

# FINAL DRAFT

## City of Coral Gables

### Procurement Regulations



***FINAL DRAFT – NOVEMBER 2008***

## ARTICLE VIII: PROCUREMENT CODE

### DIVISION 1: GENERALLY

#### CODE PROVISION:

##### *Sec. 2-578 Definitions*

#### REGULATIONS:

##### **R2-578.01 Definitions**

As used throughout these regulations, words and terms defined in the City of Coral Gables Procurement Code shall have the same meaning as in the Code, and each word or term listed in this Section shall have the meaning set forth below:

- (a) *Brand Name Specification* means a specification limited to one or more items by manufacturers' names or catalogue numbers.
- (b) *Brand Name or Equal Specification* means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet City requirements, and which provides for the submission of equivalent products.
- (c) *Code* means City of Coral Gables Procurement Code.
- (d) *Established Catalogue Price* means the price included in a catalog, printed price list, schedule, or other form which is regularly maintained by a manufacturer or contractor, either published or otherwise made available for inspection by all customers, which states prices currently in effect for the general buying public for the given supplies or services.
- (e) *Established Market Price* means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources that are independent of the manufacturer or supplier.
- (f) *Request for Information (RFI)* means the document used in an informal solicitation of information, data, comments or reactions from possible suppliers preceding the issuance of a solicitation. Prices are not requested and no contracts are awarded via this process.
- (g) *Qualified Products List (QPL)* means an approved list of supplies, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the City has determined will meet the applicable specification requirements.

#### CODE PROVISION:

##### *Sec. 2-579 Interpretations*

*This Code shall be construed and applied to promote its underlying purpose and policies.*

#### REGULATIONS:

*[RESERVED]*

#### CODE PROVISION:

##### *Sec. 2-580 Purposes and Policies*

#### REGULATIONS:

##### **R2-580.01 Purpose of These Regulations**

These regulations, issued by the City Manager, establish policies, procedures, and guidelines relating to procurement, management, and disposal of supplies, services and construction, as applicable, under the authority of the City of Coral Gables Procurement Code.

**R2-580.02     Applicability**

These regulations shall apply to every transaction to which the City of Coral Gables Procurement Code applies.

**R2-580.03     Severability**

If any provision of these regulations, or any application thereof, to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of these regulations which can be given effect without the invalid provision or application, and to this end the provision of these regulations are declared to be severable.

**CODE PROVISION:**

***Sec. 2-581 Supplementary General Principles of Law Applicable***

**REGULATIONS:**

*[RESERVED]*

**CODE PROVISION:**

***Sec. 2-582 Requirement of Good Faith***

**REGULATIONS:**

*[RESERVED]*

**CODE PROVISION:**

***Sec. 2-583 Application of this Code***

**REGULATIONS:**

*[RESERVED]*

**CODE PROVISION:**

***Sec. 2-584                     Duties of the City Attorney***

**REGULATIONS:**

**R2-584.01             Approval for Form and Legal Sufficiency/Legal Rulings**

R2-584.01.1     *Solicitations and Contracts:* The City Attorney may approve as to form and legal sufficiency solicitation and contract documents and other forms. Provided no modification or exception has been made to the standard forms as approved by the City Attorney, the Chief Procurement Officer or City Manager, as applicable, may issue or execute said contracts or documents without additional legal review. The provisions of this Regulation shall not limit the ability of the Chief Procurement Officer or City Manager to request legal review of any contract, change order, contract modification, solicitation or other document. The City Attorney shall serve as legal counsel and shall review and render rulings on legal issues.

R2-584.01.2     *Contracts, Change Orders and Other Transactions Requiring City Commission Approval:* Prior to submission to the City Commission for approval, awards, contracts, change orders, contract modifications and other transactions shall be reviewed for form and legal sufficiency by the City Attorney.

**Sec2-585            *Modifying or Altering a Contract***

**REGULATIONS:**

**R2-585.01            City Commission Approval**

R2-585.01.1 *Alterations and Modifications:* Any alterations or modifications to a contract or agreement shall be made only when authorized by the City Commission upon the written recommendations 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 contractor and the City Manager prior to such authorization by the City Commission.

**DIVISION 2: PROCUREMENT ORGANIZATION**

**SUBDIVISION I: IN GENERAL**

**CODE PROVISION:**

***Sec. 2-629 RESERVED***

**REGULATIONS:**

***[RESERVED]***

**SUBDIVISION II. PROCUREMENT DIVISION**

**CODE PROVISION:**

***Sec. 2-630 Centralization of Procurement Authority***

**REGULATIONS:**

**R2-630.01            Finance Department**

R2-630.01.01 *Centralization:* All authority relating to the procurement of supplies and services, the management, control, sale and disposal of supplies, the purchase, lease or sale of real property, and the procurement of construction is exercised by the Finance Department.

**SUBDIVISION III. CITY MANAGER AND  
CHIEF PROCUREMENT OFFICER**

**CODE PROVISION:**

***Sec. 2-650 Authorities of the City Manager and Chief Procurement Officer***

**REGULATIONS:**

**R2-650.01            Reports to the City Commission**

R2-650.01.1 *Reports by the Chief Procurement Officer:* Not later than February 1, May 1, August 1 and November 1 of each year, the Chief Procurement Officer shall submit a report to the City Manager, City Commission and appropriate committees of jurisdiction on procurement activity during the previous calendar quarter, including, but not limited to:

- (a) *Procurement Cards.* A summary of procurement card activity showing the total number of transactions and total dollar value by department.

- (b) *Delegated Procurement.* A summary of delegated small purchases showing the number of transactions and total dollar value by department.
- (c) *Small Purchases.* The number and dollar value of purchase orders less than the formal bid threshold issued by the Procurement Department.
- (d) *Cooperative Purchases.* A summary of cooperative purchases showing the number of transactions and total dollar value; a complete listing of purchases exceeding \$25,000.00, including contractor, amount and user department(s).
- (e) *City Manager Awards.* A complete listing of contracts awarded by the City Manager, including contractor, amount and user department(s).
- (f) *City Commission Awards.* A complete listing of contracts awarded by the City Commission, including contractor, amount and user department(s).
- (g) *City Manager Change Order Approvals.* A complete listing of change orders and contract modifications approved by the City Manager, including contractor, original contract amount, change order amount, revised contract amount, and user department(s).
- (h) *City Commission Change Order Approvals.* A complete listing of change orders and contract modifications approved by the City Manager, including contractor, original contract amount, change order amount, revised contract amount, and user department(s).
- (i) *Sole Source Procurements.* A complete listing of sole source contracts, including contractor, amount and user department.
- (j) *Emergency Procurements.* A complete listing of emergency contracts, including contractor, amount and user department.
- (k) *Special Procurements.* A complete listing of special procurements, including contractor or grantee, amount and user department.
- (i) *Term Contract Release Orders.* [RESERVED]

## CODE PROVISION:

### **Sec. 2-651**                      ***Delegation of Authority by the City Manager***

#### REGULATIONS:

#### **R2-651.01**                      **Authority to Delegate**

R2-651.01.01 *Authority to Delegate:* The City Manager may delegate authority or may revoke authority that has been previously delegated. Factors to consider in making the decision to delegate include:

- (a) the expertise of the potential delegate in terms of procurement knowledge and any specialized knowledge pertinent to the authority to be delegated;
- (b) the past experience of the potential delegate in exercising similar authority;
- (c) the degree of economy and efficiency to be achieved in meeting the City's requirements if authority is delegated;
- (d) the available resources of the Procurement Department to exercise the authority if it is not delegated; and
- (e) the consistency of delegation under similar circumstances.

## **R2-651.02            Delegation of Authority to Officials in User Departments**

The City Manager may delegate in writing such authority as may be deemed appropriate to the head of any user department. Such delegation shall be in writing and shall specify:

- (a) the activity or function authorized;
- (b) any limits or restrictions on the exercise of the delegated authority;
- (c) whether the authority may be further delegated; and
- (d) the duration of the delegation.

## **R2-651.03            Authority to Make Small Purchases**

The City Manager may delegate to the head of any user department the authority to make small purchases pursuant to Section 2-769 (Small Purchases) and the regulations promulgated thereunder.

# **SUBDIVISION IV. ORGANIZATION OF PUBLIC PROCUREMENT**

## **CODE PROVISION:**

### ***Sec. 2-677        Authorities to Contract for Legal Services***

## **REGULATIONS:**

## **R2-677.01            Authority to Contract for Legal Services**

2-677.01.01    The City Attorney shall perform all legal services required to accomplish the purposes of their office, and shall have the authority to retain outside legal services when such services are necessary due to a conflict of interest under state law, the Rules of Professional Responsibility, where factual circumstances arise where representation of multiple parties may or will create a conflict of interest, or when the City Attorney deems it necessary in the best interests of the City.

