condition acceptance on modification of such proposals, whether or not such rights are expressly stated in the request for proposals.
- (3) Except where prospective providers of service have been prequalified as provided in section 30-84, public notice of the request for proposals will be given in the same manner as required for competitive sealed bidding. The city will provide a request for proposal to any person desiring one and may charge a reasonable fee for the requested documents consistent with the public records law.
- (4) The city manager will evaluate and rank all responsive proposals based on the criteria identified in the request for proposals. The scope of evaluation will include the qualifications of the offeror and any additional information deemed necessary for proper evaluation.
- (5) The city manager may shortlist and negotiate with the offerors submitting the highest ranked proposals, subject to application of any local preference granted. During negotiation the city manager may request revised proposals from shortlisted offerors.
- (6) If after shortlisting and engaging in negotiations, the city manager is unable to negotiate satisfactory contract terms with any of the shortlisted offerors for award of the contract (if within the city manager's authority) or for recommendation to the city commission. The city manager may terminate negotiations with any or all of the shortlisted offerors and may replace them with remaining offerors based on ranking; or unless directed otherwise by the city commission, the city manager may terminate all negotiations and cancel the request for proposals.
- (7) The city manager will have the authority at any time to terminate all negotiations and cancel the request for proposals, unless directed otherwise by the city commission. For procurements requiring city commission approval, the city commission may cancel the request for proposals at any time before a contract resulting from the negotiations is finalized.
- (8) Cancellation of the request for proposals after initial proposals are received constitutes a cancellation of all ongoing negotiations and a rejection of all proposals. Upon the cancellation of proposals the city may re-solicit proposals, solicit competitive bids, or procure required goods or services by any other legal means.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-84. - Prequalification.

- (a) The city may require prospective contractors and vendors to prequalify for the right to submit bids or proposals for procurement of goods or services, including construction services and continuing professional services, whenever the city determines prequalification to be in the city's best interest.
 - (1) Prequalification will be solicited through the issuance of a request for qualifications. The request will require at a minimum that the contractor or vendor answer questions that are contained in a pre-qualification questionnaire.
 - (2) Public notice of the request for qualifications will be provided in a newspaper of general circulation within the city. Newspaper notice will be published at least seven days prior to the date set forth for as the deadline for receipt of submissions, or at such other time as may be required by state law, and may be a general notice referring bidders to the purchasing agent or a website for specific bid information. In addition, the city may post notice of the request for qualifications at a designated location in city hall and on the city's web site, and may directly solicit submittals from

prospective contractors and vendors in order to foster competition. The city will also provide a request for qualifications to any person desiring one and may charge a reasonable fee for the request documents consistent with the public records law.

- (3) The pre-qualification questionnaire will include questions pertaining to the following criteria:
 - a. The familiarity and experience of the prospective contractor or vendor with the particular type of goods or services required.
 - b. The sufficiency and availability of personnel, equipment, materials, and other facilities or resources of the prospective contractor or vendor to accomplish the designated work or provide the construction or contract supplies, materials, or reports and opinions.
 - c. The ability of the prospective contractor or vendor to provide required bonds and insurance, including indemnity and where applicable, maintenance of completed improvements.
 - d. The financial ability and condition of the prospective contractor or vendor to accomplish the work designated.
 - e. The experience of the prospective contractor or vendor in performing the designated work as well as experience in performing similar work.
 - f. The safety record of the prospective contractor or vendor.
 - g. The record of the prospective contractor or vendor within the preceding five years regarding claims, arbitration, mediation, or litigation filed by or against the prospective contractor or vendor regarding public or private construction contracts or other contracts where the prospective contractor or vendor provided services, supplies, materials, opinions, or reports.
 - h. Any other information deemed appropriate for the particular purchase or contract.
 - (4) Persons responding to the request for pre-qualifications will answer all questions under penalty of perjury. All responses will be submitted in a sealed envelope.
 - (5) The city manager will evaluate all responsive submittals using a uniform rating system. For bids or proposals requiring city commission approval, the city manager will forward recommendations based on these evaluations to the city commission and the city commission will determine which, if any, of the contractors or vendors who participated in the process are qualified to submit bids or proposals. In all other instances the city manager is authorized to determine which, if any, of the contractors or vendors are so qualified.
 - (6) Upon the conclusion of the pre-qualification proceeding, if the city determines that only one contractor or vendor is qualified, the city may proceed to negotiate a contract with the vendor under such terms and conditions as the city may require. If the city determines that more than one contractor or vendor is qualified, invitations to bid or requests for proposal will be mailed only to those contractors or vendors who are determined to be qualified. No additional public notice will be required regarding an invitation to bid or request for proposals that is open only to prequalified contractors or vendors.
- (b) Prequalification under this section is specifically authorized for service providers such as construction management entities, program management entities, and contractors as referenced in F.S. §§ 255.19 and 255.20, and consultants providing professional services governed by the CCNA. The prequalification procedures used in this section will apply except to the extent that CCNA or other state law requires otherwise.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-85. - Competitive sealed bids and proposals—Major and minor irregularities.

