


# THE CITY OF RIVIERA BEACH

# PROCUREMENT CODE

# ADOPTED JANUARY 18, 2012

ORDINANCE NO. 4010

# CITY OF RIVIERA BEACH PROCUREMENT CODE
# TABLE OF CONTENTS


Section — Page

Article 1. General Provisions....2
Part A Purpose and Application....2
Section 1-101. Purpose....2
Section 1-102. Application....3
Part B Definitions....3
Section 1-201. Definitions....3
Part C Public Access to Procurement Information....9
Section 1-301. Public Access to ProcurementInformation....9
Article 2. Office of the Purchasing Agent....9
Section 2-101. Establishment, Appointment, and Tenure....9
Section 2-102. Authority and Duties....9
Section 2-103. Delegation to Other City Officials....10
Section 2-104. Unauthorized Purchases....10
Article 3. Source Selection and Contract Formation....10
Part A Methods of Source Selection....10
Section 3-101. Competitive Sealed Bidding....10
Section 3-102. Competitive Sealed Proposals....13
Section 3-103. Contracting for Designated Professional Services....13
Section 3-104. Small Purchases....14
Section 3-105. Sole Source Procurement....15
Section 3-106. Emergency Procurements....15
Section 3-107. Cancellation of Invitations for Bids or Requests for Proposals....16
Section 3-108. Nonbudgeted Items....16
Part B Qualifications and Duties....17
Section 3-201. Responsibility of Bidders and Offerors....17
Section 3-202. Cost or Pricing Data....17

Section 3-203. Cost or Price Analysis.....19
Section 3-204. Bid, Performance and Payment Bonds on Supply or ServiceContracts.....19
Part C Types of Contracts and Contract Administration.....19
Section 3-301. Types of Contracts.....19
Section 3-302. Contract Clauses and Their Administration.....21
Section 3-303. Contract Administration.....22
Section 3-304. Cost Reimbursement Provisions.....24
Section 3-305. Approval of Accounting System.....24
Section 3-306. Right to Inspect Plant.....24
Section 3-307. Right to Audit Records.....24
Section 3-308. Reporting of Anticompetitive Practices..... 25
Section 3-309. City Procurement Records.....25
Section 3-310. Patents.....25
Section 3-311. Notice of Federal Public Policy Requirements.....26
Article 4. Specifications.....26
Section 4-101. Maximum Practicable Competition.....26
Section 4-102. Qualified Products List.....26
Section 4-103. Brand Name Specification.....27
Section 4-104. Brand Name Specification Determination.....28
Section 4-105. Energy Conservation.....28
Article 5. Procurement of Construction, Architect-Engineer and Land Surveying Services.....28
Part A Management of Construction Contracting.....28
Section 5-101. Responsibility for Selection of Methods of ConstructionContracting Management.....28
Part B Bid Security and Performance Bonds.....29
Section 5-201. Bid Security.....29
Section 5-202. Contract Performance and Payment Bonds.....29
Section 5-203. Copies of Bond Forms.....30
Part C Fiscal Responsibility.....30

Section 5-301. Fiscal Responsibility.....30
Part D Professional Architectural, Engineering, Landscape Architecturaland Land Surveying Services (Sec. 287.055, F.S.).....31
Section 5-401. Public Announcement, Competitive Selection and Negotiation.....31
Article 6. Debarment or Suspension.....39
Section 6-101. Authority to Debar or Suspend.....39
Section 6-102. Decision to Debar or Suspend..... 41
Section 6-103. Finality of Decision..... 41
Article 7. Supply Management..... 41
Section 7-101. General Supervision.....41
Section 7-102. Quality Assurance, Inspection, and Testing.....41
Section 7-103. Inventory Management.....42
Section 7-104. Warehousing and Storage.....42
Section 7-105. Authorization to Dispose of Supplies.....42
Section 7-106. Report of Supplies.....42
Section 7-107. Transfer of Excess and Surplus Supplies.....42
Section 7-108. Disposition of Surplus Supplies.....43
Section 7-109. Auctions.....43
Section 7-110. Posted Prices.....43
Section 7-111. Trade-In.....43
Article 8. Appeals and Remedies.....43
Section 8-101. Bid Protests..43
Section 8-102. Contract Claims.....44
Section 8-103. Authority of the Director of Purchasing to Settle Bid Protests and Contract Claims.....45
Section 8-104. Remedies for Solicitations or Awards in Violation of Law.....45
Article 9. Intergovernmental Relations.....46
Section 9-101. Cooperative Purchasing Authorized.....46

Section 9-102. Sale, Acquisition, or Use of Supplies by a Public Procurement Unit....46
Section 9-103. Cooperative Use of Supplies or Services....46
Section 9-104. Joint Use of Facilities....46
Section 9-105. Supply of Personnel, Information, and Technical Services....46
Section 9-106. Public Procurement Units in Compliance with Code Requirements....47
Section 9-107. Contract Prices Established by Other Governmental Units....47
Article 10. Preferences For Local Vendors....47
Section 10-101. Definitions....47
Section 10-102. Lowest Responsible Bidder....48
Section 10-103. Incentive for Vendors who sub-contract at least 25% of Contractwith local businesses....50
Section 10-104. Other Minimum Qualifications....50
Part B Small Business Enterprise Participation Goal.... 50
Section 10-201. Definitions....50
Section 10-202. Scope....54
Section 10-203. Goals ....54
Section 10-204. Contract Compliance Requirement....55
Section 10-205. Ranking of Responsive Bidders.... ....55
Section 10-206. Suspension/Debarment....56
Section 10-207. Prompt Payment....56
Section 10-208. Procurement Procedures....57
Part CMinority Business Enterprise Participation....58
Section 10-301. Definitions....58
Section 10-302. MBE Participation for Public Solicitations Other

than Bids .....59

Part D Apprenticeship Program .....61

Section 10-401. Apprenticeship Program Requirements .....61

Article 11. Ethics in Public Contracting .....62

Section 11-101. Criminal Penalties .....62

Section 11-102. Employee Conflict of Interest .....62

Section 11-103. Gratuities and Kickbacks .....63

Section 11-104. Prohibition Against Contingent Fees .....63

Section 11-105. Employment of former City employees by any person, business, or organization contracting with the City regulated .....63

Section 11-106. Waivers from Conflicts of Interests .....64

Section 11-107. Use of Confidential Information .....64

Section 11-108. Recovery of Value Transferred or Received in Breach of Ethical Standards .....64

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, REPEALING THE UNCODIFIED PROCUREMENT CODE IN ITS ENTIRETY BY REPEALING ORDINANCE NUMBER 2412 AND THE AMENDMENTS THERETO WHICH INCLUDES ORDINANCE NUMBERS 2570, 2916 AND 3027; CREATING A NEW CHAPTER 32 OF THE CITY'S CODE OF ORDINANCES ENTITLED "PROCUREMENT" WHICH SHALL GOVERN PURCHASES OF GOODS AND SERVICES WITHIN THE CITY OF RIVIERA BEACH; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City of Riviera Beach adopted a "Procurement Code" on January 4, 1989, as Ordinance number 2412, the purpose of which was "to provide for the fair and equitable treatment of all persons involved in purchasing by the City, to encourage participation by and utilization of Local-owned businesses, to maximize the purchasing value of public funds, and to provide safeguards for maintaining a procurement system of quality and integrity"; and

**WHEREAS,** the City revised Ordinance number 2412 on November 4, 1992, via Ordinance number 2570 by revising the name of the advisory board from the Local Business Enterprise Council to the Local Business Enterprise Advisory Committee, and by adjusting the Committee's makeup and responsibilities; and

**WHEREAS,** Ordinance number 2570 also added a selection process for selecting the lowest responsible bidder for City contracts which incorporated a local preference component; and

**WHEREAS,** the City further revised Ordinance number 2412 and Ordinance number 2570 on May 1, 2002, via Ordinance number 2916 by amending the selection process to exempt construction contracts from the local preference component; and

**WHEREAS,** the City further revised Ordinance number 2412 on August 15, 2007, via Ordinance number 3027 by amending section 3-106 giving the City Manager the authority to enter into contracts and make payment for repairs to City facilities for thirty days following a locally designated disaster emergency; and

**WHEREAS,** none of the aforementioned ordinances which made up the Procurement Code were codified; and

**WHEREAS,** staff has made substantial revisions to the Procurement code and find that it's in the best interest of the City to repeal Ordinance number 2412 and its amendments in their entirety and adopt a new Procurement Code; and

**WHEREAS,** this new revised ordinance shall be codified in the City's Code of Ordinances and shall be known as the "City of Riviera Beach Procurement Code."

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:**

**SECTION 1.** That the uncodified Procurement Code is hereby repealed in its entirety by specifically repealing Ordinance number 2412 and the amendments thereto which includes ordinance numbers 2570, 2916, and 3027.

**SECTION 2.** That a new Chapter 32 of the City's Code of Ordinances is hereby created entitled "Procurement" which shall govern purchases of goods and services within the City of Riviera Beach.

## ARTICLE I – GENERAL PROVISIONS

### Part A – Purpose and Application

**Sec. 1-101. Purpose.**

The purpose of the City of Riviera Beach Procurement Code (hereinafter, "Ordinance") is to provide for the fair and equitable treatment of all persons involved

in purchasing by the City, to encourage participation by and utilization of locally-owned businesses, to maximize the purchasing value of public funds, and to provide safeguards for maintaining a procurement system of quality and integrity.

**Sec. 1-102. Application.**

This Ordinance applies to contracts for the procurement of supplies, services, and construction entered into by the City after the effective date of this Ordinance, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by the City for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance of contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state law and regulations. Nothing in this Ordinance shall prevent the City from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

## Part B – Definitions

**Sec. 1-201. Definitions.**

(1) Actual costs. All direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs only.

(2) Architect, Engineer and Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of Florida.

(3) Blind Trust. An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

(4) Brand Name or Equal Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet City requirements, and which provides for the submission of equivalent products.

(5) Brand Name Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.

(6) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(7) Change Order. Any written purchase order signed and issued by the Purchasing Agent or designee, directing the contractor to make changes which the "Changes" clause of the contract authorized by the Purchasing Agent to order without the consent of the contractor.

(8) Confidential information. Any information which is available to an employee only because of the employee's status as an employee of the City and is not a matter of public knowledge or available to the public on request.