## **CODE PROVISION:**

### ***Sec. 2-678        Exemptions***

## **REGULATIONS:**

## **R2-678.01            Exemptions to the Procurement Code**

2-678.01.01    The following supplies and services are exempt from this Code: 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, mediator services, paralegal services; real property, real estate brokerage and appraising, options of title or abstracts of titles for real property; title insurance for real property, and other related costs of acquisition or sale of real property; public utility services from natural or regulated monopolies, including but not limited to telephone, electric, water and sewer; 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; lectures or seminars by individuals; meeting rooms; works of art for public places, and art design and conservation services; graphic design, web design; hotel accommodations and travel services on City business; purchase of public transportation services; purchase of tickets for special events, tourist attractions and amusement parks; City sponsored events as authorized in the yearly City budget; entertainment services (including banquets and similar food services) and, artistic services for City sponsored events; purchases of motor vehicle license plates from a governmentally regulated monopoly or a government

agency; procurements made through the Steering Committee process of the South Florida Money Laundering Strike Force.

## **SUBDIVISION V. REGULATIONS**

CODE PROVISION:

*Sec. 2-700      Promulgation of Regulations*

REGULATIONS:

*[RESERVED]*

## **DIVISION 3. SOURCE SELECTION AND CONTRACT FORMATION**

### **SUBDIVISION I. IN GENERAL**

CODE PROVISION:

*Sec. 2-733      Cancellations of Invitations for Bids or Requests for Proposals*

REGULATIONS:

#### **R2-733.01      Scope of the Regulation**

The provisions of this Regulation shall govern the cancellation of any solicitation whether issued by the City under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

#### **R2-733.02      Policy**

Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only.

#### **R2-733.03      Cancellation of Solicitation – Notice**

Each solicitation issued by the City shall state that the solicitation may be canceled as provided in this Regulation.

#### **R2-733.04      Cancellation of Solicitation; Rejection of All Bids or Proposals**

##### *R2-733.04.1      Prior to Opening*

- (a) As used in this Regulation, "opening" means the date set for opening of bids, receipt of un-priced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.
- (b) Prior to opening, a solicitation may be canceled, in whole or in part, when the Chief Procurement Officer, City Manager or City Commission determines that such action is in the City's best interest for reasons including, but not limited to:
  - (i) the City no longer requires the supplies, services, or construction;
  - (ii) the City no longer can reasonably expect to fund the procurement; or
  - (iii) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- (c) When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation shall:
  - (i) identify the solicitation;

- (ii) briefly explain the reason for cancellation; and
- (iii) where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar supplies, services, or construction.

**R2-733.04.2** *After Opening*

- (a) After opening but prior to award, all bids or proposals may be rejected, in whole or in part, when the Chief Procurement Officer, City Manager or City Commission determines that such action is in the City's best interest for reasons including, but not limited to:
  - (i) the supplies, services, or construction being procured are no longer required;
  - (ii) ambiguous or otherwise inadequate specifications were part of the solicitation;
  - (iii) the solicitation did not provide for consideration of all factors of significance to the City;
  - (iv) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  - (v) all otherwise acceptable bids or proposals received are at unreasonable prices; or
  - (vi) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- (b) A notice of rejection should be sent to all businesses that submitted bids or proposals, and it shall conform to Subsection R2-733.04.1(c) of this Regulation.

**R2-733.04.3** *Documentation;* The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

**R2-733.05** **Rejection of Individual Bids or Proposals**

**R2-733.05.1** *General;* This Section applies to rejection of individual bids or proposals in whole or in part.

**R2-733.05.2** *Notice in Solicitation;* Each solicitation issued by the City shall provide that any bid or proposal may be rejected, in whole or in part, when in the best interest of the City as provided in this Regulation.

**R2-733.05.3** *Reasons for Rejection:*

- (a) *Bids.* As used in this Subsection, "bid" means any bid submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding and includes submissions under Regulation R2-769.01 (Small Purchases) if no changes in offers are allowed after submission. Reasons for rejecting a bid include but are not limited to:
  - (i) the business that submitted the bid is non-responsible as determined under Regulation R2-798.01 (Standards of Responsibility);
  - (ii) the bid is not responsive; that is, it does not conform in all material respects to the Formal Bids; see Regulation R2-766.11.2 (Bid Evaluation and Award, Responsibility and Responsiveness); or
  - (iii) the supply, service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Formal Bids; see Regulation R2-766.11.3 (Bid Evaluation and Award, Product Acceptability).
- (b) *Proposals.* As used in this Subsection, "proposal" means any offer submitted in response to any solicitation, including an offer under Regulation R2-769.05



(Negotiated Small Purchases), except a bid as defined in Subsection R2-733.05.3(a) of this Regulation. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the City's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

- (i) the business that submitted the proposal is non-responsible as determined under Regulation R2-798.01 (Standards of Responsibility);
- (ii) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the City in some material respect; or
- (iii) the proposed price exceeds budgetary constraints or is unreasonable.

R2-733.05.4 *Notice of Rejection; Upon request, unsuccessful bidders or offerors shall be advised of the reasons therefore.*

#### **R2-733.06 Disposition of Bids or Proposals**

When bids or proposals are rejected, or a solicitation canceled after bids or proposals are received, the bids or proposals that have been opened shall be retained in the procurement file. If unopened, a photocopy of the outside of the envelope shall be retained in the procurement file, and the bid or proposal returned to the bidder or offeror.

## **SUBDIVISION II. METHODS OF SOURCE SELECTION**

### **CODE PROVISION:**

#### ***Sec. 2-765 City Contracts***

REGULATIONS:  
[RESERVED]

### **CODE PROVISION:**

#### ***Sec. 2-766 Competitive Sealed Bidding (Formal Bids)***

### **REGULATIONS:**

#### **R2-766.01 The Invitation for Bids.**

R2-766.01.1 *Content:* The Invitation for Bids shall include the following:

- (a) 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, and any other special information;
- (b) the specifications, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements;
- (c) the contract terms and conditions;
- (d) the time and date for the receipt of bids and of the public opening; and
- (e) the criteria to be used in determining acceptability of the bid.

R2-766.01.2 *Incorporation by Reference:* The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

## **R2-766.02 Bid Submission**

R2-766.02.1 *Bid Form:* Bids shall be submitted to the office designated in the Public Notice and Invitation for Bids on the forms and schedules provided in the Invitation for Bids. Bids shall be submitted sealed and clearly marked with the bid number and title.

R2-766.02.2 *Electronic Submission of Bids:* Bids may not be submitted electronically in any format.

R2-766.02.3 *Bid Samples and Descriptive Literature:* Bid samples and descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

- (a) *Descriptive literature* means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item that enables the City to consider whether the item meets its needs.
- (b) *Bid sample* means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

## **R2-766.03 Public Notice**

R2-766.03.1 *Publication:*

- (a) Supplies and Services. Notice inviting bids shall be published at least once in a newspaper of general circulation in the City at least ten days prior to the date for submitting bids and at least five days prior to any scheduled pre-bid conference.
- (b) Construction Projects Projected to Cost Less than \$200,000.00. Notice inviting bids shall be published at least once in a newspaper of general circulation in the City at least ten (10) days prior to the date for submitting bids and at least five days prior to any scheduled pre-bid conference.
- (c) Construction Projects Projected to Cost More than \$200,000.00. Notice inviting bids shall be published at least once in a newspaper of general circulation in the City at least 21 days prior to the date for submitting bids and at least five days prior to any scheduled pre-bid conference.
- (d) Construction Projects Projected to Cost More than \$500,000.00. Notice inviting bids shall be published at least once in a newspaper of general circulation in the City at least 30 days prior to the date for submitting bids and at least five days prior to any scheduled pre-bid conference.

R2-766.03.2 *Internet Notice:* Notice of the time and place at which bids will be publicly opened and read aloud shall be posted on the City's web site and on such other sites as designated by the Chief Procurement Officer. When practicable, potential bidders may download the Invitation for Bids from the City's web site, or such other sites as designated by the Chief Procurement Officer.

R2-766.03.3 *Distribution:* Invitations for Bids or notices of the availability of Invitations for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of availability shall indicate where, when, and for how long Invitations for Bids may be obtained, and generally describe the supply, service, or construction desired. Notices of availability may be distributed by e-mail or facsimile transmission.

R2-766.03.4 *Public Availability:* A copy of the Invitation for Bids shall be made available for public inspection in the Procurement Division of the Finance Department, as applicable.

