

ARTICLE III. CITY OF MIAMI PROCUREMENT ORDINANCE*

***Editor's note:** Ord. No. 12271, § 2, adopted August 22, 2002, repealed and reenacted art. III to read as herein set out. Formerly, art. III pertained to purchasing and contracts generally, and derived from the Code of 1980, §§ 18-11, 18-51, 18-51.1--18-51.6, 18-52, 18-52.1--18-52.9, 18-53, 18-54, 18-54.1--18-54.4, 18-55, 18-55.1--18-55.3, 18-56, 18-56.1--18-56.4, 18-57, 18-57; Ord. No. 9572, § 1, adopted February 10, 1983; Ord. No. 10032, §§ 1--4, adopted September 12, 1985; Ord. No. 10231, § 1, adopted March 13, 1987; Ord. No. 10328, § 1, adopted October 22, 1987; Ord. No. 11048, § 2, adopted March 25, 1993; Ord. No. 11072, § 1, adopted July 8, 1993; Ord. No. 11087, § 2, adopted September 27, 1993; Ord. No. 11564, § 9, adopted October 28, 1997; Ord. No. 11657, § 2, adopted May 26, 1998; Ord. No. 11688, § 1, adopted July 21, 1998; Ord. No. 11726, § 1, adopted November 17, 1998; Ord. No. 11727, § 2, adopted November 17, 1998; Ord. No. 11878, § 2, adopted January 13, 2000; Ord. No. 11890, § 3, adopted February 10, 2000; Ord. No. 12103, § 1, adopted September 13, 2001, and Ord. No. 12141, § 1, adopted October 25, 2001.

Charter references: Chief procurement officer, § 28; contracts for public works, improvements, real property, personal property, and unified development projects, § 29.

City Code cross reference--Conflicts of interest, § 2-611 et seq.

Law review references--Articles as to municipal contracts in Florida, 8 Miami L.Q. 257; 16 Miami L. Rev. 513.

State law references: Purchases by municipality under state purchasing agreement, F.S. § 287.042 (2); consultant's competitive negotiation act, F.S. § 287.055; preference to Florida business, F.S. § 287.084.

Sec. 18-71. Purpose.

The purpose of this article is to prescribe the manner in which the city shall control the purchase of materials, supplies, equipment and services of the city, and to maintain a high ethical standard for all officers and employees of the city in connection therewith; to place city's purchasing function in a centralized system in which the city will be able to establish policies and procedures governing all purchases and contracts; to provide for the fair and equitable treatment of all persons doing business with the city; to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-72. Application and exclusions.

(a) *Application.* Regardless of the source of funds, including state and federal assistance monies, and except as otherwise specified by law, the provisions of this article shall apply to every purchase/procurement by:

- (1) All city entities or boards, as hereinafter defined, except for the community redevelopment agencies.
- (2) The downtown development authority, the department of off-street parking, the Model City Homeowners Trust, the Civilian Investigative Panel, Virginia Key Beach Park

Trust, and the Miami Sports and Exhibition Authority (each referred to herein as the "board" or "city entity, as applicable); provided, however, that:

a. With respect to each board, the following terms shall have the meanings ascribed to them in this section:

1. "City" shall mean the board.
2. "City manager" shall mean the executive director of the board.
3. "Chief procurement officer" shall mean the executive director of the board or his or her designee.
4. "City commission" shall mean the board of directors of the board.

b. The cone of silence shall not apply to any board or city entity set forth in subsection 18-72(2) herein or the community redevelopment agencies.

(b) *Exclusions.* This article shall not apply to:

(1) Procurement of dues and memberships in trade or professional organizations; registration fees for trade and career fairs; subscriptions for periodicals and newspapers; advertisements; postage; expert witnesses; legal services, abstracts of titles for real property and title searches; title insurance for real property; water, sewer, and electrical utility services; copyrighted materials or patented materials including but not limited to technical pamphlets, published books, maps, testing or instructional materials; fees and costs of job-related seminars and training.

(2) Real property.

(3) Goods purchased with petty cash in accordance with established city procedures.

(4) Items purchased for resale to the general public.

(5) Purchase of groceries.

(6) Artistic services or works of art.

(7) Hotel accommodation and services.

(8) Public-owned transportation.

(9) Purchase of tickets for special events, tourist attractions and amusement parks.

(10) City-sponsored events at hotels, motels, restaurants, or other similar venues not owned by the city.

(11) Entertainment services for city-sponsored events.

(12) Purchases of motor vehicle license plates from a governmentally regulated monopoly or a government agency.

(13) Travel on city business as provided in APM-77, as amended.

(14) Persons retained as expert consultants, as defined herein.

(Ord. No. 12271, § 2, 8-22-02; Ord. No. 12354, § 1, 4-10-03)

Sec. 18-73. Definitions.

For the purposes of this article, the following terms shall have the meanings ascribed to them in this section:

Addendum means an addition or supplement to a document: for example, items or information

added to a solicitation document.

Administrative policies and procedures of purchasing means those appropriately promulgated directives having general or particular applicability designed to implement or interpret policy, or describing organization, procedure, or practice requirements.

Amendment means a modification, deletion, or addition to an executed agreement.

Bid means a formal written price offered by a business to the city to furnish specific goods, equipment and/or contractual or public works or improvements in response to an invitation for bids.

Bid award means award of a bid for which funds have lawfully been appropriated by the city commission.

Blanket purchase order means a purchase order under which a contractual party agrees to provide Goods or services to a purchaser on a demand basis; the purchase order generally establishes a maximum dollar limit, prices, terms, conditions, and the period covered, with no specified quantities; shipments are to be made as required by the purchaser.

Brand name "or equal" specifications means specification(s) limited to one or more items by the manufacturer's names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the city's requirements and which provide(s) for the submission of equivalent products.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change order means a written modification to a contract or purchase order, which normally revises the quantities or scope of services, and may include an extension of time to complete the contract.

Chief procurement officer means the person holding the position as the director of the department of purchasing of the city.

City entity(ies) shall mean the city, the office of the mayor, the city commissioners, the city manager, the city clerk, all city departments and offices, the city commission, every agency, authority, advisory board, regulatory board, quasijudicial board, semiautonomous instrumentality, committee, task force, trust, or any group created and/or funded, in whole or in part, by the city commission, provided, with the exception of the community redevelopment agencies.

Contract means:

- (1) A legally binding promise enforceable by law; a written agreement between two or more competent parties to perform or not perform a specific act or acts,
- (2) All types of agreements for the procurement or disposal of goods, services or public works or improvements.

Contractual party means a person or entity that enters into a contract with the city, or supplies goods, equipment or services to the city.

Contractual services means contractual or general services that include, but are not limited to, cleaning and security guard services; grounds maintenance; leasing; and rental, maintenance or repair of equipment, supplies, machinery and other city-owned personal property. The term shall not include professional or other personal services, which are by their nature unique or are not subject to competitive bidding.

Cooperative purchasing means:

- (1) Procurement conducted on behalf of two or more public entities;
- (2) The combining of requirements of two (2) or more public entities in order to obtain the benefits of volume purchasing and/or reduction in administrative expenses.

Designee means a duly authorized representative of a person holding a superior position.

Electronic means electric, digital, magnetic, optical, electromagnetic, or any other similar technology.

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

Goods mean any tangible personal property other than services or real property.

Invitation for bids (IFB) means the solicitation document and all attachments and addenda used for competitive sealed bidding for the procurement of public works or improvements, goods, equipment and/or contractual services. The IFB is used when the using agency is capable of specifically defining the scope of work for which a contractual or general service is required or when the using agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.

Local office means a business which conducts all or a portion of its operations from a permanent structure that is located within the corporate limits of the city, and has operated legally pursuant to all applicable zoning and licensing laws for a minimum of six months prior to the date bids or proposals were received for the purchase or contract at issue. A post office box shall not be sufficient to constitute a local office within the city. If the business is located in the permanent structure pursuant to a lease, such lease must be in writing, for a term of no less than one year, have been in effect for no less than six months prior to date bid or proposal was received, and be available for review and approval by the chief procurement officer or its designee.

Most advantageous means a judgmental assessment of what is in the best interests of the city and denotes a condition, which will result in a maximum benefit being conferred upon the city.

On-line procurement/bidding means a procurement process in which the purchasing department receives bids for goods, equipment, and contractual services, electronically transmitted over the Internet in a real-time, open, interactive competitive bidding event.

Persons retained as expert consultants means individuals acting as independent contractors retained by the city manager on a contract basis with a specific term for the purpose of performing specialized defined tasks that require knowledge, skills and training not otherwise available to the city by temporary or permanent members of the classified or unclassified service and which tasks, by their nature, require independent and autonomous judgment. Remuneration for the services of such persons shall not exceed \$125,000.00 in any one year, and shall be payable on a per diem basis.

Practicable means that which may be accomplished or put into practical application.

Procurement means buying, purchasing, renting, leasing or otherwise acquiring any goods and/or services for public purposes in accordance with the law, rules, regulations and procedures intended to provide for the economic expenditure of public funds. It includes, but is not limited to, all functions which pertain to the obtaining of any supplies, materials, equipment and/or services, including public works and improvements and capital improvement projects, as defined herein, required by any department or agency of city government, regardless of the source of funds. For the purposes of this article, it excludes those items set forth in subsection 18-72(b).

Professional and personal services means (a) services, the value of which is substantially measured by the professional competence of the person performing them, and which are not susceptible to realistic competition by cost of services alone; (b) services rendered by members of a recognized profession or persons possessing a specialized skill. Such services are generally acquired to obtain information, advice, training or direct assistance.

Professional and personal services shall include but not be limited to services customarily rendered by architects, engineers, surveyors, auditors, software and system applications, planning, electronic, technology, technical and management consultants, appraisers, and medical-related

providers.

Proposal means an executed formal document submitted by a proposer to the city, stating the goods and/or services offered to satisfy the need as requested in the request for proposals, or request for letters of interest or request for qualifications.

