Print

CHAPTER 35: PROCUREMENT PROCEDURES; PUBLIC FUNDS

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PUBLIC FUNDS

§ 35.01 INVESTMENT OR REINVESTMENT OF SURPLUS PUBLIC FUNDS.

(A) The City Commission shall be authorized to invest or reinvest surplus public funds without the necessity of having to adopt such investment or reinvestment of funds.

(B) This grant of authority shall, pursuant to F.S. § 166.261, be limited to investment or reinvestment of surplus public funds in the following:

(1) The Local Government Surplus Funds Trust Fund;

(2) Negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;

(3) Interest-bearing time deposits or savings accounts in banks organized under the laws of this state, in national banks organized under the laws of United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law;

(4) Obligations of the Federal Farm Credit Banks; the Federal Home Loan Mortgage Corporation, including Federal Home Loan Mortgage Corporation participation certificates; or the Federal Home Loan Bank or its district banks, or obligations guaranteed by the Government National Mortgage Association; or

(5) Obligations of the Federal National Mortgage Association, including Federal National Mortgage Association participation certificates and mortgage pass-through certificates guaranteed by the Federal National Mortgage Association.

(Ord. 705, passed 8-1-84)

PROCUREMENT PROCEDURES

§ 35.15 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADDENDA or ***ADDENDUM.*** Written or graphic instruments issued prior to the opening of bids

which clarify, correct or change the bidding documents or the contract documents.

BUSINESS LOCATION. A permanent office or other site where the vendor operates, conducts, engages in, or carries on all, or a portion of, its business. A post office box shall not be sufficient to constitute a ***BUSINESS LOCATION.***

CHANGE ORDER. Changes, due to unanticipated conditions or developments, made to an executory contract, which do not substantially alter the character of the work contracted for, and which do not vary so substantially from the original specifications as to constitute a new undertaking. The changes must reasonably and conscientiously be viewed as being in fulfillment of the original scope of the contract rather than as departing therefrom. Further, the changes, when viewed against the background of the work described in the contract and the language used in the specifications, must clearly be directed either to the achievement of a more satisfactory result or the elimination of work not necessary to the satisfactory completion of the contract.

CHIEF PROCUREMENT OFFICER. The City Manager, or his or her designee, who is responsible for the procurement of commodities and services as well as the management and disposal of commodities.

CITY STANDARD COMMODITIES. Those situations where the city has determined that a particular style, brand, make, or model is the only type that meets the city's requirements for performance, compatibility or other salient characteristics.

COMMODITIES. Personal property, including, but not limited to, goods, supplies, apparatus, equipment, material and other forms of tangible personal property.

CONTRACTOR. Any person or business entity having a contract with the city.

COOPERATIVE PURCHASING. Situations where the city participates in joint procurement of commodities or services with other public entities within the state, in order to obtain lower prices through greater purchasing volume.

INVITATION FOR BID. A written solicitation for competitive sealed bids with the title date and hour of the public bid opening designated therein and specifically defining the commodities or services for which bids are sought. The invitation for bid shall be used when the city is capable of specifically defining the scope of work for which a service is required or when the city is capable of establishing 15 precise specifications defining the actual commodities required. The invitation for bid shall include instruction to bidders, plans, drawings and specifications, if any, bid form and other required forms and documents to be submitted with the bid.

QUOTATIONS. Unsealed telephonic, facsimile or written bids for commodities or services.

REQUEST FOR LETTERS OF INTEREST. A written solicitation for offers with the title, date and hour of the submission deadline designated. A request for letters of interests shall include, but is not limited to, general information and submission deadline. The city shall engage in competitive negotiations with responsible offerors determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion.

REQUEST FOR PROPOSALS. A written solicitation for competitive sealed proposals with the title, date and hour of the public opening designated. A request for proposals shall include, but is not limited to, general information, functional or general specifications, a statement of work, proposal instruction and evaluation criteria. All requests for proposals shall state the relative importance of

price and any other evaluation criteria. The city may engage in competitive negotiations with responsible proposers determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offer.

REQUEST FOR QUALIFICATIONS. A written solicitation for competitive sealed offers with the title, date and hour of the public opening designated. A request for qualifications shall include, but is not limited to, general information, functional or general specifications, statement of work, instructions for offer and evaluation criteria. All requests for qualifications shall state the relative importance of the evaluation criteria. The city may engage in competitive negotiations with responsible offerors determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of offers, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offer.

RESPONSIBLE BIDDER, RESPONSIBLE OFFEROR, or ***RESPONSIBLE PROPOSER.*** A person or business entity having the capability in all respects to perform fully the contract requirements and sufficient experience, ability, reliability, capacity, facilities, equipment, financial resources and credit to give the city a reasonable expectation of good faith performance, determined solely within the city's discretion.