## **R2-766.04 Bidders Lists**

R2-766.04.1 *Purpose:* Bidders lists may be compiled to provide the City with the names of businesses that may be interested in competing for various types of City contracts. Bidder registration is a service that is provided to prospective bidders. The registration process does not guarantee that a prospective bidder will receive a particular solicitation. Inclusion or exclusion of the name of a business does not indicate whether the business is responsible with respect to a particular requirement or otherwise capable of successfully performing a City contract.

R2-766.04.2 *Deletion of Bidders:* Businesses that fail to respond to three consecutive solicitations for similar items may be removed from the applicable bidders list.

## **R2-766.05 Pre-Bid Conference**

Pre-bid conferences may be conducted to explain the solicitation requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held at least five days after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment. If a summary of the conference is prepared, it shall be supplied to all those prospective bidders known to have received an Invitation for Bids. All Pre-Bid Conferences shall be recorded, and, if a transcript is made, the transcript shall be a public record.

## **R2-766.06 Amendments to Invitations for Bids**

R2-766.06.1 *Form:* Amendments to Invitations for Bids shall be identified as such and shall require the bidder acknowledge receipt of all amendments issued. The amendment shall reference the portions of the Invitations for Bids it amends.

R2-766.06.2 *Distribution:* Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids.

## **R2-766.07 Pre-Opening Modification or Withdrawal of Bids**

R2-766.07.1 *Procedure:* Bids may be modified or withdrawn by written notice received by the office designated in the Invitation for Bids prior to the time and date set for bid opening.

R2-766.07.2 *Disposition of Bid Security:* If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

R2-766.07.3 *Records:* All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

## **R2-766.08 Late Bids, Late Withdrawals, and Late Modifications**

R2-766.08.1 *Definition:* Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late.

R2-766.08.2 *Treatment:* No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of City personnel directly serving the procurement activity.

R2-766.08.3 *Notice:* Bidders submitting late bids that will not be considered for award shall be notified as soon as practicable.

R2-766.08.4 *Records:* Records shall be made and kept for each late bid, late modification, or late withdrawal.

## **R2-766.09 Receipt, Opening, and Recording of Bids**

R2-766.09.1 *Receipt:* Bids shall be submitted to the office of the Chief Procurement Officer designated in the Public Notice and Invitation for Bids. Upon receipt, each bid and modification shall be time-stamped and stored unopened in a secure place until the time and date set for bid opening.

R2-766.09.2 *Opening and Recording:* Bids and modifications shall be opened publicly in the presence of one or more witnesses, at the time, date, and place designated in the Invitations for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Chief Procurement Officer, including, but not limited to acknowledgement of addenda and submission of bid security, shall be read aloud or otherwise made available. Such information shall also be recorded at the time of bid opening. The name of witnesses shall also be recorded at the opening.

## **R2-766.10 Mistakes in Bids**

R2-766.10.1 *General;* Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the City of the fair treatment of other bidders.

R2-766.10.2 *Mistakes Discovered Before Opening:* A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Regulation R2-766.07 (Pre-Opening Modification or Withdrawal of Bids).

R2-766.10.3 *Confirmation of Bid;* When the Chief Procurement Officer knows or has reason to conclude that a mistake has been made, such representative should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonable lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in R2-766.10.4 through R2-766.10.6 of this Regulation are met.

R2-766.10.4 *Mistakes Discovered After Opening but Before Award.* The following procedures shall be applied when mistakes in bids are discovered after the time and date set for bid opening but before award.

- (a) *Minor Informalities.* Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that may be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Chief Procurement Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City. Examples include the failure of a bidder to:
  - (i) return the number of signed bids required by the Invitation for Bids;
  - (ii) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or
  - (iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if:
    - (A) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
    - (B) the amendment involved had a negligible effect on price, quantity, quality, or delivery.
- (b) *Mistakes Where Intended Correct Bid is Evident.* If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. In the event of a

discrepancy between the unit price and the extension, the unit price shall govern. Otherwise, no error in bid price may be corrected.

- (c) *Mistakes Where Intended Correct Bid is not evident.* A bidder may be permitted to withdraw a low bid if:
  - (i) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
  - (ii) the bidder submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

**R2-766.10.5 *Mistakes Discovered After Award.*** Mistakes shall not be corrected after award of the contract, except where the Chief Procurement Officer, after consultation with the City Attorney, makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

**R2-766.10.6 *Unilateral Withdrawal of a Bid.*** Any bidder who unilaterally withdraws a bid without permission before ninety days have elapsed from the date of bid opening, or such other time specified in the Invitation for bids, shall forfeit their bid security in accordance with R2-1004.06 (Bid Security Forfeiture) and may be debarred in accordance with Section 2-952 (Authority to Debar or Suspend) of the Code.

**R2-766.10.7 *Determinations Required.*** When a bid is corrected or withdrawn, or correction or withdrawal is denied, under Subsections R2-766.10.4 or R2-766.10.5 of this Regulation, the Chief Procurement Officer, after consultation with the City Attorney, shall prepare a written determination showing that the relief was granted or denied in accordance with these regulations.

## **R2-766.11 Bid Evaluation and Award**

**R2-766.11.1 *General.*** The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Invitation for Bids shall set forth the requirements and criteria that will be used and no bid shall be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids.

**R2-766.11.2 *Responsibility and Responsiveness.*** Responsibility of prospective contractors is covered by Regulation R2-798.01 (Standards of Responsibility). Responsiveness of bids is covered by Section 2-578(66). [Definitions] of the Code which defines "responsive bidder" as "a person who has submitted a bid that conforms in all material respects to the requirements of the Invitation for Bids."

**R2-766.11.3 *Product Acceptability.*** The Invitation for Bids shall set forth any evaluation criterion to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for accomplishing any of the following prior to award:

- (a) inspection or testing of an item prior to award for such characteristics as quality or workmanship;
- (b) examination of such elements as appearance, finish, taste, or feel; or
- (c) other examinations to determine whether the item conforms with any other purchase description requirements.

**R2-766.11.4 *Determination of Lowest Bidder.*** Following determination of product acceptability as set forth in Subsection R2-766.11.3 of this Regulation, if any is required; bids will be evaluated to determine which bidder offers the lowest cost to the City in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria

that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, and ownership or life cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall:

- (a) be reasonable estimates based upon information the City has available concerning future use; and
- (b) treat all bids equitably.

**R2-766.11.5 *Supplier's Past Performance.*** A supplier's past performance on City contracts may be utilized as a factor for consideration in award of the contract. The Chief Procurement Officer is authorized to develop a system to collect and analyze data with respect to a supplier's performance, including delivery, quality and service.

**R2-766.11.6 *Award.*** Consistent with the provisions of Section 2-828.3 (Contract Award), the bid 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. Awards shall include authority for subsequent options for renewal, if any. Options for renewal shall be exercisable at the option of the City Manager if, after review of past performance under the contract, the City Manager determines that exercise of the option renewal is in the best interest of the City.

- (1) In the event the lowest responsive and responsible bid exceeds available funds, the City Manager is authorized, when time or economic considerations preclude re-solicitation of bids, to negotiate an adjustment in price with the lowest responsive and responsible bidder, in order to bring the bid price within the amount of available funds.
- (2) The City Manager may conduct negotiations limited to the lowest responsive and responsible bidder regarding contractual terms and conditions. Said negotiations are permissible only to the extent that they do not materially alter the contemplated contract and are not contrary to the interest of the City or fair treatment of other bidders.
- (3) In the event only one bid is received, the City may award to the sole responsive and responsible bidder, conduct negotiations with the sole responsive and responsible bidder, or re-bid, whichever is in the best interest of the City.
- (4) Authority to Award to Second Lowest Responsive and Responsible Bidder. If within ninety (90) days after Bids are opened, or any period of time that bids are to remain firm as prescribed in the Invitation for Bids, the initial award is rescinded or the contract terminated pursuant to Section 2-829 (Approval of Change Orders and Contract Modifications), the City may elect to award the contract to the next lowest responsive and responsible bidder. After the acceptance period prescribed, the City may award to the next lowest responsive and responsible bidder provided: a. a determination is made that it is in the best interest of the City to award based upon the Bids submitted rather than re-bid, and b. the next lowest responsive and responsible bidder agrees, in writing, to the extension of the bid for the additional period of time. The City Manager has the authority to award to the next lowest responsive and responsible bidder on a contract that does not exceed \$100,000.00 on a single purchase or per annum basis. The City Commission has the sole authority to award an annual or multi-year contract exceeding \$100,000.00 to the next lowest responsive and responsible bidder upon recommendation by the City Manager.