Public notice unless otherwise specified herein, shall mean publication in a newspaper of general circulation in the city within a reasonable time.

Purchase means the same as procurement, as defined herein.

Purchase order means the city's document used to authorize a purchase transaction with a contractual party. It should contain a description of goods and/or services ordered, applicable terms as to payment, discounts, date of delivery/performance, insurance and other factors or conditions relating to the transaction. Acceptance of a purchase order by a contractual party shall constitute a contract, except in those instances in which a purchase order is used only as an internal encumbrance document.

Quotation or informal bid means any oral or written informal offer by an offeror to the city to furnish specific goods and/or services at a stated price.

Request for letters of interest (RFLI) means a solicitation of responses from interested and prospective proposers to submit a summary of their qualifications and/or capabilities and state their interest in performing a specific job or service. Proposers may be given latitude in offering a service that may fulfill the city's need.

Request for proposals (RFP) means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed proposals for goods and/or services. Evaluation of a proposal is based on prior established criteria wherein the RFP shall state the relative importance of price and other evaluation factors.

Request for qualifications (RFQ) means a solicitation of responses from interested and prospective proposers/respondents in which factors other than price, including but not limited to financial capability, reputation, experience, and business competency, are considered and evaluated in order to develop a list of qualified respondents.

Request or invitation for quotation means a competitive solicitation for an informal bid price for supplies or services that is conveyed by form, letter, telephone or other means and does not require advertisement or a sealed bid public opening, or public reading of bids.

Responsible bidder, proposer, offeror, or respondent means a business which has submitted a bid, offer, proposal, quotation or response, which has the capability, as determined by the city, in all respects to perform fully the contract requirements, and the integrity and reliability of which give reasonable assurance of good faith and performance.

Responsive bidder, proposer, offeror, or respondent means a business which has submitted a bid, offer, proposal, quotation or response which conforms in all material respects to the solicitation.

Scope of work means a detailed description of the work set forth in the request for proposal, request for qualifications, or request for letters of interest which the contractual party will be required to perform.

Signature means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

State law references: F.S. ch. 668, Part I, electronic signatures, as amended

Sole source means the only existing source of the item or service which meets the needs of the using agency, city department, office, board, city commission, or trust, as determined by a reasonably thorough analysis of the marketplace.

Specifications means a concise statement of a set of requirements to be satisfied by a product, material, or process used in an invitation for bids or request or invitation for quotation to describe the goods, equipment, and/or contractual services to be purchased or otherwise acquired.

Surplus personal property means surplus, obsolete or scrap supplies or equipment. "Surplus supplies or equipment" means those which are capable of being used but are in excess of the normal operating requirements of the city. "Obsolete supplies or equipment" means those which may no longer be used for their intended purposes because their use has become economically upgraded. "Scrap supplies or equipment" are those that can no longer be used either safely or economically for any purpose except for their possible salvage value.

Using agency means any city entity which requests and uses goods, equipment and/or services procured pursuant to this article.

(Ord. No. 12271, § 2, 8-22-02; Ord. No. 12354, § 1, 4-10-03)

Sec. 18-74. Cone of silence.

(a) The requirements of subsection 2-11.1(t) ("Cone of Silence Ordinances") of the Code of Miami-Dade County, Florida, as amended, shall not be applicable to the city.

(b) Cone of silence. The cone of silence shall be applicable only to contracts for the provision of goods and services and public works or improvements for amounts greater than \$200,000.00; provided, however, that the cone of silence shall not be applicable to the city attorney's office nor to the office of the independent auditor general.

(c) "Cone of silence" is defined to mean a prohibition on:

(1) Any communication regarding a particular request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), invitation for bids ("IFB") or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist, or consultant and the city's professional staff including, but not limited to, the city manager and his or her staff;

(2) Any communication regarding a particular RFP, RFQ, RFLI, IFB or any other advertised solicitation between the mayor, city commissioners or their respective staffs and any member of the city's professional staff including, but not limited to, the city manager and his or her staff;

(3) Any communication regarding a particular RFP, RFQ, RFLI, IFB or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist, or consultant and any member of the selection/evaluation committee therefor;

(4) Any communication regarding a particular RFP, RFQ, RFLI, IFB or any other advertised solicitation between the mayor, city commissioners or their respective staffs and any member of the selection/evaluation committee therefor; and

(5) Any communication regarding a particular RFP, RFQ, RFLI, IFB or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist, or consultant and the mayor, city commissioners, and their respective staffs; and

(6) Any communication regarding a particular RFP, RFQ, RFLI, IFB or any other advertised solicitation between any member of the city's professional staff, including but not limited to the city manager and his or her staff, and any member of the selection/evaluation committee therefor. The city manager and the chairperson of the selection/evaluation committee may communicate about a particular selection/evaluation committee's recommendation but only after the committee has submitted its written

recommendation to the city manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the city manager with the city clerk and be included in any recommendation memorandum submitted by the city manager to the city commission.

Notwithstanding the foregoing, the Cone of Silence shall not apply to:

- a. Competitive processes for the award of CDBG, HOME, SHIP, HOPWA, and ESG (emergency shelter grants), Funds issued and administered by the city department of community development, and Law Enforcement Trust Fund (LETF) grants administered by the city police department;
- b. Communications between a potential proposer, offeror, respondent, bidder, consultant or lobbyist and city purchasing staff regarding minority/women business and local vendor outreach programs;
- c. Duly noticed pre-bid/proposal conferences and site inspections;
- d. 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 proposals and the time the city manager makes his or her written recommendation to the city commission;
- e. Emergency procurements;
- f. Communications with the city attorney and his or her staff;
- g. Communications regarding a particular RFP, RFQ, RFLI, IFB or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist or consultant and the chief procurement officer, its staff, or any city purchasing agent, or its staff, responsible for administering the procurement process for such solicitation, 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;
- h. Communications regarding a particular RFP, RFQ, RFLI, IFB or any other advertised solicitation between the chief procurement officer, its staff, or any city purchasing agent, or its staff responsible for administering the procurement process for such solicitation and a member of the corresponding selection/evaluation committee, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation;
- i. Sole source procurements;
- j. Bid waivers;
- k. Oral presentations before selection/evaluation committees and communications occurring during duly noticed meetings of selection/evaluation committees;
- l. Competitive negotiations;
- m. Public presentations made to the city commission and communications occurring during any duly noticed public meeting;
- n. Communications in writing or by e-mail at any time with any city employee, official, mayor, or member of the city commission unless specifically prohibited by the applicable RFP, RFQ, RFLI, IFB or other advertised solicitation. The city shall file a copy of any written communications with the city clerk;
- o. Communications in connection with the collection of industry comments or the performance of market research regarding a particular RFP, RFQ, RFLI, IFB or any other advertised solicitation by the chief procurement officer or its staff;

- p. Contract negotiations.
 - q. On-line procurements pursuant to section 18-114.
 - r. The downtown development authority, the department of off-street parking, the Model City Homeowners Trust, the Civilian Investigative Panel, and the Miami Sports and Exhibition Authority.
- (d) Procedure.
- (1) Imposition. A cone of silence shall be imposed upon each RFP, RFQ, RFLI, IFB or any other advertised solicitation when the solicitation is advertised in a newspaper of general circulation. At the time of imposition of the cone of silence, the city manager or his or her designee shall provide for public notice of the cone of silence. The city manager or his or her designee shall issue a notice thereof to the affected department (s), the city clerk, each commissioner and to the mayor and shall include in any advertised solicitation a statement disclosing that the solicitation is subject to the cone of silence.
 - (2) Termination. Except as otherwise provided herein, the cone of silence shall terminate at the time the city manager's approval of the award or the city manager's written recommendation to the city commission, as may be applicable, is received by the city clerk, or at such time that bids or proposals are rejected by the city commission or the city manager; provided, however, that if the city commission refers the recommendation back to the city manager for further review, the cone of silence shall be reimposed until such time as the city manager's subsequent written recommendation is received by the city clerk.
- (e) Penalties. Violation of the cone of silence by a particular bidder or proposer shall render the award to said bidder or proposer voidable by the city commission. Any person who violates a provision of this ordinance shall be prohibited from serving on a city competitive selection/evaluation committee unless such appointment is approved by a 4/5 vote of the city commission. A violation of this section by a particular bidder, proposer, offeror, respondent, lobbyist or consultant shall subject said bidder, proposer, offeror, respondent, lobbyist or consultant to potential debarment pursuant to this Code.

In addition to any other penalty provided by law, violation of any provision of this article by a city employee shall subject said employee to disciplinary action up to and including dismissal.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-75. Organization.

The purchasing department is the centralized organization for all procurement and contracting for goods, material, equipment, contractual services, professional and personal services and consultant services, public works or improvements and/or combination of goods and services; for performance of the city's purchasing functions, and for implementation of the provisions of this article. The chief procurement officer shall be the director of this department.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-76. Chief procurement officer.

The city manager shall appoint a chief procurement officer who shall have authority over implementation of policies, procedures, regulations and forms governing city contracting methods and procedures; types of contracts; qualifications and duties; inspections and audits; disputes and

remedies; ethics; and public access and information as set forth in this article.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-76.1. Duties of the chief procurement officer.