RESPONSIVE BIDDER, RESPONSIVE OFFEROR, or ***RESPONSIVE PROPOSER.*** A person who has submitted a bid, offer, or proposal that conforms in all material respects to the invitation for bid, request for letters of interests, request for qualifications, or request for proposals, determined solely within the city's discretion.

SERVICES. The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end-product other than reports that are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

SOLE SOURCE. The commodities or services are available from only one responsible vendor.

SURPLUS PROPERTY. Any personal property belonging to the city that is capable of being used but is in excess of the normal operating requirements of the city or which is no longer used or which has become obsolete, worn out or scrapped.

USING AGENCY. Any department, agency, commission, bureau or other unit in the city government using commodities or procuring services as provided in this subchapter.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.16 PROCUREMENT DIVISION.

The Procurement Division shall be under the supervision of the Director of Public Services.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.17 COMPLIANCE REQUIRED.

It shall be unlawful for any city officer or employee to purchase any commodities or services or make any contract within the purview of this subchapter unless there has been compliance with the requirements of this subchapter. Any purchase made or contract executed contrary to the provisions hereof shall be null and void, and the city shall not be bound thereby.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11) Penalty, see § 10.99

§ 35.18 COMPETITIVE BIDDING OR COMPETITIVE PROPOSALS REQUIRED; EXCEPTIONS.

(A) A purchase of or contract for commodities or services that is estimated by the Chief Procurement Officer to cost more than $25,000 shall be based on competitive bids or competitive proposals as determined by the Chief Procurement Officer, except as specifically provided herein.

(B) For all capital improvement projects where the services of a professional architectural, engineering, landscape architectural, or survey and mapping services are required, the Chief Procurement Officer, with the approval of the City Manager, will adhere to the following guidelines:

(1) For all projects estimated to cost more than $500,000, the City Commission shall approve the project delivery method to complete the project prior to the solicitation for the project being presented to the City Commission for approval for advertisement as required in § 35.19(A).

(2) For all capital improvement projects estimated to cost $500,000 or less, the Chief Procurement Officer, with the approval of the City Manager, shall determine the project delivery method to be utilized to complete the project and shall present the recommendation as part of the request for approval of bid advertisement as required in § 35.19(A).

(C) Only the following situations are exempt from the competitive bid and competitive proposal requirements of this section:

(1) *Emergency purchases.* In urgent cases of compelling emergency that require the immediate purchase of commodities or services, the City Manager is empowered to waive competitive bidding or competitive proposals and authorize the Chief Procurement Officer to secure by open market procedure any commodities or services, notwithstanding the estimated cost of the commodities or services.

(2) *Professional services.* Contracts for professional services involving peculiar skill, ability, experience or expertise, which are in their nature unique and not subject to competitive bidding, or competitive proposals, are exempt from this section; however, state laws, such as the Consultants' Competitive Negotiation Act of the state statutes, as may be amended from time to time to the extent applicable, shall be followed.

(3) *City standard, single-source and sole- source commodities or services.* City standard, single- source and sole-source commodities or services are exempt from this section.

(4) *Disaster preparedness.* Contracts for and purchases of commodities or services that are made in contemplation and preparation for and in response to the occurrence of a natural or man-made disaster or civil unrest, where time or availability rather than price is the controlling factor, are exempt from this section.

(5) *Utilization of other governmental agencies' contracts.* Commodities or services that are the subject of contracts with the state its political subdivisions or other governmental entities including

the United States government, are exempt from this section, provided, however, that this division shall apply only if the contract expressly permits or if the awarding jurisdiction and/or the vendor agree to allow the city to purchase therefrom and if either: (i) the commodities or services are the subject of a price schedule negotiated by the state or federal government or by competitive bid by another governmental agency and not on any preference; (ii) or the price offered for the commodity or service exactly equals or is lower than the governmental contract from vendors awarded the governmental contract. Where an award is made pursuant to this paragraph, the terms and conditions agreeable to the city may be used in lieu of those terms and conditions of the contract with the other governmental agency.

(6) *Cooperative purchasing.* Cooperative purchasing plans are exempt from this section.

(7) The following contractual services are not subject to the competitive procurement requirement:

(a) Academic program reviews or lectures or seminars by individuals;

(b) Health services involving examination, diagnosis, treatment, prevention, medical consultation or administration;

(c) Artistic services which are original and creative in character and skill in a recognized field of artistic endeavor such as music, dance, drama, painting and sculpture, photography, culinary arts, fashion design and the like.

(d) Maintenance service of equipment. When considered to be in the best interest of the city and recommended by the using department and the services to be performed are by the equipment manufacturer, manufacturer's service representative or a distributor of the manufacturer's equipment, the services may be procured without following the competitive sealed bid process.

(e) Advertising for the purpose of public notifications;

(f) Utilities including but not limited to electric, water and communications;

(g) The foregoing enumeration of services deemed to be exempt from the competitive procurement requirements is not intended to be an exhaustive or exclusive list. The City Manager or his or her designee may determine if a contractual service must be procured through the competitive procurement process if not expressly indicated herein;

(h) Copyrighted materials, except computer software; and/or

(i) Food, clothing and other promotional items purchased for resale or distribution to the public.

