

**ORDINANCE NO. 11-03**

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, AMENDING CHAPTER 2 “ADMINISTRATION” OF THE CITY OF MARCO ISLAND CODE OF ORDINANCES BY REMOVING DIVISION II “PURCHASING” OF ARTICLE V “FINANCES”; BY RECREATING DIVISION II “PURCHASING” OF ARTICLE V “FINANCES”; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII of the State constitution and Chapters 166, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, the City of Marco Island must purchase certain commodities, equipment, and services, including professional consulting services; and

**WHEREAS**, it is the goal of City Council to maximize the value of each tax dollar for expenditures associated with the provision of those services necessary for the general health, safety, and welfare of the community; and

**WHEREAS**, the financial resources of the City and the services provided to the community may be enhanced with sound purchasing practices.

**WHEREAS**, the purchasing policy for the City of Marco Island was adopted as Ordinance No. 98-6 on August 17, 1998, and amended as Ordinance No. 06-06 on June 19, 2006; and

**WHEREAS**, the purchasing policy was codified in the Marco Island Code of Ordinances as Division 2 “Purchasing” of Article V “Finances”; and

**WHEREAS**, it is in the best interests of the City of Marco Island to clearly define the City Manager’s authority in the area of rejecting bids, directing re-bids or negotiations of contracts, directing purchase of materials on contracts awarded, and administering a dispute resolution process; and

**WHEREAS**, the City Manager has recommend the removal of the existing purchasing ordinance to provide for efficient and sound procurement practices in order to obtain the best

value for each tax dollar expended and to ensure fair and equitable treatment of all persons who deal with the purchasing system of the City; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:**

**Section 1.**            **Recitals Adopted.**    That each of the above stated recitals are hereby adopted and confirmed.

**Section 2.**            **City Code Amended.**        That Division 2 “Purchasing” of Article V “Finances” of Chapter 2 “Administration” of the City of Marco Island Code of Ordinances, as identified in Exhibit “A” attached hereto is hereby removed from the City Code.

**Section 3.**            **City Code Amended.**        That Division 2 “Purchasing” of Article V “Finances” of Chapter 2 “Administration” of the City of Marco Island Code of Ordinances is hereby created and shall read as follows:

Section 2-251.            Purpose of Division.

(a)    The City of Marco Island is required to purchase goods and services, which are necessary for the operation and maintenance of city government. This article establishes the procedures to maximize the use of financial and personnel resources with sound procurement practices in order to obtain the best value for each tax dollar expended; to ensure fair and equitable treatment of all persons who deal with the purchasing system of Marco Island; to develop procurement capability responsive to user department needs; to provide safeguards for the maintenance of a procurement system dedicated to quality and integrity; and to promote public confidence in the procedures followed in public procurement.

(b)    The purchase of goods and services shall follow sound financial management practices, utilizing techniques and processes that ensure that those goods and services are obtained at the best quality and lowest prices and which meet the requirements of the city.

(c).    The purchase of goods and services shall follow all applicable State Statutes.

(d).    When competitive bidding is required, adequate fair and open competitive practices will be employed to ensure that all parties that are interested in earning city business will be given the opportunity to do so.

Section. 2-252.            Definitions.

The following words and phrases as used in this ordinance shall have the following meanings:

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

Adequate competition means the solicitation of sources to ensure that the price paid is fair and reasonable.

Bid, proposal and quotation means an offer given to the City in response to a solicitation.

Change order means revisions made to an executed contract, which does not alter the character of the work.

Contract means any agreement for the procurement of supplies, services, or construction. Typical contracts include, but are not limited to, contracts, purchase orders or agreements, including verbal or email authorizations.

Contracting Officer Representative (COR) means a person designated to direct one or more contractors in the delivery of products and services. The COR also reports on the progress of the contractor(s), approves invoices (or release of progress payments), and prepares all change orders including termination paperwork at the end of a contract.

Cooperative purchasing (“piggy-backing”) or Competitive pricing can usually be assured when using cooperative purchasing agreements, which were negotiated through the RFB/RFP process.

Design-Build is a procurement method in which a single firm has been given responsibility for the design and construction of a public project. Selection of a firm requires a combination of qualification-based selection and negotiated pricing based on project requirements and specifications.

Emergency procurement means a purchase made in response to a need when the delay incidental to compliance with all governing rules, regulations, and/or procedures would be detrimental to the life, health, welfare, safety or convenience of the city and/or its residents.

Noncompetitive purchase means any purchase of supplies, materials, equipment, or services from one source without competition.

Project manager shall mean the City’s representative for procurement of supplies, services, and construction.

Proprietary refers to a technological design or architecture whose configuration is unavailable to the public and may not be duplicated without permission from the designer or architect.

Prototype means an original, full-scale, and usually working model of a new product or new version of an existing product.

Purchasing means the buying, renting, leasing, or otherwise acquiring of any supplies, materials, and equipment, professional or contractual services, or construction services.

Responsible Bidder means a person or firm who has submitted a bid and has the capability in all respects to perform fully the contract requirements and the tenacity, perseverance, experience, integrity, reliability, capacity facilities, equipment and credit which will ensure good-faith performance.

Responsive Bidder means a person or firm who has submitted a bid, which conforms in all material respects to the invitation to bid or request for proposals.

Small Purchases means the procurement of goods and services that do not exceed twenty-five thousand dollars \$25,000.

Sole Source means the only known vendor or the only responsible vendor capable of providing commodities or contractual services to the city.

Surplus means materials, supplies or equipment for which the city no longer has a use, or materials, supplies and equipment which has reached the end of its useful life, or items that are not functional and for which the cost of repair is not a sound business decision.

Warrant means a written authorization of authority to a specific individual issued by the City Manager, to be reviewed no less than annually.

Section 2-253. Purchasing Authority.

(a) The city manager shall have purchasing authority, including authority to award and administer contracts necessary to procure goods and services for the city. The city manager may delegate procurement authority to a purchasing agent, contract officer, or employee(s). The city manager may:

- (1) Enter into, award, administer, and terminate contracts, unless otherwise provided in this article.
- (2) Require bid bonds, performance, and payment bonds before entering into a contract, in such form and amount as found reasonably necessary to protect the best interest of the city, procure supplies, material, equipment, contractual services, and construction services required by the city.
- (3) Require chemical and physical tests of samples submitted with quotations, bids, or proposals to determine their quality and conformance with specifications.

(4) Transfer surplus stock to other offices, departments, or agencies of the city government when the estimated value is less than one thousand dollars (\$1,000).

(5) Sales of personal and surplus property, when the estimated value exceeds one thousand dollars (\$1,000), shall be sold by written sales contract or at public auction to the highest responsible bidder, after due notice inviting proposals or bids. Surplus personal property may be sold to other governmental agencies in lieu of using sealed bid or public auction procedures.