Subject to the provisions of this article, the chief procurement officer shall:

- (1) Administer the central purchasing and contracting system for the city;
- (2) Procure or supervise the procurement of all goods and services as needed by the city in the manner provided by this article.
- (3) Provide for the establishment/promulgation of administrative policies and procedures of purchasing, and its operations manual, which shall be reviewed by the city manager and amended from time to time;
- (4) Take all necessary action to further the objectives of the city with regard to the promotion and encouragement of minority and women business participation in the procurement process;
- (5) Be responsible for the provisions of the Anti-Deficiency Act contained in this article;
- (6) Determine the method of selection for each type of procurement;
- (7) Standardize, to the extent possible, contract clauses, terms and conditions, and documents;
- (8) Maintain a current list of possible sources of supply for all goods and services purchased by the city;
- (9) Have the authority to delegate any or all duties to individual purchasing agents assigned to city departments or offices, subject to the approval of the city manager.
- (10) Have the authority to approve the use of a competitive contract for the purchase of necessary goods or services which has been secured by or on behalf of any federal, state, county, or municipal government, or by any other governmental entity or by any not for-profit organization or state-funded institution.
- (11) With such submissions as may be required from individual purchasing agents, departments, and offices, keep such records as will adequately reflect leases, specifications, invitations for bids, requests for proposals, requests for quotations, requests for qualifications, requests for letters of interest, bids, quotations, proposals received, actions taken, final dispositions, and the purchase of goods and services and disposal of all supplies, materials, equipment.
- (12) Submit an annual report on the operation of the city's procurement system to the city manager, together with recommendations for its improvement.
- (13) Sell, trade, exchange, transfer, or otherwise dispose of surplus city-owned personal property;
- (14) Perform such other duties as may be provided for in other sections of this chapter, or as directed by the city manager, or its designee.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-77. Authority of the chief procurement officer.

All rights, powers, duties, and authority relating to the procurement and contracting of goods

and/or services for the city, including the authority.

- (1) To approve all purchases and awards up to \$25,000.00;
- (2) To certify for compliance with applicable procurement methods all purchases and awards not in excess of \$50,000.00 for goods and services, and not in excess of \$100,000.00 for contracts for public works and improvements, except as otherwise provided in this article; and
- (3) To issue those purchase orders and change orders for the purchase of goods and services governed by this article, provided they are in conformance with the law and all applicable rules and regulations.

The city manager retains sole authority to execute contracts and agreements except for purchase orders and change orders.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-78. Delegation of authority by the chief procurement officer to other city purchasing agents.

The chief procurement officer may delegate the following duties to city purchasing agents, including those in the purchasing department and those assigned to other departments or offices, which duties shall be performed under the general supervision of and subject to the policies, procedures, regulations and forms issued by the chief procurement officer.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-79. General duties of city purchasing agents.

- (a) To administer the procurement process for certain procurements as authorized by the applicable administrative policies and procedures of purchasing.
- (b) To draft or cause to be drafted invitations for bids, requests for proposals, and other solicitations as may be permitted by law, and to prepare specifications or scope of work for same.
- (c) To forecast departmental purchase requirements for future periods and to buy in quantities which are most economical for the city.
- (d) To investigate new products and new sources of supply and to maintain, update and promulgate lists of qualified bidders and sources of professional services.
- (e) To stimulate maximum competition among qualified suppliers of goods and services for the city's business.
- (f) To provide for the inspection and testing of goods delivered in order to determine quantity, quality and adherence to provisions of invitations for bids, requests for proposals, and related specifications.
- (g) To make transfers of supplies, materials and equipment which are not needed by a department or office to another department or office which may need them.
- (h) To submit recommendations to the chief procurement officer concerning the operation of the city's procurement system.
- (i) To take any other action consistent with existing law and with this article to make certain that city purchases, sales and leases are made on the basis of free and open competition, as prescribed in this article.

(j) To perform any other duty not inconsistent with existing law or this article.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-80. Responsibilities of the chief procurement officer relating to the Anti-Deficiency Act.

The chief procurement officer shall be responsible for the provisions relating to the Anti-Deficiency Act, set forth in sections 18-500 through 18-503, as follows:

- (1) *Requisitions.* Assuring that all requisitions received have been properly authorized.
- (2) *Purchase orders.* Assuring that the purchase order is issued for an amount not to exceed the amount set forth in the requisition, a resolution adopted by the city commission and any other legal authorization.
- (3) *City-wide contracts.* Assuring that purchase orders authorized by a city-wide contract do not exceed the amount authorized by the city commission and any other legal authorization.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-81. Estimates of requirements.

All departments or offices of the city shall file with the chief procurement officer detailed estimates of all their requirements for supplies, materials, equipment and contractual services in such a manner, at such times, and for such future periods as the city manager may prescribe; provided that the length of the periods shall not be less than three months. The requirement for preparing such estimates shall in no way prevent any using department or office from filing with the chief procurement officer, at any time, a requisition for any supplies, materials, equipment or contractual services, the need for which was not foreseen when the detailed estimates were filed.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-82. Disposal of surplus city-owned personal property.

(a) When a surplus of city-owned personal property exists, the chief procurement officer may transfer it to any other department or office which has need for it. The chief procurement officer shall also have power to sell all such supplies, materials and equipment which have become unsuitable for city use or to exchange for or trade in the same for new supplies, materials and equipment. When such surplus supplies, material and equipment have a limited use other than by the city, the city commission may classify the same as category "A" or category "B" stock. Category "A" stock shall be available for disposition as the city's contribution or the city's commitment in support of a particular public purpose which may include those community civic or social service programs as may be authorized by the city commission. Category "B" stock shall be that stock of surplus supplies, material and equipment which is available for disposition pursuant to the terms and provisions of subsection (b) hereof; namely, sale to sister cities or municipalities of friendly foreign countries. Not for profit organizations which provide a public purpose shall be offered first consideration as recipients for the disposition of category "A" and "B" surplus stock. Except for category "A" stock or category "B" stock and except in those cases in which the chief procurement officer determines that it is not practical to do so, any department or office that provides surplus stock for any such transfer, sale, exchange or trade-in shall receive credit therefor, based on the fair market value of such surplus; and any department or office receiving such surplus stock shall receive corresponding debit therefor, such credit and

debit to be charged to the respective budgets of the departments or offices involved.

(b) Notwithstanding the above provisions, when a foreign city enjoying a current, formally designated status as a "sister city," in accordance with the terms of Resolution No. 78-5, dated January 11, 1978, or a municipality of a friendly foreign country desires to purchase personal property owned by the city, including vehicles and equipment which are no longer needed for public use or which have become unsuitable for further use by the city, and where said property has been categorized as category "B" stock, such sale may be negotiated in accordance with the following procedure and criteria:

(1) All equipment proposed for sale to sister cities or municipalities of friendly foreign countries must be declared surplus, following then-existing administrative procedures. All such equipment must be offered to sister cities for a period of 30 days before being offered for sale to such municipalities. Note: "Friendly foreign countries" means those countries against which there are no trade embargoes or travel prohibitions imposed by the executive branch of the U.S. government.

(2) The prices negotiated for such sale must be equal to or greater than the prices which would be reasonably anticipated from the sale of such surplus equipment through public auction. This condition may apply to the total sale of a number of pieces of equipment rather than individual piece prices for the aggregate return on a given sale in determining whether the negotiated price is equal to or greater than could be expected at a public auction.

(3) The negotiated unit price shall not include any transportation or shipping costs; these costs will be borne by the sister city or the municipality purchasing said equipment.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-83. Availability of funds.

Except in cases of emergency, the chief procurement officer, city manager or purchasing agents shall not issue any order for delivery on a contract or any open-market order unless and until availability of funds have been verified that there is to the credit of the using department or office a sufficient unencumbered appropriation balance, in excess of all unpaid obligations, to defray the cost of such supplies, materials, equipment or contractual services.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-84. Methods of source selection.

All purchases of goods, including but not limited to supplies, materials, equipment, printed materials and all purchases of services, including but not limited to personal, professional, management, technical, contractual and general services needed by the city, but not including legal services, may be obtained by contract or through city labor and materials and shall be exclusively made in the manner set forth in this article.

All invitation for bids, request for letters of interest, request for proposals, request for qualifications or any other method of source selection, whether formal or informal, to be issued by the city shall be developed or drafted by city employee(s) and in the event that the same are not developed or drafted by city employee(s), the non-city employee(s) or firm assisting, developing, or drafting any portion of the solicitation document shall be prohibited from competing for the award of any contract resulting from such process and shall be treated as part of the city's professional staff under the cone of silence, when applicable; this provision does not apply to circumstances whereby the city engages non-city employee(s) or firm to collect or provide industry comments, conduct market research, or provide technical data.

Any agreement for purchase entered into in any manner inconsistent with the procedures stated in this article by any person shall be voidable by the city.

(Ord. No. 12271, § 2, 8-22-02; Ord. No. 12949, § 2, 10-11-07)

Sec. 18-85. Competitive sealed bidding.

(a) *Conditions for use.* Competitive sealed bidding shall be used for the award of all contracts for goods, equipment and services over \$25,000.00, except as otherwise provided for in this article, where it is both practicable and advantageous for the city to specify all detailed plans, specifications, standards, terms and conditions so that adequate competition will result and award may be made to the lowest responsive and responsible bidder principally on the basis of price; provided, however, that if the amount of a bid submitted by a bidder who maintains a local office is not more than ten percent in excess of the lowest other responsive and responsible bidder, such local bidder may be offered the opportunity of accepting the contract at the low bid amount. Notwithstanding the foregoing, the city manager may waive competitive sealed bidding methods by making a written finding which shall contain reasons supporting the conclusion that competitive sealed bidding is not practicable or is not advantageous to the city, which finding must be ratified and the award approved by an affirmative vote of four-fifths of the city commission after a properly advertised public hearing. When competitive sealed bidding methods are waived, other procurement methods shall be followed except for the cone of silence provisions, which shall not be applicable. This section shall not apply to transfers to the United States or any department or agency thereof, to the state or to any political subdivision or agency thereof.

(b) *Invitation for bids.* An invitation for bids shall be issued and shall include, but not be limited to:

- (1) Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the city, the right of the city manager to reject all offers or bids, and any other special information;
- (2) The purchase description, qualification factors, delivery or performance schedule, and such inspection and acceptance requirements as may not be included in the purchase description;
- (3) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable;
- (4) The date, time and place at which any prebid conference may be held and whether attendance at such conference is a condition for bidding; and
- (5) The place where any documents incorporated by reference may be obtained.

(c) *Bidders lists.* Bidders lists may be compiled to provide the city with the names of businesses which may be interested in competing for various types of city contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether that business is responsible in respect to a particular procurement or otherwise capable of successfully performing a particular city contract.