(9) Construction. The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The item does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(10) Contract. Any agreement, regardless of style or form, for the procurement of supplies, services, or construction.

(11) Contract Modification. Any written alternation in specifications, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract.

(12) Contractor. Any Person or Business having a contract with the City.

(13) Cooperative Purchasing. Procurement conducted by, or on behalf of, more than one Public Procurement Unit, or by a Public Procurement Unit with an External Procurement Activity.

(14) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

(15) Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(16) Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and applicable in accordance with the contract terms and the provisions of this Ordinance, and a fee or profit, if any.

(17) Direct or Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or acting in any other advisory capacity.

(18) Discrimination. An act or failure to act, intentional or unintentional, the effect of which is that a person, because of race, color, sex, or national origin, has been otherwise subjected to unequal treatment under any activity to be assisted under Federal, State, County or City activity.

(19) Employee. An individual drawing a salary or wages from the City, whether elected or not; any non-compensated individual performing personal services for the City or for any department, agency, commission, council, board, or for any other entity established by the executive or legislative branch of the City; and any non-compensated individual serving as an elected official of the City.

(20) Established Catalogue Price. The price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(21) Excess Supplies. Any nonexpendable supplies having a remaining useful life but which are no longer required by the Using Department in possession of the supplies.

(22) Expendable Supplies. All tangible supplies having an original acquisition cost of $100 or less per unit and a probable useful life of one year or less.

(23) External Procurement Agency. Any buying organization not located in this State which, if located in this State, would qualify as a Public Procurement Unit.

(24) Financial Interest.

(a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has

received, or is presently or in the future entitled to receive, more than $100 per year, or its equivalent;

(b) Ownership of 5% or more of any property or business; or

(c) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

(25) Governmental Body. Any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch of any government in the United States of America.

(26) Grant. The furnishing by a governmental body of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

(27) Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(28) Immediate Family. A spouse, children, parents, brothers, and sisters.

(29) Invitation for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

(30) Local Public Procurement Unit. Any county, municipality, school board, and any other subdivision of the State or agency of any such subdivision; any public authority, educational, health, or other public institution; and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction.

(31) Local Business Enterprise. Local business enterprise is a business with a permanent, physical place of business within the corporate city limits and a valid business tax receipt applicable to the required goods, services or construction being procured. Post office boxes or locations at a postal service center shall not be used for the purposes of establishing a physical address.

(32) May. Denotes the permissive.

(33) Nonexpendable Supplies. All tangible supplies having an original acquisition cost of over $100 per unit and a probable useful life of more than one year.

(34) Person. Any natural or artificial person, business, corporation, union, committee, club, other organization, or group of individuals.

(35) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(36) Pricing Data. Information concerning prices for items substantially similar to those being procured, including offered or proposed selling prices, historical selling prices and current selling prices. The term refers to data relevant to both prime and subcontract prices.

(37) Prime Contractor. Any person who has a contract with the City to build, alter, repair, improve, or demolish any public structure or building, or perform other improvements of any kind to any public real property.

(38) Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction, including all functions that pertain thereto such as the description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(39) Public Agency of the City. A public entity subject to or created by the City.

(40) Public Procurement Unit. Either a Local Public Procurement Unit or a State Public Procurement Unit.

(41) Purchasing Agency. Any governmental body which is authorized to enter into contracts.

(42) Purchasing Agent. Any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes the position of "Director of Purchasing."

(43) Qualified Products List. An approved list of supplies, services, or construction items described by model or catalogue numbers which, prior to

competitive solicitation, the City has determined will meet the applicable specification requirements.

(44) Regulation. A governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been lawfully promulgated.

(45) Request for Proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals. Also referred to as "RFP".

(46) Responsible Bidder or Offeror. A person who 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 assure good faith performance.

(47) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

(48) Services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include services provided pursuant to employment agreements or collective bargaining agreements.

(49) Shall. Denotes the imperative.

(50) Specification. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. The terms may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(51) State Public Procurement Unit. The Office of the Chief Procurement Officer and any other Purchasing Agency of the State of Florida.

(52) Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

(53) Surplus Supplies. Any nonexpendable supplies no longer having any use to the City, including obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

(54) Using Agency. Any department, commission, board, or other agency of the City requiring supplies, services, or construction procured pursuant to this Ordinance.

**Part C – Public Access to Procurement Information**

**Sec. 1-301. Public Access to Procurement Information.**

Procurement information shall be a public record to the extent provided in Chapter 119, Florida Statutes, and shall be available to the public as provided in such statute.

**ARTICLE 2 – OFFICE OF THE PURCHASING AGENT**

**Sec. 2-101. Establishment, Appointment, and Tenure.**

(1) Appointment. The Director of Purchasing shall be appointed as Purchasing Agent by the City Manager pursuant to Section 2-118 of the City Code. Qualifications for the Purchasing Agent are contained in the Job Classification System descriptions.

(2) Tenure. The Purchasing Agent shall be appointed to serve an indefinite term and may be removed under procedures outlined in the Personnel Polices and General Codes of the City.

**Sec. 2-102. Authority and Duties.**

(1) Principal Public Purchasing Official. Except as otherwise provided herein, the Director of Purchasing shall serve as the principal public purchasing official for the City, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Ordinance, as well as the management and disposal of supplies. The Director of Purchasing shall have the authority to execute all purchases or dues for purchases which are approved by the City Council in the appropriations ordinance or resolution.

(2) Duties. In accordance with this Ordinance, and subject to the supervision of the City Manager, the Director of Purchasing shall:

(a) Procure or supervise the procurement of all supplies, services, and construction needed by the City;

(b) Sell, trade, or otherwise dispose of surplus supplies; and

(c) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with public agencies using the supplies, services, and construction.

(3) Regulations and Operational Procedures. Consistent with this Ordinance, and with the approval of the City Manager, the Purchasing Agent:

(a) Shall have the authority and responsibility to promulgate regulations governing the procurement, management, control and disposal of any and all supplies, services and construction.

(b) May adopt operational procedures relating to the execution of the duties of the Purchasing Agent. These may be set forth in a manual or handbook.

**Sec. 2-103. Delegations to Other City Officials.**

The Director of Purchasing may not delegate authority to purchase certain supplies, services, or construction items to other City officials, unless specifically authorized by the City Manager.

**Sec. 2-104. Unauthorized Purchases.**

Except as herein provided in this Ordinance, or otherwise provided in the City's General Codes, it shall be a violation of this Ordinance for any city officer, employee, or other person, to order the purchase of, or make any contract for, materials, supplies or services within the purview of this Ordinance, in the name of or on behalf of the City other than through the Director of Purchasing or a designee of the Director of Purchasing, and the City shall not be bound by a purchase order or contract made contrary to any of the provisions herein.

## ARTICLE 3 – SOURCE SELECTION AND CONTRACT FORMATION

### Part A – Methods of Source Selection

**Sec. 3-101. Competitive Sealed Bidding.**

(1) Conditions for Use. All contracts of the City exceeding twenty-five thousand ($25,000) shall be awarded by competitive sealed bidding except as otherwise provided in Sections 3-102 (Competitive Sealed Proposals), 3-103 (Contracting for Designated Professional Services), 3-104 (Small Purchases), 3-105

(Sole Source Procurement), 3-106 (Emergency Procurements), or 5-401 (Public Announcement and Selection Process) of this Ordinance, or as otherwise approved in public session by City Council.

(2) Invitation for Bids. An invitation for bids shall be issued and shall include specifications, all contractual terms and conditions applicable to the procurement.

(3) Public Notice. Public notice of the invitation for bids shall be given not less than 14 calendar days prior to the date set forth in the notice for the opening of bids. Such notice may be given by publication in a subscription newspaper of general circulation in the City or by posting the particulars to the Purchasing Department Web-page. The notice shall state the place, date, and time of bid opening.

(4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the public notice of the invitation for bids. The amount of each bid and such other relevant information as the Director of Purchasing deems appropriate, together with the name of each bidder, shall be recorded.

(5) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alternation or correction, except as authorized in this Ordinance. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall generally set forth the evaluation criteria to be used.

(6) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before the bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids

prior to time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(a) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(b) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Director of Purchasing.

(7) Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid for a project exceeds available funds, and such bid does not exceed such funds by more than 15 percent, the Director of Purchasing is authorized, when time or economic considerations preclude solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids. The City retains the right to reject all bids should negotiations fail.

(8) Pre-Qualification of Bidders. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

**Sec. 3-102. Competitive Sealed Proposals.**

(1) Conditions for Use. When the Director of Purchasing determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by use of the competitive sealed proposals method.

(2) Request for Proposals. Proposals shall be solicited through a request for proposals.

(3) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 3-101(3) (Competitive Sealed Bidding, Public Notice).

(4) Receipt of Proposals. No proposals shall be opened until the time designated in the public notice of the request for proposals. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered.

(5) Evaluation Factors. The request for proposals shall state the relative importance of price, if appropriate, and other evaluation factors.

(6) Discussion with Responsible Offerors and Revision to Proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be capable 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 proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

(7) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

**Sec. 3-103. Contracting for Designated Professional Services.**

(1) General Authority. Procurement of professional services of accountants, dentists, physicians, psychologists, and veterinarians, licensed to

practice in Florida, shall be by the use of the competitive sealed proposals method set forth in Section 3-102 (Competitive Sealed Proposals), except as authorized by Section 3-105 (Sole Source Procurement) or Section 3-106 (Emergency Procurement), or except when the fee for professional services is limited to $25,000 or less per fiscal year of the City. Procurement of professional services may be authorized by Section 3-104 (Small Purchases).

(2) Contracts for Legal Services. Notwithstanding the foregoing, the City Council may authorize the procurement of legal services by negotiating with a lawyer or lawyers selected or recommended by the City Attorney on the basis of experience and skill. Further, as it relates to litigation matters, the City Attorney has the authority to negotiate with and hire attorneys necessary to defend the City, subject to terms and conditions as may be outlined in contracts with insurance carriers.

(3) Contracts for Medical Services. Notwithstanding the foregoing, the City Council may authorize the procurement of medical services by negotiating with a medical doctor or doctors selected or recommended by the City Manager or designee on the basis of experience and skill.

(4) Contracts for Other Services. Notwithstanding the foregoing, the City Council may authorize the procurement of other services, such as social services, by negotiating with organizations selected or recommended by the City Manager or designee on the basis of experience and skill.