(8) *Best interest of the city.* Purchases of and contracts for commodities or services are exempt from this section when the City Commission declares by a simple majority affirmative vote that the process of competitive bidding and competitive proposals is not in the best interest of the city. The City Commission shall make specific factual findings that support its determination, and such contracts shall not be placed on the City Commission consent agenda.

(D) Any other provision of this section to the contrary notwithstanding, city purchasing shall be conducted in accordance with applicable state law, including F.S. §§ 180.24 and 255.20, as may be amended from time to time.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.19 COMPETITIVE BIDDING PROCEDURE.

The competitive bidding procedures below shall be followed:

(A) *Presentation to City Commission.* All competitive bidding or competitive proposal solicitations as defined in § 35.18 shall be presented to the City Commission for their consideration prior to advertisement.

(B) *Advertisement for bids required.* Notice of the competitive bid shall be advertised in accordance with the requirements of the Florida Statutes, as may be amended from time to time.

(C) (1) *Bid deposits.* When deemed necessary by the Chief Procurement Officer, bid deposits or sureties shall be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of the deposit or surety where the Chief Procurement Officer has required same. A successful bidder shall forfeit any deposit or surety required by the Chief Procurement Officer upon failure on its part to enter a contract within 15 days after the award.

(2) *Sureties on performance.* For all competitive bids seeking commodities or services in excess of $200,000 the Chief Procurement Officer or appropriate staff person shall include as a requirement of such advertised bids a performance bond in the total contract amount. The Chief Procurement Officer, in his or her discretion, may require such performance bonds for bids seeking commodities or services in an amount of $200,000 or less. The City Manager shall have the discretion to waive the performance bond requirement in the event of an undue hardship or emergency. Any bonding company used must be listed on the United States Department of the Treasury's *Circular 570.* Additionally, the bonding company must be rated at least "A," Class VI, by *Best's Key Rating Guide,* published by A.M. Best Company, and be authorized to do business in the state.

(D) *Addenda.* Written addenda will be issued when changes, clarification or amendments to the invitation for bids are deemed necessary.

(E) *Bid opening procedure.*

(1) Bids shall be submitted sealed to the City Clerk, or at such location as otherwise designated in the bid, and shall be identified as bids on the envelope.

(2) Bids shall be opened in public at City Hall by the City Clerk or designee at the time and place stated in the public notice. All bids shall be publicly announced at the time of opening.

(3) A tabulation of all bids received shall be posted for public inspection.

(4) No late bids shall be accepted or opened, and, if received after the date and time called for in the bid notice, shall be retained unopened by the City Clerk.

(5) Failure to properly sign bids shall invalidate them and they shall not be considered.

(6) The bids opened shall contain a copy to be filed in the Clerk's office.

(7) The city reserves the right to waive any irregularities in the bids, as determined by the Chief Procurement Officer and approved by the City Manager.

(F) *Rejection of bids.* The City Manager and City Commission may reject any bids, parts of all bids or all bids for any one or more commodities or services included in the proposed contract when the public interest will be served thereby. The Chief Procurement Officer shall not accept a bid from a contractor who is in default on the payment of taxes licenses or other moneys due the city.

(G) Contracts shall be awarded to the lowest responsive, responsible bidder. In determining the "lowest responsive, responsible bidder," the Chief Procurement Officer shall consider:

(1) The prices contained in the bid;

(2) The ability, capacity and skill of the bidder to perform the contract or provide the service required;

(3) Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference;

(4) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(5) The quality of performance of previous contracts of services, including, but not limited to, city contracts;

(6) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

(7) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

(8) The quality, availability and adaptability of the commodities or services to the particular use required;

(9) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

(10) The number and scope of conditions attached to the bid;

(11) The overall cost to the city;

(12) Whether the bidder is involved in any pending litigation with the city; and/or

(13) The best interests of the city.

(H) *Determination and findings statement*. When the award is not given to the most responsive, responsible bidder, a determination and findings statement shall be prepared by the Chief Procurement Officer and filed with the other papers relating to the transaction.

(I) *Tie bids.*

(1) If the determination of lowest responsive, responsible bidder results in a tie, the contract may be split when it is to the city's advantage as determined by the Chief Procurement Officer.

(2) If the Chief Procurement Officer determines not to split the bid, the contract shall be awarded by first preference to businesses with drug-free workplace programs as described in § 35.30 and then by publicly drawing lots.

(J) *Prohibition against subdivision.* No contract of purchase shall be subdivided to avoid the requirements of this section.

(K) *Inspection of bids.* Inspection of the city's formal bids and proposals shall be conducted in accordance with applicable state law, including F.S. Ch. 119, as said statutes may be amended from time to time.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.20 COMPETITIVE NEGOTIATIONS.