- (a) The purchasing authority may waive minor irregularities in sealed bids or proposals. Minor irregularities include the following:
- (1) Failure to acknowledge addenda which do not affect price.
 - (2) Failure to submit the correct number of copies.
 - (3) Failure to specify delivery or payment terms unless such specification is expressly required in the bid or proposal.
 - (4) Failure to provide references at the time the bid or proposal is submitted.
 - (5) Failure to extend unit prices.
 - (6) Failure to submit written evidence that the agent signing for an owner had authority to bind the bidder or proposer.
- (b) The purchasing authority will not waive major irregularities in sealed bids or proposals. Major irregularities include the following:
- (1) Failure to sign the bid or proposal.
 - (2) Failure to submit valid bid security when required, or submission of bid security in an insufficient amount.
 - (3) Failure to acknowledge an addendum which affects bid price.
 - (4) Failure to submit samples or literature when specifically required in order to evaluate a bid or proposal.
 - (5) Failure to submit the bid or proposal on time.
 - (6) Failure to submit complete bid pricing pages.
 - (7) Exceptions or qualifications in a bid.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-86. - Local preference in competitive procurement awards.

- (a) *Purpose and findings.* The city annually spends significant dollars on purchasing goods and services, including for the construction of improvements to real property or existing structures. The dollars used in making those purchases are derived, in large part, from taxes, fees, and utility revenues paid by businesses located within the corporate city limits, and the city commission has determined that funds generated in the community should, to the extent possible, be placed back into the local economy. Therefore, the city commission has determined that it is in the best interest of the city to give a preference to local businesses in making such purchases whenever the application of such a preference is reasonable in light of the dollar-value of proposals received in relation to such expenditures.
- (b) *Competitive bids.* Where the lowest responsive bid by a responsible bidder is submitted by a non-local vendor, and the lowest responsive bid submitted by a responsible local vendor is within ten percent of that bid, then such local vendor and such non-local vendor each will have the opportunity to submit, within five working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid will be awarded to the bidder submitting the lowest responsive bid or final bid. In case of a tie between a responsible local vendor and a responsible non-local vendor, the bid will be awarded to the local vendor.
- (c) *Competitive sealed proposals.* Where proposals submitted for a negotiated purchase are rated by a point system, a local vendor may be granted a preference of up to ten percent of the total available

points. Where the contract is for the purchase of services, the exact percentage awarded may be adjusted based on the extent of work to be subcontracted to non-local vendors. If the ranked list of the most highly qualified firms does not include a local vendor, then the highest ranked local vendor will be included on the list of firms with whom the city manager negotiates. All firms on the resulting list will be given the opportunity to submit a best and final fee proposal when the evaluation includes price. Best and final fee proposals will be evaluated and the final ranking will be based upon that final evaluation.