(d) *Public notice.* Notice inviting bids shall be published at least once in a newspaper of general circulation in the city a reasonable time prior to bid opening; but in any event at least 15 calendar days shall intervene between the last date of publication and the final date for submitting bids. Such notice shall state the general description of the goods or services to be purchased, the place where a copy of the invitation for bids may be obtained, and the time and place for opening of bids. In addition, the chief procurement officer may solicit bids from all

responsible prospective suppliers listed on a current bidders list by sending such bidders copies of the notice to acquaint them with the proposed purchase.

(e) *Prebid conferences.* Prebid conferences may be conducted to explain the requirements of the proposed procurement and shall be announced to all prospective bidders known to have received an invitation for bids. Conferences should be held long enough after the invitations for bids have been issued to allow prospective bidders to become familiar with the proposed procurement, but sufficiently before bid submission to allow consideration of the conference results in preparing their bids. Nothing stated at a prebid conference shall change the invitation for bids unless a change is made by written addendum, which shall be supplied to all those prospective bidders known to have received an invitation for bids. All prebid conferences shall be recorded, and, if a transcript is made, such transcript shall be a public record.

(f) *Bid opening.* All bids shall be submitted sealed to the city clerk and shall be opened publicly by the city clerk or designee in the presence of one or more witnesses at the time and place stated in the public notice and in the invitation for bids. The amount of each bid and such other relevant information as may be deemed desirable, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection.

(g) *Bid acceptance and evaluation.* 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, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award, such as discounts, transportation costs, and total or life cycle costs shall be measured objectively. No criteria may be used in bid evaluation which were not set forth in the invitation for bids. The results of the evaluation and tabulation of bid prices shall be transmitted by the chief procurement officer to the city manager.

(h) *Award.* The procurement shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder, whose bid meets the requirements and criteria set forth in the invitation for bids except as otherwise provided in this section. For any procurement, including contracts, a bid to be awarded which exceeds \$25,000.00 shall be awarded by the city manager only upon certification of the results of the evaluation and the bid tabulation by the chief procurement officer as being in compliance with competitive sealed bidding methods, except as otherwise provided in this article. Copies of the city manager's award shall be delivered to the chief procurement officer and all affected department directors.

All bid awards in excess of \$50,000.00 must be approved by the city commission upon recommendation by the city manager. The decision of the city commission shall be final. Threshold amounts referenced herein shall include the values associated with potential options of renewal. Awards made by the city manager or by the city commission shall include authority for all subsequent options of renewal, if any. The aforementioned options of renewal shall be exercisable at the option of the city manager if, after review of past performance under the contract, the city manager determines, in his/her sole discretion, that exercise of the option of renewal is in the best interest of the city.

The city commission or the city manager shall have the authority to reject any or all bids or portions of bids, or to negotiate with the lowest bidder for better pricing.

In the event only one bid is received, the city may award to the sole bidder, negotiate for better pricing or may re-bid, whichever is in the best interest of the city.

The city manager shall submit to the city commission on a monthly basis a list of procurements or contracts awarded by the city manager.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-86. Competitive negotiations/competitive sealed proposals.

(a) *Conditions for use.*

(1) Competitive negotiations/competitive sealed proposals shall be used in those circumstances in which it is both practicable and advantageous for the city to consider a range of competing plans, specifications, standards, terms and conditions so that adequate competition will result and award be made not principally on the basis of price, but to the respondent whose proposal contains the most advantageous combination of price, quality or other features. All contracts shall be signed by the city manager.

(2) A contract may be entered into by use of the competitive negotiation/competitive sealed proposal methods when:

- a. The chief procurement officer determines that the complex specialized nature or technical details of a particular procurement make the use of competitive sealed bidding either not practicable or reasonable, or not advantageous to the city; or
- b. Specifications or scope of work cannot be fairly or objectively prepared so as to permit competition in the invitation for bids; or
- c. Technology, electronic, software, and system applications are available from a limited number of sources; or
- d. Qualifications and the quality of the service to be delivered can be considered more important than price.

(3) Competitive negotiations/competitive sealed proposals shall be used in the procurement of personal and professional services except for:

- a. Professional services as defined in Florida Statute § 287.055, as amended from time to time.
- b. Legal services.
- c. Services related to the cultural, educational, recreational or park activities provided by non-profit organizations within city parks. These services may be awarded without competitive negotiations if the city manager makes a written finding, supported by reasons, to the city commission that competitive negotiation methods are not practicable or advantageous. Such finding must be ratified and the award approved by an affirmative vote of four-fifths of the commission after a properly advertised public hearing.
- d. Maintenance agreements to support proprietary software applications.

(b) *Competitive negotiations method.* Where the contract does not exceed \$50,000.00, at least three written proposals shall be sought and the city shall enter into competitive negotiations to determine which proposal is most advantageous to the city. The written proposals received and the results of the evaluation shall be maintained as a public record. The contract may be awarded by the city manager upon certification of compliance with competitive negotiations method by the chief procurement officer. The city manager shall submit to the city commission on a monthly basis a list of contracts awarded by the city manager.

(c) *Competitive sealed proposal method.* Where the contract exceeds \$50,000.00, the city may utilize the following competitive sealed proposal method:

(1) Request for proposals or request for letters of interest or request for qualifications setting forth the terms and conditions of the professional or personal services sought, including but not limited to, scope of work and evaluation factors, shall be issued.

(2) Mailing lists. Lists of prospective proposers/respondents may be compiled pursuant to section 18-85 (competitive sealed bidding).

(3) Public notice. Adequate public notice in a newspaper of general circulation shall be provided pursuant to section 18-85.

(4) Pre-proposal conference. A pre-proposal conference may be conducted to explain the requirements of the proposed procurement and shall be announced to all prospective proposers known to have received an RFP, RFLI, or RFQ. Conferences should be held long enough after the RFP, RFLI, or RFQ has been issued to allow prospective proposers to become familiar with the proposed procurement, but sufficiently before receipt of proposal to allow consideration of the conference results in preparing their proposals. Nothing stated at a pre-proposal conference shall change the RFP, RFLI, or RFQ unless a change is made by written addendum, which shall be supplied to all those prospective proposers known to have received an RFP, RFLI, or RFQ. All pre-proposal conferences shall be recorded, and, if a transcript is made, such transcript shall be a public record.

(5) Receipt of proposals. Sealed proposals must be received by the city clerk no later than the time and date specified for submission in the request for proposals or request for letters of interest or requests for qualifications. The name of each proposer shall be recorded by the city clerk or its designee, and the record and each proposal, to the extent consistent with applicable state law, shall be open to public inspection.

(6) Proposal evaluation. An evaluation committee shall be appointed by the city manager for the purpose of evaluating proposals based upon the criteria contained in the RFP, RFLI or RFQ. No other factors or criteria shall be used in the evaluation. As may be provided in the RFP, RFLI or RFQ, proposers may be invited to make oral presentations regarding their Proposals. The recommendations of the evaluation committee shall be submitted to the city manager.

In the event only one proposal is received, the evaluation committee may proceed with the evaluation, or request the city manager to reject all proposals, whichever is in the best interests of the city.

- a. After reviewing the evaluation committee's recommendation, the city manager may:
1. Approve the recommendation of the evaluation committee, written notice of which shall be provided to all proposers, and the city manager shall then submit his or her recommendation to the city commission;
 2. Reject the evaluation committee's recommendation and instruct the evaluation committee to re-evaluate and make further recommendations;
 3. Reject all proposals; or
 4. Recommend that the city commission reject all proposals.

(7) Award. Award shall be made to the responsive and responsible proposer whose proposal is most advantageous to the city as determined by the city commission in accordance with the evaluation criteria contained in the RFP, RFLI or RFQ.

- b. After reviewing the city manager's recommendation, the city commission may:
1. Approve the city manager's recommendation and authorize contract negotiations;
 2. Reject all proposals;
 3. Reject all proposals and instruct the city manager to reissue a solicitation; or
 4. Reject all proposals and instruct the city manager to enter into competitive negotiations with at least three individuals or firms possessing the ability to perform such services and obtain information from said individuals or firms

relating to experience, qualifications and the proposed cost or fee for said services, and make a recommendation to the city commission.

The decision of the city commission shall be final. Written notice of the award shall be given to the successful proposer.

Threshold amounts referenced herein shall include the values associated with potential options of renewal. Awards made by the city manager or by the city commission shall include authority for all subsequent options of renewal, if any. The aforementioned options of renewal shall be exercisable at the option of the city manager if, after review of past performance under the contract, the city manager determines in his/her sole discretion that exercise of the option of renewal is in the best interest of the city.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-87. Professional services as defined in F.S. § 287.055, as amended from time to time; award of certain professional agreements not exceeding \$500,000.00 by the city manager.

(a) In the procurement of professional services covered by the Consultant's Competitive Negotiation Act, the provisions of F.S. § 287.055, as amended, as supplemented by applicable provisions of the procurement ordinance, shall govern.

(b) The city manager is authorized to promulgate and implement administrative procedures not inconsistent with Florida Statutes or the purchasing ordinance.

(c) Definitions. For purposes of this section the following words shall have the meanings ascribed to them in the Consultant's Competitive Negotiation Act, F.S. § 287.055, as amended:

- (1) Agency.
- (2) Firm.
- (3) Compensation.
- (4) Agency official.
- (5) Project.
- (6) Continuing contract.
- (7) Design-build firm.
- (8) Design-build contract.
- (9) Design criteria package.
- (10) Design criteria professional.
- (11) Professional services.

The following are additional definitions not defined in CCNA that may apply to projects under this section:

(12) Value-analysis means an organized approach to optimizing both cost and performance in a new or existing facility or eliminating items that add cost without contributing to required function.

(13) Life-cycle costing means that process whereby all the expenses associated with the operation, maintenance, repair, replacement, and alteration costs of a facility are included.