**Sec. 3-104. Small Purchases.**

(1) General. Any contract not exceeding $25,000 may be made in accordance with the small purchase procedures authorized in this Section. Contracts shall not be divided for the purpose of avoiding the application of these purchasing requirements.

(2) Small Purchases over $2,500. Insofar as it is practical for small purchases in excess of $2,500, no less than three businesses shall be solicited to submit quotations. The process for soliciting quotations requires the requesting department to submit to the Director of Purchasing a requisition with a sufficient description of the services or goods required, and the Purchasing Department shall

obtain the necessary quotes. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

(3) Small Purchases of $2,500 or Less. The Director of Purchasing shall adopt operational procedures for making small purchases of $2,500 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service, or construction being purchased. Further, such operational procedures shall require the preparation and maintenance of written records adequate to document the competition obtained, properly account for the funds expended, and facilitate and audit of the small purchase made.

**Sec. 3-105. Sole Source Procurement.**

A contract may be awarded without competition when the Director of Purchasing determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Director of Purchasing shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification numbers of each contract file.

**Sec. 3-106. Emergency Procurements.**

Notwithstanding any other provisions of this Ordinance, the City Manager or designee may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification numbers of the contract file.

Further, during the aftermath of a locally designated disaster emergency as declared under Article II, section 15 of the City's Charter or in carrying out emergency management powers as defined in section 252.38, Florida Statutes, as may be amended from time to time, these procurement procedures shall authorize the City Manager and the Director of Purchasing, to contract and make payment for repairs to damaged city facilities for a thirty (30) day period following the disaster emergency. The City Manager will report to the City Council on expenditures following the disaster. Further, the City Manager and the Director of Purchasing may utilize the resources of the City's insurance underwriter as part of the City's due diligence process in identifying vendors to complete repairs in the most timely and cost effective manner. These emergency procurement procedures will be in effect until repairs on City owned facilities are completed.

**Sec. 3-107. Cancellation of Invitations for Bids or Request for Proposals.**

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the City. The reasons therefore shall be made part of the contract file. Each solicitation issued by the City shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interest of the City. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of the same or similar items.

**Sec. 3-108. Nonbudgeted Items.**

(1) Inventory items. Items which are kept on hand as stock inventory may be purchased by the Director of Purchasing provided orders of twenty thousand dollars ($20,000) or more but less than forty thousand dollars ($40,000) shall first be approved by the City Manager. Orders of forty thousand dollars ($40,000) or more shall be approved by the City Council.

(2) Operating Expenditures. Non-budgeted operating items may be purchased by the Director of Purchasing provided the cost does not exceed twenty

thousand dollars ($20,000). All such items over twenty thousand dollars ($20,000) must be approved by the City Manager.

(3) Special-purpose purchases. Items from renewal and replacement funds and from trust funds may be purchased by the Director of Purchasing provided the requesting department has first received approval from the City Manager.

(4) Capital expenditures. Non-budgeted capital items must be approved by the City Council.

**Part B – Qualifications and Duties**

**Sec. 3-201. Responsibility of Bidders and Offerors.**

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Director of Purchasing. Grounds for a determination of non-responsibility may include, but are not limited to, the unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

**Sec. 3-202. Cost or Pricing Data.**

(1) Required Submissions Relating to the Award of Contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed one hundred thousand dollars ($100,000) and is to be awarded by competitive sealed proposals (Section 3-102), or by sole source procurement authority (Section 3-105).

(2) Exceptions. The submission of cost or pricing data relating to the award of a contract is not required when:

(a) The contract price is based on adequate price competition;

(b) The contract price is based on established catalogue prices or market prices;

(c) The contract price is set by law or regulation; or

(d) It is determined in writing by the Director of Purchasing that the requirements of Section 3-202(1) above may be waived, and the determination states the reasons for such waiver.

(3) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing or any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed 10% of the initial contract.

(4) Exceptions. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

(a) unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or

(b) it is determined in writing by the Director of Purchasing that the requirements of Section 3-202(3) above may be waived, and the determination states the reasons for such waiver.

(5) Certification Required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that the cost or pricing data submitted is accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(6) Price Adjustment Provision Required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the City, including profit or fee, shall be adjusted to exclude any significant sums by which the City finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current.

**Sec. 3-203. Cost or Price Analysis.**

A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under Section 3-101 (Competitive Sealed Bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file.

**Sec. 3-204. Bid, Performance and Payment Bonds on Supply or Service Contracts.**

Bid, performance and payment bonds or other security may be requested for supply contracts or service contracts as the Purchasing Agent or head of a using agency deems advisable to protect the City's interests. Any such bonding requirements shall be set forth in the solicitation. Bid, performance or payment bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

**Part C – Types of Contracts and Contract Administration**

**Sec. 3-301. Types of Contract.**

(1) General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of the City may be used, provided that the use of a cost-plus-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impractical to obtain the supply, service, or construction item required except under such a contract.

(2) Multi-Term Contracts.

(a) Specified Period. Unless otherwise provided by law, a contract for supplies or services maybe entered into for any period of time deemed to be in the best interest of the City, provided the term of the contract and conditions or renewal or 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 succeeding fiscal periods shall be subject to the

availability and appropriation of funds therefore in the budget of the City, as determined by the City Council.

(b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:

(i) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(ii) that multi-year contracts for continuing services for engineering, architectural, and landscape architectural services, shall contain a non-exclusivity clause that permits the City to utilize, at its option, either the services of the person, business, or organization holding a multi-year continuing service contract or to solicit requests for proposals on a project basis.

(c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

(3) Multiple Source Contracting.

(a) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the City's actual requirements is limited by the Uniform Commercial Code.

(b) Limitations on use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of Section 3-101 (Competitive Sealed Proposals), Section

3-104 (Small Purchases), or Section 3-106 (Emergency Procurements), as applicable. Multiple source awards shall not be made when a single award will meet the City's needs without sacrifice of economy or service, unless Local business and SBE conditions are involved. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

(c) Contract and Solicitation Provisions. All eligible users of the contract shall be named in the solicitation, and the actual requirements of such users that can be met under the contract shall be obtained in accordance with the contract, provided that:

(i) The City shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and

(ii) The City shall reserve the right to take bids separately if the Director of Purchasing approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the City.

(d) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the City shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

(e) Determination Required. The Director of Purchasing shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the contract file.

**Sec. 3-302. Contract Clauses and Their Administration.**

(1) Contract Clauses. All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The City Manager or designee, after consultation

with the City Attorney, may include clauses appropriate for supply, service, or construction contracts regarding:

(a) the unilateral right of the City to order, in writing, changes in the work within the scope of the contract;

(b) the unilateral right of the City to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;

(c) variations occurring between estimated quantities of work in contract and actual quantities;

(d) defective pricing;

(e) time of performance and liquidated damages;

(f) specified excuses for delay or nonperformance;

(g) termination of the contract for default;

(h) termination of the contract in whole or in part for the convenience of the City;

(i) suspension of work on a construction project ordered by the City;

(j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract;

(i) when the contract is negotiated;

(ii) when the contractor provides the site or design; or

(iii) when the parties have otherwise agreed with respect to the risk of differing site conditions;

(k) anti-discrimination assurance from the contractor.

(2) Price Adjustments.

(a) Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed in one or more of the following ways:

(i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(ii) By the unit prices specified in the contract or subsequently agreed upon;

(iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(iv) in such other manner as the contracting parties may mutually agree; or

(v) in the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the City, as accounted for in accordance with the City cost accounting principles regulations, or lacking applicable city regulations in accordance with generally accepted cost accounting principles, and subject to the provisions of Article 9 (Appeals and Remedies).

(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-202 (Cost or Pricing Data).

(3) Standard Clauses and Their Modification. The City Manager or designee, after consultation with the City Attorney, may establish standard contract clauses for use in City contracts.

**Sec. 3-303. Contract Administration.**

A contract administration system designed to insure that a contract is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, should be maintained. For every contract a City contact person will be designated.

**Sec. 3-304. Cost Reimbursement Provisions.**

If a contract is being funded in whole or in part by assistance from a federal agency, then reimbursement to contractors for incurred costs or cost estimates included in negotiated prices may be subject to federal cost principles. Individual

federal agencies may have requirements applicable to their particular assistance programs. Lacking applicable federal regulations, individual federal agency regulations, or City regulations, cost reimbursement shall be in accordance with generally accepted cost accounting principles.

**Sec. 3-305. Approval of Accounting System.**

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the Director of Purchasing that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specified contract type contemplated; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

**Sec. 3-306. Right to Inspect Plant.**

The City may, at reasonable times, inspect any part of the plant, place of business, or worksite of a contractor or subcontractor which is pertinent to the performance of any contract awarded or to be awarded by the City.

**Sec. 3-307. Right to Audit Records.**

(1) Audit of Cost or Pricing Data. The City may, at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to Section 3-202 (Cost or Pricing Data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of the final payment under the contract.

(2) Contract Audit. The City shall be entitled to audit the books and records of a contractor, or a subcontractor at any tier, under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a

period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

(3) Contractor Records. If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

(a) requiring the contractor, and subcontractors at any tier, to maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and

(b) requiring the contractor, and subcontractor at any tier, to provide to the City, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purpose of examining, auditing, and copying them.

**Sec. 3-308. Reporting of Anticompetitive Practices.**

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted by the complainant to the State Attorney in Palm Beach County and the City Attorney.

**Sec. 3-309. City Procurement Records.**

All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file by the Director of Purchasing, and shall be retained and disposed of in accordance with records retention guidelines and schedules as required by Florida Statutes.

**Sec. 3-310. Patents.**

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from another governmental agency, then the contract shall include provisions:

(a) giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or invention arising out of the contract; and

(b) requiring the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

**Sec. 3-311. Notice of Federal Public Policy Requirements.**

If the contract is being funded in whole or in part by assistance from another governmental agency, and the contract is subject to one or more federal public policy requirements, such as, for example, equal employment opportunity, fair labor standards, energy conservation, environmental protection, or other similar socio-economic programs, then the Director of Purchasing should include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors, material men, etc.

## ARTICLE 4 – SPECIFICATIONS

**Sec. 4-101. Maximum Practicable Competition.**

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications, including, but not limited to, those prepared for the City by architects, engineers, designers and draftsmen.

