

Exhibit 2- Clean Draft Proposed Procurement Code

Sec. 23-1. Short title.

This chapter shall be known and may be cited as the procurement code of the city.

Sec. 23-2. Department and Purpose.

The underlying purpose of the procurement department shall be as follows:

- (1) To provide the city with a unified purchasing system with centralized responsibility that allows for the delegation of purchasing authority;
- (2) To provide increased economy in city procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the city;
- (3) To obtain in a cost-effective and responsive manner the supplies, services and construction required by city departments in order for those departments to better serve the city's businesses and residents;
- (4) To provide safeguards for the maintenance of a procurement system of quality and integrity;
- (5) To provide for increased public confidence in the procedures followed in public procurement;
- (6) To ensure the fair and equitable treatment of all persons who deal with the procurement system in the city;
- (7) To simplify, clarify, and modernize the law governing procurement by this city;
- (8) To foster effective broad-based competition within the free enterprise system;
- (9) To permit the continued development of procurement policies and practices; and
- (10) To ensure that the city purchases recycled and other environmentally preferable products whenever the products meet the price and performance requirements of the city.

Sec. 23-3. Definitions.

Award means the acceptance of a bid, offer or proposal by the proper authorized designee.

Best and Final Offer (BAFO) means a responsive proposal that contains a proposer's most favorable terms for price, services, and products to be delivered.

Bids means a written offer submitted to the city by a prospective offeror to furnish specific services, supplies, or construction services in response to an invitation for bid.

Bid bond means a sum of money, which could be in the form of a cashier's check, irrevocable letter of credit, money order or a bond issued by a surety, deposited with a bid or proposal guaranteeing the bidder or offeror will not withdraw the bid or proposal for a specific period of

Exhibit 2- Clean Draft Proposed Procurement Code

time, will furnish bonds as required, and will accept a contract, if awarded, or forfeit the bid bond.

Evaluation committee means a group of three or more persons selected by the city manager to review proposals received in response to an RFP. The evaluation committee may include persons who are not employed by the city.

Invitation to Bid (ITB) means a procurement method used to solicit competitive sealed bid responses, sometimes called formal bids, when price is the basis for award.

Performance bond means a sum which is issued, usually by a surety assuring the city that once the contract is awarded, the contractor will meet its obligations under the contract.

Project is an endeavor with a specific scope designed to produce a result with a defined beginning and end and deliverables. The determination of whether various activities should constitute one project or multiple projects should be made in the best interest of the City, taking into account the intent of the policies in this chapter, efficiency, time constraints, funding sources, and reasonable distinctions between activities. A project should never be split for the purpose of avoiding the restrictions of this Chapter.

Request for proposal (RFP) means a solicitation for proposal to provide a solution to a problem or a course of action or a determination of data findings useful to the city. An RFP is characterized by description of the desired results and a scale of how the proposals will be evaluated to obtain the results. Negotiation on any part of the RFP is permissible. The RFP includes all documents, whether attached or incorporated by reference, utilized for soliciting proposals. Compensation paid to a proposer is negotiated once the top rated proposer has been determined.

Request for qualifications (RFQ) (prequalification of bidders) is the screening of potential vendors in such factors as financial capability, reputation, professional expertise and management in order to develop a list of qualified vendors.

Vendor means an actual or potential supplier of a good or service, regardless of the nature of the good or service provided or the term used in the agreement (e.g. contractor, consultant, etc.). The term includes all persons employed by, representatives of and agents of the vendor.

Sec. 23-4. Applicability; Delegated Spending Authority.

- (a) Except as otherwise specified by law, this Article shall apply to every procurement by the City.
- (b) *Funds or assistance from other governmental entities.* When the procurement involves the expenditure of assistance or contract funds from other governmental entities, the

Exhibit 2- Clean Draft Proposed Procurement Code

procurement, management, and interpretation shall be conducted in accordance with any mandatory applicable policy, law or regulations.