## **R2-766.12 Low Tie Bids**

**R2-766.12.1 *Definition;*** Low tie bids are low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the Invitation for Bids.

R2-766.12.2 *Award*; Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. Low tie bids shall be evaluated based upon the following criteria in order of precedence:

- (a) if the City Manager determines that selection of a particular bidder or bidders is in the best interests of the City because of product, service, delivery, qualifications or past performance;
- (b) if the bidder has a drug-free workplace program as defined in Florida Statutes Section 287.087;
- (c) if the bidder is a minority business enterprise, certified in accordance with Florida Statutes Section 287.0943;
- (d) if the tied bidders include a bidder or bidders whose principal place of business is located in the City of Coral Gables, the local bidder shall be given preference;
- (e) if the tied bidders include a bidder or bidders whose principal place of business is located in Miami-Dade County, the bidder located in Miami-Dade County shall be given preference; or
- (f) by drawing lots.

R2-766.12.3 *Record*; Records shall be made of all Invitations for Bids on which tie bids are received showing at least the following information:

- (a) the identification number of the Invitation for Bids;
- (b) the supply, service, or construction item; and
- (c) a listing of all the bidders and the prices submitted.

#### **R2-766.13 Option Provisions**

R2-766.13.1 *Contract Provision*; When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. (Exercise of the option is always at the City's discretion and not subject to agreement or acceptance by the contractor). All contract renewals or extension of contracts shall require a report by the City Manager to the City Commission 120 days before the renewal or extension date.

R2-766.13.2 *Exercise of Option*; Before exercising any option for renewal, extension, or purchase, the Chief Procurement Officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the City than renewal or extension of the existing contract.

#### **R2-766.14 Documentation of Award**

Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file.

## CODE PROVISION:

### **Sec. 2-767      *Multi-steps Sealed Bidding***

#### REGULATIONS:

##### **R2-767.01      *Multi-Step Sealed Bidding***

R2-767.01.1      *Definition;* Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit un-priced technical offers to be evaluated by the City, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

R2-767.02.2      *Conditions for Use;* the multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description that will be suitable to permit an award based on price. Multi-step sealed bidding may thus be used when it is considered desirable:

- (a) to invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;
- (b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

##### **R2-767.03      *Pre-Bid Conferences in Multi-Step Sealed Bidding.***

Prior to the submission of un-priced technical offers, a mandatory pre-bid conference as contemplated by Regulation R2.766.05 (Pre-Bid Conferences) may be conducted by the Chief Procurement Officer. The Chief Procurement Officer may also hold a conference of all potential bidders any time during the evaluation of the un-priced technical offers.

##### **R2-767.04      *Procedure for Phase One of Multi-Step Sealed Bidding.***

R2-767.04.1      *Form.* Multi-step sealed bidding shall be initiated by the issuance of a Competitive Sealed Bid. In addition to the requirements set forth in Regulation R2-766.01 (Formal Bids), the multi-step solicitation shall state:

- (a) that un-priced technical offers are requested;
- (b) whether priced bids are to be submitted at the same time as un-priced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;
- (c) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose un-priced technical offers are found acceptable in the first phase;
- (d) the criteria to be used in the evaluation of the un-priced technical offers;
- (e) that the City, to the extent the Chief Procurement Officer finds necessary, may conduct oral or written discussions of the un-priced technical offers;
- (f) that bidders may designate those portions of the un-priced technical offers that contain trade secrets or other proprietary data that are to remain confidential; and



- (g) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Formal Bids.

R2-767.04.2 *Public Notice*; Public notice shall be given in the same manner as provided in Regulation R2-766.03 (Public Notice).

R2-767.04.3 *Amendments to the Formal Bids*; After receipt of un-priced technical offers, amendments to Formal Bids shall be distributed only to bidders who submitted un-priced technical offers, and they shall be permitted to submit new un-priced technical offers or to amend those submitted. If, in the opinion of the City Manager, a contemplated amendment will significantly change the nature of the procurement, the Formal Bids shall be canceled in accordance with Regulation R2-733.04 (Cancellation of Solicitations; Rejection of All Bids or Proposals) and a new Formal Bids issued.

R2-767.04.4 *Receipt and Handling of Un-priced Technical Offers*; Un-priced technical offers shall be publicly opened in front of one or more witnesses, with only the name of each bidder read and recorded. The record and each technical proposal shall be open to public inspection within the time frame specified in Florida Statutes, Public Records Act, and Chapter 119.

R2-767.04.5 *Evaluation of Un-priced Technical Offers*; The un-priced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Formal Bids. The un-priced technical offers shall be categorized as:

- (a) acceptable or potentially acceptable; or
- (b) non-responsive, non-responsible, incomplete or otherwise unacceptable. The Chief Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable un-priced technical offers to assure effective price competition in the second phase without technical discussions.

R2-767.04.6 *Discussion of Un-priced Technical Offers*; The Procurement Officer may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer. Such submission may be made at the request of the Procurement Officer or upon the bidder's own initiative.

R2-767.04.7 *Notice of Unacceptable Technical Offer*; After evaluation of the technical offers and during or after discussions, the Procurement Officer shall notify with reasonable promptness any bidder that its offer has been found unacceptable.

## **R2-767.05 Mistakes during Multi-Step Sealed Bidding**

Mistakes may be corrected or bids may be withdrawn during Phase One at any time. During Phase Two, mistakes may be corrected or withdrawal permitted in accordance with Regulation R2-766.10 (Mistakes in Bids).

## **R2-767.06 Procedure for Phase Two**

R2-767.06.1 *Initiation*; Upon the completion of Phase One, the Procurement Officer shall either:

- (a) open priced bids submitted in Phase One (if priced bids were required to be submitted) from bidders whose un-priced technical offers were found to be acceptable; or
- (b) if priced bids have not been submitted, technical discussions have been held, or amendments to the Formal Bids have been issued, invite each acceptable bidder to submit a priced bid.

R2-767.06.2 *Conduct*; Phase Two shall be conducted as any other competitive sealed bid procurement except that no public notice need be given of this invitation to submit priced bids because such notice was previously given.

## CODE PROVISION:

### **Sec. 2-768      *Competitive Sealed Proposals***

#### REGULATIONS:

#### **R2-768.01      *Conditions for Use of Competitive Sealed Proposals***

R2-768.01.1 *General Discussion*. The competitive sealed proposals method differs from competitive sealed bidding in two important ways:

- (a) it permits discussions with competing offerors and changes in their proposals including price; and
- (b) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

An important difference between competitive sealed proposals and competitive sealed bidding is the finality of initial offers. Under competitive sealed proposals, alterations in the nature of a proposal, and in prices, may be made after proposals are opened. Such changes are not allowed, however, under competitive sealed bidding (except to the extent allowed in the first phase of multi-step sealed bidding). Therefore, unless it is anticipated that a contract can be awarded solely on the basis of information submitted by bidders at the time of opening, competitive sealed bidding is not practicable or advantageous.

Another consideration concerns the type of evaluations needed after offers are received. Where evaluation factors involve the relative abilities of offerors to perform, including degrees of technical or professional experience or expertise, use of competitive sealed proposals is the appropriate procurement method. Similarly, such method is appropriate where the type of need to be satisfied involves weighing artistic and aesthetic values to the extent that price is a secondary consideration. Further, where the types of supplies, services, or construction may require the use of comparative, judgmental evaluations to evaluate them adequately, use of competitive sealed proposals is the appropriate method.

#### **R2-768.02      *Content of the Request for Proposals***

The Request for Proposals shall be prepared in accordance with Regulation R2-766.01 (The Formal Bids) provided that it shall also include:

- (a) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and
- (b) a statement of when and how prices should be submitted.

### **R2-768.03 Form of Proposal**

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

### **R2-768.04 Public Notice**

Public notice shall be given in the same manner as provided for Formal Bids under Regulation R2-768.04 (Public Notice).

### **R2-768.05 Use of Bidders Lists**

Bidders lists compiled and maintained in accordance with Regulation R2-766.04 (Bidders Lists) may serve as a basis for soliciting competitive sealed proposals.

### **R2-768.06 Pre-Proposal Conferences**

Pre-proposal conferences may be conducted in accordance with Regulation R-766.05 (Pre-Bid Conferences). Any such conference should be held prior to submission of initial proposals.

### **R2-768.07 Amendments to Requests for Proposals**

Amendments to Requests for Proposals may be made in accordance with Regulation R2-766.06 (Amendments to Formal Bids) prior to submission of proposals.