**Sec. 4-102. Qualified Products List.**

(1) Use. A qualified products list may be developed by the Director of Purchasing when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy the City's requirements.

(2) Comments. Prior to final approval of the proposed specifications for a qualified products list item, the Director of Purchasing shall provide the using department, and a reasonable number of manufacturers or suppliers as the Director of Purchasing deems appropriate, an opportunity to comment on the draft of the proposed specifications.

(3) Solicitation. When developing a qualified products list, a representative group of potential suppliers should be solicited in writing to submit products for

testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

(4) Testing. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements.

(5) Final Approval, Revisions and Cancellation. The final approval of, revisions to and cancellation of qualified products lists shall be made only upon approval of the Director of Purchasing or designee.

**Sec. 4-103. Brand Name Specification.**

(1) Use. Brand name or equal specifications may be used when the Purchasing Agent determines in writing that:

(a) no other design or performance specification or qualified products list is available;

(b) time does not permit the preparation of another form of purchase description;

(c) the nature of the product or the City's requirements makes use of a brand name or equal specification suitable for the procurement;

(d) use of a brand name or equal specification is in the City's best interests.

(2) Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(3) Required Characteristics. Unless the Director of Purchasing determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(4) Nonrestrictive Use of Brand Name of Equal Specifications. Where a brand name or equal specification is used in solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing

the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

**Sec. 4-104. Brand Name Specification Determination.**

(1) Use. Because the use of a brand name specification is restrictive of product competition, it may be used only when the Director of Purchasing makes a written determination that only the identified brand name item or items will satisfy the City's needs.

(2) Competition. The Director of Purchasing shall seek to identify sources from which the designated brand name items or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3-105 (Sole Source Procurement).

**Sec. 4-105. Energy Conservation.**

If a contract is being funded in whole or in part by assistance from another governmental agency, then the City's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

## ARTICLE 5 – PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

### Part A – Management of Construction Contracting

**Sec. 5-101. Responsibility for Selection of Methods of Construction Contracting Management.**

The City Manager or designee shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the Director of Purchasing shall consider the City's requirements, its resources, and the potential contractor's capabilities. The Director of Purchasing shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

## Part B – Bid Security and Performance Bonds

**Sec. 5-201. Bid Security.**

(1) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Director of Purchasing to exceed one hundred thousand dollars ($100,000). Bid security shall be a bond provided by a surety company authorized to do business in the State, or the equivalent in case, or otherwise supplied in a form satisfactory to the City. Nothing herein shall prevent the requirement of such bonds on construction contracts under one hundred thousand dollars ($100,000) when the circumstances warrant in the opinion of the City Manager.

(2) Amount of Bid Security. Bid security shall be in an amount equal to at least 5% of the amount of the bid.

(3) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires bid security, a bid shall be rejected in the event of non-compliance unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirement.

(4) Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in Section 3-101(6)(b) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards), no action shall be taken against the bidder or the bid security.

**Sec. 5-202. Contract Performance and Payment Bonds.**

(1) When Require – Amounts. When a construction contract is awarded in excess of one hundred thousand dollars ($100,000), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract;

(a) Performance bond satisfactory to the City, executed by a surety insurer authorized to do business in the State as a surety, in an amount equal to 100% of the price specified in the contract, conditioned that the contractor perform the contract in the time and manner prescribed in the contract; and

(b) A payment bond satisfactory to the City, executed by a surety insurer authorized to do business in the State as a surety, in an amount equal to 100% of the price specified in the contract, conditioned that the contractor promptly make payments to all persons supplying labor, materials of supplies used directly or indirectly in the performance of the work provided for in the contract, and who are claimants as defined in Section 255.05(1), Florida Statutes.

(2) Reduction of Bond Amounts. The City Manager is authorized to reduce the amount of performance and payment bonds to 50% of the contract price for each bond when a written determination is made that it is in the best interests of the City to do so.

(3) Authority to Requirement Additional Bonds. Nothing in this Section shall be construed to limit the authority of the City to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section 5-202.

**Sec. 5-203. Copies of Bond Forms.**

Any person may request and obtain from the City a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

**Part C– Fiscal Responsibility**

**Sec. 5-301. Fiscal Responsibility.**

Every contract modification, change order, or contract price adjustment in excess of ten percent (10%) under a construction contract with the City shall be subject to prior approval by the City Council after receiving a report as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget. Contract modifications, change orders, or contract price adjustments totaling less than ten percent (10%) cumulatively may be processed subject to the approval of the City Manager without prior approval of City Council; however, each successive cumulative $15,000 increment shall be subject to

the approval of City Council, prior to the next successive cumulative $20,000 increment being approved by the City Manager.

**Part D – Professional Architectural, Engineering, Landscape Architectural and Land Surveying Services (Sec. 287.055, F.S.)**

**Sec. 5-401. Public Announcement, Competitive Selection and Negotiation.**

(1) Public Announcement. It is the policy of the City to publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the Director of Purchasing may require firms to submit a statement of qualifications, performance data and a quotation of their proposed fees for the performance of professional services.

(a) Scope of Project Requirements. No less than 14 days prior to the anticipated mailing date and advertising date of the public announcement for professional services, the using department or agency for which the professional services are requested shall submit to the Director of Purchasing written project requirements indicating the nature and scope of the professional services needed by the using department or agency including but not limited to the following:

(i) the general purpose of the service study;

(ii) the objectives of the study or service;

(iii) estimated period of time needed for the service of the study;

(iv) the estimated cost of the service or study;

(v) whether the proposed study or service would or would not duplicate any prior or existing study or service;

(vi) list of current contracts or prior services or studies which are related to the proposed study or service; and

(vii) the desired qualifications, listed in order of importance, of the person or firm applicable to the scope and nature of the services requested.

(b) Review of Project Requirements. The City Manager or designee shall review the scope of project requirements and, if revisions of project requirements may be warranted to best meet the needs of the City, copies of the project requirements shall be submitted to the User Department and the Director of Purchasing for their consideration of revision prior to public distribution of the project requirements.

(c) Distribution of Project Requirements. The Director of Purchasing shall distribute the written project requirements to all persons on the mailing list, if one exists, who have indicated an interest in being considered for the performance of such professional services and to any other additional persons as the Director of Purchasing or using agency deems desirable. The project requirements shall be accompanied by an invitation to such persons to submit an indication of interest in performing the required services, and by notification of a reasonable period of time within which such indications of interest will be accepted, which period shall not be less than fourteen days from the date of distribution. The Director of Purchasing shall also publish once in at least one newspaper of general circulation in the City and Palm Beach County, at least 14 days prior to the closing date for the acceptance of indications of interest, a general notice of the project requirements and an invitation to submit indications of interest.

(d) Re-solicitation. If the City receives indications of interest from less than three persons, it may re-solicit indications of interest from all persons previously solicited and from such additional persons as it may deem advisable. Thereafter, it may proceed to consider those persons responding to the solicitation or re-solicitation.

(e) Modifications Prohibited. After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed prior to the selection of those best qualified to be formally interviewed.

(f) Reuse of Existing Plans. There shall be no public notice requirement or utilization of the selection process as provided in this section for projects in which the City is able to reuse existing plans from a prior project. However, public notice of any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.

(g) Exemptions. This section shall not apply to a professional service contract for a project whose basic construction cost is estimated to be below the threshold established in Sections 287.055 and 287.017, Florida Statutes, or for a planning or study activity when the fee for professional services is below the applicable threshold, or in the cases of valid public emergency so certified by the City Manager. This section shall not apply to any requirement for professional services if a continuing contract to provide such services is in effect and a determination is made to utilize the continuing contract to obtain such services.

(2) Selection. Depending on the expected complexity and expense of the professional services to be contracted, the City Manager or designee shall determine whether a selection committee will best serve the needs of the City.

(3) Evaluation procedures.

(a) Membership. Prior to the award of a contract for the performance of professional services, the City Manager may appoint an Evaluation Committee. The Committee shall consist of one representative from the Finance Department and at least one representative from the using department for which the professional services will be performed. Other members may be appointed to the committee by the City Manager.

(b) Approval and Distribution of Project Requirements.

(1) The using department shall submit to the City Manager written project requirements indicating the nature and scope of the professional services needed by the using department and shall

also submit a certification of information required by the Committee, including the following:

(i) the general purpose of the service or study.

(ii) the objectives of the study or service.

(iii) the estimated period of time needed for the service or the study.

(iv) the estimated cost of the services or study.

(v) Whether the proposed study or service would or would not duplicate a prior or existing study or service.

(vi) List of current contracts or prior services or studies which are related to the proposed study or service.

Upon receipt of the scope and the certification, the City Manager shall immediately send copies to the Evaluation Committee. The Evaluation Committee shall then review the scope and approve or disapprove the scope of services.

(2) The Evaluation Committee or City Manager's designee shall have the prepared written project requirements indicating the nature and scope of professional services needed by a using department distributed by the Purchasing Department to the persons on the mailing list, if one exists, who have indicated an interest in being considered for the performance of the professional services for using agencies and to other additional persons as the Evaluation Committee or designee deems desirable. The project requirements shall be accompanied by an invitation to the persons to submit an indication of interest in performing the required services and by notification of a reasonable period of time within which the indications of interest will be accepted, which period shall also be published once in a newspaper of general circulation in the City (at least ten days prior to the closing date for the acceptance of indications of interest) a general notice of the project requirements and an invitation to submit indications of interest.

(c) Work Description. If the Evaluation Committee or designee determines that it is unable to define with reasonable precision the nature and scope of the professional services needed by the using agency, it shall also require interested persons to submit a detailed description of the work to be performed in order to meet the general project requirements.

(d) Certain prior contractees disqualified. A person who has contracted with a City department for the performance of professional services for the purpose of defining with reasonable precision the nature and scope of other professional services needed by the department may, in the discretion of the Evaluation Committee, be disqualified from the award of a contract to perform the other professional services which the person or entity was previously contracted by the City to define.

(e) Quotation of fees. The Evaluation Committee or designee shall also require interested persons to submit a quotation of their proposed fees for the performance of the professional services, unless the interested persons are prohibited by law from doing so.

(f) Re-solicitation. If the Evaluation Committee or designee receives indications of interest from less than three persons, it may re-solicit indications of interest from persons previously solicited and from the additional persons as it may deem advisable. Thereafter, it may proceed to consider those persons responding to the solicitation or re-solicitation.