- (c) *Delegated Spending Authority*. The city manager is authorized, without obtaining city commission approval, to purchase and contract for equipment, supplies and services when the purchase is less than \$75,000 per project. The City Manager shall develop and implement written policies for the solicitation and award of such purchases through informal quotations, except as otherwise required by state statute. All other procurement awards require commission approval unless specifically exempted in this Code.
- (d) Nothing in this chapter shall limit the City Commission's right to waive any provisions contained herein when it deems such a waiver to be in the best interest of the City.
- (e) To the extent the provisions of this chapter conflict with procurement requirements of state law, the provisions of this chapter are waived, and the city shall abide by the requirement of state law.

Sec. 23-5. - Competitive procurement required; Procurement Mechanisms.

(a) Except as otherwise indicated herein, all purchases of and contracts for equipment, supplies and contractual services in excess of the delegated spending authority, shall be based on a competitive procurement process. City contracts shall be awarded by one of the following methods, as permitted by any applicable law and as determined by the City Manager to be in the best interest of the City:

(1) *Invitations to Bid (ITB)*. Any resulting contract shall be awarded to the responsive and responsible bidder submitting the lowest or best overall bid which meets all specifications.

(2) *Request for Proposals (RFP)*. Any resulting contract shall be awarded to the responsive and responsible proposer submitting the proposal which, with all factors considered, provides the best value as determined by the City according to the criteria set forth in the solicitation.

(3) *Cooperative Purchasing*. Includes a variety of arrangements whereby two or more public entities have the opportunity to purchase from the same supplier or multiple suppliers using a single competitive procurement mechanism.

(4) *Piggybacking*. Procuring goods or services from vendors who have been selected as a result of a competitive selection process by another governmental entity. The selection process utilized by the contracting entity must be substantially similar to the requirements of the City. The goods or services procured by the City must be procured pursuant to the original contract scope and terms. The expiration of an original contract

Exhibit 2- Clean Draft Proposed Procurement Code

shall not bar use of a piggyback if the vendor is still willing to provide the goods and services pursuant to the competitively solicited contract's scope and terms.

(5) *Continuing Services Agreements*. Individual purchase of services quoted on a per-project basis pursuant to the terms solicited via RFP.

(6) *Requests for Qualifications (RFQ)*. A RFQ may be either a single step or multi-step solicitation. A single step RFQ is used when it is in the best interest of the City to award based solely on qualifications, and a multi-step RFQ is used to create a pre-qualified pool of vendors for a subsequent solicitation.

(b) Requests for Information (RFI) may be utilized in advance of one of the above mechanisms when it is in the best interest to request information from potential vendors prior to the issuance of a planned solicitation.

(c) Revenue generating and concession contracts, including the assignment, license, sale or transfer of interests in or rights to discoveries, inventions, patents, or copyrightable works, whether tangible or intangible, shall be awarded in accordance with the provisions of this chapter, except that price shall be evaluated on the basis of the highest bid or offer. Nothing herein shall preclude the use of competitive sealed proposals as a method of source selection wherein price is not the only evaluation criteria.

(d) The City Manager shall have the authority to negotiate the proposed terms of an agreement with the highest ranked responsive and responsible firm for an RFP or the lowest responsive and responsible firm for an ITB, prior to bringing the item to the Commission for an award of contract, subject to the requirements of Florida's Sunshine laws.

(e) No individual member of the city commission shall be involved in the preparation, submittal and evaluation of solicitations and responses, including attendance at or participating in presentations to or deliberations by a selection committee or contact with vendors, unless required by Florida statute. This provision shall not prohibit members of the commission from discussing a prospective procurement's scope or mechanism during publicly noticed meetings, or asking for information or discussing concerns with the City Manager.

(f) *Advertisements*. Notice inviting solicitations. Except for those solicitations that are required by statute to be advertised in a newspaper, notices inviting solicitations shall be published electronically. A general description of the commodities or services to be purchased, a statement of where the solicitation documents may be obtained, and the date, time and place of receipt is to be provided.

(g) *Demonstration of products*. All departments that engage firms in the demonstration, inspection and/or testing of supplies or services for which no formal solicitation has been

Exhibit 2- Clean Draft Proposed Procurement Code

advertised, must involve the procurement department in the demonstrations and/or testing. Where there would be an eventual solicitation for the products and/or services which have previously gone through a demonstration and/or inspection, it must be made known at the pre-bid meeting for the particular solicitation released.