When the use of competitive bidding is not in the best interest of the city for a purchase of, or contract for, commodities and/or services estimated to cost in excess of $25,000, the commodities and/or services may be purchased by competitive negotiations. A request for proposals or a request for qualifications, or a request for letters of interest shall be issued. Adequate public notice of the solicitation shall be given in the same manner as provided in § 35.19. Other procedural provisions applicable to the sealed bid process shall also apply. To assure full understanding of and responsiveness to the solicitation requirements and full understanding of qualified proposals or offers, discussions may be conducted with qualified proposers or offerors who submit responses determined to be reasonably acceptable of being selected for award for the purpose of clarification and to assure full understanding of, and responsiveness to, the solicitation requirements. The respondents shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of responses, and such revisions may be permitted through negotiations prior to award for the purpose of obtaining best and final proposals or offers. The award shall be made to the responsible proposer or offeror whose proposal or offer is determined to be the most advantageous to the city taking into consideration price and the evaluation factors set forth in the solicitation. No other criteria shall be used in the evaluation. A summary of the basis on which the award is made shall be included in the contract file.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.21 AWARD OF CONTRACT.

(A) *City Commission approval.*

(1) An initial purchase of, or contract for, commodities or services, in excess of $25,000, shall require the approval of the City Commission, regardless of whether the competitive bidding or competitive proposal procedures were followed. However, emergency purchases as described in § 35.18, shall not require advance City Commission approval. In such emergency situations, the City Manager may approve the purchase or contract, subject to later ratification by the City Commission. Emergency purchases are to be made only when the normal function and operation of the city would be hampered to such an extent by submittal of a requisition in the usual manner that it may effect the life, health or convenience of citizens.

(2) Purchases exceeding the sum of $75,000 in the aggregate shall not be purchased from the same person or entity during the course of any fiscal year, unless the purchases are first authorized by the City Commission. The above provision shall not apply to purchases of utilities or to ongoing contracts.

(B) *City Manager approval.* A purchase of, or contract for, commodities or services in an amount of $25,000 or less shall require the approval of the City Manager.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.22 CITY ATTORNEY TO REVIEW AND APPROVE FORM OF PURCHASING CONTRACTS.

The City Attorney shall review all contracts awarded under this subchapter and shall approve the contracts as to form prior to their execution by the appropriate city officials. Notwithstanding the

above, the City Attorney, in his or her discretion, may approve form contracts bearing a pre-printed City Attorney approval, provided that the provisions of the form contracts are not modified.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.23 DEBARMENT AND SUSPENSIONS.

(A) *Authority and requirement to debar and suspend.* After reasonable notice to an actual or prospective contractual party, and after reasonable opportunity to such party to be heard, the City Manager, after consultation with the City Attorney, shall have the authority to debar a person or entity for the causes listed below from consideration for award of city contracts. The debarment shall be for a period of not fewer than three years. The City Manager shall also have the authority to suspend a contractor from consideration for award of city contracts, if there is probable cause for debarment pending the debarment determination. The authority to debar and suspend contractors shall be exercised in accordance with regulations that shall be issued by the City Manager.

(B) *Causes for debarment or suspension.* Causes for debarment or suspension include the following:

(1) Conviction of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or incident to the performance of such contract or subcontract;

(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violation of city's contract provisions, which is regarded by the Chief Procurement Officer to be indicative of non-responsibility. Such violation may include failure without good cause to perform in accordance with the terms and conditions of a city contract or to perform within the time limits provided in the city contract, provided that failure to perform caused by acts beyond the control of a party shall not be considered a basis for debarment or suspension;

(5) Debarment or suspension of the person or entity by any federal, state, or other governmental entity;

(6) False certification pursuant to division (C) below; and/or

(7) Any other cause judged by the City Manager to be so serious and compelling as to affect the responsibility of the person or entity performing city contracts.

(C) *Debarment and suspension decisions.* Subject to the provisions of division (A) above, the City Manager shall render a written decision stating the reasons for the debarment or suspension. A copy of the decision shall be provided promptly to the contractual party.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.24 AVAILABILITY OF FUNDS.

Except in cases of emergency, the City Manager or designee shall not issue any order for delivery

on a contract or any open-market order unless and until the Director of the Finance Department certifies that there are unencumbered funds available in the using agency's budget, in excess of all unpaid obligations, to defray the cost of the commodities or services.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.25 OPEN MARKET PROCEDURE.

(A) *Generally.* A purchase of, or contract for, commodities or services that is estimated by the Chief Procurement Officer to cost $1,000 or less, maybe purchased either in the open market without newspaper advertisement and without observing the procedures prescribed by § 35.20, or in accordance with the competitive bidding procedure prescribed by § 35.20, as deemed appropriate by the Chief Procurement Officer. However, all such purchases of greater than the estimated cost of $1,000 but less than or equal to $5,000 shall require at least three quotations by telephone. Purchases of an estimated cost greater than $5,000 but less than $25,000 shall require at least three quotations in written form.