(6) Sell all supplies, materials and equipment which have become surplus property or unsuitable for use.

(7) Trade-in supplies, material and equipment when deemed in the best interest of the city.

(8) Enter into interlocal agreements for cooperative purchasing when the best interest of the city would be served.

#### Section 2-254. Authority and Responsibilities of City Manager

##### (a) Authority of the City Manager

(1) The city manager may establish procurement policies and procedures and execute agreements for the purchases of goods and services as necessary.

(2) The city manager shall have the authority to approve, reject, or modify bids or contracts and to administer the purchase of goods and services to ensure that the best interests of the city are served.

(3) The city manager may delegate procurement authority to the purchasing/ contract manager or purchasing agent.

(4) The city manager shall have the authority to declare city-owned items as surplus and direct the department owning such surplus items to transfer the items to another city department or to dispose of such surplus equipment in an approved manner as specified in purchasing policies & procedures.

##### (b) Responsibilities of the City Manager.

(1) The city manager or designee is responsible for ensuring efficient and effective contracting, compliance with the terms and conditions of contracts, and protecting the interest of the city in all contractual relationships. The city manager is

provided the latitude to exercise sound business judgment while adhering to the requirements of this section and sound procurement principles.

- (2) The city manager is ultimately responsible for ensuring that the best interest of the city is served.

Section 2-255. General Practices.

(a) The method of procurement is dependent upon the type of commodity or service and the value of that commodity or service. Where required by state statute, city ordinance or department procedures, the city shall competitively award contracts in accordance with those statutes, ordinances or policy & procedures.

(b) Competition. Purchases should be planned and made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation of sources to ensure that the price paid is fair and reasonable. The requirement for adequate competition does not preclude non-competitive procurement as enumerated in this section.

- (1) Request for Bids (RFB) shall be used for projects exceeding twenty-five thousand dollars (\$25,000) when the specifications for the product or services can be clearly defined and there is little or no leeway in the interpretation of the requirement. Care must be taken not to create a specification that only one vendor can meet.

- (2) Request for proposals (RFP) shall be used for those projects that cannot be precisely defined and specifications are such that more than one approach or product type could fulfill the requirement.

- (3) Request for qualifications (RFQ) shall be primarily used to obtain professional services. The intent is to choose the vendor based on qualifications rather than price alone.

(c) Noncompetitive purchases are permitted provided:

- (1) Acquisition of supplies or services does not exceed twenty-five thousand dollars (\$25,000) in value.

- (2) In emergencies involving public health, public safety, or where necessary for repairs to city property in order to protect against further loss or damage to city property or to prevent or minimize serious disruption in city services.

- (3) Where goods and services are available from federal, state or local government agencies, and contracts with firms that provide goods or services subject to uniform tariff, government regulation or area-wide rates (utilities).

(4) Repair, maintenance, remodeling, renovation, construction or demolition of a single project not involving an increase in the size and type of an existing facility.

(5) Maintenance and servicing of equipment by the manufacturer or authorized service agent of the equipment.

(6) Telecommunications systems and information technology, including data processing equipment, systems software, and reproduction equipment.

(7) Where complete systems or equipment, parts or replacements of specified makes and models are needed for interoperability, compatibility or standardization purposes.

(8) When competitive purchasing would not otherwise be in the best interest of the city.

(9) When purchasing land, buildings, structures, or assets of other government agencies or private utilities.

(10) When granting non-exclusive franchise agreements, or contracts to manage and operate municipal facilities and programs.

(d) Standards of conduct. City employees are held to the highest standard of conduct in the performance of their duties and shall conduct themselves so as to avoid even the appearance of any impropriety in the planning and execution of purchase requirements. All employees shall adhere to the standards of ethical conduct as listed in the city's personnel manual and other applicable policies and laws.

(e) Gifts and rebates. The city manager and every officer and employee of the city are expressly prohibited from accepting any valuable gift, whether in the form of service, loan, thing or promise that may tend to unduly and improperly influence them in the discharge of their duties.

(f) Public notice. Public notice should be provided for all purchases requirements valued at over twenty-five thousand dollars (\$25,000) unless otherwise provided in this article.

(g) Purchasing Methods

(1) Small purchases are determined by the level of effort expected and the documentation of the effort used to ensure that the price received is fair and reasonable and is in direct proportion to the cost of the good or service. Purchasing requirements aggregating may not be separated solely for the purpose of avoiding formal contract procedures. When smaller purchases are a part (segment) of a system, process, structure, facility and/or project, the total cost of the system, etc. will determine the controlling purchasing method and procedure.

(2) The basis for award would be the lowest bid price submitted by a responsive and responsible bidder.

(3) Factors other than price are considered and negotiations with the best proposer(s) are used to determine the ultimate awardee.

(4) The method of the procurement of professional services is governed by Section 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act.

(5) Contracts or purchasing agreements that were obtained through competitive purchasing methods by federal, state, county, or municipal purchasing organizations can be used by the city in place of issuing its own RFBs or RFPs.

(6) Emergency procurement may justify non-competitive purchasing. Documentation shall be prepared to enable the Finance Department to process the invoices and to provide management insight and ultimate approval.

(7) Design-Build. Some of the primary objectives of using this procurement method are; (a) fast tracking of project completion (b) quick re-pricing and the ability to obtain an immediate analysis of options during a critical time when changes in plans are being considered, (c) competitive bids are obtained from each subcontractor and (d) it ensures that a project is going to be within an established budget before any early and/or substantial expenditures are made. For design-build projects, the city shall follow the procedures set forth in Section 287.055, Florida Statutes, as may be amended from time to time.

(8) Purchases shall be made following established procurement and contracting principles and requirements of this article and supplemental procurement policies established by the city manager. The purchasing method employed is based upon the purchase requisition dollar estimate and the complexity of the purchase requirement.

a. Purchasing Using Petty Cash. Department heads are authorized to make purchases for supplies and material valued up to one hundred dollars (\$100) using departmental petty cash funds. The department head shall be responsible for the accounting and documentation of petty cash transactions. Use of petty cash for services is prohibited.

b. Purchasing Using a Credit Card. The City has obtained credit cards and assigned them to select employees. The purpose of the credit card is to obtain services and supplies via internet and telephonic sources. A secondary use of the credit card is to pay for travel related expenses. In all instances, purchase via credit card should be limited to the signature authority of the individual making the purchase (e.g. \$10, \$500, \$1,000).



c. Purchasing by an Employee with Subsequent Reimbursement by city is discouraged and should be used only as a last resort.

d. Competition for Simplified or Small Purchases. Competition is not required if the city manager or designee determines that the price received is fair and reasonable. Where practicable, noncompetitive purchases may be distributed equitably among qualified suppliers in order to develop and maintain a responsive industrial/supplier base for the city.