### **R2-768.08 Modification or Withdrawal of Proposals**

Proposals may be modified or withdrawn prior to the established due date in accordance with Regulation R2-766.07 (Pre-Opening Modification or Withdrawal of Bids). For the purposes of this Regulation and Regulation R2-768.09 (Late Proposals, Late Withdrawals, and Late Modifications), the established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the time and date by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

### **R2-768.09 Late Proposals, Late Withdrawals, and Late Modifications**

Any proposal, withdrawal, or modification received after the established due date at the place designated for receipt of proposals is late. See Regulation R2-768.08 (Modification or Withdrawal of Proposals) for the definition of "established due date." They may only be considered in accordance with Regulation R2-766.08 (Late Bids, Late Withdrawals, and Late Modifications).

### **R2-768.10 Receipt and Registration of Proposals**

Proposals shall be submitted to the office of the Chief Procurement Officer designated in the Public Notice and Request for Proposals. Upon receipt, each proposal and modification shall be time-stamped and stored unopened in a secure place until the established due date.

### **R2-768.11 Evaluation of Proposals**

R2-768.11.1 *Evaluation Factors in the Request for Proposals;* The Request for Proposals shall state all of the evaluation factors, including price and past performance.

R2-768.11.2 *Evaluation;* The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems shall be used. Factors not specified in the Request for Proposals shall not be considered. In addition to price and past performance, evaluation criteria may include, but not be limited to:

- (a) demonstrated understanding of the project;
- (b) technical and/or management approach, including proposed methodology;
- (c) *ability to meet schedule and budget limitations;*
- (d) relevant experience and expertise; and

- (e) availability to perform as reflected by current and projected workloads and the availability of key personnel, equipment and facilities.

R2-768.11.3 *Past Performance*; generally, past contract performance of an offeror shall be considered at least equal in importance to any other non-cost evaluation factor.

- (a) *General Indicia of Past Performance*; As appropriate, the following factors should be considered in evaluating past performance:
  - (i) quality of product or service;
  - (ii) timeliness of performance;
  - (iii) cost control;
  - (iv) business practices;
  - (v) customer (end user) satisfaction; and
  - (vi) key personnel past performance.
- (b) *Subcontractors*. If subcontractors are likely to perform critical aspects of the contract, the past performance of these subcontractors should be evaluated to determine the overall risk of the prime contractor in performing the contract.
- (c) *Contractor Performance Reports*. The Chief Procurement Officer shall establish a system for the collection and maintenance of information on past contract performance, including a standardized Contractor Performance Report form.
- (d) *Insufficient Past Contract Performance Information*. When the City has insufficient past contract performance information, it should obtain information about an offeror's past performance from a variety of customers, including governmental and commercial entities. The most prevalent method for obtaining information from past and present customers is to conduct reference checks. Prior to conducting reference checks, the Procurement Officer shall develop a questionnaire or survey form that assesses the offeror's strengths and weaknesses for the contract being considered. Quality certifications or awards may also serve as a useful source of past performance information.

R2-768.11.3 *Classifying Proposals*. For the purpose of conducting discussions under Regulation R2-768.12 (Proposal Discussions with Individual Offerors), proposals shall be initially classified as:

- (a) acceptable or potentially acceptable; or
- (b) non-responsive, non-responsible, incomplete or otherwise unacceptable.

The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file. Offerors whose proposals are unacceptable shall be so notified with reasonable promptness.

## **R2-768.12 Proposal Discussions with Individual Offerors**

R2-768.12.1 *"Offerors" Defined*. For the purposes of discussions as defined in this Section of the Regulations, the term "offerors" includes only those businesses and/or individuals submitting proposals that are acceptable or potentially acceptable. The term shall not include persons who submitted unacceptable proposals.

R2-768.12.2 *Purposes of Discussions*; Discussions are held to:

- (a) promote understanding of the City's requirements and the offerors' proposals; and

- (b) facilitate arriving at a contract that will be most advantageous to the City taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

R2-768.12.3 *Conduct of Discussions; Offerors* shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The Procurement Officer should establish procedures and schedules for conducting discussions. If during discussions there is a need for any substantial clarification of or change in the Request for Proposals, the Request shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be submitted in writing by the offeror. The Procurement Officer shall keep a record of the date, place, and purpose of meetings and those attending.

R2-768.12.4 *Best and Final Offers; When* in the best interest of the City, the Procurement Officer may request the submission of best and final offers. The request for best and final offers shall be in writing and shall establish a common date and time for the submission. Best and final offers shall be submitted only once; provided, however, the Procurement Officer may make a written determination, after consultation with the City Attorney, that it is in the City's best interest to conduct additional discussions or change the City's requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

#### **R2-768.13 Mistakes in Proposals**

R2-768.13.1 *Modification or Withdrawal of Proposals; Proposals* may be modified or withdrawn as provided in Regulation R2-768.08 (Modification or Withdrawal of Proposals).

R2-768.13.2 *Confirmation of Proposal; When* the Procurement Officer knows or has reason to conclude before award that a mistake has been made, such officer should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in Subsections R2-768.13.3 through R2-768.13.4 of this Regulation are met.

R2-768.13.3 *Mistakes Discovered After Receipt of Proposals but Before Award.* This Subsection sets forth procedures to be applied in which mistakes in proposals are discovered after receipt of proposals but before award.

- (a) *During Discussions; Prior to Best and Final Offers.* Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
- (b) *Minor Informalities.* Minor informalities, unless otherwise corrected by an offeror as provided in this Section, and shall be treated as they are under competitive sealed bidding. See Regulation R2-766.10.4 (a) (Mistakes in Bids, Mistakes Discovered After Opening but Before Award).
- (c) *Correction of Mistakes.* If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:
  - (i) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or
  - (ii) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value that clearly and convincingly demonstrates

both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

(d) *Withdrawal of Proposals.* If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

- (i) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;
- (ii) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or
- (iii) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates the intended correct offer, but to allow correction would be contrary to the fair and equal treatment of the other offerors.

R2-768.13.4 *Mistakes Discovered After Award.* Mistakes shall not be corrected after award of the contract except where the Chief Procurement Officer makes a written determination, after consultation with the City Attorney, that it would be unconscionable not to allow the mistake to be corrected.

R2-768.13.5 *Determinations Required.* When a proposal is corrected or withdrawn, or correction or withdrawal is denied under Subsections R2-768.13.3(b), R2-768.13.3(c), R2-768.13.3(d), or R2-768.13.4, the Chief Procurement Officer shall prepare a written determination, after consultation with the City Attorney, showing that relief was granted or denied in accordance with these regulations.

#### **R2-768.14 Documentation of Award**

Following award, a record showing the basis for determining the successful offeror shall be made a part of the procurement file.

#### **R2-768.15 Request for Information (RFI)**

R2-768.15.1 *Authority;* The City may issue a Request for Information requesting information, data, comments or reactions from potential suppliers pertaining to state of the art technology, designs or technical literature related to products, systems, technologies or services. The City evaluates the information submitted to determine which product, system or technology should be identified in a future solicitation, typically a Request for Proposals or Multi-Step Sealed Bid. This method is commonly used as a research tool to obtain the latest industry information and to assist the City in determining the most appropriate technology for its intended application. No contracts are awarded via this process.

R2-768.15.2 *Public Notice;* Public notice shall be given in the same manner as provided for Invitation for Bids under Regulation R2-768.03 (Public Notice).

### **CODE PROVISION:**

#### ***Sec. 2-769 Small Purchases (Informal Bids).***

### **REGULATIONS:**

#### **R2-769.01 Application of Small Purchase Regulations**

R2-769.01.1 *Amount.* As specified in the Code, this Regulation is established for procurements of less than \$25,000.00 for supplies, services or construction.

R2-769.01.2 *Existing City Contract for Item.* Supplies, services or construction items that may be obtained under current City contracts shall be procured under such agreements in accordance with the terms of such contracts and shall not be procured under this Regulation. Operational procedures and contract terms may provide for waivers or exceptions to this Subsection.

R2-769.01.3 *Non-competitive Procurement.* If the supply, service or construction item is available from only one source, the sole source procurement method set forth in Section 2-770 (Sole Source Procurement) of the Code shall be used even if the procurement is a small purchase as specified in Subsection R2-770.01.1 of this Regulation.

R2-769.01.4 *Division of Requirements.* Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Article 3 [Source Selection] of the Code.

R2-769.01.5 *Delegation to User Departments.* Pursuant to Regulation R2-651.04 (Authority to Make Small Purchases), the City Manager may delegate to the head of any user department the authority to make small purchases up to \$2,500.00 per transaction. The user department shall submit to the Procurement Division of the Finance Department a purchase request for any small purchase exceeding \$2,500.00. The Chief Procurement Officer may adopt operational procedures governing purchases by user departments. Nothing in this Regulation shall prevent user departments from submitting purchase requests for \$2,500.00 or less to the Procurement Division of the Finance Department for processing.