(B) *Notice inviting quotations.* When using the open market procedure, the Chief Procurement Officer may solicit or oversee the solicitation of quotations by:

(1) Direct mail requests to prospective vendors;

(2) Telephone;

(3) Public notice;

(4) Facsimile; and/or

(5) Internet

(C) *Recording.* The Chief Procurement Officer shall keep a record of all open market orders and the bids submitted in competition thereon, and such records shall also be open to public inspection.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.26 INSPECTION AND TESTING OF PURCHASED ITEMS OR SERVICES.

(A) *Generally.* The Chief Procurement Officer shall inspect or supervise the inspection of all deliveries of commodities or services to determine their conformance with the specifications set forth in the order or contract.

(B) *Inspection by using agency.* The Chief Procurement Officer shall have the authority to authorize using agencies having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies under rules and regulations prescribed by the Chief Procurement Officer.

(C) *Testing.* The Chief Procurement Officer shall have the authority to require chemical and physical test of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests the Chief Procurement Officer shall have the authority to make use of laboratory facilities of any agency of the city government or of any outside laboratory.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.27 SURPLUS PROPERTY.

(A) *Disposal of surplus property.* The Chief Procurement Officer may sell, trade or otherwise dispose of surplus and obsolete personal property belonging to the city either by sale, barter or exchange, by competitive sealed bid, public auction, cannibalization, trade in or any other means of disposal as may be appropriate and in the best interests of the city. Disposal of surplus or obsolete personal property in excess of $20,000 per item shall be made only after approval by the City Commission. No employee of the Purchasing Division having direct control of the surplus property or handling the disposition of the property shall be entitled to purchase any such property.

(B) *Donation of surplus property.* Surplus property valued at $1,000 or greater may be donated by City Commission approval, in any manner as the Commission deems fit. Any surplus property valued at less than $1,000 may be donated by the City Manager in his or her discretion.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.28 CHANGE ORDERS.

(A) *City Manager's authority.* Subject to the restrictions contained in division (B) below, the City Manager is authorized to approve and initial work on the following types of change orders determined in his or her judgment, to be in the public interest, as follows:

(1) All change orders decreasing the cost of the contract to the city that do not materially alter the character of the work contemplated by the contract;

(2) A change order where the net change increases the cost of the contract to the city by an amount less than or equal to 5%; and/or

(3) On a unit price contract a change order consisting of unit quantity increases at the unit price bid, which do not exceed 10% of the original unit quantity for each line item.

(B) Notwithstanding the provisions of division (A) above, the City Manager is not authorized to approve a change order without authorization of the City Commission where the sum of all change orders issued under the contract exceeds 5% of the original contract amount or $25,000.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.29 TERM, TERMINATION, EXTENSION AND RENEWAL OF CONTRACTS.

(A) *Term.*

(1) Unless otherwise provided by law, a contract for supplies or services may be entered into for any time period deemed to be in the best interests of the city provided the extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for future fiscal periods shall be subject to the availability of funds.

(2) Contracts may be awarded with provisions of upward or downward price adjustments

provided this allowance is part of the original bid solicitation and the adjustments are based on a nationally recognized or published index or other criteria acceptable to the Chief Procurement Officer.

(B) *Termination.* The City Manager or his or her designee is authorized to terminate any contract entered into by the city when he or she determines that a party to the contract has breached or failed to perform one or more of its obligations under the contract. Except in the case of an emergency, where such advance notice is not possible, or where the contract was entered into without City Commission approval, the City Manager or his or her designee must provide sufficient prior written notice to the Mayor and each Commissioner so that they can make any necessary inquiries at the next Commission meeting. When a contract is entered into by the city pursuant to City Commission approval and is terminable by the city without cause, only the City Commission is authorized to terminate the contract without cause. If the Mayor or any Commissioner desires that a contract be terminated without cause, he or she shall notify the City Manager in writing and request that the item be placed on the next Commission agenda.

(C) *Extensions.* The City Manager or his or her designee is authorized to extend, for operational purposes only, and for a maximum of 180 days, any contract previously approved by the City Commission and entered into by the city. Any further extensions of the contract require the approval of the City Commission.

(D) *Renewals.*

(1) *General.* When a contract is entered into by the city pursuant to City Commission approval and provides for one or more renewals by affirmative action of the city, the City Manager may approve such renewals without approval of the City Commission.

(2) *Automatic.* When a contract is entered into by the city pursuant to City Commission approval and provides for one or more automatic renewals unless one party notifies the other of its intent not to renew, only the City Commission is authorized to decide not to renew the contract.

(E) *Employment contracts.* The provisions of this section shall not apply to the employment contract of the City Manager, the City Attorney, the Finance Director and the Commission Auditor.