Sec. 23-6. Local Vendor Preference.

(a) Except as otherwise prohibited by law, certain vendors will be afforded a local vendor preference as follows:

- (1) A "local Hallandale Beach vendor" shall mean a vendor which has maintained a permanent place of business within the City for a minimum duration of one (1) year immediately prior to the due date of solicitation. The permanent place of business may not be a post office box.
- (2) The business must have a current business tax receipt from the City of Hallandale Beach.
- (3) *Preference must be asserted.* Any claim for Local Vendor preference must be asserted by the vendor at the time of submission of the bid or proposal.

(b) *Invitation To Bid.*

- (1) When a qualifying responsive and responsible, non-local business submits the lowest price bid, and the bid submitted by the local Hallandale Beach vendor is within five percent (5%) of that lowest price, the local Hallandale Beach vendor shall have an option to submit another bid to match the lowest responsive bid. If the local Hallandale Beach vendor submits a bid that matches the lowest responsive bid, then the award will go to the local Hallandale Beach vendor. If not, the award will be made to the vendor that submits the lowest responsive bid. This applies to ITB that includes Local Vendor Preference.
- (2) If multiple local Hallandale Beach vendors submit bids that are within five percent (5%) of the lowest bid, then all local Hallandale Beach vendors will be asked to submit a "best and final offer (BAFO)." The award will be made to the local Hallandale Beach vendor submitting the lowest BAFO providing that the BAFO at least matches the lowest bid received in the original solicitation.

(c) *Request For Proposals.* When a qualifying responsive and responsible local Hallandale Beach vendor submits a proposal to a solicitation, the local Hallandale Beach vendor will be provided a total of five (5) points. This applies to RFPs that include Local Vendor Preference.

Exhibit 2- Clean Draft Proposed Procurement Code

(d) Exceptions to applicability of local vendor preference. No local vendor preference will be applied in the following situations:

- (1) The City is the lead agency for the southeast Florida cooperative purchasing group.
- (2) State or federal law prohibits the use of local preference.
- (3) The work is funded in whole or in part by a governmental entity where the laws, rules, regulations or policies prohibit the use of local preferences.
- (4) The local vendor is either non-responsive or non-responsible.
- (5) All bids submitted exceed the budget amount for the project.
- (6) Emergency purchases.
- (7) The city manager or City Commission has determined it is not in the best interest of the City to apply local vendor preference to a solicitation.

Sec. 23-7. Insurance and Security Requirements.

- (a) The Risk Manager will determine the type and minimum limits of liability, worker's compensation, professional liability and other forms of insurance coverage that may be required for each type of purchase. The City shall be named as an additional insured for any required coverage.
- (b) *Security (bid bonds).* When the estimated cost of a construction contract is one hundred and fifty thousand dollars (\$150,000.00) or higher, or when otherwise deemed necessary by the city manager, security in the form of a bid bond issued by a surety company licensed to do business in the state or a cash bond in an amount equal to ten percent of the bid shall be prescribed in the public notices inviting bids, as otherwise permitted by law. When the city manager deems it necessary to require a bid bond for bids less than \$150,000.00, the bond shall be in an amount equal to five percent of the bid. A vendor shall forfeit a bid security upon a refusal or failure to execute the contract within 15 calendar days of the notice of award of contract, unless the city is solely responsible for the delay in executing the contract. The city commission may, upon the refusal or failure of the successful vendor to execute the contract, award the contract to the next lowest vendor. When eligibility for county, state or federal grants requires differing security bond requirements than those enacted in this section, the requirements of this section shall be waived in favor of the requirements of the grant.
- (c) *Performance and payment bonds.* Unless otherwise prohibited by law, a performance bond and a payment bond, or a "contract bond" combining the elements of a

Exhibit 2- Clean Draft Proposed Procurement Code

performance and a payment bond, issued by a surety company licensed to do business in the state, may be required before entering into a contract, in an amount at least equal to the contract price or such higher amount as may be found reasonably necessary to protect the best interests of the city except, in limited circumstances, such as incremental services contracts. If such bond is required, the form and amount of the bond shall be described in the notice and/or documentation requested. The performance and payment bond is required to ensure the completion of a project in the event of contract breach or forfeiture by the contractor.