## **R2-769.02 Written Competition for Small Purchases**

R2-769.02.1 *Procedure.* Insofar as it is practical for the purchase of supplies, services or construction between \$1,000.00 and \$25,000.00, no less than three persons shall be solicited to submit written quotations that are recorded and placed in the procurement file. Award shall be made to the person offering the lowest acceptable quotation. Quotations may be solicited and quotes submitted in writing, by facsimile, or by means of electronic commerce in accordance with operational procedures adopted by the Chief Procurement Officer.

R2-769.02.2 *Records.* The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

R2-769.03 Competition for Small Purchases between \$1,000.00 and \$10,000.00

R2-769.03.1 *Procedure.* Insofar as it is practical for the purchase of supplies or services between \$1,000.00 and \$10,000.00, no less than three persons shall be solicited to submit verbal quotations that are recorded and placed in the procurement file. Quotations may be obtained by either the Procurement Division of the Finance Department or user department, as applicable. Award shall be made to the person offering the lowest acceptable quotation. The Chief Procurement Officer shall adopt operational procedures for obtaining quotations.

R2-769.03.2 *Records.* The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

## **R2-769.04 Purchases of \$1,000.00 or Less**

R2-766.04.1 *Procurement Cards;* The City Manager may direct the Chief Procurement Officer and Finance Director to establish a procurement card program to permit user departments to make small purchases of \$1,000.00 per transaction or less. The Chief Procurement Officer and Finance Director shall adopt operational procedures regarding the management of said program.

R2-766.04.2 *Other Purchases Less Than \$1,000.00;* Purchases of \$1,000.00 or less may be made without competition at the discretion of the official issuing the purchase order.

## **R2-769.05 Negotiated Small Purchases**

R2-769.05.1 *Procedure*; Any procurement that meets the requirements of Section 2-768(a) (Competitive Sealed Proposals; Conditions for Use) of the Code that is less than amounts established in R2-769.01.1 (Application of Small Purchase Regulations; Amount) may be informally solicited. The Chief Procurement Officer shall solicit written proposals from not less than three potential vendors. The Chief Procurement Officer may award a contract to the offeror whose proposal is determined most advantageous to the City, provided the contract documents have been approved as to form and legal sufficiency by the City Attorney.

R2-769.05.2 *Records*; Following award, a record showing the basis for determining the successful offeror shall be made a part of the procurement file.

## **CODE PROVISION:**

### ***Sec. 2-770 Sole Source Procurement***

## **REGULATIONS:**

### **R2-770.01 Conditions for Use of Sole Source Procurement**

R2-770.01.1 *Sole Source Procurement*; A requirement for a particular proprietary item does not justify sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of possible circumstances that could necessitate sole source procurement:

- (a) the purchase of goods or services for which there is no competitive product or service, particularly because of patents, copyrights, secret processes, or natural monopolies;
- (b) the purchase of a component or replacement part for which there is no commercially available substitute and which can be obtained only from the manufacturer;
- (c) the purchase of an item where compatibility is the paramount consideration;
- (d) the purchase of a proprietary item from a distributor or service provider who has exclusive contractual rights to geographic, regional or territorial location;
- (e) purchases of used equipment;
- (f) where a sole supplier's item is needed for trial use or testing;
- (g) where a sole supplier's item is to be procured for over-the-counter resale;
- (h) where public utility services are to be procured and there is no established competition; and
- (i) unsolicited offers.

In cases of reasonable doubt as to whether an item or service is sole source, competition should be solicited.

R2-770.01.2 *Purchases of Used Equipment*; The head of the user department must determine in writing that the equipment is satisfactory for the intended purpose and that the purchase of said used equipment is in the City's best interest.

R2-770.01.3 *Unsolicited Offers*; An unsolicited offer is any offer other than one submitted in response to a solicitation. To be considered for evaluation, an unsolicited offer:

- (a) must be made entirely at the initiative of the offeror;
- (b) must be in writing;
- (c) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the City;



- (d) must be unique or innovative to City use;
- (e) must demonstrate the proprietary character of the offering warrants consideration of the use of sole source procurement; and
- (f) may be subject to testing under terms and conditions specified by the City.

The City may evaluate any unsolicited offer to determine its utility to the City and whether it would be to the City's advantage to enter into a contract based on such an offer. Any contract based on an unsolicited offer shall include a written determination as specified in Regulation R2-770.02 (Determination and Record of Sole Source Procurement).

R2-770.01.4 *Cooperative Purchasing*; Contracts awarded pursuant to the Provisions of Cooperative Purchasing of the Code shall not be considered non-competitive under this Regulation. Reference to the applicable cooperative purchasing agreement shall be made on the purchase order or contract.

## **R2-770.02 Determination and Record of Sole Source Procurement**

R2-770.02.1 *Determination*; Any request by the head of a user department that procurement be restricted to one potential contractor shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need. The determination as to whether procurement shall be made as a sole source shall be made by the Chief Procurement Officer after conducting a good faith review of available sources. The Chief Procurement Officer may specify the application of such determination and the duration of its effectiveness. Such determination and the basis therefore shall be in writing.

R2-770.02.2 *Proprietary Specifications*; Any request by the head of a user department that proprietary specifications be used in the solicitation for a contract shall be accompanied by a written explanation as to why only the proprietary item specified will meet the requirements of the user department. The Chief Procurement Officer shall make a written determination as to whether the procurement shall be made using proprietary specifications after conducting a good faith review of available supplies or services. The determination regarding proprietary specifications shall be included in any award recommendation made to the City Manager or City Commission.

R2-770.02.3 *Record of Sole Source Procurement*; The Chief Procurement Officer shall submit a quarterly report of sole source procurements, solicitations based upon proprietary specifications, and other contracts awarded pursuant to a waiver of competition to the City Manager and City Commission that shall include the following information:

- (a) Contractor's name and address;
- (b) Brief description of items purchased;
- (c) Amount of contract or annual purchases; and
- (d) User department or departments.

## **R2-770.03 Approval and Award of Sole Source Contracts Exceeding \$100,000.00**

R2-770.03.1 *Recommendation*; The Chief Procurement Officer shall submit their determination, including the written explanation by the head of the user department for sole source procurement, to the City Manager. Upon written concurrence by the City Manager, the recommendation will be referred to the City Commission for consideration, after conducting an advertised public hearing.

R2-770.03.2 *Public Notice*;

- (a) Public notice of the intended sole source award shall be posted at City Hall and given in the same manner as provided for Invitation for Bids under Regulation R2-768.03 (Public Notice) at least ten (10) calendar days prior to the scheduled date of the public hearing. The public notice shall state the intention to award a sole source contract, the nature of the supplies, services or construction items to be acquired, and the proposed contractor.
- (b) Potential sources that may be able to satisfy the City's requirements shall be informed of their right to contact the Chief Procurement Officer and to attend the public hearing.
- (c) A record of the notice and any responses thereto shall be included in the information provided the City Commission.

## CODE PROVISION:

### ***Sec. 2-771      Emergency Procurement***

#### REGULATIONS:

##### **R2-771.01      Definition of Emergency Conditions**

An emergency condition is a situation that creates a threat to public health, welfare, or safety. The existence of such condition creates an immediate and serious need for supplies, services or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (a) the functioning of City operations;
- (b) the preservation or protection of property; or
- (c) the health or safety of any person.

##### **R2-771.02      Scope of Emergency Procurements**

Emergency procurement shall be limited to those supplies, services or construction items necessary to meet the emergency.

##### **R2-771.03      Emergency Procurements up to \$5,000.00**

The head of any user department may make emergency procurements up to \$5,000.00 when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by the City Manager or Chief Procurement Officer, after consultation with the City Manager, shall be obtained prior to the procurement.

##### **R2-771.04      Emergency Procurements of \$5,000.00 or More**

R2-771.04.1      *Request;* Whenever possible, prior to initiation of an emergency procurement, the head of the user department shall submit to the Chief Procurement Officer a purchase request for the supplies, services or construction needed along with a full explanation in writing of the circumstances necessitating the emergency. Where time or circumstances preclude written documentation, the documents shall be submitted as soon as possible, but not more than three business days after the initial action.

R2-771.04.2      *Emergency Procurement up to \$25,000.00;* The City Manager or Chief Procurement Officer may make an emergency procurement when an emergency condition arises and the need cannot be met through normal procurement methods. If the action is initiated by the Chief Procurement Officer, the City Manager shall be notified as soon as possible as to the nature of the emergency and the action taken.