(g) Modifications prohibited. Once written indications of interest have been accepted by the Evaluation Committee or designee, they shall not be modified or allowed to be modified subsequently in any manner whatsoever except for correction of clerical errors or other similar minor irregularities as may be allowed by the Evaluation Committee or designee prior to making its recommendations as to interest, availability and qualifications to an awarding authority.

(4) Selection of persons qualified, interested and available.

(a) From among those persons evidencing an interest in performing the services, the Evaluation Committee or designee shall:

(i) Prepare an alphabetical list of those persons determined to be qualified, interested and available, and

(ii) Designate three persons on the alphabetical list considered by the Evaluation Committee or designee to be best qualified to perform the work required.

(b) The best qualified selection shall be based upon the Evaluation Committee's or designee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed.

(c) The Evaluation Committee or designee shall determine qualifications, interest and availability by reviewing the written responses received that express an interest in performing the services. When required by Section 287.055 thresholds, an Evaluation Committee shall conduct formal interviews of selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determinations shall be based upon the following considerations:

(i) competence, including technical education and training, experience in the kind of project to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons and, where applicable, the relationship of construction cost estimated by the person to actual costs on previous projects.

(ii) current work load.

(iii) financial responsibility.

(iv) ability to observe and advise whether plans and specifications are being complied with, where applicable.

(v) past record of professional accomplishments.

(vi) proximity to the project involved.

(vii) past record of performance for using agencies.

(viii) ability to design and approach and work plan to meet the project requirements, where applicable.

(ix) quotation of rates, fees or charges and other detailed cost-proposal or cost-breakdown information.

(x) the volume of current and prior work performed for using agencies shall be considered a minus factor.

(d) The absence of professional experience in a specialized area shall not inhibit proper consideration of otherwise qualified, competent persons.

(e) In determining the best qualified persons, the Evaluation Committee shall give preference to persons having local places of business where no other differentiation in qualifications can be made.

(f) In determining the best qualified persons, the Evaluation Committee shall give preference to persons that are Local businesses.

(g) Minutes. The Evaluation Committee shall keep official minutes of its meetings, which shall be maintained on file in the respective using department as a permanent public record.

(h) Public notice of meetings. The Evaluation Committee shall cause a written notice of time, place and purpose of each of its meetings to be filed as a public record with the City Clerk's Office at least 24 hours in advance of the meeting.

(5) Award of contract; independent agencies. In cases where an independent agency is directed by law to award its respective contracts, the Evaluation Committee shall forward to the independent agency the alphabetical list of persons qualified, interested and available and its recommendation regarding the three persons considered best qualified. After receipt of the list and recommendation, the independent department shall select three persons in order of preference based on most qualified to perform the services and shall engage in negotiation according to this order, beginning with the first best qualified, proceeding to commence negotiation with the second best qualified person or, failing accord with the second most qualified and terminating the negotiation, proceeding to undertake

the negotiation with the third best qualified person. Thereafter, the selection and negotiation procedure shall be continued with additional selected persons in order of best qualified until a mutual agreement is reached. No independent agency which is required by law to utilize the services of the Purchasing Department shall award a contract for professional services until after receipt of the recommendations of the Evaluation Committee.

(6) Other cases. In those cases to which Chapter 287, Florida Statutes does not apply, the Evaluation Committee or designee shall forward to the requesting department an alphabetical list of persons qualified, interested and available and its recommendation regarding the three persons considered best qualified in order of first, second and third best qualified. The City Manager shall approve or disapprove the recommendation of the Evaluation Committee. Upon approval, the Evaluation Committee or designee shall negotiate with the first most qualified person and recommend to the City Manager, for approval, mutually satisfactory terms of employment, including the professional fee to be charged. If no mutual agreement is approved by the City Manager, the City Manager shall terminate negotiations with the person by written notice and negotiation shall commence with the second most qualified person. Upon failing accord and terminating negotiation with the second most qualified person, negotiations shall be commenced with the third most qualified person. This selection and negotiation procedure shall be continued with additional selected persons in order of best qualified until a mutual agreement is approved by the City Manager. The City Council may then award a contract for the performance of the required professional services to the person with whom a mutual agreement is reached. If the City Manager disapproves the recommendation of the Evaluation Committee or designee as to the ranking of the three best qualified, then the selection process may continue as to additional firms in the order of their competence and qualifications until an agreement is reached or it is determined that no agreement will be reached.

(7) Truth-in-negotiation certificate required for contracts in excess of $50,000. For all lump sum or cost-plus-a-fixed-fee professional service contracts over $50,000 the person receiving the award shall execute a truth-in-negotiation

certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. A professional service contract under which a certificate is required shall contain a provision that the contract price shall be adjusted to exclude any significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Contract adjustments shall be made within one year following the end of the contract.

(8) Contingent fees prohibited. Each contract entered into for professional services shall contain a prohibition against contingent fees as follows: The architect, registered land surveyor, professional engineer or other person providing professional services (as applicable) warrants that he has not employed or retained a company or person, other than a bona fide employee working solely for the architect, registered land surveyor, professional engineer or other person providing professional services for any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this agreement.

For the breach or violation of this provision, the City or independent department shall have the right to terminate the agreement without liability and, in its discretion, to deduct from the contract price, or otherwise recover the full amount of the fee, commission, percentage, gift or consideration.

(9) Continuing Contracts. Nothing in this section shall be construed to prohibit continuing contracts for professional services between a firm and the City.

(10) Exemptions. The provisions of this Part D shall not apply to the awarding of a contract:

(a) for the performance of professional services for a professional fee, exclusive of reimbursed expenses, of less than the thresholds specified now or hereafter in Chapter 287, Florida Statutes.

(b) with another local, State or federal governmental agency for the performance of professional services.

## ARTICLE 6 – DEBARMENT OR SUSPENSION

**Sec. 6-101. Authority to Debar or Suspend.**

After reasonable notice to the Person involved and reasonable opportunity for that Person to be heard, the Director of Purchasing, after consulting with the City Attorney, is authorized to debar a Person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years. After consultation with the City Attorney, the Director of Purchasing is authorized to suspend a Person from consideration for award of contract if there is probable cause to believe that the Person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:

(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 subcontractor;

(b) 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 which currently, seriously, and directly affects responsibility as a City contractor;

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

(d) violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify debarment action:

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

  (ii) a record of failure to perform or of unsatisfactory performance in accordance with terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(e) violation of the ethical standards set forth in Article 11 (Ethics in Public Contracting); and

(f) any other cause the Director of Purchasing determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this Ordinance.

**Sec. 6-102. Decision to Debar or Suspend.**

The Director of Purchasing shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

**Sec. 6-103. Finality of Decision.**

A decision to debar or suspend shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision files a written notice of appeal to the City Council, in which event the decision shall be deemed final and conclusive if and when the decision is affirmed by the City Council.

## ARTICLE 7 – SUPPLY MANAGEMENT

**Sec. 7-101. General Supervision.**

The Director of Purchasing or designee shall have general supervision of the management of supplies during their entire life cycle. The objectives of supply management include preventing waste, continuing utilization of supplies, and obtaining a fair return of value upon disposal of supplies. In order to achieve these objectives, sound inspection, testing, warehousing, and inventory practices are called for, and effective means of transferring and disposing of property shall be utilized.

**Sec. 7-102. Quality Assurance, Inspection, and Testing.**

The Director of Purchasing or designee shall take such steps as are deemed desirable to ascertain or verify that supplies, services, or construction items procured by the City conform to specifications. In performing this duty, the Purchasing Agent may establish inspection and testing facilities, enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities, and contract with others for inspection or testing facilities, and contract with others for inspection or

testing work as needed. The Purchasing Agent may delegate authority for inspection and testing to using departments.

**Sec. 7-103. Inventory Management.**

The Director of Purchasing or designee shall have general supervision of all inventories of tangible personal property, whether warehoused or in use, belonging to the City or any of its departments. This responsibility shall not, however, relieve any department of accountability for tangible personal property and other supplies under its control. All warehouses and similar storage areas shall be inventoried at least annually. The Director of Purchasing or designee shall have general supervision of the determination of appropriate stock levels and economic order quantities for all inventories belonging to the City.

**Sec. 7-104. Warehousing and Storage.**

The Director of Purchasing or designee shall exercise general supervision of any receiving, storage, and distribution facilities and services maintained and operated by the City or any of its agencies.

**Sec. 7-105. Authorization to Dispose of Supplies.**

No Using Department shall transfer, sell, trade-in, or otherwise dispose of supplies owned by the City without written authorization of the Director of Purchasing or designee.

**Sec. 7-106. Report of Supplies.**

Using departments shall notify the Director of Purchasing or designee, on such forms and at such times as the Director of Purchasing may prescribe, of all excess supplies. In so doing, a Using department may suggest a dollar value per item or per lot that it desires to receive from any transfer or disposition of such excess supplies, but the suggestion shall not constitute the minimum sale or transfer amount.

**Sec. 7-107. Transfer of Excess and Surplus Supplies.**

Insofar as is feasible and practical, the Director of Purchasing shall transfer excess supplies to other City departments. The price of the supply transferred shall be the fair market price based, where possible, on previous sales of similar products in the open market, or on an appraised value, and shall be one mutually agreed upon between the owning agency and the recipient, and approved by the Director of

Purchasing. If agreement cannot be reached, the Director of Purchasing shall establish the price.

**Sec. 7-108. Disposition of Surplus Supplies.**

Surplus supplies shall be offered through competitive sealed bids, public auction, or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sales to be restricted or controlled, the Director of Purchasing may employ such other means, including appraisal, provided such officer makes a written determination that such procedure is advantageous to the City.

**Sec. 7-109. Auctions.**

When authorized by the Director of Purchasing, City employees or an experienced professional auctioneer may be used to cry the sale and assist in the preparation of the sale.

**Sec. 7-110. Posted Prices.**

Surplus supplies may be sold at posted prices as determined by the Director of Purchasing when such prices are based on fair value and the sale is conducted pursuant to written procedures established by the Purchasing Agent.

**Sec. 7-111. Trade-In.**

Surplus supplies may be traded-in only when the Director of Purchasing determines the trade-in value is expected to exceed the value estimated to be obtained through the sale or other disposition of such supplies.