e. Basis for Award. Simplified purchases are awarded to the proposer who offers the best value to the city. Best value is obtained by basing the award on price or a combination of price with price-related factors, other evaluation factors, or both. Rationale for making other than low price award will be documented in the appropriate files. In instances of equal prices and all other evaluation factors being equal, the award should be made to the local proposer.

f. Solicitations. Solicitation of proposals or quotations for small purchases may be done in writing or orally, at the discretion of the city manager or designee. Public notice of small purchases is not required, but may be initiated at the discretion of the city manager.

g. Negotiation. The city manager or designee may negotiate with proposers to ensure prices are reasonable, and that the city's requirements are understood.

h. Suppliers or Sources in Default to City. No purchases shall be made from vendors or contractors who are delinquent in the payment of taxes, licenses or other monies due the city.

i. Ordering Methods. Simplified or small purchases may be made using petty cash or by purchase methods, such as purchase orders, unpriced purchase orders, blanket purchase orders and delivery agreements.

j. Administration of Small Purchases. Small purchases will be administered in accordance with the terms and conditions of the order or agreement. The city manager may amend, modify, cancel, or terminate purchase orders and agreements as deemed necessary by the particular circumstances or situation.

(9) Formal Contract Procedures. All supplies, material, equipment and contractual services valued in excess of twenty-five thousand dollars (\$25,000), whether purchased competitively or noncompetitively through sealed bids or sealed proposals, shall be purchased by formal written contract or purchase order. Sale of property between two governmental entities shall be pursuant to Florida Statutes. The principles listed in the subparagraph below apply to formal contracts:

a. Public Notice Requirements. All purchase requirements over twenty-five thousand dollars (\$25,000), except those authorized to be purchased noncompetitively by this article, shall only be awarded after due public notice. The public notice required for purchases over twenty-five thousand dollars (\$25,000) shall include a general description of the articles or services, state where written solicitations may be obtained, and shall state the time and place for receipt of bids or proposals.

b. Solicitations. Except in cases of emergency, written solicitations will be issued when requesting sealed bids and sealed proposals.

Section 2-256. Use of Sealed Competitive Bidding.

(a) Sealed, competitive bidding is a method of contracting that employs competitive bids, public opening of bids, and award to the lowest responsive and responsible bidder. Invitations to bid (written solicitations) shall be used to request sealed bids and shall describe the purchase requirements. Sealed bid procedures are normally used for standard products or services where the specifications or statement of work are so definitive that prospective bidders may clearly understand the requirement and may take the necessary business risk to propose a firm-fixed price for the contract.

(1) Bid bonds for sealed bids. When deemed necessary, bid bonds shall be prescribed in the public notices inviting sealed bids. Upon entering into a contract, bidders will be entitled to return of the bid bond. A successful bidder shall forfeit any bid deposit upon failure on his part to enter into a contract within the working days specified following the award of contract. The city, in its sole discretion, may waive this forfeiture.

(2) Sealed bids - Award to other than low bidder. When contract award is not made to the lowest responsible bidder, a full and complete statement of the reasons should be prepared and filed with the purchase transaction.

(3) Bond of Contractor, as defined in Chapter 255.05, Florida Statutes, means (in part) any person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority or private entity, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work of before recommencing the work after a default or abandonment, to execute, deliver to the public owner, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. When such work is done for the state and the contract is for \$100,000 or less, no payment and performance bond shall be required. At the discretion of the official or board awarding such contract when such work is done

for any county, city, political subdivision, or public authority, any person entering into such a contract which is for \$200,000 or less may be exempted from executing the payment and performance bond.

Section 2-257. Contract Through Negotiation.

(a) Negotiation is a process of contracting through the use of either competitive or other-than-competitive proposals and discussions. Negotiation is a procedure that may include the receipt of sealed proposals from offerors, permits bargaining, and may afford offerors an opportunity to revise their offers before award of a contract. Award may be made on a basis other than the lowest price. Negotiation is the preferred method of contracting when specifications or statements of work may not be definitive and may allow for variation in providing the products or services. Requests for proposals (written solicitation) should be used in negotiated acquisitions to communicate purchase requirements to prospective contractors and to solicit proposals or quotations from them.

(1) Award without negotiation. A contractor may be selected from the sealed proposals and award made without discussing proposals with the offerors. Whenever price or price-related factors are the most important or the only evaluation factors, award will normally be made without discussion, if adequate competition exists, to ensure that offerors submit their most favorable proposals at the outset. However, even when award will be based on price alone, discussions may be held as necessary to determine that the price is fair and reasonable. The decision to make an award without discussions shall be made by the city manager for amounts up to fifty thousand dollars (\$50,000).

(2) Award with negotiation. Whenever appropriate, written or oral discussions may be held with offerors to resolve uncertainties in their proposals, to give them an opportunity to correct deficiencies, and to provide the opportunity to revise proposals. Discussion may be held with one offeror or with all offerors in the competitive range. The competitive range will be determined following evaluation of proposals. The competitive range shall be determined on the basis of the evaluation factors stated in the solicitation and shall only include all proposals that have a reasonable chance of being selected for award.

(3) Conduct of discussions. When necessary, discussions shall be held with the assistance or participation of technical, accounting or legal personnel as appropriate. Discussions may be conducted so as to:

- a. Advise the offeror of deficiencies in its proposal in terms of user department requirements, but not deficiencies relative to other proposals.
- b. Attempt to resolve uncertainties concerning aspects of the proposal.

c. Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process.

d. Provide the offeror a reasonable opportunity to submit any price, technical or other revisions to its proposal that may result from the discussions.

(4) Best and final offers. Upon completion of discussions, a request for "best and final offer" will be issued to all offerors still in the competitive range.

(5) Contractor selection. Following receipt of the best and final offers, the contract may be awarded to the offeror (contractor) whose proposal offers the best value to the city.

Section 2-258. Award of Contracts.

(a) Authority to Award Contracts:

(1) Contracts with a total value under fifty thousand dollars (\$50,000) may be awarded by the city manager.

(2) Contracts with a total value over fifty thousand dollars (\$50,000) shall be awarded by the City Council.

(3) Exemptions:

- Contracts for capital projects and equipment;
- Utility department water & wastewater production chemicals

a. The city manager shall have the authority to award all contracts for capital equipment and projects specifically approved by the City Council in the current year budget provided that:

i. All purchasing requirements are met and documented and available for public inspection; and

ii. The final cost per item does not exceed the approved current year budget cost by more than 25% of the budgeted amount or more than a total dollar value of fifty thousand dollars (\$50,000). If the final cost of the item exceeds the approved current year budget cost by more than fifty thousand dollars (\$50,000), the award shall be made by City Council.

b. The city manager shall have the authority to award term contracts for utility department chemicals that are used in the production of water or the

treatment of wastewater, and previously funded in the current year utility department operating budget and required in the day to day operation of the utility department.