- (d) *Local preference not required.* This section will not be deemed to require the granting of a local preference, and nothing herein prohibits the award of a contract to a non-local vendor where such award is in the public interest.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-87. - Procurements by lease and multi-year procurements.

- (a) Unless otherwise provided by law, a procurement contract may be entered into for any period of time deemed to be in the best interest of the city.
- (b) Unless the city commission expressly approves otherwise, every contract for procurement of goods by lease will provide the city the right to terminate without cause on 90 or fewer days' notice, or the right to terminate based on non-appropriation.
- (c) Unless the city commission expressly approves otherwise, every contract for a multi-year procurement will provide the city the right to terminate without cause on 90 or fewer days' notice, or the right to terminate based on non-appropriation; and will further provide that in the event of termination as described above the maximum reimbursement available to the contractor will be the reasonable value of goods and services delivered and accepted through the termination date.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-88. - Indefinite quantity contracts.

The city commission may award indefinite quantity contracts whenever it is impractical to determine in advance the precise quantities of goods or services needed. In approving an indefinite quantity contract, the city commission may authorize the city manager to make expenditures up to a maximum stated amount or to expend such sums as may be budgeted and appropriated for purchase orders under the contract.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-89. - Design-build contracts.

- (a) *Purpose.* This section will apply whenever the city elects to use design-build services for a construction project, and is intended to assure compliance with the CCNA.
- (b) *Development of design criteria.* A design criteria professional who is a city employee or a consultant selected and engaged in accordance with F.S. § 287.055(4), (5), will prepare a design criteria package specifying performance criteria for the project. The performance criteria will include but not be limited to size, net interior space provisions, location, material quality standards, cost, construction schedule, site development requirements, landscaping, grading, utility provisions for water, power, telephone, storm water disposal, and parking provisions.
- (c) *Firm selection procedure.* After preparation of the design criteria package, a design-build firm will be selected using a qualifications-based procedure in compliance with F.S. § 287.055(3)—(5), or a competitive proposal process. If a competitive proposal process is used, it will comply with sections 30-83 through 30-85 of this purchasing code, except as follows:

- (1) The request for proposals may provide for a single-step or a two-step proposal and evaluation process. In a single-step process, proposals will be ranked based on qualifications and weighted criteria including price, technical, and design aspects. In a two-step process, the first submittal will address only firm qualifications. Qualified firms will then have an opportunity to submit price, technical, and design information. After receipt of the additional submittal, proposals will be evaluated and ranked in accordance with the weighted criteria.
- (2) The city manager will negotiate with at least three of the highest ranked firms submitting proposals, or where fewer than three firms have submitted proposals, with all firms that submitted proposals.
- (d) *Design criteria professional's assistance.* The design criteria professional will assist the city in evaluating proposals, negotiating with firms, and administering the contract. This assistance includes review of detailed working drawings submitted by the selected firm and evaluation of the selected firm's compliance with the design criteria package.
- (e) *Waiver.* The city commission may waive some or all of the requirements of this section where a good faith estimate of the construction cost is less than the category five threshold set forth in F.S. § 287.017, or where the city commission determines that a valid public emergency exists.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-90. - Contract security.

- (a) When a construction contract for a specific construction project is awarded in excess of \$100,000.00, the contractor must provide security in the form of performance and payment bonds, cash deposits, or irrevocable letter of credit in conformance with the minimum requirements of F.S. § 255.05, and will become binding upon the execution of the contract. The required security must equal 100 percent of the price specified in the contract and will be conditioned upon the contractor's performance in the time and manner prescribed in the contract, and prompt payment to all persons supplying labor, materials, or supplies used directly or indirectly in the performance of the work provided for in the contract and who are claimants as defined in F.S. § 255.05(1).
- (b) For all construction contracts and for all non-construction contracts, the city reserves authority to require payment and performance bonds and other contract security as the city deems to be in its best interest, and where such contract is awarded pursuant to an invitation to bid or request for proposal, the invitation or request will set forth the required amount and other terms and conditions relating to contract security.
- (c) Any bid, payment, or performance bonds provided as bid or contract security must be written by a surety company authorized to do business in the state and must be accompanied by evidence of the authority of the issuing agent. In addition, no such bond in an amount greater than \$5,000.00 will be accepted unless the surety company executing the bond is currently listed by the U.S. Treasury Department as approved to write bonds for federal projects in an amount not less than the amount of the bond tendered to the city.