## ARTICLE 8 – APPEALS AND REMEDIES

**Sec. 8-101. Bid Protests.**

(1) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City Council. Protestors shall seek resolution of their complaints initially with the Director of Purchasing, and secondly with the City Manager prior to protesting to the City Council. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and could not

have been reasonably expected to know of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within five (5) calendar days after such aggrieved person knows or could have reasonably been expected to know of the facts giving rise thereto.

(2) Stay of Procurements During Protests. In the event of a timely protest under Subsection (1) of this Section, the Director of Purchasing shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the City Manager makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the City.

**Sec. 8-102. Contract Claims.**

(1) Decision of the City Manager. All claims by a contractor against the City relating to a contract, except bid protests, shall be submitted in writing to the City Manager or designee for a decision. The contractor may request a conference on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(2) Notice to the Contractor of the City Manager's Decision. The decision of the City Manager or designee shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under this Section.

(3) Finality of City Manager's Decision; Contractor's Right to Appeal. The City Manager's decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the contractor files a written notice of appeal with the City Council, in which event the decision shall be deemed final and conclusive if and when the decision is affirmed by the City Council.

(4) Failure to Render Timely Decision. If the City Manager does not issue a written decision regarding any contract controversy within fifteen (15) work days after receipt of a written request for a final decision, or within such longer period

as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision has been issued.

**Sec. 8-103. Authority of the Director of Purchasing to Settle Bid Protests and Contract Claims.**

The Director of Purchasing may be authorized to settle any protest regarding the solicitation or award of a City contract, or any claim arising out of the performance of a City contract, prior to an appeal to the City Manager, City Council or the commencement of an action in a court of competent jurisdiction, but may not settle any such protest or claim for consideration exceeding $5,000 in value without the prior approval of the City Council.

**Sec. 8-104. Remedies for Solicitations or Awards in Violation of Law.**

(1) Prior to Bid Opening or Closing Date for Receipt of Proposals.

If prior to the bid opening or the closing date for receipt of proposals, the Director of Purchasing, after consultation with the City Attorney, determines that a solicitation is in violation of federal, state, or municipal law or ordinance, then the solicitation shall be cancelled or revised to comply with applicable law.

(2) Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Director of Purchasing, after consultation with the City Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state or municipal law, or ordinance, then the solicitation or proposed award shall be cancelled.

(3) After Award. If, after an award the Director of Purchasing, after consultation with the City Attorney, determines that solicitation or award of a contract was in violation of applicable law or ordinance, then:

(a) if the person awarded the contract has not acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the City, or

(ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, but excluding attorney's fees, prior to the termination; or

(b) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void, if such action is in the best interests of the City.

## ARTICLE 9 – INTERGOVERNMENTAL RELATIONS

**Sec. 9-101. Cooperative Purchasing Authorized.**

The City's Purchasing Department may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more Public procurement Units or External Procurement Activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended State Public Procurement Unit contracts which are made available to Local Public Procurement Units.

**Sec. 9-102. Sale, Acquisition, or Use of Supplies by a Public Procurement Unit.**

The City's Purchasing Department may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit or External Procurement Activity independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 7 (Supply Management) of this Ordinance.

**Sec. 9-103. Cooperative Use of Supplies or Services.**

The City's Purchasing Department may enter into an agreement, independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 7 (Supply Management) of this code, with any other Public Procurement Unit or External Procurement Activity for the cooperative use of supplies or services under the terms agreed upon between the parties.

**Sec. 9-104. Joint Use of Facilities.**

The City's Purchasing Department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit or an External Procurement Activity under the terms agreed upon between the parties.

**Sec. 9-105. Supply of Personnel, Information, and Technical Services.**

(1) Supply of Personnel. The City's Purchasing Department is authorized, at its discretion, upon written request from another Public Procurement Unit or External Procurement Activity, to provide personnel to the requesting Public Procurement Unit or External Procurement Activity. The Public Procurement Unit or External Procurement Activity making the request may pay the Public Procurement Unit providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.

**Sec. 9-106. Public Procurement Units in compliance with Code Requirements.**

Where the Public Procurement Unit or External Procurement Activity administering a cooperative purchase complies with the requirements of this Code, any Public Procurement Unit participating in such a purchase shall be deemed to have complied with this Code. Public Procurement Units may not enter into a cooperative purchasing agreement for the purpose of circumventing this Code.

**Sec. 9-107. Contract Prices Established by Other Governmental Units.**

The City may purchase any item or service except as otherwise prohibited by State or Federal law, at the same contract price as established by another governmental unit if the Purchasing Department or other City Using Department determines that the price is such that following Article 3 herein (Source Selection and Contract Formation) is not warranted. Such contracts, by way of example, are a contract price by another Florida municipality established by competitive bidding (piggybacking) or source selection similar to Article 3, herein; a price established by a so-called State contract or a price established by a department or division of the United States Government, such as the General Services Administration.

## ARTICLE 10 - PREFERENCES AND INCENTIVES

## PART A – Preferences for Local Vendors

**Sec. 10-101. Definitions.**

For the purposes of this section the following definitions shall apply:

(1) Local Business. A local business, for the purposes of the application of a local vendor preference, means a bidder or proposer which has a permanent, physical place of business within the city limits, and a valid business tax receipt applicable to

the required goods, services, or construction items being procured. Post office boxes or locations at a postal service center are not verifiable and shall not be used for the purpose of establishing said physical address. If the business is a joint venture/partnership, it is sufficient for qualification as a local business if at least one party of the joint venture/partnership meets the test set forth in this Section. The bidder/proposer shall have the burden of demonstrating that it meets this definition.

(2) Non-Local business. A bidder or proposer which is not a local business as defined herein.

**Sec. 10-102. Lowest Responsible Bidder.**

In the event the lowest responsive, responsible bidder or the highest ranked responsive, responsible proposer in the procurement of goods, services or construction is a non-local business, then all bids and/or proposals from responsive, responsible local businesses to the same solicitation shall be adjusted by five percent, (5%) solely for the purpose of determining bid/contract award. The bid price of local bidders will be adjusted downward by five percent (5%) only for purposes of evaluating and ranking of bidders, not to exceed $25,000.In no event, shall the application of this adjustment to a responsive quote or bid change the actual bid amount. Further, in no event will it cause the City to pay more than $25,000 above the amount bid by the non-local vendor which would have been recommended for award if the local vendor preference had not been applied.

If the application of the five percent (5%) local vendor preference causes the evaluated local vendor price to be less than the actual low-bid price, but the actual bid price of the local vendor is more than five percent (5%) (or $25,000, whichever is applicable) than the actual low-bid price of a non-local vendor, then the non-local vendor submitting the actual low-bid, shall be viewed as the low-bidder, and be recommended for award, unless for reasons other than price, the bid is not found to be responsive and/or responsible.

The determination as to whether a bidder or proposer is a local or non-local business shall be made by the Purchasing Department, after confirming the vendor has a valid business tax receipt and certificate of occupancy, as reflected within the

Business Master File of the City's FMS system. The bidder or proposer does not have to be a current vendor to the City (City as a customer) at the time of bidding/proposing, but must have been issued a business tax receipt applicable to the goods/services/construction being requested, prior to the due date/time for bids/proposals. Prior to making an award through the application of the local vendor preference, city staff may require a bidder or proposer to provide additional information at any time prior to the award.

**Example:**

The City receives bids/proposals from four (4) businesses in response to a formal public solicitation. Each company is determined to be responsive and responsible and eligible for award of the contract. Two bidders/proposers are local companies with business operations located in Riviera Beach, the other two (2) businesses are non-local companies with permanent business operations located in other communities. The following bid/proposal amounts were received:

| Service/Goods | XYZ Corporation West Palm Beach, FL | John Smith Corp. Riviera Beach, FL | Golden Eagle Inc. Weston, FL | First Rate, LLC Riviera Beach, FL |
|---|---|---|---|---|
| Park Improvements | **$135,000** | **$109,000** | **$100,000** | **$104,000** |
| 5% Local Preference Downward Adjustment | **N/A** | **5% of $109,000 = <$5,450>** | **N/A** | **5% of 104,000 = <$5,200>** |
| Adjusted Bid Amounts for Purposes of Ranking Only | **$135,000** | **$103,550** | **$100,000** | **$98,800** |

The apparent low bidder is Golden Eagle Inc. of Weston, Florida; however, since the lowest responsive, responsible bidder is a non-local business, then all bids and/or proposals from responsive, responsible local businesses are adjusted by five (5) percent solely for the purpose of determining bid/contract award.

The bid prices for John Smith Corp. and First Rate, LLC, local bidders, will be adjusted downward by five percent (5%) for purposes of ranking the bidders/proposers. After application of the five percent (5%) local preference, First Rate, LLC, a local Rivera Beach business, is ranked as the low bidder.

The ranking is only for purposes of determining award of the bid/proposal. The contract amount for First Rate, LLC will be $104,000; the same as its bid.

**Sec. 10-103. Incentive for vendors who sub-contract at least 25% of Contract with local businesses.**

If no Riviera Beach Company bids on a contract or responds to a proposal, preference will be given to non-local businesses which submit bids/proposals that utilize local Riviera Beach businesses for at least 25% of the contract award amount.

**Sec. 10-104. Other Minimum Qualifications.**

The above preference criteria are based on the fact the company awarded the Contract will have met all other qualifications necessary to provide the goods/services being bid. These qualifications include, but are not limited to, whether the SBE format has been achieved, experience, bond capacity, insurance requirements, financial capacity, and references. Failure to meet these qualifications and others as required by the general and special conditions of the bid will cause the bid to be rejected.

**Part B – Small Business Enterprise Participation Goal**

**Sec. 10-201. Definitions.**

For the purposes of this section only the following definitions shall apply:

(1) Acting as a conduit means, in part, not acting as a regular dealer by making sales of material, goods or supplies from items bought, kept in stock and regularly sold to the public, as opposed to only government agencies, in the usual course of business. Brokers, manufacturer's representatives, sales representatives and non-stocking distributors are considered as conduits that do not perform a commercially useful business function.

(2) Affiliation means that the entity applying for SBE certification controls, has the power to control, or is controlled by another entity or entities, or identify of interest exists between the entity applying for SBE certification and another entity or

entities. In determining whether an affiliation exists, it is necessary to consider factors including, but not limited to, common ownership, common management, common use of facilities, equipment, and employees, contractual obligations and family interest in the business. Affiliated entities must be considered together in terms of gross receipts in determining whether a business entity meets SBE eligibility criteria.