(F) *City Commission notification.* The City Manager, or his or her designee, shall notify the Commission, in writing, at least three months in advance of the expiration, renewal, automatic renewal or extension date, and shall provide a copy of the contract or agreement and a vendor performance report card for the contract or agreement to the City Commission.

(G) *Application to existing and future contracts.* The provisions of this section shall apply to every contract in existence on the effective date of this section and every contract entered into thereafter.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.30 PREFERENCE TO BUSINESSES WITH DRUG-FREE WORKPLACE PROGRAMS.

(A) The city hereby adopts by reference F.S. § 287.087, as amended, regarding bidding preferences for businesses with drug-free workplace programs.

(B) Whenever two or more bids which are equal with respect to price, quality and service are received by the city for the procurement of commodities or services, a bid received from a business

that certifies that it has implemented a drug-free workplace program shall be given a preference, provided that the drug-free workplace program complies with F.S. § 287.087, and any other applicable state law. An announcement of this preference may be included in the bid documents.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.31 NON-DISCRIMINATION.

The vendor shall not discriminate against any person in its operations, activities or delivery of services. The vendor shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.32 NON-COLLUSION.

A bidder shall not collude, conspire, connive or agree, directly or indirectly, with any other bidder, firm or person to submit a collusive or sham bid in connection with the work for which the bid has been submitted; or to refrain from bidding in connection with such work or have in any manner, directly or indirectly, sought by person to fix the price or prices in the bid or of any other bidder, or to fix any overhead profit, or cost elements of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against any other bidder, or any person interested in the proposed work.

(Ord. 1409, passed 6-19-02; Am. Ord. 1684, passed 3-16-11)

§ 35.33 DESIGN-BUILD PROJECTS.

For design-build projects, the city shall follow the procedures set forth in F.S. § 287.055. The city may use either a qualifications based selection process or a competitive proposal selection process as detailed in F.S. § 287.055.

(Ord. 1684, passed 3-16-11)

§ 35.34 PROMOTING BUSINESS WITH THE CITY; NO EXPENDITURE OF PUBLIC FUNDS.

Notwithstanding any provision of this chapter, the city may, by a majority vote of the City Commission, enter into a mutually beneficial arrangement with a private business entity for the specific benefit of the citizens and residents of the city provided that no public funds are expended in furtherance of such arrangement. If the City Commission votes to enter into such an arrangement with a particular private business entity, all such other private businesses within the city that provide the same or similar goods or services shall be fully afforded the same or similar business opportunity. Notwithstanding the other provisions of this section, the City Manager, at his or her

discretion, may adopt an administrative policy permitting the city to enter into sponsorships or other similar relationships with private businesses in the city.

(Ord. 1650, passed 8-4-09; Am. Ord. 1684, passed 3-16-11)

§ 35.35 PROCUREMENT OF GOODS AND SERVICES FUNDED WITH FINANCIAL ASSISTANCE FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

For all goods and services which are partially or fully funded with funding provided by the United States Department of Housing and Urban Development, the procurement process shall comply with the city's Local Jobs Initiative Section 3 compliance plan, as adopted in conformance with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701(u).

(Ord. 1684, passed 3-16-11)

§ 35.36 LOCAL VENDOR PREFERENCE.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LOCAL BROWARD COUNTY VENDOR. A business entity which has maintained a permanent place of business with full-time employees within the Broward County limits for a minimum of one year prior to the date of issuance of a bid or proposal solicitation. The permanent place of business may not be a post office box. The business location must actually distribute goods or services from that location. In addition, the business must have a current business tax receipt from the Broward County or the city within Broward County where the business resides.

LOCAL PEMBROKE PINES VENDOR. A business entity which has maintained a permanent place of business with full-time employees within the city limits for a minimum of one year prior to the date of issuance of a bid or proposal solicitation. The permanent place of business may not be a post office box. The business location must actually distribute goods or services from that location. In addition, the business must have a current business tax receipt from the City of Pembroke Pines.

(B) Process.

(1) Competitive bid. For bid evaluation purposes, vendors that meet the definition of local Pembroke Pines vendor, as defined herein, shall be given a 5% evaluation credit. This shall mean that if a local Pembroke Pines vendor submits a bid/quote that is within 5% of the lowest price submitted by any vendor, the local Pembroke Pines vendor shall have an option to submit another bid which is at least 1% lower than the lowest responsive bid/quote. If the local Pembroke Pines vendor submits a bid which is at least 1% lower than that lowest responsive bid/quote, then the award will go to the local Pembroke Pines vendor. If not, the award will be made to the vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder IS a local Pembroke Pines vendor, the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.

(2) For bid evaluation purposes, vendors that meet the definition of local Broward County vendor, as detailed herein, shall be given a 2.5% evaluation credit. This shall mean that if a local Broward County vendor submits a bid/quote that is within 2.5% of the lowest price submitted by

any vendor, the local Broward County vendor shall have an option to submit another bid which is at least 1% lower than the lowest responsive bid/quote. If the local Broward County vendor submits a bid which is at least 1% lower than that lowest responsive bid/quote, then the award will go to the local Broward County vendor. If not, the award will be made to the vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is a local Pembroke Pines vendor, the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.