R2-771.04.3      *Emergency Procurement over \$25,000.00;* The City Manager or designee shall approve all emergency procurements exceeding \$25,000.00 for construction and \$100,000.00 for

supplies and services. If the emergency procurement exceeds \$100,000.00 for supplies, services or \$25,000.00 for construction, it shall be presented for ratification by the City Commission at the next available City Commission meeting, whenever possible, but must be ratified by the City Commission when all the necessary information and documentation has been received by the City Manager.

R2-771.04.4 *City Council*; The City Council may for any reason cited in Subsection R2-771.01 declare a procurement to be an emergency and authorize the Chief Procurement Officer to take appropriate action.

R2-771.04.5 *Fiscal Responsibility*; To the extent practicable, the Finance Director shall certify availability of budgeted funds prior to award. Where time or circumstances preclude advance approval, the Finance Director shall be notified of the emergency procurement within one business day.

#### **R2-771.05 Source Selection Method**

The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

#### **R2-771.06 Determination and Record of Emergency Procurement**

R2-771.06.1 *Determination*; The official responsible for the procurement shall make a written determination stating the basis for the emergency procurement and for the selection of the particular contractor. When the procurement has been made by the head of a user department, the written explanation shall be submitted to the Chief Procurement Officer within three business days of the initial action.

R2-771.06.2 *Record*; The Chief Procurement Officer shall submit a quarterly report of emergency procurements to the City Manager and City Commission that shall include the following information:

- (a) contractor's name and address;
- (b) the amount and type of the contract;
- (c) a listing of the supplies, services or construction items procured under the contract; and
- (d) the basis for the emergency.

#### **CODE PROVISION:**

##### ***Sec. 2-772 Special Procurements/Bid Waiver***

#### **REGULATIONS:**

##### **R2-772.01 Application**

R2-772.01.1 *Innovative Procurement Methods*; Innovative competitive procurement processes may be utilized to purchase new or unique City requirements, new technologies, or to achieve best value where deviations to the strict requirements of this Code are necessary to protect the best interest of the City. The process to be followed shall be clearly defined in the solicitation.

R2-772.01.2 *Non-Profit Organizations*;

- (a) Special procurements may be utilized for grants or agreements of any nature between the City and qualified eligible non-profit organizations under Section 501 of the Internal Revenue Service Code.

- (b) Special procurement may be utilized for services related to the cultural, educational, and recreational or park activities provided by non-profit organizations within City parks.

## **R2-772.02            Public Notice**

R2-772.02.1    *Competitive Solicitations*; Any competitive solicitation issued pursuant to a special procurement in excess of the formal bid threshold established in Section 2-766(a) (Competitive Sealed Bidding; Conditions for Use) shall be given in the same manner as provided for Formal Bids under Regulation R2-768.03 (Public Notice) at least ten (10) calendar days prior to the scheduled date for receipt of bids or proposals and shall satisfy the public notice requirements of Section 2-772 (Special Procurements).

R2-772.02.2    *Non-Competitive Solicitations*; If competition is not solicited, public notice of the intended special procurement award shall be posted at City Hall and given in the same manner as provided for Formal Bids under Regulation R2-768.03 (Public Notice) at least ten (10) calendar days prior to the scheduled date of the public hearing.

## **R2-772.03            Record**

The Chief Procurement Officer shall submit a quarterly report of special procurements to the City Manager and City Commission that shall include the following information:

- (a) the contractor or grantee's name and address;
- (b) the amount and type of the contract;
- (c) a description of the grant or a listing of the supplies, services or construction items procured under the contract; and
- (d) the basis for the special procurement determination.

## **CODE PROVISION:**

### ***Sec. 2-773            Revenue Generating and Concession Contracts***

#### **REGULATIONS:**

**R2-773.01**            Revenue generating and concession contracts, including the assignment, license, sale or transfer of interests in or rights to discoveries, inventions, patents, or copyrightable works, whether tangible or intangible, shall be awarded in accordance with the provisions of this Division, except that price shall be evaluated on the basis of the highest bid or offer.

## **SUBDIVISION III. QUALIFICATIONS AND DUTIES OF CONTRACTUAL PARTIES**

## **CODE PROVISION:**

### ***Sec. 2-798            Responsibilities of Bidders and Offerors***

#### **REGULATIONS:**

#### **R2-798.01            Standards of Responsibility**

R2-798.01.1    *Standards*; Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

- (a) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (b) a satisfactory record of performance;
- (c) a satisfactory record of integrity;
- (d) qualified legal standing to contract with the City;
- (e) not been suspended or debarred from conducting business with another governmental unit;
- (f) not breached or failed to perform on a contract; and
- (e) supplied all necessary information in connection with the inquiry concerning responsibility.

#### **R2-798.02 Information Pertaining to Responsibility**

The prospective contractor shall supply information requested by the Procurement Officer concerning responsibility within a reasonable time period as established by the Procurement Officer. If such contractor fails to supply the requested information in a timely manner, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable. The prospective contractor may demonstrate the availability of necessary financial, equipment, facility, and personnel resources by submitting:

- (a) evidence that the contractor possesses such necessary resources;
- (b) acceptable plans to subcontract for such necessary resources; or
- (c) a documented commitment from, or explicit arrangement with, satisfactory sources to provide such necessary resources.

#### **R2-798.03 Duty Concerning Responsibility**

Before award a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible.

### **CODE PROVISION:**

#### ***Sec. 2-799 Pre-qualification***

#### **REGULATIONS:**

#### **R2-799.01 Pre-qualification for Construction Projects**

**R2-799.01.1 Authorization;** The City may use a Request for Qualifications to pre-qualify offerors for construction projects under Section 2-1089 (Construction Manager-at-Risk) and Section 2-1090 (Design-Build) of the Code.

**R2-799.01.2 Form;** A standard form or format may be developed for statements of qualifications and performance data, which shall include, but not be limited to:

- (a) the name of the firm and the location of its offices, specifically indicating the principal place of business;
- (b) the age of the firm and its average number of employees over the past five years;
- (c) the education, training, and qualifications of members of the firm and key employees;
- (d) the experience of the firm reflecting technical capabilities and project experience, including identification of areas of expertise;
- (e) a comprehensive list of projects for which the firm was responsible.

- (f) the names of not less than five clients who may be contacted, including at least two for whom services were rendered in the last year;
- (g) safety record; and
- (h) any other pertinent information requested by the Procurement Officer.

R2-799.01.3 *Public Notice*; Public notice of the Request for Qualifications shall be given in the same manner provided for a Formal Bids under Regulation R2-766.03 (Public Notice).

R2-799.01.4 *Limitation*; Nothing in this Regulation shall limit or impair the ability of the City to pre-qualify suppliers for other types of solicitations or project delivery methods.

## CODE PROVISION:

### **Sec. 2-800      *Substantiation of Offered Prices***

#### REGULATIONS:

##### **R2-800.01      Requirement for Cost or Pricing Data**

The provisions of this Regulation regarding submission of cost or pricing data do not apply to a contract let by competitive sealed bidding, or small purchases. The Procurement Officer may request cost of pricing data to be submitted in support of a proposal when:

- (a) any contract expected to exceed \$25,000.00 is to be awarded by competitive sealed proposals, by sole source procurement, or under Section 2-1092 (Architectural, Engineering, Landscape Architectural, or Surveying and Mapping Services) of the Code;
- (b) adjusting the price of any contract, including a contract awarded by competitive sealed bidding, if the adjustment involves aggregate increases or decreases expected to exceed \$25,000.00; or
- (c) an emergency procurement is made in excess of \$25,000.00, but such data may be submitted after contract award.

##### **R2-800.02      Submission of Cost or Pricing Data**

R2-800.02.1 *Time and Manner*; When cost or pricing data is required, the data shall be submitted to the Procurement Officer prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the Procurement Officer.

R2-800.02.2 *Obligation to Keep Data Current*; The offeror or contractor is required to keep such submission current until the price negotiations are concluded.

## **SUBDIVISION IV. TYPES OF CONTRACTS**

## CODE PROVISION:

### **Sec. 2-824      *Types of Contracts***

#### REGULATIONS:

##### **R2-824.01      Types of Fixed-Price Contracts**

R2-824.01.1 *Fixed-Price Contract* means a contract providing for a firm price, or a price that may be adjusted only in accordance with contract clauses providing for revision of the contract price under stated circumstances.

- (a) *Firm-Fixed-Price Contract* provides a price that is not subject to any adjustment on the basis of the contractor's cost experience or other circumstances arising during the performance of the contract.