(4) Blanket/price agreement contracts shall be awarded by the purchasing/contracts manager provided that all purchasing requirements are met and documented and available for public inspection.

(5) Emergency Procurements. If the city manager determines that an emergency exists and a delay would be detrimental to the interests of the city, the city manager is authorized to direct the purchase of any supplies or professional or contractual services needed to protect the health, safety, and welfare of the city and its residents. The city manager shall inform the City Council of the conditions and circumstances requiring such action for purchases having a dollar value exceeding fifty thousand dollars (\$50,000).

(6) Basis of Award. Contracts may be awarded to the lowest and most responsible bidder, as determined on the basis of the entire bid and the investigations into the bidder by the city manager and purchasing/contracts manager. When the contract is awarded by the city manager or purchasing/contracts manager, such award shall be evidenced by either a Notice of Award or purchase order, signed by the purchasing/contracts manager.

(7) Modification and Withdrawal of Bids. Bids submitted in response to RFBs or RFPs may be modified or withdrawn at any time prior to the applicable public opening date (for advertised solicitations) or due date (for unadvertised purchases). The request for withdrawal or modification should be made in writing and signed by an officer of the company. After the public opening or due date, as applicable, obvious errors that are clearly evident on the face of the bid document may be corrected by the purchasing/contracts manager and such required changes noted on the official bid tab.

(8) The city reserves the right to:

(a) Evaluate the current capacity of the low bidder to perform the size and scope of work specified in the contract bidding documents;

(b) Use previous performance on similar job(s) for the city as a factor in the selection of the bidder;

(c) To negotiate with the apparent lowest and most responsible bidder to correct obvious defects in the original bid;

(d) To waive defects in the form of bid or to waive formalities and negotiate with the apparent lowest and most responsible bidder to such extent as may be necessary to satisfy the intent and requirements of the city's project.

(9) In the event of a tie, the project manager and the purchasing/contracts manager shall consider the following factors including: delivery lead-time, documented quality, warranty, availability of local service, cost of repair parts, contractor reputation and all other relevant information to make the recommendation of award. In instances of equal prices and all other evaluation factors being equal, the award should be made to the local proposer. All considerations used in the decision should be documented for reference. For purchases or construction agreements, the final decision on the resolution of the tie shall be made by the city manager. Protest of the recommended award shall follow the standard protest procedure.

(10) Any prospective bidder who desires to protest any aspect(s) or provision(s) of the bid invitation shall file a protest with the city manager in writing prior to the time of the bid opening.

#### Section 2-259. Change Orders and Renewals.

(a) Change orders are often needed to (i) address unforeseen conditions, (ii) to add or decrease the scope of work due to changes in the city's requirements, and (iii) to execute price revisions to material supply contracts as are authorized by that contract.

The authority to award or approve change orders is subject to the following:

(1) For contracts authorized by City Council, the city manager may approve change orders or contract modifications provided that the cumulative changes do not exceed 25% of the original contract amount and do not exceed the city manager's signature authorization level.

(2) For contracts of less than fifty thousand dollars (\$50,000), the city manager may approve change orders or contract modifications provided that the cumulative contract and change orders do not exceed 25% of the original contract amount.

(3) The city manager may approve 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.

(4) All change orders that the city manager is not authorized to approve must be formally approved by the City Council before work may be authorized to begin.

(5) In the event that a change order which under the aforementioned criteria must be approved by City Council, is of an emergency nature or if a delay in the approval by City Council caused by the timing of a City Council meeting will result in a work stoppage or cause increases in the cost of the project, the city manager is authorized to approve the change order and is then required to advise City Council shortly thereafter of that change order and the circumstances which necessitated that decision .

(b) Contract Renewals.

(1) If the City Council previously awarded a contract that contained a renewal option, the city manager, or his designee, shall determine if such a renewal is in the best interest of the city and may exercise this option on behalf of the city in accordance with the terms and conditions of the contract, for a period not exceeding 3 years.

(2) When a contract is entered into by the city pursuant to City Council approval and provides for one (1) or more automatic renewals unless one (1) party notifies the other of its intent not to renew, only the City Council is authorized to decide not to renew the contract.

(c) Extensions.

(1) If provided for in a contract, the purchasing/contracts manager may authorize up to a ninety (90) day extension of a contract in accordance with the terms and conditions of the contract. Otherwise, the city manager is authorized to extend, for operational purposes only for a maximum of one hundred eighty (180) days, any contract entered into by the city pursuant to City Council approval. Any further extensions of such contract require the approval of the City Council.

(d) Price adjustment.

(1) For any material supply contract that has a price adjustment clause that allows for increases after the initial set price term, the purchasing/contracts manager has the authority to authorize price changes that are supported by either the consumer price index (CPI) or by documented fuel surcharges. That authority is limited to a maximum increase of 25% over the prior year price. Price changes exceeding that maximum are to be submitted to the city manager for approval. The city manager may either approve the change or may instruct the purchasing/contracts manager to advertise and award the contract.

Section 2-260. Rejecting Bids; Negotiation.

(a) The City reserves the right to reject any bids or portions of them, as best serves the interest of the city. By way of example and not limitation, bids may be rejected if:

- (1) They are nonresponsive;
- (2) They are materially higher than expected;
- (3) Errors in specifications may have caused confusion;
- (4) Sufficient funds are not available;
- (5) The item or service is no longer needed;
- (6) There is a lack of competition;
- (7) The item or service can be provided in-house;
- (8) The bidder does not qualify under state or federal law;
- (9) The bidder is not in compliance with city ordinances. This requirement may be waived if the city finds that the noncompliance is inadvertent, minor, and curable as a condition of the award;
- (10) The bidder does not appear to have the expertise, financial capability or other ability to meet the requirements of the contract to be awarded, or is otherwise shown not to be responsible.

(b) Negotiation. If no bid is received, the City Council may authorize the purchasing/contracts manager to purchase by negotiation.

Section 2-261. Bidder Suspension and Debarment Procedure.

(a) After reasonable notice to an actual or prospective contractual party, and after reasonable opportunity to such party to be heard, the city manager 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 (3) 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 the following regulations:

(1) Causes for debarment or suspension. Causes for debarment or suspension include the following: Bidders, contractors, and other proposing parties may be debarred from doing business with the city for any of the following reasons:

a. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

b. Conviction under state or federal statutes of embezzlement, theft, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty.

c. Conviction under state or federal anti-trust statutes arising out of the submission of bids or proposals.



d. Civil finding of guilt of activity described above.

e. Violation of contract provisions including the following:

(i) Deliberate failure without good cause to perform in accordance with the specifications, or within the time limit provided in the contract.

(ii) Unauthorized withdrawal of a submitted bid or proposal after opening.