Sec. 23-8 Cancellations of competitive solicitations.

An invitation for bids, a request for proposals, or other solicitation may be canceled, and all responses rejected, by the City Manager when it is in the best interest of the city. The reasons therefore shall be documented in the procurement file.

Sec. 23-9. Award.

- (a) *Responsibility.* Only vendors determined to be responsible shall be considered for award. The procurement department, in consultation with the department that will manage the project, shall issue a written determination of responsibility determining whether a vendor has demonstrated the capability, as determined by the city, in all respects to perform fully the contract requirements, and the experience, capacity, facilities, equipment, credit, integrity and reliability which will ensure good faith performance.
- (b) *Responsiveness.* Only submissions responsive to the solicitation issued by the City shall be considered for award. The response must conform in all material respects to a solicitation. A bid or proposal must be submitted on the required forms, containing all requested information, signatures, notarizations, insurance, bonding, security, or other mandated requirements required by the bid documents at time of submission.
- (c) In determining the lowest responsible bid or quotation, the following shall be considered, in addition to price:
 - (1) The quality of commodities or services offered;
 - (2) The ability, capacity, and skill of the vendor to perform the contract or provide the commodities or services required;
 - (3) Whether the vendor can perform the contract or provide the commodities or services promptly, or within the time specified, without delay or interference;

Exhibit 2- Clean Draft Proposed Procurement Code

- (4) The sufficiency of the vendor's financial resources and the effect thereof on the vendor's ability to perform the contract or provide the commodities or services;
 - (5) The character, integrity, reputation, judgment, experience, and efficiency of the vendor;
 - (6) The quality of vendor's performance on previous orders or contracts for the city;
 - (7) Litigation by the vendor on previous orders or contracts with the city;
 - (8) Compliance by the vendor with federal, state and local laws and ordinances relating to the subject of the purchase or contract;
 - (9) The ability of the vendor to provide future maintenance and service where such maintenance and service is essential;
 - (10) Internal cost of vendor's proposal, including any additional expenditure required by the city to complete the project or purchase; and
 - (11) Life cycle costs, including costs of purchase, maintenance, and disposal, less residual value over the expected life of the product.
- (d) In the event the lowest, most responsive and responsible bid for a project exceeds available funds, and the city commission does not make available additional funds, the city manager is authorized, when time or economic considerations preclude re-solicitation of bids, to negotiate an adjustment of the bid price as long as the scope of work is not materially changed with the lowest, most responsive and responsible bidder, in order to bring the bid within the amount of available funds. Final negotiations shall be in written form as approved by the city manager.
- (e) The City Manager may award procurements within the delegated spending authority. All other procurements, except emergency procurements, require commission approval for award.
- (f) If a bid or proposal other than the lowest and most responsive bid or proposal is considered the most advantageous to the City, the commission may award a contract where it finds waiver of the provisions of this chapter to be necessary in the best interests of the city.

Sec. 23-10. Exception to competitive solicitation requirements:

- (a) The following situations are exempted from the competitive solicitation requirements of this article:

Exhibit 2- Clean Draft Proposed Procurement Code

- (1) *Specialized services.* Contracts for specialized services involving peculiar skill, ability, experience or expertise, which are in their nature unique.
- (2) *Sole Source and Noncompetitive goods or services.* Goods or services available only from one source, such as unique, patented or franchised supplies, or those for which only a single source is able to perform a contract due to documented reasons.
- (3) No viable response received. Where no responsive response was submitted by a responsible vendor after publication of a competitive solicitation.
- (4) Best interest of city. Where the city commission declares by majority vote that the process of competitive solicitations is not in the best interest of the city and the reasons therefore, for example, if the City elects to conduct a limited time pilot to test the viability and impacts of a program, or ratification of expenditures made contrary to the requirements stated herein.
- (5) Direct Purchase Tax Savings Program (DPTSP). The purchase of supplies or materials where such supplies or materials are being procured by the city as an owner direct purchase for incorporation into a city construction project, the contract for which was previously awarded by the city, which prior award included the cost of such supplies and materials. In such event, the City shall procure the supplies or materials in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities.
- (6) Other exceptions. The following supplies and services may be procured without competition:
 - a. Servicing or warranty work on equipment by an authorized dealer or representative when work by another party would void a warranty or guaranty.
 - b. Purchase of additional extended warranties.
 - c. On-going maintenance and support of existing software/hardware and on-going maintenance, monitoring, and support of existing security software and hardware and alarm software and hardware.
 - d. Advertising in newspapers, periodicals and related publications, television, radio billboards, kiosks and/or other signage assets, professional organizations, trade shows and any other related media.
 - e. Commodities or services from other governmental entities, institutions of higher learning, not-for-profit organizations, or state sponsored institutions.
 - f. Freight, storage charges, and demurrage.

Exhibit 2- Clean Draft Proposed Procurement Code

- g. Regulatory or government licenses and permits.
- h. Membership in professional, trade and other similar associations.
- i. Shipping services, including postage, overnight delivery, and other courier services.
- j. Published books, manuals, maps, periodicals, films, technical pamphlets, and copyrighted educational aids.
- k. Real property and real estate transaction-related costs, including closing/processing fees, abstract of titles, and title insurance and services of professionals to assist in the identification, inspection, due diligence investigation and appraisal of properties for potential acquisition, and maintenance of the properties after acquisition or such other services as may be necessary.
- L. Services of visiting speakers, lecturers, training for staff for continuing education, and performing artists.
- m. Utilities, including water, wastewater, sewer, gas, electric, or other utilities as defined by law, or phone, cable or internet services.
- n. Works of art for public display.
- o. Persons or entities retained as expert consultants or private investigators and workplace investigators to assist the City in sensitive human resource or workplace matters.
- p. Entertainment and entertainment related expenses for city sponsored events.
- q. Travel on city business, including hotel accommodations and services.
- r. Purchase for services and facilities at hotels, motels, restaurants and similar facilities for city sponsored events.
- s. Insurance coverage for City property.
- t. Health/medical services offered to city employees involving examination, screening, diagnosis, treatment, prevention, or medical consultation. Examples include bootcamps and wellness events. This exception does not include annual employee benefit programs such as medical insurance.

Sec. 23-11. Emergency Purchases.

Exhibit 2- Clean Draft Proposed Procurement Code

(a) The City Manager may authorize the procurement of goods and services, without competitive solicitation or commission approval, to address an unexpected and urgent need where health and safety or the conservation of public resources is at risk, using such competition as is practical under the circumstances, as follows:

(1) During a declared state of emergency.

(2) On a case by case basis. The documentation of the emergency conditions related to that purchase and written approval of the City Manager must be maintained in the procurement file. The City Manager will report to the City Commission all such emergency procurements.

Sec. 23-12. Appropriations required.

No obligation for expenditures of city funds may be incurred except pursuant to, and only to the extent of, a specific appropriation of funds in the budget. No money may be drawn from the treasury of the city nor may the appropriate city officials execute any check, draft, warrant, note or other negotiable instrument, except pursuant to, and only to the extent of, a specific appropriation of funds in the budget to be debited for such payment. In the event that contracts are to extend over a period longer than one year, and which are to be met from current receipts of the city, it shall be lawful for the commission to make appropriation sufficient to answer the requirements of any such contracts for only one year and the contract shall be legal and binding. Future years shall be subject to the appropriation of funds.

Sec. 23-13. Appropriations for outstanding purchase orders.

A duly authorized appropriation of any given fiscal year shall continue to be a valid appropriation of a subsequent fiscal year, without appropriation or inclusion in the later year's budget, providing that the expenditure pursuant to such appropriation has been authorized by the city commission or a properly executed purchase order is outstanding at the end of the fiscal year of the original appropriation. Authority to complete such purchase and expenditure is granted; and if the expenditure is not completed after a reasonable time, the city manager is authorized and directed to cancel and close out the unexpended balance of the appropriation.