(Ord. No. 12-121, § 1, 4-18-2012)

Secs. 30-91—30-139. - Reserved.

DIVISION 4. - PROCUREMENT CONTRACT ADMINISTRATION

Sec. 30-140. - Formal amendment required.

No executed written contract for the purchase of goods or services will be modified except by a formal written amendment or change order authorized in accordance with the provisions below.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-141. - Amendments and change orders—Sufficiency of funds required.

- (a) No amendment to a procurement contract increasing the cost of the procurement will be approved unless the certification as to sufficiency of funds required by this Code has been made.
- (b) No change order increasing the cost of a procurement contract will be issued unless the certification as to sufficiency of funds required by this Code has been made.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-142. - Administrative authority to issue change orders affecting contracts awarded by city commission.

- (a) The city manager is authorized to issue a change order or multiple change orders increasing the adjusted contract price of any contract awarded by the city commission up to a maximum cumulative amount of \$25,000.00 or five percent of the adjusted contract price, whichever is greater. For purposes herein, "adjusted contract price" means the original contract price or the contract price resulting from city commission-approved change orders or contract amendments.
- (b) The city manager is authorized to issue a change order increasing the price of a contract awarded by the city commission in excess of the amount set forth in (a) of this section where the increase is necessary to effect emergency repairs or replacements, due to exigent circumstances encountered during the performance of the contract, or to prevent increased costs due to reasonable delay claims by the contractor, subject to compliance with section 30-52(b) of this Code for emergency purchases including prompt submission to the city commission for ratification.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-143. - Administrative authority to issue change orders affecting contract time.

- (a) The city manager is authorized to issue a change order or multiple change orders to extend time for performance where necessary to avoid a contractor's claim for delay due to circumstances such as force majeure events or the city's actions or omissions. The cumulative effect of such change orders will not extend time for performance by more than 60 days or ten percent of the adjusted contract time, whichever is greater. For purposes herein, "adjusted contract time" means the original contract time plus or minus any time adjustments previously approved by the city commission by amendment or change order.
- (b) The city manager is authorized to issue a change order extending the time for performance beyond the time set forth in (a) of this section where necessary to prevent increased costs due to reasonable delay claims by the contractor, subject to compliance with section 30-52(b) of this Code for emergency purchases including prompt submission to the city commission for ratification.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-144. - Extension of procurement contracts.

- (a) The city commission may authorize the city manager to exercise options to renew on the city's behalf when the contract clearly sets forth price and other terms applicable during the extension period.
- (b) Where an invitation to bid or request for proposals provides a specific time period for which goods or services are sought, no resulting procurement contract will be extended beyond that time period.

(Ord. No. 12-121, § 1, 4-18-2012)

Sec. 30-145. - Administrative amendments to procurement contracts.

The city manager is authorized to execute amendments that solely involve a name change or the substitution of a party caused by a corporate acquisition (stock or assets) or merger, or resulting from a court order (such as the appointment of a receiver or trustee, federal or state forfeiture, by way of illustration and not limitation).

(Ord. No. 12-121, § 1, 4-18-2012)

Secs. 30-146—30-179. - Reserved.**DIVISION 5. - MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES^[3]**

Footnotes:

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Editor's note— Ord. No. 12-121, § 2, adopted April 18, 2012, redesignated former Art. III, §§ 30-146—30-151, as Art. II, Div. 5, §§ 30-180—30-185, as set out herein. See also the Code Comparative Table.

Cross reference— Businesses, ch. 26.

Sec. 30-180. - Definitions.