(iii) Failure to execute contract following notification of award.

(iv) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts or other contract violation. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment or suspension.

(2) Certification. Prior to or contemporaneously with any submission of a bid or request for proposal, or if there is no such bid or proposal, prior to execution of a contract for commodities or services, such bidder or proposer shall execute an affidavit certifying that neither the contractual party nor any of its principal owners or personnel have been convicted of any violations, debarment, or suspensions as set forth above.

(3) Debarment and suspension decisions. Subject to the provisions of this section, 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 suspended or debarred party, along with a notice of said party's right to seek judicial relief. The city manager or designee is responsible for ensuring efficient and effective contracting, compliance with the terms and conditions of contracts, and protecting the interests of the city in all contractual relationships. The city manager is provided the latitude to exercise sound business judgment while adhering to the requirements of this section and sound procurement principles.

Section 2-262. Dispute Resolution & Protest Procedure.

(a) Any unresolved dispute pertaining to:

(1) Unadvertised or non-competitive purchases made under this section shall be submitted to the city manager for resolution and/or final determination.

(2) Unresolved disputes pertaining to protests by bidders on advertised solicitations for purchases greater than twenty-five thousand dollars (\$25,000) shall follow the following Bid/Proposal Protest Procedure.

(b) Bid/Proposal Protest Procedure. Any firm that has submitted a formal bid/proposal to the City of Marco Island and who is adversely affected by an intended decision with respect to the award of the formal bid/proposal, shall file a written "Notice of Protest" with the purchasing/contracts manager within three (3) days of either the bidder's receipt of the notice of disqualification of its bid, or receipt of a notice of intent to recommend award from the purchasing/contracts manager. Failure to submit the Notice of Protest as outlined in the Code shall constitute a waiver of proceedings.

(1) The "Notice of Protest" shall identify the solicitation and specify the basis for the protest. The "Notice of Protest" must be received by the City Clerk and time stamped no later than 4:00 PM on the third working day following the posting date of the recommended award.

(2) The protesting party must then file a Formal Written Protest within five (5) calendar days after the receipt of the Notice of Protest. The protesting party shall post a bond (bond, cashier's check, or letter of credit) in an amount equal to five percent (5%) of the firm's total bid/proposal or ten thousand dollars (\$10,000), whichever is less. Said bond shall be designated and held for the payment of any costs that may be levied against the protesting firm by the City Council, if the protest is deemed by the Council to be a frivolous protest.

(3) The Formal Written Protest shall contain the following:

- a. Bid/Proposal (RFB, RFP, or RFQ) identification number and title.
- b. Name and address of the affected party and the title or position of the person submitting the Protest.
- c. A statement of all claimed disputed issues of material fact. If there are no disputed material facts, the Formal Written Protest must so indicate.
- d. A concise statement of the facts alleged and the rules, regulations, statutes or constitutional provisions which entitle the affected party to relief.
- e. All information, documents, other materials, calculations and any statutory or case law authority in support of the ground for the Protest.
- f. A statement indicating the relief sought by the affected (protesting) party.
- g. Any other relevant information that the affected party deems to be material to the protest.

- (4) Upon receipt of a timely filed Notice of Protest, the Purchasing/Contracts Manager will abate the award of the formal bid/proposal as appropriate until the Protest is heard pursuant to the informal hearing process as further outlined below, except and unless the City Manager shall find and set forth in writing particular facts and circumstances that would require an immediate award of the formal bid/proposal for the purpose of avoiding a danger to the public health, safety or welfare. Upon such written finding by the City Manager, the City Manager may authorize an expedited Protest hearing and may void the requirement for a formal written Protest and bond.
- (5) A Dispute Committee, comprised of the City Manager or designee, Finance Director or designee, Public Works Director or designee and, as deemed appropriate, the City Attorney to provide legal counsel, but not as a voting member, will convene a meeting within seven (7) working days from receipt of the Formal Written Protest with the protesting firm to attempt to resolve the Protest. The hearing is to (1) review the basis of the Protest; (2) to evaluate the facts and merits of the Protest; and (3) to make a determination whether to accept or reject the Protest. If at all possible, the parties will resolve the Protest at this first meeting.
- (6) If a resolution to the satisfaction of the Dispute Committee and the protesting firm cannot be accomplished during the meeting, the Dispute Committee, with respect to the merits of the Protest, shall place the Protest on the City Council agenda with the staff recommendation and relevant background information.
- (7) City Council shall conduct a hearing on the matter at the regularly scheduled City Council meeting. Following presentations by the affected parties, the Council shall render its decision on the merits of the Protest.
- (8) If the Council's decision upholds the recommendation by the Dispute Committee in denial of the Protest regarding the award and further finds that the Protest was either frivolous and/or lacked merit, the Council, at its discretion, may assess costs, charges or damages associated with any delay of the award and any costs incurred with regard to the Protest. The bond posted by the party filing the protest may be applied by City Council at its discretion to pay in whole or in part said costs, charges, or damages
- (9) If the Council's decision upholds the position of the party filing the Protest, the Purchasing/Contracts Manager will cancel any prior award and award the contract to the party filing the Protest in the amount of that party's original bid/proposal.

Section 2-263. Professional Services.

- (a) The selection of professional engineering and architectural services shall follow the procedure established by Chapter 287.055, Florida Statutes, as revised.

- (1) The city manager shall appoint a committee of no less than three individuals to evaluate statements of qualification and proposals for professional services. Such individuals may be employees, citizens, or elected officials.

Section 2-264. Administration of Contracts.

(a) While administration of contracts (including purchase orders) requires the efforts and skills of many city employees, the city manager shall provide guidance regarding contract administration functions. Once a contract has been awarded pursuant to Approval of Contract requirements in this chapter, the city manager is authorized to issue purchase orders for the direct purchase of materials as part of a contract award. Competitive proposals shall not be required when a purchase is made for materials, equipment, prefabricated elements and components, appliances, fixtures and supplies bought under a sales tax savings procedure constituting part of a construction project, which construction contract has been awarded in compliance with this chapter. Concurrent with the issuance of a direct materials purchase order, a deduct purchase order amendment shall be issued to the contract holder.

Section 2-265. Contracting Officer's Representative (COR).

(a) A person may be designated as Contracting Officer's Representative (COR). In a complex procurement (i.e. the Septic Tank Replacement Program) or a major redevelopment project (i.e. Collier Boulevard Reconstruction) the COR directs one or more contractors in the delivery of products and services. The COR also reports on the progress of the contractor(s), the COR approves invoices (or release of progress payments), and COR prepares all change orders including termination paperwork at the end of a contract. The COR may not change the scope of work.

Section 2-266. Purchasing Agent.