(3) If there is a local Pembroke Pines vendor and a local Broward County vendor participating in the same bid solicitation and both vendors qualify to submit a second bid as detailed above, the local Pembroke Pines vendor will be given first option. If the local Pembroke Pines vendor cannot beat the lowest bid received by at least 1%, an opportunity will be given to the local Broward County vendor. If the local Broward County vendor cannot beat the lowest bid by at least 1%, then the bid will be awarded to the lowest bidder regardless of geographic location of the business.

(4) If multiple local Pembroke Pines vendors submit bids/quotes which are within 5% of the lowest bid/quote, then all vendors will be asked to submit a best and final offer (BAFO). The award will be made to the local Pembroke Pines vendor submitting the lowest BAFO providing that that BAFO is at least 1% lower than the lowest bid/quote received in the original solicitation. If no local Pembroke Pines vendor can beat the lowest bid/quote by at least 1 %, then the process will be repeated with all local Broward County vendors who have submitted a bid/quote which is within 2.5% of the lowest bid/quote. If no local Pembroke Pines vendor and no local Broward County vendor can submit a BAFO that is at least 1% lower than the lowest bid/quote submitted in the original solicitation, the award will be made to the lowest responsive bidder regardless of geographic location of the business.

(C) Competitive proposal. For evaluation purposes, local Pembroke Pines vendor and local Broward County vendor shall be a criterion for award in any Request For Proposal unless specifically exempted by the City Manager or the City Commission.

(D) Exceptions.

(1) No local vendor preference will be included in any competitive solicitation where the city is the lead agency for the Southeast Florida Cooperative Purchasing Group;

(2) Utilization of a state or other agency contract;

(3) State or federal law prohibits the use of local preference;

(4) The work is funded in whole or in part by a governmental entity where the laws, rules, regulations or policies prohibit the use of local preferences;

(5) Sole source or single source purchases;

(6) The local vendor is either non-responsive or non-responsible;

(7) All bids submitted exceed the budget amount for the project;

(8) Emergency purchases;

(9) The City Manager and/or the City Commission may exempt any competitive solicitation from the local vendor preference.

(Ord. 1707, passed 10-19-11)

§ 35.37 MILITARY VETERAN'S PREFERENCE.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

VETERAN OWNED SMALL BUSINESS. A business entity which has received a Determination Letter from the United States Department of Veteran Affairs Center for Verification and Evaluation notifying the business that they have been approved as a veteran owned small business (VOSB).

(B) Process.

(1) Competitive bid. For bid evaluation purposes, vendors that meet the definition of veteran owned small business, as defined herein, shall be given a 2.5% evaluation credit. This shall mean that if a veteran owned small business submits a bid/quote that is within 2.5% of the lowest price submitted by any vendor, the veteran owned small business shall have an option to submit another bid which is at least 1% lower than the lowest responsive bid/quote. If the veteran owned small business submits a bid which is at least 1% lower than that lowest responsive bid/quote, then the award will go to the veteran owned small business. If not, the award will be made to the vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder IS a local Pembroke Pines vendor or a local Broward County vendor as established in § 35.36 of this Code, entitled "Local Vendor Preference", then the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.

(2) If there is a local Pembroke Pines vendor, a local Broward County vendor, and a veteran owned small business participating in the same bid solicitation and all three vendors qualify to submit a second bid as detailed above, the local Pembroke Pines vendor will be given first option. If the local Pembroke Pines vendor cannot beat the lowest bid received by at least 1%, an opportunity will be given to the local Broward County vendor. If the local Broward County vendor cannot beat the lowest bid by at least 1%, an opportunity will be given to the veteran owned small business. If the veteran owned small business cannot beat the lowest bid by at least 1%. then the bid will be awarded to the lowest bidder.

(3) If multiple veteran owned small businesses submit bids/quotes which are within 2.5% of the lowest bid/quote and there are no local Pembroke Pines vendors or local Broward County vendors as described in § 35.36 of this Code, entitled "Local Vendor Preference", then all vendors will be asked to submit a best and final offer (BAFO). The award will be made to the veteran owned small business submitting the lowest BAFO providing that that BAFO is at least 1% lower than the lowest bid/quote received in the original solicitation. If no veteran owned small business can beat the lowest bid/quote by at least 1%, then the award will be made to the lowest responsive bidder.

(C) Competitive proposal. For evaluation purposes, veteran owned small business shall be a criterion for award in any Request For Proposal unless specifically exempted by the City Manager or the City Commission. The criterion amount shall be 2.5%.

(D) Any business claiming veteran owned small business cannot also claim local vendor preference as described in § 35.36 of the this Code entitled "Local Vendor Preference".