Sec. 23-14. Other Procurement Requirements.

(a) Unless waived by the City Commission, the city shall not enter into a contract with a business unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, a boycott. For the purposes of this paragraph, boycott means to blacklist, divest from, or otherwise refuse to deal with a

Exhibit 2- Clean Draft Proposed Procurement Code

nation or country, or to blacklist or otherwise refuse to deal with a person or entity when the action is based on race, color, national origin, religion, sex, gender identity, sexual orientation, marital or familial status, age, or disability in a discriminatory manner. The term boycott does not include a decision based upon business or economic reasons, or boycotts, embargoes, trade restrictions, or divestments that are specifically authorized or required by federal law or state law.

(b) *Domestic Partnership Benefits.* Contractors with five or move more employees contracting with the city, in an amount valued over the delegated spending authority amount, agree to provide equal benefits to employees' spouses or domestic partners and the children of employees and their spouses or domestic partners. The requirement will be included in solicitations.

- (1) As part of the competitive solicitation and procurement process a contractor seeking a contract shall certify by providing the domestic partnership certification form, that upon award of a contract it will provide benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses. The domestic partnership certification form shall be signed by an authorized officer of the contractor and submitted with the solicitation response. Failure to provide the domestic partnership certification form shall result in a contractor being deemed non-responsive.
- (2) Exception and waiver. The provision of this section shall not apply where:
 - a. The contractor provides benefits neither to employees' spouses nor spouse's dependents.
 - b. The contractor is a religious organization, association, society or any non-profit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.
 - c. The contractor is a governmental entity.
 - d. The contract is for the sale or lease of property.
 - e. The covered contract is necessary to respond to an emergency.
 - f. The provision of this section would violate grant requirements, the laws, rules or regulations of federal or state law.
 - g. The city commission waives compliance of this section in the best interests of the city, including but not limited to, the following circumstances:
 - i. Where only one solicitation response is received.

Exhibit 2- Clean Draft Proposed Procurement Code

- ii. Where more than one solicitation response is received, but the solicitation demonstrates that none of the proposed solicitations can comply with the requirements of this section.

(3) For the purposes of this section, a domestic partner shall mean any two adults of the same or opposite sex, who have registered as domestic partners with the county pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least one of the domestic partners. A contractor may institute an internal registry to allow for the provision of equal benefits to employees with a domestic partner who does not register their partnerships pursuant to a governmental body authorizing such registration, or who are located in a jurisdiction where no such governmental domestic partnership registry exists. A contractor that institutes such registry shall not impose criteria for registration that are more stringent than those required for domestic partnership registration by the county.

(c) *Public Bid Disclosure Act* (Florida Statutes § 218.80). When a department wishes to release a construction bid or RFP, all of the city's permits or fees, including, but not limited to, all license fees, permit fees, impact fees, or inspection fees, payable by the contractor to the city must be disclosed. If the RFP does not require the response to include a final fixed price, the city is not required to disclose any fees or assessments in the RFP. However, at least ten days prior to requiring the contractor to submit a final fixed price for the project, the city shall make the disclosures required by F.S. § 218.80.

Sec. 23-15. Contracts; Authority to Terminate.

- (a) Except as otherwise prescribed by law, any type of written contract that will promote the best interests of the city may be used, provided that the use of a cost-plus-a-percentage-of-cost is prohibited. This section expressly allows contracts for construction management services, design build contracts, and continuation contracts based on unit prices.
- (b) Unless otherwise authorized by the city manager, no work shall be commenced, nor any supplies delivered, under any city contract until all conditions precedent as specified in the contract documents have been met, including, but not limited to:
 - (1) The contract has been duly executed by the city; and
 - (2) The contractor has furnished, where required, certificates of insurance and endorsements, bid security, performance bonds and payment bonds.
- (c) Every contract, unless otherwise exempt, shall contain language that obligates the contractor to comply with the applicable provisions of this section. The contract shall include provisions for the following:

Exhibit 2- Clean Draft Proposed Procurement Code

- (1) The contractor certifies and represents that it will comply with this section during the entire term of the contract.
 - (2) The failure of the contractor to comply with this section shall be deemed to be a material breach of the contract, entitling the city to pursue any remedy stated below or any remedy provided under applicable law.
 - (3) The city may terminate the contract if the contractor fails to comply with this section.
 - (4) The city may retain all monies due or to become due until the contractor complies with this section.
- (d) The City Manager shall have authority to initiate the termination of a contract pursuant to its terms. Termination of agreements in excess of \$200,000 shall require commission ratification within thirty (30) days of the notice of termination. Notwithstanding the requirement for commission ratification, a vendor that has received a notice of termination from the City Manager shall cease work in accordance with the terms of the contract.

Sec. 23-16. Change Orders.

(a) Any change in the contract price, scope of work or time for completion of any project purchase following the award of a contract shall be by a written change order, approved and executed with the same formalities as the contract. However, the city manager may approve and execute change orders without city commission approval subject to the following limitations:

- (1) The city manager may approve any change orders so long as the total sum of all change orders does not exceed the total amount awarded by the city commission by more than either ten percent of the contract cost or the delegated spending authority amount, whichever is less. The scope of any project may not be changed without prior approval of the city commission. No increase in contract price shall be approved unless there are sufficient funds available for such purpose.
- (2) Contract price decreases may be approved without limitation.
- (3) No change order shall materially change the scope of the work unless approved by the city commission.

Sec. 23-17. Protests procedures.

Any party may present a written protest about the award of a contract as a result of an RFP, RFQ or bid to the director of procurement. Emergency procurements, purchases for goods, supplies, equipment, and services, the estimated cost of which does not exceed the delegated spending authority amount, are not subject to protests.

Exhibit 2- Clean Draft Proposed Procurement Code

- (1) *Time for protest.* The submission of a protest about the award of a contract, as a result of an RFP, RFQ or bid, to the director of procurement must be made no later than five (5) business days of award by the city commission.
- (2) *Form and content of protest.* The protest shall be filed in writing with the director of procurement and shall state the contested information about the RFP, RFQ or bid.

The procurement director will provide a copy of the written protest to the city attorney and other appropriate city staff.
- (3) *Protest filing fee.* The written protest must be accompanied by a filing fee in the form of a money order or cashier's check payable to the city in an amount equal to one percent of the contract value, which resulted from an RFP, RFQ or Bid, but no greater than \$10,000. The filing fee shall guarantee the payment of all costs which may be adjudged against the protestor in any administrative or court proceeding. If a protest is upheld by the director of procurement, the filing fee shall be refunded to the protestor less any costs assessed under subsection (4), costs, below.
- (4) *Costs.* All costs accrued from a protest shall be assumed by the protestor.
- (5) *Authority to resolve protests.* The procurement director shall have the authority, subject to the approval of the city manager and the city attorney, to settle and resolve any written protest within 30 days after receipt of the written protest.
- (6) *Special magistrate.* In the event the protest is not resolved by the procurement director, a hearing shall be scheduled by the city before a special magistrate selected by the city, who shall only determine whether procedural due process has been afforded, whether the essential requirements of law have been observed, and whether the procurement director's finding are arbitrary, capricious, or an abuse of discretion. Any hearing shall be limited to two hours per side, unless the special magistrate rules otherwise. This requirement is a jurisdictional prerequisite to the institution of any civil action regarding the same subject matter.

Sec. 23- 18. Requirement of Good Faith; Ethics.

- (a) This article requires all parties involved in the negotiation, performance, or administration of city contracts to act in good faith.
- (b) All purchases must be made in accordance with all applicable city policies and procedures.
 - (1) *Unauthorized purchasing practices.* An unauthorized purchase occurs when any employee of the city orders, contracts for, or buys any materials or supplies outside the purview of the city charter and/or this code of ordinances or any other city policies and procedures. Any individual making an unauthorized purchase may be subject to disciplinary actions as appropriate, which may include termination and/or prosecution. The following are unauthorized purchasing practices:
 - a. Artificially dividing purchases into multiple segments resulting in single orders below the dollar threshold requirements as established

Exhibit 2- Clean Draft Proposed Procurement Code

herein and through administrative policies and standard operating procedures (also known as "stringing" or "splitting purchases") is prohibited.