(a) One or more purchasing agents may be staffed by the city. An appropriate use of a purchasing agent is to conduct buying activity on behalf of a utility wherein there exists a steady and repetitive need to purchase materials, chemicals, and supplies; and to regularly rebid utility supplies in order to obtain the best terms and prices.

(b) The purchasing agent's authority is exhibited in the form of a Warrant which specifies the purchasing agent's scope of authority and the time frame of the Warrant. All Warrants will be issued by the city manager and reviewed no less than annually.

(c) The purchasing agent is responsible to adhere to all purchasing rules and regulations, and to maintain records of all buying transactions.

(d) The Purchasing Agent has no authority to approve invoices or authorize the payment of monies to contractors/suppliers. Invoice approval must come from operations or administration personnel responsible for receiving supplies and services.

**Section 4. Severability.** Should any section or provision of this Ordinance, or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder as a whole or part thereof, other than the part declared invalid.

**Section 5. Inclusion in the Code.** It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the City of Marco Island and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 6. Effective Date.** That this Ordinance shall become effective immediately upon adoption by City Council on second reading.

PASSED AND ADOPTED on first reading this 7<sup>th</sup> day of February, 2011.

PASSED AND ADOPTED on second reading this 22<sup>nd</sup> day of February, 2011.

Attest:

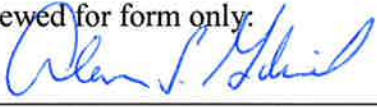
By:   
Laura M. Litzan, City Clerk

**CITY OF MARCO ISLAND, FLORIDA**

By:   
Frank R. Recker, Chairman

(SEAL)

Reviewed for form only:

By:   
Alan L. Gabriel, City Attorney

## Exhibit "A"

### DIVISION 2. PURCHASING

#### ~~Sec. 2-251. Purpose of division.~~

~~The city is required to purchase goods and services, which are necessary for the operation and maintenance of city government. This division establishes the procedures to maximize the use of financial and personnel resources with sound procurement practices in order to obtain the best value for each tax dollar expended, to ensure fair and equitable treatment of all persons who deal with the purchasing system of the city, to develop procurement capability responsive to user department needs, to provide safeguards for the maintenance of a procurement system dedicated to quality and integrity, and to promote public confidence in the procedures followed in public procurement.~~

#### ~~Sec. 2-252. Authority of city manager.~~

~~The city manager shall have purchasing authority, including authority to award and administer contracts necessary to procure goods and services for the city. The city manager may delegate procurement authority to a purchasing agent, contract officer, or employee. The city manager may:~~

- ~~(1) Enter into, award, administer, and terminate contracts, unless otherwise provided in this division.~~
- ~~(2) Require bid bonds and performance and payment bonds before entering into a contract, in such form and amount as found reasonably necessary to protect the best interest of the city, and procure supplies, material, equipment, contractual services, and construction services required by the city.~~
- ~~(3) Require chemical and physical tests of samples submitted with quotations, bids or proposals to determine their quality and conformance with specifications.~~
- ~~(4) Transfer surplus stock to other offices, departments or agencies of the city government.~~
- ~~(5) Sell all supplies, materials and equipment which have become surplus property or unsuitable for use.~~
- ~~(6) Trade in supplies, material and equipment when deemed in the best interest of the city.~~
- ~~(7) Enter into interlocal agreements for cooperative purchasing when the best interest of the city would be served.~~
- ~~(8) Reject all bids received, when the best interests of the city would be served.~~
- ~~(9) Establish administrative policies and procedures for the implementation of this division.~~

#### ~~Sec. 2-253. Responsibilities of city manager.~~

~~The city manager or designee is responsible for ensuring efficient and effective contracting, ensuring compliance with the terms and conditions of contracts, and protecting the interests of the city in all contractual relationships. The city manager is provided the latitude to exercise~~

sound business judgment while adhering to the requirements of this division and sound procurement principles.

~~Sec. 2-254. General practices.~~

~~(a) *Competition.* Purchases should be planned and made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation of sources to ensure that the price paid is fair and reasonable. The requirement for adequate competition does not preclude noncompetitive procurement as enumerated in this division.~~

~~(b) *Noncompetitive purchasing.* A noncompetitive purchase is any purchase of supplies, material, equipment or service from one source without competition. Noncompetitive purchases are permitted as follows:~~

- ~~(1) When acquisition of supplies or services does not exceed \$10,000.00 in value.~~
- ~~(2) In emergencies involving public health or public safety, or where necessary for repairs to city property in order to protect against further loss or damage to city property or to prevent or minimize serious disruption in city services.~~
- ~~(3) Where goods and services are available under contracts written by federal and state agencies or other local governments.~~
- ~~(4) Where goods and services are available from federal, state or local government agencies, and for contracts with firms that provide goods or services subject to uniform tariffs, government regulation or area wide rates (utilities).~~
- ~~(5) For institutional memberships, exhibition fees, booth space and attendance at training, seminars, or conferences.~~
- ~~(6) Where services required are for professional (architectural, engineering and medical) or artistic skills.~~
- ~~(7) For repair, maintenance, remodeling, renovation, construction or demolition of a single project not involving an increase in the size and type of an existing facility.~~
- ~~(8) For maintenance and servicing of equipment by the manufacturer or authorized service agent of the equipment.~~
- ~~(9) For telecommunications systems and information technology, including data processing equipment, systems software, and reproduction equipment.~~
- ~~(10) Where, after reasonable investigation, it has been demonstrated that only one source is capable of meeting the purchase requirement.~~
- ~~(11) Where complete systems or equipment, parts or replacements of specified makes and models are needed for inter-operability, compatibility or standardization purposes.~~
- ~~(12) When competitive purchasing would not otherwise be in the best interest of the city.~~
- ~~(13) When purchasing land, buildings, structures, or assets of other government agencies or private utilities.~~

~~(14) When granting nonexclusive franchise agreements, or contracts to manage and operate municipal facilities and programs.~~

~~(c) *Standards of conduct.* City employees are held to the highest standard of conduct in the performance of their duties and shall conduct themselves so as to avoid even the appearance of any impropriety in the planning and execution of purchase requirements. All employees shall adhere to the standards of ethical conduct as listed in the city's personnel manual and other applicable policies and laws.~~

~~(d) *Gifts and rebates.* The city manager and every officer and employee of the city are expressly prohibited from accepting any valuable gift, whether in the form of service, loan, thing or promise, that may tend to unduly and improperly influence them in the discharge of their duties.~~

~~(e) *Public notice.* Public notice should be provided for all purchase requirements valued at over \$10,000.00 unless otherwise provided in this division.~~

~~Sec. 2-255. Purchasing methods.~~

~~(a) *Generally.* Purchases shall be made following established procurement and contracting principles and requirements of this division and supplemental procurement policies established by the city manager. The purchasing method employed is based upon the purchase requisition dollar estimate and the complexity of the purchase requirement.~~