(3) Business category means construction; professional services procured pursuant to the Competitive Consultant Negotiations Act (CCNA); other professional services, and commodities. For purposes of SBE eligibility criteria, a business entity shall be considered for eligibility in the business category in which it performs the largest portion of its work.

(4) Certification means the process by which the office of small business assistance determines a business meets the criteria for small, minority or woman business enterprise.

(5) Certified small business enterprise (SBE) means a business which has been certified as such by the State of Florida, Palm Beach County Office of Small Business Assistance or other county or state governmental agency (SBA).

(6) Code means the City of Riviera Beach Procurement Code.

(7) Commercially useful business function means adding value to the goods and services supplied under a contract.

(8) Days mean business days, unless specified otherwise.

(9) Domiciled in the county means the business holds a valid Palm Beach County business tax receipt and has a permanent place of business in the county. In order to establish a permanent place of business in the county, the business must:

(a) Demonstrate business activity during the preceding twelve (12) months at the county location, and have sufficient full-time employees in the county to perform the contracted work;

(b) The county business tax receipt bears the county address, and the county location is in an area zoned for the conduct of such business;

(c) The county location must be verifiable through documentation such as lease agreement, utility bills, client invoices, payroll records or other appropriate documentation; and

(d) The county location must be identifiable through signage, telephone book listing, or other appropriate means.

On-site visits may be conducted prior to and during the certification term to determine continued adherence to the domicile requirements and other requirements of the code. Additional backup documentation may be requested on a case-by-case basis. A county telephone number or post office box in the city shall not be sufficient to establish domicile in Palm Beach County.

(10) Front shall mean a business which purports to be a small business but which is actually owned and/or controlled in a manner which does not comply with the county's requirements of certification.

(11) Goals means annual small business goals expressed as percentages of total dollar volume for participation of small businesses in the city's procurement of goods, services and construction.

(12) Home business means a small business that operates form the business owner's home. Home businesses usually have a very small number of employees that are often members of the business owner's family. A home business is not affiliated with, nor a subsidiary of another company located outside of the home. Home businesses meeting this definition are eligible for certification as a small business, provided they meet all other certification criteria. Home offices of an employee working for a company located in another county do not establish domicile in Palm Beach County.

(13) Joint venture means an association of two (2) or more persons or businesses registered with the State of Florida to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

(14) Manufacturer means a firm or business entity that produces an item from raw materials or who substantially alters the form of a product in order to make it suitable for a particular use.

(15) Prime contractor means any person who has a contract with the county to provide specific construction services, sales, supplies, materials, professional services, labor and/or equipment.

(16) Professional services means any narrow discipline wherein a known practitioner has thorough education and experience and has developed expert advisory and programming skills as a vocation; any service performed primarily by vocational personnel which requires the analysis or certification of a professional before the services are acceptable to the user of the service; or any other advisory study, or programming activity where the director of purchasing determines that the level of skills and/or creativity of the potential or known practitioner(s) warrants a competitive proposal or submittal process.

(17) Project goal means SBE goals expressed as percentages of total dollar volume for participation of small businesses, on individual city contracts.

(18) Small and minority/women business directory means a compilation of certified small businesses and M/WBEs which is maintained electronically by the City of Riviera Beach Purchasing Department and made available to contractor(s) or vendor(s) for use in identifying subcontractors, material suppliers, etc.

(19) Small business means a business domiciled in Palm Beach County and certified by the County or State of Florida which is an independently owned and operated for profit business concern organized to engage in commercial transactions. A small business must be owned and controlled by an individual who is a citizen or a lawful permanent resident of the United States.

(20) Small business enterprise means a business as defined under certified small business enterprise herein. Also referred to as "SBE".

(21) Subsidiary means a company whose controlling interest is owned by another company. A subsidiary cannot be considered an independent business.

All terms not specifically defined herein, but defined in the city's procurement ordinance, shall carry the definition therein described.

**Sec. 10-202. Scope.**

This part shall apply to the solicitation of all goods, services and construction by the city which is governed by this ordinance, which may be amended from time to

time. Whenever possible, the city shall utilize a solicitation process which encourages SBE participation even on those items which are exempt from the requirements of the procurement ordinance.

**Sec. 10-203. Goals.**

(1) Annual goals. The annual SBE goal for city procurement of construction, professional services and commodities shall be a minimum of fifteen (15) percent. The annual goal shall be applied to each individual city procurement of goods, services or construction unless otherwise approved by the city manager.

(2) Evaluation of goal attainment. The goal shall be applied to the full monetary value of the contract and be reflected in the full monetary portion spent on subcontracts for supplies, consulting or construction services to be awarded to those SBEs meeting contract specifications.

(a) When a certified SBE submits a bid as a prime contractor, the SBE will be credited with meeting the percentage of the goal that the SBE will be performing with its own forces plus the percentage of subcontracts awarded to certified SBEs. A joint venture consisting of a small business and non-small business functioning together as a prime contractor will be credited with small business participation on the basis of the percentage of participation in the work, risk, and profit by the small business.

(b) Bidders will receive credit for goal attainment only for subcontractors who are certified and licensed, if required, in the specific area of expertise for which credit is sought at the time of bid opening. Bidders utilizing SBE suppliers will receive credit for goal attainment at seventy percent (70%) of the contract for supplies.

(3) In the event annual goals are not achieved, the city may implement programs, including, but not limited to, a sheltered market program for contracts under two hundred thousand dollars ($200,000) to achieve goal attainment. Any programs, other than sheltered markets, must be approved by the City Council prior to implementation.

**Sec. 10-204. Contract Compliance Requirements.**

The Purchasing Department will establish procedures for monitoring and evaluating program performance and compliance, subject to the city manager's approval. In the addition to the remedies of suspension or debarment as provided herein, any contractor or firm that falsely represents to the city, pursuant to a city contract, that it is an SBE, or that it will utilize the services or commodities of an SBE and subsequently does not do so without the prior written approval of the city, may be in breach of contract.

Upon determination that a breach of contract has occurred, the city shall have all available remedies for breach of contract. In addition, all amounts paid to the contractor or firm under the contract intended for expenditure with SBEs will be forfeited and recoverable by the city. The city, at its sole discretion, may waive the breach and available remedies; however any such waiver shall not constitute a waiver of rights for breach of any provision of the contract.

**Sec. 10-205. Ranking of Responsive Bidders.**

When evaluating competitive bids/quotes of up to five hundred thousand dollars ($500,000) in which the apparent low bidder is determined to be nonresponsive to SBE requirements, the contract shall be awarded to the low bidder responsive to SBE requirements, or in the event there are no bidders responsive to the SBE requirements, to the bidder with the greatest SBE participation in excess of eight percent (8%) participation, as long as the bid does not exceed the low bid amount by five percent (5%).

In cases where the low bid exceeds five hundred thousand dollars ($500,000), the contract shall be awarded to the low bidder responsive to the SBE requirements, or in the event there are no bidders responsive to the SBE requirements, to the bidder with the greatest SBE participation in excess of eight percent (8%) participation, provided that such bid does not exceed the low bid otherwise responsive to the bid requirements by more than fifty thousand dollars ($50,000).

This section applies only when price is the determining factor.

**Sec. 10-206. Suspension/Debarment.**

The city reserves the right to suspend or debar any vendor who has previously failed to perform properly and who has done so by commission or omission of an act

of such serious and compelling nature that the act indicates a serious lack of business integrity or honesty. Such acts include, but are not limited to:

(1) The violation of any applicable law, regulation or contract provision relating to the performance of obligations incurred pursuant to an agreement with a recipient under a county contract.

(2) Making or procuring to make any false statement or use of deceit.

(3) Making false representations as a small business for purposes of qualifying for certification as such a business under a program that is designed to assist SBEs in the receipt of contracts with the county for the provision of goods or services.

(4) Representing a SBE as performing a commercially useful function when such business is merely acting as a conduit in order to participate in the county's SBE program or receive a preference or benefit under the SBE program.

(5) Repeatedly failing to meet SBE goals when submitting bids when there is documented availability of SBEs as shown by other bidders on the same projects meeting the stated goals.

(6) Failing to comply with the SBE requirements of an awarded contract. The director of the office of small business assistance may refer a business or firm to the Director of Purchasing for consideration of suspension or debarment. The procedures for suspension or debarment are provided for in this procurement ordinance.

**Sec. 10-207. Prompt Payment.**

Pursuant to the provisions of F.S. 218.735(6), as may be amended, when a prime contractor receives payment from the city for labor, services or materials furnished by subcontractors or suppliers hired by the prime contractor, the prime contractor shall remit payment due to those subcontractors and suppliers within ten (10) days after the prime contractor's receipt of payment. When a subcontractor receives payment from a prime contractor for labor, services or materials furnished by sub-subcontractor and suppliers hired by the subcontractor, the subcontractor

shall remit payment due to those sub-subcontractors and suppliers within seven (7) days after the subcontractor's receipt of payment from the prime contractor.

Every contract let by the city for the performance of work shall contain a provision requiring the prime contractor to certify in writing that all subcontractors, subconsultants and suppliers have been paid for work and materials from previous progress payments received, less any retainage, by the prime contractor prior to receipt of any further progress payments. During the contract and upon completion of the contract, the city may request documentation to certify payment to subcontractors, subconsultants or suppliers. Nothing herein shall prohibit a prime contractor or subcontractor from disputing, pursuant to the terms of a relevant contract, all or any portion of a payment alleged to be due to another party. In the event of such dispute, the prime contractor or subcontractor may withhold the disputed portion of any such payment if the prime contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The prime contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section. All payments not made within the time periods herein specified shall bear interest at the rate of one (1) percent per month, or the rate specified by the contract, whichever is greater.

This provision in no way creates any contractual relationship between any subcontractor, subconsultant or supplier and the city or any liability on the city for the prime contractor's failure to make timely payment to the subcontractor, subconsultant or supplier.

**Sec. 10-208. Procurement Procedures.**

The Purchasing Department shall establish specific purchasing procedures to increase SBE participation, including, but not limited to, purchases under the mandatory bid or proposal amount set forth in the procurement code and purchases made by decentralized purchase orders (DPOs) under twelve-hundred dollars ($1,200).