(14) Capital Improvements Program (CIP) shall mean the work and materials

- authorized for construction, rehabilitation, restoration or betterment of streets, avenues and other public thoroughfares, public parks, buildings, and/or other public properties, and other municipal public improvements included within the city's adopted Capital Improvement Program, as amended or modified by the city commission from time to time.
- (d) File of qualifications for CCNA firms. In the procurement of professional services covered by CCNA, the chief procurement officer may encourage the firms engaged in the lawful practice of their professions to submit a statement of qualifications and performance data. This information shall be held in the purchasing division and shall become part of the basis for selection of professional firms to serve the city. The list of qualifications shall contain the type of services provided by each firm, the staff available, their areas of specific expertise, and any forms then currently required by the city, the county or the state. The city may request supplemental information from any firm to be kept on file.
- (e) Public announcement. The chief procurement officer shall publicly announce as required by the Consultant's Competitive Negotiation Act, F.S. § 287.055, as amended, each such occasion when Professional Services are required. The public announcement shall be made in a uniform and consistent manner.
- (f) Review of qualifications. A selection committee appointed by the city manager shall review all qualifications and submittals of those firms responding to the public announcement for professional services issued by the city. As provided by CCNA, the firms desiring to provide professional services must first be certified by the city as fully qualified to provide the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm.
- (g) Short list. The selection committee shall reduce the number (short-list) at least three firms for further discussion. This requirement is not applicable if fewer than three firms deliver submittals.
- (h) The committee shall conduct discussions with, and may require public presentations by, no fewer than three firms. The requirements for the discussion or presentation will be the same for each firm short-listed. The committee shall select, in order of preference, no less than three firms (unless fewer than three firms deliver submittals) determined to be the most highly qualified to perform the required services. In making such determinations the committee shall consider the factors set forth in CCNA, as amended. Any applicable local preference awarded pursuant to law shall not violate the principal of selection of the most qualified firm.
- (i) Ranking reported. On completion of the committee selection process the committee shall report the ranking order of the firms to the city manager. The city manager shall immediately advise the mayor and city commission in writing of the three or more firms selected and their ranking order of preference. The city clerk will be provided with a copy of each report and memo referenced in this section.
- (j) Negotiations proceed if no concern is expressed. If no commissioner or the mayor individually indicate a concern with the ranking of the selection committee within five working days of the transmittal of the memo reporting the ranking the city manager will proceed with negotiations.
- (k) Procedure if a concern is expressed. If the mayor or a commissioner have concerns which cannot be resolved without impacting the order of the ranking or selection, an item shall be placed before the city commission to approve the selection and ranking or, alternatively, to refer the item back to the selection committee.
- (l) Negotiations. The city manager may, after five consecutive business days of notification of the ranking to the mayor and the city commission attempt to negotiate with the highest ranked firm to perform services at compensation which is, in the opinion of the city manager, determined to be fair and reasonable. Compensation include all reimbursable expenses. If the

city manager is unable to negotiate a satisfactory contract with the firm obtaining the highest-ranking negotiations with that highest ranked firm shall be terminated. The city manager shall then undertake negotiations with the second ranked firm. If these negotiations also prove unsatisfactory, negotiations will again be terminated and the city manager will negotiate, in turn, with each firm in accordance with its ranking by the committee, until an agreement is reached, or the short list is exhausted. When a short list is exhausted, a new solicitation shall be initiated by the city, unless otherwise decided by the city commission.

(m) Award of contract. Notwithstanding any other provision of the purchasing ordinance, at the successful conclusion of negotiations the city manager may award and execute contracts for professional services, as defined by CCNA, which do not exceed \$500,000.00 in total compensation. The decision of the city manager shall be final. Compensation referenced herein shall include all reimbursable expenses and contract values associated with potential options for renewal. All professional service contract awards of \$500,000.00, or more in total compensation under this section shall be made by the city commission, whose decision shall be final.

Awards made by the city manager or city commission, as applicable, shall include authority for all subsequent options of renewal, if any.

(n) Report to city commission. The city manager shall submit to the city commission, on a bi-monthly basis, a listing of any contracts including the names of the firms, the names of the projects, and the amount of compensation of any contracts the city manager has awarded under this section.

All contracts awarded under this section shall be executed by the city manager, approved as to insurance requirements by the risk manager, and approved as to legal form by the city attorney.

(o) Delegation of authority. Excepting the execution of contracts, the city manager may delegate his or her duties under this section to the chief procurement officer or the administrative head of the using agency.

(Ord. No. 12349, § 2, 3-27-03)

Editor's note: Ord. No. 12349, § 2, adopted March 27, 2003, amended § 18-87 in its entirety to read as herein set out. Formerly, § 18-87 pertained to professional services as defined in F.S. § 287.055, as amended from time to time, and derived from Ord. No. 12271, § 2, adopted August 22, 2002.

Sec. 18-88. Small purchases.

(a) *Conditions for use.* All purchases of goods, supplies, equipment, and services, the estimated cost of which does not exceed \$25,000.00 may be made using the simplified small-purchase procedures prescribed in this section, except as otherwise provided in this article.

(b) *Division of requirements.* Procurement requirements shall not be artificially divided so as to permit use of small-purchase procedures described in this section instead of the methods otherwise applicable.

(c) *Soliciting quotations.* Goods, supplies, equipment and contractual services.

(1) *Small purchases more than \$10,000.00.* Insofar as it is practicable, as determined by the chief procurement officer, for small purchases of more than \$10,000.00, at least five quotations shall be sought. Award shall be made on the basis of competitive bidding, except as otherwise provided in this article. The names of the offerors submitting written, electronic or facsimile quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

(2) *Small purchases up to \$10,000.00.* Insofar as it is practicable, as determined by the chief procurement officer, for small purchases of up to \$10,000.00, at least three quotations shall be sought except as otherwise provided in this article. Award shall be

made on the basis of competitive bidding. The names of offerors submitting written, electronic or facsimile quotations and the date and amount of each quotation, shall be recorded and maintained as a public record.

(3) *Small purchases up to \$5,000.00.* The chief procurement officer shall adopt operational procedures for making small purchases up to \$5,000.00. Such procedures shall provide for obtaining adequate and reasonable competition for the goods and services being purchased insofar as it is practicable and shall require the maintenance of adequate written records to document the purchasing decision. Such records shall be open to public inspection.

(d) *Award.*

(1) *Goods, supplies, equipment and contractual services.* Small purchases up to \$25,000.00 shall be approved by the chief procurement officer on the basis of competitive bidding methods. However, if the amount of the quotation submitted by an offeror with a local office is not more than ten percent in excess of the lowest other responsive and responsible offeror, such offeror may be offered the opportunity of accepting the contract at the lowest informal bid amount. The chief procurement officer shall have the authority to reject any or all informal bids.

(2) *Professional and personal services.* Except for the performance of legal services, whenever the total cost for a contract for professional or personal services is \$25,000.00 or less, one written proposal shall be sought and the award shall be made by the chief procurement officer on the basis of competitive negotiations.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-89. Contracts for public works or improvements.

(a) Any public work or improvement may be executed either by contract or by the city labor force, as may be determined by the city commission. There shall be a separate accounting as to each work or improvement. Before authorizing the execution by the city labor force of any work or improvement or phase thereof, the city manager shall submit to the city commission a description of the anticipated scope of work and related cost estimates.

(b) All contracts for public works or improvements in excess of \$25,000.00 shall be awarded to the lowest responsive and responsible bidder after public notice on the basis of competitive sealed bidding methods, as provided herein or as provided in applicable Florida Statutes, whichever is determined to be in the best interest of the city.

Notwithstanding the foregoing, the city manager may waive competitive sealed procurement methods by making a written finding, supported by reasons, that a valid emergency exists or that there is only one reasonable source of supply, which finding must be ratified by an affirmative vote of four-fifths of the city commission after a properly advertised public hearing. When competitive sealed procurement methods are waived, other procurement methods as may be prescribed by ordinance shall be followed, except for the cone of silence provisions.

(c) Public notice shall be in accordance with the applicable Florida Statutes.

(d) *Award.*

(1) All contracts for public works or improvements which do not exceed \$25,000.00 shall be awarded on the basis of competitive negotiations.

(2) All contracts for public works or improvements in excess of \$25,000.00 shall be awarded by the city manager only upon certification of the results of the evaluation and the bid tabulation by the chief procurement officer as being in compliance with competitive sealed procurement methods or in accordance with applicable Florida

Statutes.

(3) All contracts in excess of \$100,000.00 must be approved by the city commission upon recommendation by the city manager. The decision of the city commission shall be final.

(4) The city commission or the city manager shall have the authority to reject any or all bids or portions of bids, and re-bid or elect not to proceed with the project.

(5) When it becomes necessary in the opinion of the city manager to make alterations or modifications in a contract for any public work or improvement which increases the contract to a total amount in excess of \$100,000.00, such alterations or modifications shall be made only when authorized by the city commission upon the written recommendation of the city manager. No such alteration shall be valid unless the price to be paid for the work or material, or both, under the altered or modified contract shall have been agreed upon in writing and signed by the contractual party and the city manager prior to such authorization by the city commission.

(6) Copies of the city manager's award shall be delivered to the director of the department of public works and to the chief procurement officer.

(7) The city manager shall submit to the city commission on a monthly basis a list of contracts for public works or improvements awarded by the city manager.

(Ord. No. 12271, § 2, 8-22-02; Ord. No. 12654, § 2, 2-10-05; Ord. No. 12780, § 2, 3-9-06)

Sec. 18-90. Emergency procurements.

In case of emergency, it is not advantageous or practicable for the city to use competitive bidding methods. Therefore, the city may purchase directly those goods or services whose immediate procurement is essential to the life, health, welfare, safety or convenience of the city. Such emergency procurements shall nevertheless be made with such competition as may be practicable under the circumstances.

(1) In seeking a waiver of competitive bidding methods for emergency procurements that do not exceed \$25,000.00, the head of the using department or office shall submit to the chief procurement officer in writing a full explanation of the circumstances of the emergency and the reasons for selection of a particular firm, along with a list of others which may have been solicited, with an approved requisition by the director of the requesting department.