(E) Exceptions.

(1) No veteran owned small business preference will be included in any competitive solicitation where the city is the lead agency for the Southeast Florida Cooperative Purchasing Group;

(2) Utilization of a state or other agency contract;

(3) State or federal law prohibits the use of veteran owned small business preference;

(4) The work is funded in whole or in part by a governmental entity where the laws, rules, regulations or policies prohibit the use of veteran owned small business preferences;

(5) Sole source or single source purchases;

(6) The veteran owned small business is either non-responsive or non-responsible;

(7) All bids submitted exceed the budget amount for the project;

(8) Emergency purchases;

(9) The City Manager and/or the City Commission may exempt any competitive solicitation from the veteran owned small business preference.

(Ord. 1769, passed 2-19-14)

§ 35.38 BID PROTEST PROCEDURES.

(A) Upon completion of the evaluation of all bids for a particular procurement, the Purchasing Manager shall issue a notice of bid/proposal action. This notice, containing the date and time of issuance, shall be posted on the city website and on the Internet bid service websites named in the bid documents.

(B) A bidder with a "substantial interest" who has been adversely affected by the city's selection of a bidder may protest the selection by complying with the requirements set forth herein. A bidder shall be deemed to have a "substantial interest" if the bidder would have been selected as the lowest responsive and responsible bidder but for the alleged mistake or irregularly described in the protest. If the Purchasing Manager determines that a bidder does not have a "substantial interest," that bidder is precluded from bringing a protest pursuant to this section.

(C) A bidder wishing to object to terms, conditions, specifications, procedures, selection criteria, weight of evaluation criteria or other matter set forth in the bid or proposed documents must make such objections in writing during the period of time set forth for questions and answers in the invitation to bid, request for proposal, request for qualifications or request for letters of interest. A bidder who has not raised such objections in writing during the question and answer time may not use the bid protect process to object to these matters once a notice of bid/proposal action has been posted.

(D) A bidder may file a "Notice of Intent to Protest" by emailing said notice to the Purchasing Manager within two business days of the issuance of the notice of bid/proposal action pursuant to division (A) or the publication of a City Commission agenda recommending the award of the bid, whichever is sooner. Such notice of protest shall include the bid or proposal number and title, the name and address of the protester, and a brief statement as to the basis of the protest.

(E) The complete written protest must be filed with the Purchasing Manager within ten calendar days of the issuance of the notice of bid action. To be considered, the written protest must include:

(1) Bid or proposal number and title;

(2) Company name, protester's name and title, physical address of protester, and email address

of protester;

(3) The facts and law upon which the protest is based; and grounds not stated shall be deemed waived;

(4) Rules, regulations or statutes pertinent to the protest;

(5) Relief which the protester seeks;

(6) Any other information that the protester deems to be material to the protest; and

(7) A bid protest bond in the form of a certified check, cashier's check, or money order made payable to the City of Pembroke Pines in an amount equal to 5% of the protester's bid or $5,000, whichever is less. If the protest is upheld by the city, the bond will be refunded to the protester. If the protest is denied, the entire bond amount shall be forfeited to the city.

(F) Upon receipt of a timely filled and complete formal written protest, the Purchasing Manager shall stay the award of the purchase order or contract until the protest is resolved, unless the Purchasing Manager determines in writing that compelling circumstances exist which require that the award be processed without further delay, in order to protect the city's interest or for the purpose of avoiding an immediate and serious danger to the public health, safety or welfare.

(G) After receipt of the timely filed and complete written protest, and upon the protester's request, the Purchasing Manager shall meet with the protester to discuss the allegations and to attempt to resolve the matter. The Purchasing Manager shall issue his or her decision on the protest within 14 calendar days of the meeting, or if no meeting is requested, within 14 days of receipt of the timely filed and complete written protest. Such decision shall be e-mailed to the protester on the date of issuance unless otherwise directed by the protester.

(H) The protester may appeal the decision of the Purchasing Manager to the City Manager by filing a written appeal with the City Clerk's office within three business days of issuance of the Purchasing Manger's decision. The appeal must be in writing and must include a full explanation of the basis of disagreement with the decision rendered by the Purchasing Manger, as well as the relief sought. The City Manager shall overturn the selection if the protester proves that the selection did not comply in material respects with the requirements contained in the invitation to bid, request for proposal, request for qualifications or request for letters of interest; with this procurement code, or with Florida law. The decision of the City Manager shall be final. The City Manger's decision shall be e-mailed to the protester on the date of issuance unless otherwise directed by the protester.

(I) Failure by a bidder to comply with the timelines and requirements set forth herein shall result in an immediate invalidation and termination of the protest and a waiver of the right to seek further redress or to appeal the alleged adverse action in a court of law.

(J) Any and all costs incurred by a protesting party in connection with a protest pursuant to this section shall be the sole responsibility of the protesting party.

(Ord. 1772, passed 4-9-14)