The purchasing procedures shall include a provision that every effort will be made by buyers to contact all registered certified SBE within a particular commodity area for purchases under the mandatory bid or proposal amount set forth in the procurement code. The purchasing procedures shall also include a process which allows as many vendors as possible to compete in providing goods and services to the city. The purchasing procedures shall also include a provision requiring awards of purchases under the mandatory bid or proposal amount set forth in the procurement code to be made to the lowest responsive, responsible bidder unless a certified small business is within ten percent (10%) of the lowest non-small business bid, in which case the award shall be made to the certified small business bidder submitting the lowest responsive, responsible bid. **This section shall not apply to procurement of construction**.

**Part C – Minority Business Enterprise Participation**
**For Public Solicitations Other Than Bids**

**Sec. 10-301. Definitions.**

For the purposes of this section only the following definitions shall apply:

(1) Minority Business Enterprise means a business that is owned and controlled by minority persons.

(2) Minority persons are Blacks of not of Hispanic origin, Hispanics, American Indians, Alaska Natives, Pacific Islanders, Asians and Women as set forth in State statute Section 288.703(4)(a-e), as may be amended from time to time.

(3) Owned for the purpose of determining whether a business is a minority or women business enterprise, shall mean that the minorities or women, as the context requires, shall possess an ownership interest of at least fifty-one percent (51%).

**Sec. 10-302. MBE Participation for Public Solicitations Other than Bids.**

(1) All proposers have an opportunity to increase their opportunity to be awarded a City contract/project by maximizing their use of qualified MBEs in accordance with the City's MBE Program.

(2) All Public Solicitations Other Than Bids (PSOTB) shall be reviewed by the Purchasing Director prior to advertisement to determine if there are components of the project that can be subcontracted to qualified minority business subcontractors and/or material suppliers.

(3) Relevant qualified MBEs will be notified by the Purchasing Department of the procurement opportunity.

(4) Contractor past performance. The City shall have the right to consider price, quality, past performance including meeting qualified MBE commitments, time required for performance and qualifications of the contractor in making awards.

(5) The proposer shall seek to maximize its use of qualified MBEs. The proposer shall complete the Tabulation of Subcontractors and Material Suppliers Form that will be provided with the project package by the City. The total qualified minority business participation shall be the percentage of the total contract/project dollar amount that will be completed by qualified minority businesses. The total qualified minority business participation percentage is non-cumulative; however, one or more qualified minority businesses can comprise the total qualified minority business participation percentage. The percentage of total bonus points awarded of maximum allowable points is non-cumulative and is the percentage of points to be awarded to a bidder/proposer based on the total qualified business participation.



| *Total Qualified Business Participation in Excess of 15% Goal* | *Percentage of Total Bonus Points Awarded of Maximum Allowable Points* |
|---|---|

| | |
|---|---|
| 0% - 15% | 0% |
| 20% - 30% | 4% |
| 31% - 40% | 6% |
| 41% - 50% | 8% |
| 51% and above | 10% |

(6) All proposed qualified businesses shall provide a letter of participation on its own letterhead and signed by the chief operating officer stating the actual dollar amount or percentage of work to be completed by its own forces. This information shall be submitted in the sealed proposal packet. After making an affirmative determination of qualified MBE participation, the Director of Purchasing shall assign bonus points as follows:

*Example:*

There are 100 maximum allowable points to score the proposals. The Contractor's price is $500,000. The RFP scoring assigns up to 5 points (5%) to be allocated to a contractor if 15% of the total project cost is spent with qualified MBEs. The Contractor lists four (4) qualified MBEs to provide goods and services for the project. A total of $260,000 (52%) of the total project cost will be spent with the qualified MBEs.

As an incentive for the Contractor maximizing the participation of qualified MBEs on the project, the Contractor receives an additional 10 bonus points (10%) resulting in a cumulative total of 15 points (15%) of the 100 maximum allowable points.

| *Project's Percentage of Minority Participation* | Percentage or Points |
|---|---|
| 1-15% (depends on the RFP Allocation) | 5% or 5 points |
| 46% and above | 10% or 10 points |
| Total Points Awarded of Maximum Allowable Points | 15% or 15 points |

**Part D – Apprenticeship Program**

**Sec. 10-401. Apprenticeship Program Requirements.**

It shall be the policy of the City of Riviera Beach that contractors shall be required to comply with the Apprenticeship Program of the City of Riviera Beach as follows:

(1) On City-funded construction projects which exceed Seven Hundred Fifty Thousand Dollars ($750,000), twenty percent (20%) of laborers working specialties for which there are apprentice programs registered with the City shall be apprentices. Such apprentices shall be students in certified State of Florida Pre-Apprenticeship/Apprenticeship Programs which are located in the City, and, if such percentage of apprentices of such programs is not located in the City, then such programs may be located in Palm Beach County.

(2) A City registered apprenticeship program is one which has registered with the City and provided the required documentation, including but not limited to, proof of certification as an apprenticeship program with the State of Florida and proof of having educational facilities physically locate in the City.

(3) Unless the apprenticeship requirement is waived by the City, the failure of the Contractor to demonstrate compliance with this requirement shall result in the Contractor's bid being deemed nonresponsive.

(4) The apprentice requirement may be waived or modified by the City Council:

a. Upon request of the Contractor, if the Contractor demonstrates that the required apprentices are not available despite a good faith effort on the Contractor's part; or

b. Upon request of the Contractor, if the Contractor demonstrates that the available apprentices are not sufficient to meet the twenty percent (20%) requirement and the Contractor commits to utilizing a specific percentage of apprentices demonstrated to be available; or

c. If the City determines it is in the best interests of the City to waive such requirement based on potential savings of money and time or grant requirements.

(5) The agreed upon percentage and type of apprentices will be included as a requirement of the construction contract. Failure to meet the terms of the apprenticeship requirement may result in the Contractor being found in breach of the contract and subject to possible monetary sanctions.

## ARTICLE 11 – ETHICS IN PUBLIC CONTRACTING

**Sec. 11-101. Criminal Penalties.**

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Part.

**Sec. 11-102. Employee Conflict of Interest.**

It shall be unethical for any City employee to participate directly or indirectly in a procurement contract when the City employee knows that:

(a) the City employee or any member of the City employee's immediate family has a financial interest in the procurement contract; or

(b) any other person, business, or organization with whom the City employee or any member of a City employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

A City employee or any member of a City employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matter pertaining to that financial interest.

**Sec. 11-103. Gratuities and Kickbacks.**

(1) Gratuities. It shall be unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

(2) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or offer.

**Sec. 11-104. Prohibition Against Contingent Fees.**

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

**Sec. 11-105. Employment of former City employees by any person, business, or organization contracting with the City regulated.**

It shall be a violation for any person, business or organization contracting with the City to employ in any capacity, any former City employee or member of the City employee's immediate family within one year of that employee's separation from employment with the City, unless the employer or the former City employee files with the City Clerk a disclosure statement on a form to be provided for that purpose, stating the date of employment of the former City employee by the employer. The penalty for a violation of this Section shall be a fine of not less than one hundred

dollars ($100) for a first offense, or not less than two hundred and fifty dollars ($250) for a second or subsequent offense.

**Sec. 11-106. Waivers from Conflicts of Interests.**

The City Council may grant a waiver from the employee conflict of interest provision (Section 11-102) upon making a written determination that:

(a) the financial interest of the City employee has been publicly disclosed;

(b) the City employee will be able to perform its procurement functions without actual or apparent bias or favorites; and

(c) the award will be in the best interests of the City.

**Sec. 11-107. Use of Confidential Information.**

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

(1) Employees. The City Manager may impose any one or more of the following sanctions on a City employee for violations of the ethical standards in this Article:

(a) oral or written warnings or reprimands;

(b) suspension with or without pay for specified periods of time; or

(c) termination of employment.

(2) Non-employees. The City Council may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards;

(a) written warnings or reprimands;

(b) termination of contracts; or

(c) debarment or suspension as provided in Section 6-101 (Authority to Debar or Suspend).

**Sec. 11-108. Recovery of Value Transferred or Received in Breach of Ethical Standards.**

The value of anything transferred or received in breach of the unethical standards of this Ordinance by a City employee or a nonemployee may be recovered from the City employee or the nonemployee, or both.

**SECTION 3.** Specific authority is hereby granted to codify this ordinance.

**SECTION 4.** If any word, phrase, clause, subsection, or sections of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

**SECTION 5.** That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to extent of such conflict.

**SECTION 6.** This ordinance shall be in full force and effect immediately upon its final passage and adoption.

**PASSED AND APPROVED** on the first reading this 4th day of January, 2012.

**PASSED AND ADOPTED** on second and final reading this 18th day of January, 2012.

**[SIGNATURES ON FOLLOWING PAGE]**

ORDINANCE NO. 4010

APPROVED:

THOMAS A. MASTERS
MAYOR

JUDY L. DAVIS
CHAIRPERSON

MUNICIPAL SEAL

BILLIE E. BROOKS
CHAIR PRO TEM

ATTEST:

CEDRICK A. THOMAS
COUNCIL PERSON

CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

DAWN PARDO
COUNCIL PERSON

SHELBY LOWE
COUNCIL PERSON

ORDINANCE NO. 4010

| 1st READING | | 2nd & FINAL READING | |
|---|---|---|---|
| MOTIONED BY: | S. LOWE | MOTIONED BY: | B. BROOKS |
| SECONDED BY: | B. BROOKS | SECONDED BY: | C. THOMAS |
| J. DAVIS | AYE | J. DAVIS | AYE |
| B. BROOKS | AYE | B. BROOKS | AYE |
| C. THOMAS | AYE | C. THOMAS | AYE |
| D. PARDO | AYE | D. PARDO | AYE |
| S. LOWE | AYE | S. LOWE | AYE |

REVIEWED AS TO LEGAL SUFFICIENCY

Pamala H. Ryan

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 1/11/12

[PHR &BG:syj Dec 2011]

ORDINANCE NO. 4010

CERTIFICATION OF PUBLICATION

I hereby certify that notice of the proposed enactment of this ordinance was duly published in a newspaper of general circulation within the City of Riviera Beach as required by the applicable Florida Statutes.

DATE

Carrie E. Ward, Master Municipal Clerk
City Clerk