(2) In seeking the waiver of competitive sealed bidding methods for emergency procurements exceeding \$25,000.00, the head of the using department or office shall submit to the chief procurement officer and the city manager in writing a full explanation of the circumstances of the emergency and the reasons for selection of a particular firm, along with a list of others which may have been solicited, and certification of fund availability from the director of the department of management and budget. The city manager may then waive competitive sealed bidding requirements after making a written finding, supported by reasons, that an emergency exists. Such finding must be ratified by an affirmative four-fifths vote of the city commission at the next available city commission meeting.

(3) Notwithstanding anything to the contrary contained in this Code, the city manager may direct the chief procurement officer to purchase directly those goods and/or services required by the Urban Search and Rescue Task Force when activated to perform its obligations under the existing provisions of the memorandum of understanding with the state and/or the Federal Emergency Management Agency, (FEMA). Such emergency procurements shall nevertheless be made with such

competition as may be practicable under the circumstances. If necessary, the city manager may waive competitive sealed bidding methods for such emergency procurements, after making a written finding, supported by documentation that the Urban Search and Rescue Task Force has been officially activated. Such finding and waiver must be ratified by an affirmative four-fifths vote of the city commission at the next regularly available city commission meeting for contracts exceeding \$25,000.00.

All emergency awards shall be filed and maintained by the purchasing department as a permanent and public record of the purchase.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-91. Cancellations.

The city shall have the right to cancel all invitations for bids, requests for proposals, request for quotations, or other solicitations before bid opening, proposal submission, or receipt of quotations and to reject all bids, proposals, quotations, or offers after receipt. All invitations for bids, requests for proposals, request for quotations, or other solicitations shall contain a reservation of the foregoing rights. In the event of such cancellation or rejection, the chief procurement officer shall promptly notify all affected bidders or proposers and make available to them a copy of the written explanation for such cancellation or rejection, which shall be a public record.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-92. Sole-source contracts.

(a) *Conditions for use.* Since it is not practicable for the city to use competitive bidding methods to secure goods or services if there is only one reasonable source of supply, sole-source awards may be made as an exception to the other methods prescribed in this section under the following circumstances:

- (1) Where the compatibility of equipment, accessories, or replacement parts permits one reasonable source of supply;
- (2) Where the goods or services available from a single source are needed for trial use or testing; and
- (3) Where the unique and specialized expertise of one source of services is unlikely to be obtained from any other source.

(b) *Determination, approval, and award.* The determination that an award shall be made on a sole-source basis shall be made by the chief procurement officer. Such determination shall be made in writing and provide complete justification as to why no other sources of goods or services could be obtained to meet the city's requirements. The determination shall also certify that the terms and conditions of the award have been negotiated so as to obtain the most favorable terms and conditions, including price, as may be offered to other customers or clients by the proposed contractual party. For all contracts in excess of \$25,000.00, such determination shall be submitted to the city manager who may waive competitive sealed bidding after he or she makes a written finding, supported by reasons, that only one reasonable source of supply exists. Such finding must be ratified and the award approved by an affirmative four-fifths vote of the city commission after a properly advertised public hearing.

(c) *Public notice and disclosure.* Notice that the city intends to award a sole-source contract exceeding \$25,000.00 shall be published at least once in a newspaper of general circulation in the city prior to contract award, but in any event at least 15 calendar days shall intervene between the last date of publication and the date of award. Such notices shall state the intention

to award a sole-source contract, the nature of goods or services to be acquired, the name of the proposed contractual party, and the name and telephone number of a cognizant city official who may be contacted by other potential sources who feel they might be able to satisfy the city's requirements. A record of such notices and responses thereto shall be maintained in the contract file along with the written determination required above, and a compilation of all sole source awards shall be maintained by the chief procurement officer and shall include:

- (1) The name of the sole-source contractual party;
- (2) The nature of the goods or services procured;
- (3) The reasons no other source could satisfy city requirements;
- (4) The amount and type of contract; and
- (5) The identification number for each contract file.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-93. Types of contracts.

Subject to the limitations of this section, any type of contract which will promote the best interests of the city may be used, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

(1) *Fixed-price contracts.* Fixed-price contracts shall ordinarily be used for those purchases of goods and services or sales and leases where the terms, conditions, specifications and other factors of the contract can be specified with a high degree of certainty and where use of a fixed-price contract will result in substantial competition between bidders or offerors willing to compete for the contract. Incentives based on various performance factors and escalation clauses or other economic adjustments may be included as appropriate to serve the best interests of the city in achieving the most economical contract performance.

(2) *Cost-reimbursement contracts.* Cost-reimbursement contracts shall ordinarily be used for those purchases of goods and services or sales and leases where the terms, conditions, specifications and other factors of the contract cannot be specified with a high degree of certainty or the use of fixed-price contracts is not likely to result in substantial competition between bidders or offerors willing to compete for the contract. Incentives based on various performance factors and escalation clauses or other economic adjustments may be included as appropriate to serve the best interests of the city in achieving the most economical contract performance.

(3) *Blanket purchase orders.* The chief procurement officer or individual purchasing agents may issue purchase orders for indeterminate amounts of repair parts, supplies and services to the account of any department or office, but only when based upon a definite contract or price agreement which shall be negotiated in the same manner as if the item to be purchased thereunder were to be individually purchased or contracted for under the provisions of article III of this chapter. Such orders shall state a specific monetary limit which may not be exceeded except on written approval by the chief procurement officer.

(4) *Multi-year contracts.*

- a. Unless otherwise provided by law, a contract for supplies or services, sales, or leases may be entered into for any period of time deemed to be in the best interests of the city, provided that the term of the contract and conditions for renewal or extension, if any, are included in the invitation for bids or request for proposals, and provided that funds are available for the first fiscal period at the

time of contract award. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor and shall be so stipulated in the contract.

b. Prior to the utilization of a multiyear contract, it shall be determined in writing by the using department or office and by the chief procurement officer that the estimated requirements over the period of the contract are reasonably firm and continuing; and that such a contract will serve the best interests of the city by promoting more effective competition or otherwise promoting economies to the city.

c. Accounting suitability. Except with respect to firm fixed-price contracts with no provisions for incentives, escalation or any other adjustments, no type of contract shall be used unless it has been determined in writing by individual purchasing agent or the chief procurement officer that:

1. The accounting system of the contractual party will permit timely development of all necessary cost data in the form required by the specific type of contract contemplated; and
2. The accounting system of the contractual party is adequate to allocate costs in accordance with generally accepted accounting principles.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-94. Qualifications and duties of contractual parties.

The city shall attempt to secure the most qualified contractual parties in its dealings with the private sector in accordance with the provisions of this article.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-95. Determination of responsibility.

(a) Prior to contract award, the chief procurement officer or individual purchasing agent shall determine in writing that the bidder or offeror is responsible.

(b) If a prospective contractual party who would otherwise have been awarded a contract is found nonresponsible, a copy of the determination and the reasons therefor shall be sent promptly to such party, which shall be given a reasonable opportunity for rebuttal prior to a final determination of nonresponsibility.

(c) Factors to be considered in determining responsibility of prospective contractual parties shall include but not be limited to:

- (1) Availability of appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, to meet all contractual requirements;
- (2) A satisfactory record of performance;
- (3) A satisfactory record of integrity;
- (4) Qualified legal standing to contract with the city; and
- (5) Compliance in supplying all requested information connected with the inquiry concerning responsibility.

(d) The prospective contractual party shall provide any information requested by the chief

procurement officer or purchasing agent concerning responsibility. If such contractual party fails to provide the requested information, the determination of responsibility may be made upon available information or the prospective contractual party may be found nonresponsible. The prospective contractual party may demonstrate the availability of necessary financial, equipment, facility, and personnel resources by submitting.

- (1) Evidence that the contractual party possesses such necessary resources;
- (2) Acceptable plans to subcontract for such necessary resources; or
- (3) A documented commitment for, or explicit arrangement with, satisfactory sources to provide such necessary resources.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-96. Prequalifications.

Prospective contractual parties may be prequalified as part of the process for compiling bidder lists. Such prequalification, however, does not necessarily constitute a finding of responsibility for any particular contract award.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-97. Cost or pricing data.

(a) *Contractor certification.* A contractual party shall upon request make available all costs or pricing data supporting the bid or offer and shall certify that, to the best of its knowledge, such data was accurate, complete and current at the time of the submission of bids or offers or at the time of contract modifications.

(b) *Price adjustment.* Any contract, change order or modification shall contain a provision that the price to the city, including profit or fee, shall be adjusted to exclude any sums by which the city finds that such price was increased because the cost or pricing information submitted by the contractual party was inaccurate, incomplete or not current.

(c) *Exclusions.* Contractual parties need not make available costs or pricing data or certify their accuracy, completeness and currency when:

- (1) The contract price is based on price competition resulting from sealed bids;
- (2) The contract price is based on established catalog or market prices set and offered to the general public or to governmental entities;
- (3) The contract price is set by law or regulation; or
- (4) The city manager determines that such requirements for cost or pricing data and certification should be waived, and the reasons for such waiver are stated in writing and approved by the city commission.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-98. Bond of successful contractual parties.

(a) In the case of contracts for public works or improvements or purchases involving large sums of money, the city manager may provide that the successful bidder shall post a surety bond in any amount that the city manager or his/her designee deems proper. Each call for bids for any public work or for the furnishing of any material, supplies, equipment or services, as well

as any specification documents prepared and issued thereon, shall specify that the bid bond, performance bond, or any other guarantee required in connection therewith shall be accompanied by an affidavit of a qualified officer of the entity tendering such bond or guarantee, or by the attorney in fact of such entity, setting forth the amount of capital and the amount of surplus held by such entity as of its last published report, and the date of such report. The limit of surety acceptable from any one risk shall be ten percent of the combined capital and surplus shown by such affidavit. No bid bond, performance bond, surety bond or other guarantee shall be accepted unless it is signed by a licensed agent of the state as attorney in fact for the entity writing the same and unless the same is written by a properly licensed insurance agent located in the county. The right of rejection of any and all tenders of such surety bonds shall be reserved in all cases, which fact and reservation shall be clearly set forth in the call for bids and specification documents. The city manager shall cause each such surety tendered to the city to be reviewed to determine whether the entity or agency making such tender is qualified to meet the obligation to be assumed, and shall recommend to the city commission the rejection of any such tender from any entity or agency not found to be fully qualified. Notwithstanding the foregoing, the city manager may accept, in lieu of a bid bond, a cashier's check, an irrevocable letter of credit drawn upon a local bank, or cash, upon a finding that the city's interests would be protected by such acceptance.