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

Bid means all purchase prices sought by procurement methods as described in this chapter.

Construction means the process of building, altering, repairing, improving, or demolishing any public structure, building, roadway, or other public improvements of any kind to any public real property. It does not include the routine operation, repair or maintenance of existing structures, buildings or real property.

Contract means all types of city agreements, regardless of what they may be called, for the purchase or disposal of supplies or services or performance of construction with the following exceptions: salaries/employee benefits, taxes, judgments, travels, dues, pensions, utilities, subscriptions, auto allowances, debt service requirements and postage. It includes contracts for a fixed price, costs, cost plus a fixed fee, or incentive contracts, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders.

Good faith efforts includes demonstrations and actions which show that the stated goal was pursued far beyond neutrality; indeed, was pursued intensely. Acting in a manner such that a prudent and reasonable person would conclude that the stated goal would be achieved.

Minority means Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

Minority business enterprise (MBE) means a business which is 51 percent or more owned by minority group members; or for a publicly owned business the voting stock of which is 51 percent owned by minority group members. The minority group membership must exercise actual day-to-day management and control of the business. The minority business enterprise shall be construed to include only workers employed and paid directly by the minority business enterprise receiving such contract award and equipment owned or rented by the minority business enterprise, with or without operators.

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

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

Women business enterprise (WBE) means a business firm which is 51 percent or more owned by women group members; or for a publicly owned business the voting stock of which is substantially 51 percent owned by women group members. The women group membership must exercise actual day-to-day management and control of the business. The women business enterprise shall be construed to include only workers employed and paid directly by the women business enterprise receiving such contract award and equipment owned or rented by the women business enterprise, with or without operators.

(Code 1970, § 13½-9; Ord. No. 12-121, § 2, 4-18-2012)

Cross reference— Definitions generally, § 1-2.

Sec. 30-181. - Compliance officer; compliance procedures.

- (a) The city manager shall designate a compliance officer whose duty it shall be to monitor the participation of contractors with the city in contracts for supplies, services, and construction. The compliance officer shall:
- (1) Prepare a listing of the minority and women business enterprises.
 - (2) Assist in implementing compliance guidelines, monitoring and reporting procedures to increase the participation of minorities and women in business contracts with the city and in the work forces of contractors and subcontractors doing business with the city.
 - (3) Assist in determining good faith efforts or lack of responsiveness in the performance of contracts.
 - (4) Report evidence of lack of responsiveness.
 - (5) Perform other duties relating to this article as may be directed by the city manager.
- (b) Nothing in this article shall be construed as requiring the city manager to hire a new or additional employee to fill the position of compliance officer as called for in this section.

(Code 1970, § 13½-12; Ord. No. 12-121, § 2, 4-18-2012)

Cross reference— Officers and employees, § 2-86 et seq.

Sec. 30-182. - Establishment of goals.

- (a) *Business.* Annually, the city commission shall review the level of MBE/WBE participation in business contracts (i.e., contractors, subcontractors) with the city. The commission may adjust the goals for business contract participation to reflect experience and the relevant availability of MBE/WBE businesses. In reviewing the level of minority and women participation in business with the city,

calculation of the rate shall not include amounts for contracts for which no MBE/WBE bid or for which no MBE/WBE meets the specifications.

- (b) *Employment.* Annually, the city commission shall review the level of participation in employment of minorities and women combined in the work forces of its contractors and subcontractors. The commission may adjust the goals for minority and women employment participation to reflect experience and availability of minorities and women with requisite skills.

(Code 1970, § 13½-10; Ord. No. 12-121, § 2, 4-18-2012)

Sec. 30-183. - Contract awards.