- b. Purchasing any supplies or services above the thresholds delineated herein and through administrative policies and standard operating procedures directly from a vendor, bypassing the Procurement process and procedures.
 - c. Committing to a purchase without issuance of an authorized purchase order, when one is required.
 - d. Providing false information including without limitation false quotations.
 - e. Adding unauthorized purchases to previously approved purchase orders without approval of the appropriate approval authority and subsequent modification of the purchase order.
- (c) *Lobbyist regulations.* All persons, firms, organizations and corporations seeking to contract with the city for goods and services must submit a completed and notarized lobbyist registration form/oath to the city clerk's office prior to contacting a member or members of the city commission regarding the city procurement. The lobbyist registration must disclose each party, person, principal, and/or client represented on city matters.

Sec. 23-19. Cone of silence.

- (a) *Purpose.* A cone of silence shall be applicable to all RFPs, ITBs, RFQs, or any other advertised solicitations for the provision of goods and services, unless otherwise exempted in this section.
- (b) *Definition.* The term "cone of silence" means a prohibition on:
 - (1) Any communication regarding a particular advertised solicitation between a potential vendor and the city's staff including, but not limited to, the city manager;
 - (2) Any communication regarding a particular advertised solicitation between a potential vendor and any member of the selection/evaluation committee therefor;
 - (3) Any communication regarding a particular advertised solicitation between a vendor and the mayor and city commission and their respective staff.
- (c) *Exemptions.* Notwithstanding the foregoing, the cone of silence shall not apply to:
 - (1) Communications between a potential vendor and city purchasing staff, prior to bid opening date or receipt of proposals, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
 - (2) Duly noticed pre-bid/proposal conferences and site inspections;
 - (3) Duly noticed site visits to determine the competency of bidders/proposers regarding a particular solicitation during the time period between the opening of bids/receipt of

Exhibit 2- Clean Draft Proposed Procurement Code

proposals and the time the city manager presents his/her written recommendation to city commission;

- (4) Communications with the city attorney;
- (5) Oral presentations before selection/evaluation committees and communications occurring during duly noticed meetings of selection/evaluation committees;
- (6) Public presentations made to the city commission and communications occurring during any duly noticed public meeting;
- (7) Communications in connection with the collection of industry comments or the performance of market research regarding a particular advertised solicitation by the procurement staff;
- (8) Contract negotiations that occur prior to bringing the recommendation of award of contract to the city commission.

(d) *Procedure.*

- (1) *Imposition.* A cone of silence shall be imposed upon each advertised solicitation when the solicitation is advertised. At the time of imposition of the cone of silence, the city manager or his/her designee shall issue a notice thereof to the affected department, the city clerk, mayor and city commission and shall include in any advertised solicitation a statement disclosing that the solicitation is subject to the cone of silence.
- (2) *Termination; city commission awarding authority.* Except as otherwise provided herein, the cone of silence shall terminate at the date and time of the city commission meeting where the award will be made; provided, however, that if the city commission defers the matter to a future date, the cone of silence shall be re-imposed until such time as the matter is brought back before the city commission for further deliberation. In the event the city commission decides to reject all bids, then the cone of silence shall be lifted.

- (e) *Penalties.* Violation of the cone of silence by a vendor shall render the award to said vendor voidable by the city commission. City employees determined to be in violation of this provision shall be subject to disciplinary action. Additionally, any person who has personal knowledge of a violation of this article must promptly report such violation to the city manager.

Sec. 23-20. Public Private Partnerships.

- (a) The City hereby adopts F.S. § 255.065, "Public-private partnerships", and expressly incorporates it as by reference into the City procurement ordinance, as such may be modified.
- (b) Per F.S. § 255.065, the City does not waive the requirements of F.S. §287.055 for projects where this ordinance applies.