(b) The director of finance shall cause a list to be kept of all sureties filed with the city, by names of guarantor and amounts, and shall report quarterly to the city manager full details as to bid bonds, performance bonds, or other like bonds then in effect.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-99. Inspections and audits for accuracy and accountability.

The city shall be entitled to insist that all parties dealing with it observe the highest degree of accuracy and accountability in all of their dealings with the city.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-100. Right to conduct inspections and audits.

(a) The city may, at reasonable times, inspect that part of any contractual party's plant or place of business and audit those books and records which are related to the performance of any contract awarded or to be awarded by the city. Circumstances warranting such inspections and audits shall include, but not be limited to, concern as to whether standards of responsibility specified in section 18-95 have been, are being, or are capable of being met, and concern as to whether the contract is being performed in accordance with its terms and conditions.

(b) The city may enter a contractual party's plant or place of business to:

- (1) Inspect goods or services for acceptance by the city pursuant to the terms of the contract.
- (2) Audit cost or pricing data or audit books and records.
- (3) Conduct investigations of responsibility pursuant to section 18-95 or those related to actions to debar or suspend a contractual party from consideration for award of contracts pursuant to section 18-107.

(c) Books and records relating to performance of city contracts shall be maintained by contractual parties for a period of three years from the date of final payment unless a shorter period is authorized in writing by the city manager.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-101. Inspections.

(a) *Solicitations and contractual provisions.* City contracts shall provide that the city may inspect goods or services at the facilities of the contractual party and perform tests to determine whether they conform to solicitation requirements contained in invitation for bids or requests for proposals or, after award, to the terms and conditions of the contract. Such inspections and tests shall be performed in accordance with the terms and conditions of the solicitation and contract.

(b) *Procedures for tests and inspections.*

(1) The chief procurement officer may specify general operational procedures governing the test and inspection of all goods or services, sales or leases being performed under city contract by city departments, offices and individual purchasing agents.

(2) The chief procurement officer shall inspect or supervise the inspection of all deliveries of supplies, materials, equipment, contractual services or performance under lease agreements to determine conformance with the terms and conditions upon which the order or contract was based. Any purchasing agent or department may be authorized by the chief procurement officer to inspect deliveries or contract performance in the manner stipulated with the approval of the city manager.

(3) The chief procurement officer may prescribe chemical, physical and other performance tests for goods or services, including samples submitted with bids or offers and samples of deliveries and performance to determine their quality and conformance with the terms and conditions of the solicitation or contract. In the performance of such tests or inspections, the chief procurement officer shall have the authority to make use of the laboratory facilities of any department of the city or any outside laboratory or special expertise available to evaluate service performance.

(c) *Conduct of inspections.* Whenever possible, inspections and tests shall be performed so as not to unduly delay or inconvenience the contractual parties. Contractual parties shall make available at no charge to the city all reasonable facilities and assistance, in order to facilitate the performance of inspections or tests by city representative.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-102. Audits.

(a) *Solicitations and contractual provisions.* City contracts shall provide that the city may inspect the books and records of contractual parties to determine conformance with the solicitation requirements contained in the invitation for bids or request for proposals or, after award, with the terms and conditions of the contract.

(b) *Procedures for audits.*

(1) The chief procurement officer may specify the general procedures for inspection of books and records and for the conduct of audits of all goods or services, sales or leases under city contracts.

(2) An audit may be required when, in respect to an actual or prospective contractual party, there is:

- a. A question as to the adequacy of accounting policies or cost systems;
- b. A substantial change in the methods or levels of operations;

- c. Previous unfavorable experience indicating doubtful reliability of estimating, accounting or purchasing methods;
- d. A lack of cost experience due to the procurement of a new supply or service; or
- e. Other evidence that an audit is in the city's best interests as determined by the chief procurement officer, the city manager or the city commission.

(c) *Conduct of audits.* Whenever possible, audits shall be performed so as not to unduly delay or inconvenience the contractual party. Contractual parties shall make available at no charge to the city all reasonable facilities and assistance, for the convenience of the city representatives performing the audit.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-103. Disputes and legal remedies.

The following procedure in sections 18-104 through 18-107 shall be used for arriving at early settlement of grievances by interested parties who have participated in the city's procurement process.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-104. Resolution of protested solicitations and awards.

(a) *Right to protest.* The following procedures shall be used for resolution of protested solicitations and awards except for purchases of goods, supplies, equipment, and services, the estimated cost of which does not exceed \$25,000.00. Protests thereon shall be governed by the administrative policies and procedures of purchasing.

(1) *Protest of solicitation.*

a. Any prospective proposer who perceives itself aggrieved in connection with the solicitation of a contract may protest to the chief procurement officer. A written notice of intent to file a protest shall be filed with the chief procurement officer within three days after the request for proposals, request for qualifications or request for letters of interest is published in a newspaper of general circulation. A notice of intent to file a protest is considered filed when received by the chief procurement officer; or

b. Any prospective bidder who intends to contest bid specifications or a bid solicitation may protest to the chief procurement officer. A written notice of intent to file a protest shall be filed with the chief procurement officer within three days after the bid solicitation is published in a newspaper of general circulation. A notice of intent to file a protest is considered filed when received by the chief procurement officer.

(2) *Protest of award.*

a. Any actual proposer who perceives itself aggrieved in connection with the recommended award of contract may protest to the chief procurement officer. A written notice of intent to file a protest shall be filed with the chief procurement officer within two days after receipt by the proposer of the notice of the city manager's recommendation for award of contract. The receipt by proposer of such notice shall be confirmed by the city by facsimile or electronic mail or U.S. mail, return receipt requested. A notice of intent to file a protest is considered filed when received by the chief procurement officer; or

b. Any actual responsive and responsible bidder whose bid is lower than that of the recommended bidder may protest to the chief procurement officer. A written notice of intent to file a protest shall be filed with the chief procurement officer within two days after receipt by the bidder of the notice of the city's determination of non responsiveness or non responsibility. The receipt by bidder of such notice shall be confirmed by the city by facsimile or electronic mail or U.S. mail, return receipt requested. A notice of intent to file a protest is considered filed when received by the chief procurement officer.

c. A written protest based on any of the foregoing must be submitted to the chief procurement officer within five days after the date the notice of protest was filed. A written protest is considered filed when received by the chief procurement officer.

The written protest may not challenge the relative weight of the evaluation criteria or the formula for assigning points in making an award determination.

The written protest shall state with particularity the specific facts and law upon which the protest of the solicitation or the award is based, and shall include all pertinent documents and evidence and shall be accompanied by the required filing fee as provided in subsection (f). This shall form the basis for review of the written protest and no facts, grounds, documentation or evidence not contained in the protester's submission to the chief procurement officer at the time of filing the protest shall be permitted in the consideration of the written protest.

No time will be added to the above limits for service by mail. In computing any period of time prescribed or allowed by this section, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation of the time for filing.

(b) *Authority to resolve protests.* The chief procurement officer shall have the authority, subject to the approval of the city manager and the city attorney, to settle and resolve any written protest. The chief procurement officer shall obtain the requisite approvals and communicate said decision to the protesting party and shall submit said decision to the city commission within 30 days after he/she receives the protest. In cases involving more than \$25,000.00, the decision of the chief procurement officer shall be submitted for approval or disapproval thereof to the city commission after a favorable recommendation by the city attorney and the city manager.

(c) *Compliance with filing requirements.* Failure of a party to timely file either the notice of intent to file a protest or the written protest, together with the required filing fee as provided in subsection (f), with the chief procurement officer within the time provided in subsection (a), above, shall constitute a forfeiture of such party's right to file a protest pursuant to this section. The protesting party shall not be entitled to seek judicial relief without first having followed the procedure set forth in this section.

(d) *Stay of procurements during protests.* Upon receipt of a written protest filed pursuant to the requirements of this section, the city shall not proceed further with the solicitation or with the award of the contract until the protest is resolved by the chief procurement officer or the city commission as provided in subsection (b) above, unless the city manager makes a written determination that the solicitation process or the contract award must be continued without delay in order to avoid an immediate and serious danger to the public health, safety or welfare.

(e) *Costs.* All costs accruing from a protest shall be assumed by the protestor.

(f) *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 amount of the bid or proposed contract, or \$5,000.00, whichever is less, which 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 chief procurement officer and/or the city commission, as applicable, the filing fee shall be refunded to the protestor less any costs assessed under subsection (e) above. If the protest is denied, the filing fee shall be forfeited to the city in lieu of payment of costs for the administrative proceedings as prescribed by subsection (e) above.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-105. Resolution of contract disputes.

(a) *Authority to resolve contract disputes.* The city manager, after obtaining the approval of the city attorney, shall have the authority to resolve controversies between the contractual party and the city which arise under, or by virtue of, a contract between them; provided that, in cases involving an amount greater than \$25,000.00, the city commission must approve the city manager's decision. Such authority extends, without limitation, to controversies based upon breach of contract, mistake, misrepresentation or lack of complete performance, and shall be invoked by a contractual party by submission of a protest to the city manager.

(b) *Contract dispute decisions.* If a dispute is not resolved by mutual consent, the city manager shall promptly render a written report stating the reasons for the action taken by the city commission or the city manager which shall be final and conclusive. A copy of the decision shall be immediately provided to the protesting party, along with a notice of such party's right to seek judicial relief, provided that the protesting party shall not be entitled to such judicial relief without first having followed the procedure set forth in this section.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-106. Remedies prior to award.