- (a) Contractors doing business with the city shall comply with the goals established in section 30-148 and shall prepare information which reports the MBEs, WBEs utilized, the amount of such awards, and minority and women work force participation and, if such levels and percentages are not achieved, shall provide evidence of good faith efforts made to achieve the goals stated in subsection 30-148(a).
- (b) If a good faith effort cannot be established, the compliance officer shall report such nonresponsiveness. The city commission may review the finding of nonresponsiveness, agree, modify, and/or impose appropriate penalties or institute actions upon the contractor, including but not limited to debarment from the award of present or future contracts to do business with the city for one year and forfeiture of retainage withheld pursuant to the contract.
- (c) Any business owner who shall knowingly engage in any type of subterfuge or deceit to receive a contract award under the terms of this article or who shall attempt to transfer the benefits of this article to persons or firms other than those intended to benefit from the terms of this article shall be permanently barred from receiving any future contractual awards from the city. In addition, the city may declare a forfeiture of retainage withheld pursuant to contract.
- (d) Nothing in this section shall be construed to require the award of a contract to an MBE, WBE, or other purveyor of supplies, services or construction which fails to meet contract specifications or for which the bid is unreasonably priced or for which the bid is not in the best interest of the city nor is the lowest and best bid.

(Code 1970, § 13½-11; Ord. No. 12-121, § 2, 4-18-2012)

Sec. 30-184. - Failure to maintain employment levels and percentages.

If it is determined by the compliance officer that a contractor with the city has, at any time during the term of the contract, failed to maintain the minority and female employment levels and minority and women-owned business enterprise percentages established pursuant to section 30-148 and also failed to show good faith effort to maintain such levels and percentages, the compliance officer shall document the noncompliance and report it to the city commission. The city commission may then impose appropriate penalties upon the contractor, including but not limited to debarment from submitting further bids to the city for a period of one year and forfeiture of retainage withheld pursuant to the contract.

(Code 1970, § 13½-13; Ord. No. 12-121, § 2, 4-18-2012)

Sec. 30-185. - Conformity with applicable laws.

This article shall be construed according to and in conformity with acts of Congress and of the state legislature concerning the bidding and awarding of contracts and with the Charter and this Code. Where sections of this article come into conflict with either federal law, state law, the Charter or this Code, such conflict shall be resolved in favor of applicable federal law, state law and the Charter and Code, in that order.

(Code 1970, § 13½-14; Ord. No. 12-121, § 2, 4-18-2012)

Secs. 30-186—30-200. - Reserved.

ARTICLE III. - DISPOSITION OF CITY EQUIPMENT AND MATERIALS^[4]

Footnotes:

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Editor's note— Ord. No. 12-121, § 3, adopted April 18, 2012, added a new Art. III, §§ 30-201, 30-202, as set out herein. Section 2 of said ordinance redesignated the former Art. III, §§ 30-146—30-151, as Art. II, Div. 5, §§ 30-180—30-185. See also the editor's note at Art. II, Div. 5, and the Code Comparative Table.

Sec. 30-201. - Definition.

Surplus property means any city-owned supplies, vehicles, equipment, or other personal property no longer having any use or value to the city. This includes obsolete and scrap property, property that has completed its useful life cycle, and property turned over by the police department to the purchasing department for disposal pursuant to F.S. ch. 705.

(Ord. No. 12-121, § 3, 4-18-2012)

Sec. 30-202. - Authority to dispose of surplus equipment and materials.

- (a) The city manager may dispose of the following types of surplus property by the method or methods deemed to be most advantageous, convenient, and economical:
- (1) Materials and supplies which are not fixed assets.
 - (2) Any motor vehicle.
 - (3) Any fixed asset having a net book value of less than \$5,000.00.
 - (4) Any fixed asset regardless of its net book value when immediate disposal is necessary in response to an emergency, for the preservation or protection of other city property, or to protect public health or safety.
- (b) City commission approval is required prior to disposal of any other surplus property. In authorizing disposition the city commission may dictate the manner of disposal, or may authorize the city manager to dispose of the surplus supplies by the method or methods deemed to be most advantageous, convenient, and economical.

(Ord. No. 12-121, § 3, 4-18-2012)

Secs. 30-203—30-229. - Reserved.