~~(b) *Simplified or small purchases.* Simplified or small purchase procedures are to be used in making fixed price purchases up to \$10,000.00. Requirements aggregating more than \$10,000.00 may not be separated solely for the purpose of avoiding formal contract procedures as defined in this division. The following provisions shall apply for simplified or small purchases:~~

~~(1) *Departmental authority.* Department heads are authorized to make purchases for supplies and material valued up to \$100.00 using departmental petty cash funds. The department head shall be responsible for the accounting and documentation of petty cash transactions. Use of petty cash for services is prohibited.~~

~~(2) *Competition for simplified or small purchases.* Competition is not required if the city manager or designee determines that the price received is fair and reasonable. Where practicable, noncompetitive purchases may be distributed equitably among qualified suppliers in order to develop and maintain a responsive industrial/supplier base for the city.~~

~~(3) *Basis for award.* Simplified purchases are awarded to the proposer or quoter who offers the best value to the city. Best value is obtained by basing the award on price or a combination of price with price-related factors, other evaluation factors, or both. Award may be made to other than the lowest offeror. The rationale for making other than a low price award shall be documented in the appropriate files. In instances of equal prices and all other evaluation factors being equal, the award should be made to the local proposer or quoter. If no local proposer or quoter is involved, award will be made by drawing lots and documented in the appropriate files.~~



- ~~(4) *Solicitations.* Solicitation of proposals or quotations for small purchases may be done in writing or orally, at the discretion of the city manager or designee. Public notice of small purchases is not required, but may be initiated at the discretion of the city manager.~~
- ~~(5) *Negotiation.* The city manager or designee may negotiate with proposers or quoters to ensure that prices are reasonable and that the city's requirements are understood.~~
- ~~(6) *Suppliers or sources in default to city.* No purchases shall be made from vendors or contractors who are delinquent in the payment of taxes, license fees or other monies due the city.~~
- ~~(7) *Ordering methods.* Simplified or small purchases may be made using petty cash or by purchase methods such as purchase orders, unpriced purchase orders, blanket purchase orders and delivery agreements.~~
- ~~(8) *Administration of small purchases.* Small purchases shall be administered in accordance with the terms and conditions of the order or agreement. The city manager may amend, modify, cancel, or terminate purchase orders and agreements as deemed necessary by the particular circumstances or situation.~~
- ~~(c) *Formal contract procedures.* All supplies, material, equipment and contractual services valued in excess of \$10,000.00, whether purchased competitively or noncompetitively through sealed bids or sealed proposals, shall be purchased by formal written contract or purchase order. All sales of personal and surplus property, when the estimated value exceeds \$1,000.00, shall be sold by written sales contract or at public auction to the highest responsible bidder, after due notice inviting proposals or bids. Surplus personal property may be sold to other governmental agencies in lieu of using sealed bid or public auction procedures. The following principles apply to formal contracts:~~
- ~~(1) *Approval of contracts.* —~~
- ~~a. All contracts over \$1,000.00 up to \$100,000.00 shall be awarded by the city manager.~~
- ~~b. All formal contracts over \$100,000.00 shall be awarded by the city council.~~
- ~~(2) *Public notice requirements.* All purchase requirements over \$10,000.00, except those authorized to be purchased noncompetitively by this division, shall only be awarded after due public notice. The public notice required for purchases over \$10,000.00 shall include a general description of the articles or services, state where written solicitations may be obtained, and state the time and place for receipt of bids or proposals.~~
- ~~(3) *Solicitations.* Except in cases of emergency, written solicitations will be issued when requesting sealed bids and sealed proposals.~~

~~Sec. 2-256. Sealed competitive bidding.~~

- ~~(a) *Use of sealed competitive bidding.* Sealed competitive bidding is a method of contracting that employs competitive bids, public opening of bids, and award to the~~

lowest responsive and responsible bidder. Invitations to bid (written solicitations) shall be used to request sealed bids and shall describe the purchase requirements. Sealed bid procedures are normally used for standard products or services where the specifications or statements of work are so definitive that prospective bidders may clearly understand the requirements and may take the necessary business risk to propose a firm fixed price for the contract.

~~(b) *Bid bonds.* When deemed necessary, bid bonds shall be prescribed in the public notices inviting sealed bids. Upon entering into a contract, bidders will be entitled to return of the bid bond. A successful bidder shall forfeit any bid deposit upon failure on his part to enter into a contract within the working days specified following the award of contract. The city, in its sole discretion, may waive this forfeiture.~~

~~(c) *Award to other than low bidder.* When contract award is not made to the lowest responsible bidder, a full and complete statement of the reasons should be prepared and filed with the purchase transaction.~~

~~(d) *Rejection of bids.* The city reserves the right to reject any bids or portions of them, as best serves the interest of the city. By way of example and not limitation, bids may be rejected if:~~

- ~~(1) They are nonresponsive.~~
- ~~(2) They are materially higher than expected.~~
- ~~(3) Errors in specifications may have caused confusion.~~
- ~~(4) Sufficient funds are not available.~~
- ~~(5) The item or service is no longer needed.~~
- ~~(6) There is a lack of competition.~~
- ~~(7) The item or service can be provided in-house.~~
- ~~(8) The bidder does not qualify under state or federal law.~~
- ~~(9) The bidder is not in compliance with city ordinances. This requirement may be waived if the city finds that the noncompliance is inadvertent, minor and curable as a condition of the award.~~
- ~~(10) The bidder does not appear to have the expertise, financial capability or other ability to meet the requirements of the contract to be awarded, or is otherwise shown not to be responsible.~~

#### ~~Sec. 2-257. Negotiation.~~

~~(a) *Generally.* Negotiation is a process of contracting through the use of either competitive or other than competitive proposals and discussions. Negotiation is a procedure that may include the receipt of sealed proposals from offerors, permits bargaining, and may afford offerors an opportunity to revise their offers before award of a contract. Award may be made on a basis other than the lowest price. Negotiation is the preferred method of contracting when specifications or statements of work may not be definitive and may allow for variation in providing the products or services. Requests for proposals (written solicitation) should be used in negotiated acquisitions to communicate purchase requirements to prospective contractors and to solicit proposals or quotations from them.~~

~~(b) *Award without negotiation.* A contractor may be selected from the sealed proposals and award made without discussing proposals with the offerors. Whenever price or price-related factors are the most important or the only evaluation factors, award will normally be made without discussion, if adequate competition exists, to ensure that offerors submit their most favorable proposals at the outset. However, even when award will be based on price alone, discussions may be held as necessary to determine that the price is fair and reasonable. The decision to make an award without discussions shall be made by the city manager for amounts up to \$100,000.00.~~