If prior to contract award it is determined that a solicitation or proposed award is in violation of law, then the solicitation or proposed award shall be canceled by the city commission, the city manager or the chief procurement officer, as may be applicable, or revised to comply with the law.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-107. Debarment and suspensions.

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

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

- (1) Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or incident to the performance of such contract or subcontract.
 - (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty.
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
 - (4) Violation of contract provisions, which is regarded by the chief procurement officer to be indicative of nonresponsibility. Such violation may include failure without good cause to perform in accordance with the terms and conditions of a contract or to perform within the time limits provided in a contract, provided that failure to perform caused by acts beyond the control of a party shall not be considered a basis for debarment or suspension.
 - (5) Debarment or suspension of the contractual party by any federal, state or other governmental entity.
 - (6) False certification pursuant to paragraph (c) below.
 - (7) Found in violation of a zoning ordinance or any other city ordinance or regulation and for which the violation remains noncompliant.
 - (8) Found in violation of a zoning ordinance or any other city ordinance or regulation and for which a civil penalty or fine is due and owing to the city.
 - (9) A contractual party who has defaulted under the terms of a contract with the city or any of its boards, agencies, trusts, authorities, councils or committees and has failed to cure such default.
 - (10) Any other cause judged by the city manager to be so serious and compelling as to affect the responsibility of the contractual party performing city contracts.
- (c) *Certification.* All contracts for goods and services, sales, and leases by the city shall contain a certification that neither the contractual party nor any of its principal owners or personnel have been convicted of any of the violations set forth above or debarred or suspended as set forth in paragraph (b)(5).
- (d) *Debarment and suspension decisions.* Subject to the provisions of paragraph (a), the city manager shall render a written decision stating the reasons for the debarment or suspension. A copy of the decision shall be provided promptly to the contractual party, along with a notice of said party's right to seek judicial relief.

(Ord. No. 12271, § 2, 8-22-02; Ord. No. 12312, § 1, 1-9-03)

Sec. 18-108. Ethics.

Any attempt by city employees to realize personal gain by conduct inconsistent with proper discharge of their duties is a breach of public trust. The provisions of city ordinances, county ordinances, and state statutes shall be strictly enforced to preserve the public trust.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-109. Public access and information.

The public shall have access to all documents and information pertaining to city contracts, subject to the provisions of law.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-110. First-source hiring agreements.

(a) The city commission approves implementation of the first-source hiring agreement policy and requires as a condition precedent to the execution of service contracts for facilities, services, and/or receipt of grants and loans, for projects of a nature that create new jobs, the successful negotiation of first source hiring agreements between the organization or individual receiving said contract and the authorized representative unless such an agreement is found infeasible by the city manager and such finding approved by the city commission at a public hearing.

(b) For the purpose of this section, the following terms, phrases, words and their derivations shall have the following meanings:

Authorized representative means the Private Industry Council of South Florida/South Florida Employment and Training Consortium, or its successor as local recipient of federal and state training and employment funds.

Facilities means all publicly financed projects, including but without limitation, unified development projects, municipal public works, and municipal improvements to the extent they are financed through public money services or the use of publicly owned property.

Grants and loans means, without limitation, urban development action grants (UDAG), economic development agency construction loans, loans from Miami Capital Development, Incorporated, and all federal and state grants administered by the city.

Service contracts means contracts for the procurement of services by the city which include professional services.

Services includes, without limitation, public works improvements, facilities, professional services, commodities, supplies, materials and equipment.

(c) The authorized representative shall negotiate each first source hiring agreement.

(d) The primary beneficiaries of the first-source hiring agreement shall be participants of the city training and employment programs, and other residents of the city.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-111. Contracts of other governmental entities.

Notwithstanding all other provisions of this article, in the purchase of necessary goods and/or services the city may, in lieu of other city competitive bidding procedures, accept a competitive bid which has been secured by or on behalf of any federal, state, county or municipal government or from any other governmental entity, state funded institutions and not-for-profit organizations, subject to a determination by the chief procurement officer that the contract was entered into pursuant to a competitive process in compliance with city laws, policies and procedures; provided, however, that in the purchase of goods or services in excess of \$25,000.00, such contracts shall be approved by the city manager, and purchases of goods or services in excess of \$50,000.00, shall be subject to approval by the city commission.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-112. Contracts with other governmental agencies or state funded public institutions.

Notwithstanding all other provisions of this article, the city shall be exempt from all competitive bidding procedures when it enters into an agreement with other governmental agencies or state funded institutions for the purchase or acquisition of goods or services; provided, however, that in the purchase or acquisition of said goods or services in excess of \$25,000.00, such agreement shall be approved by the city manager, and purchases of goods or services in excess of \$50,000.00 shall be subject to approval by the city commission.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-113. Cooperative purchasing.

Notwithstanding all other provisions of this article, the city's purchasing department may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods or services with one or more public entities. Such cooperative purchasing may include, but is not limited to joint or multiparty contracts between public entities.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-114. Online procurement.

(a) *Conditions for use.* Notwithstanding the foregoing, the city may engage in electronic on-line bidding to obtain competitive bids from bidders for the purchase of goods and services whenever the chief procurement officer determines that electronic on-line bidding is more advantageous than other procurement methods provided by this article.

(b) *Bidding process.* The solicitation must designate an opening date and time. The closing date and time may be fixed or remain open, depending on the structure of the item being bid on-line. Information regarding the closing date and time must also be included in the solicitation. At the opening date and time, the chief procurement officer or its designee must begin accepting on-line electronic bids, and must continue accepting bids until the bid is officially closed. Bidders will be required to register before the opening date and time and, as part of that registration, bidders must agree to any terms, conditions, or other requirements of the solicitation. The chief procurement officer may also pre-qualify bidders and allow only those bidders who are pre-qualified to submit bids on-line.

(c) *Provisions of section 18-85 of this Code do not apply.* Provisions of section 18-85 "competitive sealed bidding" shall not apply to solicitations issued pursuant to this section. However, requirements for contract awards shall be consistent with those set forth in subsection (h) of section 18-85, subject to a certification by the chief procurement officer that the contract was entered into pursuant to a competitive process in compliance with the provisions of this section 18-114.

(d) *Bid results public information.* All bids submitted electronically through an on-line bidding process are public information and subject to the State of Florida Public Records Act, as amended.

(e) *Remedies.* All remedies available to bidders through the sealed bidding process under section 18-104 of this Code, resolution of protested solicitations and awards, are available to bidders in an on-line bidding process in accordance with section 18-114.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-115. Acceptance of donations.

The city manager is authorized to accept the donation of goods and services up to an estimated value of \$25,000.00 on behalf of the city.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-116. Persons retained as expert consultants.

The city manager shall have the authority and sole discretion to contract with persons retained as expert consultants, without city commission approval. No employment emoluments shall be provided to persons retained as expert consultants.

(Ord. No. 12271, § 2, 8-22-02)

Sec. 18-117. Economic stimulus awards and agreements.

(a) This section, to be known as the economic stimulus awards and agreements, is intended to provide an expedited process to award contracts related to certain capital construction projects, identified in attachment "A" or by city commission resolution, with the express purpose of stimulating the local economy.

(b) The expedited process set forth herein, shall be applicable to the processing, design, and construction of capital improvement projects identified in attachment A. The city commission may, from time to time, by passage of resolutions, add or delete projects from the list of economic stimulus projects to which this section applies.

(c) All actions taken under this section shall be subject to review by the office of strategic planning, budgeting, and performance to ensure funding is available for each project.

(d) Notwithstanding any other provision of the City Code, including, without limitation, the city procurement ordinance, to the contrary, the city manager or his/her designee shall have the following authority only with respect to the identified economic stimulus projects:

(1) To appoint evaluation, selection and negotiation committees to obtain professional services as defined by and in accordance with F.S. § 287.055 ("The Consultant's Competitive Negotiation Act or CCNA") as amended, eliminating the requirements of subsection 18-542(12) requiring that the majority of evaluation committee be from the public, and provided that each such committee should contain, whenever possible, representation from the user department.

(2) To issue bid and proposal documents including addenda thereto.

(3) To receive, open, review and evaluate bids and proposals.

(e) The city manager may award and execute contracts including professional services agreements and construction contracts in accordance with F.S. § 255.20 ("Local bids and contracts for public construction works") as amended, without city commission approval and issue the notice to proceed on each where:

(1) The award value of the contract has been reviewed approved by the office of strategic planning, budgeting, and performance;

(2) The value of the recommended award does not exceed the estimated cost of construction by more than ten percent;

- (3) At least three bids are received from responsive and responsible bidders;
 - (4) The contractor or professional services firm receiving the award is in good standing with the city including but not limited to having no outstanding debts to the city and proves demonstrated acceptable past performance;
 - (5) The contractor has submitted required insurance, bonds, affidavits, and documentation required by the solicitation; and
 - (6) None of the bidders or proposers have timely filed a bid protest.
- (f) The city manager shall submit to the city commission, on a bi-monthly basis, a listing of any contracts including the names of the firms, the names of the projects, and the amount of compensation of any contracts the city manager has awarded under this section.
- (g) Excepting for the execution of contracts, the city manager may delegate his or her duties under this section to the director of the capital improvements programs, the chief procurement officer or the administrative head of the user agency. All contracts awarded under this section shall be in a form acceptable to the city attorney.
- (h) Contract contingency allowances of ten percent for economic stimulus projects will be utilized to minimize disruptions in the flow of the work. Change orders will be submitted for city commission approval if they increase the contract contingency as set forth herein. Such change orders will include a report on the draws against the initial contingency.
- (i) This section shall sunset upon completion of the approved list of projects, as may be amended unless this section is earlier repealed by the city commission.

(Ord. No. 13045, § 2, 12-11-08)

Editor's note: The attachment referred to in this section is not set out at length herein, but is on file in the office of the city clerk.

Secs. 18-118--18-135. Reserved.