~~(c) *Award with negotiation.* Whenever appropriate, written or oral discussions may be held with offerors to resolve uncertainties in their proposals, to give them an opportunity to correct deficiencies, and to provide the opportunity to revise proposals. Discussion may be held with one offeror, or with all offerors in the competitive range. The competitive range will be determined following evaluation of the proposals. The competitive range shall be determined on the basis of the evaluation factors stated in the solicitation and shall only include all proposals that have a reasonable chance of being selected for award.~~

~~(d) *Conduct of discussions.* When necessary, discussions shall be held with the assistance or participation of technical, accounting or legal personnel as appropriate. Discussions may be conducted so as to:~~

~~(1) Advise the offeror of deficiencies in its proposal in terms of user department requirements, but not deficiencies relative to other proposals.~~

~~(2) Attempt to resolve uncertainties concerning aspects of the proposal.~~

~~(3) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process.~~

~~(4) Provide the offeror a reasonable opportunity to submit any price, technical or other revisions to its proposal that may result from the discussions.~~

~~(e) *Best and final offers.* Upon completion of discussions, a request for a "best and final offer" will be issued to all offerors still in the competitive range.~~

~~(f) *Contractor selection.* Following receipt of the best and final offers, the contract may be awarded to the offeror (contractor) whose proposal offers the best value to the city.~~

#### ~~Sec. 2-258. Award of contracts.~~

~~Contracts may be awarded to the lowest responsible bidder meeting the terms and conditions of the specifications, provided the price, terms, and conditions are fair and reasonable. The city shall, in its discretion, determine whether such conditions qualify for award of the contract.~~

#### ~~Sec. 2-259. Professional services.~~

~~(a) The selection of professional engineering and architectural services shall follow the procedure established by F.S. § 287.055, as revised.~~

~~(b) The city manager shall appoint a committee of no less than three individuals to evaluate statements of qualification and proposals for professional services. Such individuals may be employees, citizens, or elected officials.~~

~~Sec. 2-260. Administration of contracts.~~

~~While administration of contracts (including purchase orders) requires the efforts and skills of many city employees, the city manager shall provide guidance regarding contract administration functions. Once a contract has been awarded pursuant to approval of contract requirements in this chapter, the city manager is authorized to issue purchase orders for the direct purchase of materials as part of a contract award. Competitive proposals shall not be required when a purchase is made for materials, equipment, prefabricated elements and components, appliances, fixtures and supplies bought under a sales tax savings procedure constituting part of a construction project, which construction contract has been awarded in compliance with this chapter. Concurrent with the issuance of a direct materials purchase order, a deduct purchase order amendment shall be issued to the contract holder.~~

~~(Ord. No. 98-6, exh. A, § 10, 8-17-1998; Ord. No. 06-06, § 3, 6-19-2006)~~

~~Sec. 2-261. Dispute resolution.~~

~~(a) *Dispute resolution.* Any unresolved dispute pertaining to:~~

~~(1) Unadvertised or noncompetitive purchases made under this division shall be submitted to the city manager for resolution and/or final determination.~~

~~(2) Protests by bidders on advertised solicitations for purchases greater than \$10,000 shall follow the following bid/proposal protest procedure.~~

~~(b) *Bid/proposal protest procedure.* Any firm that has submitted a formal bid/proposal to the city and who is adversely affected by an intended decision with respect to the award of the formal bid/proposal, must file a written "notice of protest" with the purchasing/contracts manager within three business days of the posting date of the recommended award. Failure to submit the notice of protest as outlined in this code shall constitute a waiver of proceedings.~~

~~(1) The "notice of protest" shall identify the solicitation and specify the basis for the protest. The "notice of protest" must be received by the city clerk and time stamped no later than 4:00 p.m. on the third working day following the posting date of the recommended award.~~

~~(2) The protesting party must then file a formal written protest within five calendar days after the receipt of the notice of protest. The protesting party shall post a bond (bond, cashier's check, or letter of credit) in an amount equal to five percent of the firm's total bid/proposal or \$10,000.00, whichever is less. Said bond shall be designated and held for the payment of any costs that may be levied against the protesting firm by the city council, if the protest is deemed by the council to be a frivolous protest.~~

~~(3) The formal written protest shall contain the following:~~

~~a. Bid/proposal (RFB, RFP, or RFQ) identification number and title.~~

~~b. Name and address of the affected party and the title or position of the person submitting the protest.~~

~~c. A statement of all claimed disputed issues of material fact. If there are no disputed material facts, the formal written protest must so indicate.~~

~~d. A concise statement of the facts alleged and the rules, regulations, statutes or constitutional provisions which entitle the affected party to relief.~~

~~e. All information, documents, other materials, calculations and any statutory or case law authority in support of the ground for the protest.~~

~~f. A statement indicating the relief sought by the affected (protesting) party.~~

~~g. Any other relevant information that the affected party deems to be material to the protest.~~

~~(4) Upon receipt of a timely filed notice of protest, the purchasing/contracts manager will abate the award of the formal bid/proposal as appropriate until the protest is heard pursuant to the informal hearing process as further outlined below, except and unless the city manager shall find and set forth in writing particular facts and circumstances that would require an immediate award of the formal bid/proposal for the purpose of avoiding a danger to the public health, safety or welfare. Upon such written finding by the city manager, the city manager may authorize an expedited protest hearing and may void the requirement for a formal written protest and bond.~~

~~(5) A dispute committee, comprised of the city manager or designee, finance director or designee, public works director or designee and, as deemed appropriate, the city attorney to provide legal counsel, but not as a voting member, will convene a meeting within seven working days from receipt of the formal written protest with the protesting firm to attempt to resolve the protest. The hearing is to:~~

~~a. Review the basis of the protest;~~

~~b. To evaluate the facts and merits of the protest; and~~

~~c. To make a determination whether to accept or reject the protest.~~

~~If at all possible, the parties will resolve the protest at this first meeting.~~

~~(6) If a resolution to the satisfaction of the dispute committee and the protesting firm cannot be accomplished during the meeting, the dispute committee, with respect to the merits of the protest, shall place the protest on the city council agenda with the staff recommendation and relevant background information.~~

~~(7) City council shall conduct a hearing on the matter at the regularly scheduled city council meeting. Following presentations by the affected parties, the council shall render its decision on the merits of the protest.~~

~~(8) If the council's decision upholds the recommendation by the dispute committee in denial of the protest regarding the award and further finds that the protest was either frivolous and/or lacked merit, the council, at its discretion, may assess costs, charges or damages associated with any delay of the award and any costs incurred with regard to the protest. The bond posted by the party filing the protest may be applied by city council at its discretion to pay in whole or in part said costs, charges, or damages.~~

~~(9) If the council's decision upholds the position of the party filing the protest, the purchasing/contracts manager will cancel any prior award and award the contract to the party filing the protest in the amount of that party's original bid/proposal.~~