- (b) *Fixed-Price Contract with Price Re-determination* provides a firm-fixed-price for an initial period of performance, after which the price may be recalculated for subsequent periods of performance based on experience during the initial period.
- (c) *Fixed-Price Contract with Economic Price Adjustment* provides for upward or downward revisions of the price upon the occurrence of certain contingencies specified in the contract, such as the actual costs of labor or materials, changes in the cost indexes for labor or materials, or changes in established or catalog prices.
- (d) *Fixed-Price Level-of-Effort Contract* requires the contractor to provide a specified level of effort for a specified period of time for work that can only be described in general terms, such as research and development.

## **R2-824.02 Types of Cost-Reimbursement Contracts**

R2-824.02.1 *Cost-Reimbursement Contract* means a contract that reimburses the contractor for costs that are allowable, allocable and reasonable under the terms of the contract; may include profit or fee. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling that the contractor may not exceed (except at its own expense) without approval by the City. The contractor agrees to perform until the contract is completed or until the costs reach the specified ceiling, whichever first occurs.

- (a) *Cost Contract* provides that the contractor will be reimbursed for allowable costs incurred in performing the contract but will not receive a fee.
- (b) *Cost-Plus-Fixed-Fee Contract* provides for payment to the contractor of a fee that is fixed at the inception of the contract in addition to reimbursement of allowable incurred costs.
- (c) *Cost-Sharing Contract* provides that the contractor receives no fee and is reimbursed only for an agreed upon portion for its reasonable, allowable and allocable costs.

These contracts may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

## **R2-824.03 Types of Cost Incentive Contracts**

R2-824.03.1 *Fixed-Price Incentive Contract*; In a fixed-price incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds target cost, and a ceiling price.

R2-824.03.2 *Cost-Plus-Incentive-Fee-Contract*; is a cost-reimbursement contract that provides an incentive to reduce costs by allowing for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs.

R2-824.03.4 *Performance Incentive Contract*; In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle the City to a price decrease.

## **R2-824.04 Time and Materials Contracts; Labor Hour Contracts**

R2-824.04.1 *Time-and-Materials Contract* provides for the acquisition of supplies or services on the basis of direct labor hours at specified, fixed, hourly rates that include wages, overhead, profit, and general and administrative expenses, and materials at cost. Such contracts shall, to the extent possible, contain a stated ceiling or estimate that shall not be exceeded without prior City approval and shall be entered into only after the Procurement Officer determines that:

- (a) City personnel have been assigned to closely monitor the performance of the work; and
- (b) under the circumstances, it would not be practicable to use any other type of contract to obtain needed supplies, services or construction, in the time required, and at the lowest cost to the City.

R2-824.04.2 *Labor-Hour Contract*; is a variation of the time-and-materials contract differing only in that the contractor does not supply materials. It shall contain the same ceiling and require the same determinations as required in Subsection R2-824.04.1 of this Regulation.

## **R2-824.05 Leases**

R2-824.05.1 *Lease* is a contract conveying from one person (lessor) to another (lessee) use of real estate or personal property for a designated period of time in return for rental payment or other compensation. Title does not pass from the lessor to the lessee.

R2-824.05.2 *Lease-Purchase Agreement*; is a lease contract containing a purchase option in which the lessee's periodic payments or parts thereof may be applied to serve both as the rental obligation and as installments for acquiring ownership of the property upon lessee exercising the purchase option.

R2-824.05.3 *Conditions for Use*; A lease may be entered into provided:

- (a) the Purchasing Officer determines that it is in the best interest of the City as the result of a cost/benefit analysis of the costs to own, the costs to lease, and the advantages and disadvantages of any relevant qualitative factors;
- (b) all conditions for renewal and costs of termination are set forth in the lease; and
- (c) the lease is not used to circumvent normal procurement procedures.

## **CODE PROVISION:**

### ***Sec. 2-825 Multi-Year Contracts***

#### **REGULATIONS:**

R2-825.01 Except for and in accordance with other provisions of this code and unless otherwise provided by law, a contract for supplies or services may be entered for a period of time deemed to be in the best interest of the City, provided that the term of the contract and conditions for renewal or extension, if any, are included in the solicitation, and funds are available for the first fiscal year at the time of contract award. As established in the City Charter, in no event shall a contract exceed ten years. No contract for supplies shall exceed three years, with all applicable extensions thereof, except when approved by four-fifths vote of the City Commission. The contract may stipulate that payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.

## **CODE PROVISION:**

### ***Sec. 2-826 Term Contracts***

#### **REGULATIONS:**

#### **R2-826.01 Definitions of Indefinite-Delivery Contracts**

R2-826.01.1 *Definite-Quantity Contracts* provide for delivery of specific supplies or services for a fixed contract period, with deliveries or performance to be scheduled at designated locations upon order



R2-826.01.2 *Indefinite-Quantity Contracts* provide for an indefinite quantity, within stated limits, of supplies or services during a fixed contract period, with deliveries or performance upon issuance of purchase orders.

R2-826.01.3 *Requirements Contracts* provide for all actual purchase requirements for specified supplies or services during the contract period to be filled by the selected vendor, with deliveries upon issuance of purchase orders.

#### **R2-826.02 Utilization of Term Contracts**

The City may utilize definite quantity, indefinite quantity and requirements contracts, as appropriate, to enable volume purchasing. The Chief Procurement Officer may determine the actual or estimated requirements of supplies, services or construction items of one or more departments and establish term contracts to provide a continuing source or sources of supply for the specified items. Term contracts are to be solicited and awarded in accordance with applicable provisions of the Code and these Regulations, except that:

- (a) prior submission of a purchase request by the user department(s) as required in Section 2-830 (Purchase Requests) of the Code is waived; and
- (b) Certification of the availability of sufficient budgeted funds as required in Section 2-831 (Fiscal Responsibility) of the Code may be deferred until purchase orders are issued pursuant to operational procedures that may be adopted by the Finance Director

#### **R2-826.03 Purchases by User Departments**

R2-826.03.1 *Operational Procedures*; The Chief Procurement Officer and Finance Director may adopt operational procedures to enable user departments to place purchase orders for supplies, services and construction items on City term contracts. Said procedures shall provide the means for the Procurement Division of the Finance Department to monitor all purchases made for or by user departments against established term contracts.

R2-826.03.2 *Limits*; Unless a term contract establishes a different threshold; the head of a user department may place an order under an established City term contract up to \$10,000.00. The user department shall submit a purchase request to the Procurement Division of the Finance Department for purchases in excess of the established threshold.

R2-826.03.3 *Fiscal Responsibility*; Prior to the issuance of any purchase order over \$1,000.00, the Finance Director shall certify the availability of funds. Prior to the issuance of any purchase order of \$1,000.00 or less, the head of the user department shall verify the availability of sufficient budget funds.

#### **R2-826.04 Cooperative Purchasing Agreements**

The Chief Procurement Officer may adopt operational procedures to enable user departments to place orders for supplies, services and construction items on cooperative purchasing agreements.

### **CODE PROVISION:**

#### ***Sec. 2-827 Contract Clauses and Their Administration***

### **REGULATIONS:**

#### **R2-827.01 Contract Clauses and their Administration;**

- (a) Contract Clauses. All City contracts for supplies, services and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Chief Procurement Officer may promulgate operational procedures permitting or requiring the inclusion of clauses covering the following subjects:

- (1) the unilateral right of the City to order in writing changes in the work within the scope of the contract;
  - (2) the unilateral right of the City to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
  - (3) variations occurring between estimated quantities of work in a contract and actual quantities;
  - (4) defective pricing;
  - (5) liquidated damages;
  - (6) specified excuses for delay or nonperformance;
  - (7) termination of the contract for default;
  - (8) termination of the contract in whole or in part for the convenience of the City;
  - (9) suspension of work on a construction project ordered by the City; and
  - (10) site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clause need not be included in a contract:
    - a. when the contract is negotiated;
    - b. when the contractor provides the site or design; or
    - c. when the parties have otherwise agreed with respect to the risk of differing site conditions.
- (b) Price Adjustments.
- (1) Adjustments in price pursuant to clauses promulgated under Subsection (a) of this Section shall be computed in one or more of the following ways:
    - a. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
    - b. by unit prices specified in the contract or subsequently agreed upon;
    - c. by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
    - d. in such other manner as the contracting parties may mutually agree; or
    - e. in the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, subject to the provisions of Division 6 (Legal and Contractual Remedies).
  - (2) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 2-800 (Substantiation of Offered Prices).
- (c) Standard Clauses. The Chief Procurement Officer, with the approval of the City Attorney, may establish standard clauses for use in City contracts. Said standard clauses may be varied as necessary by the Finance Director when deemed appropriate for the specific solicitation or contract, subject to the review and approval of the City Attorney.

## CODE PROVISION:

### *Sec. 2-828 Contract Award.*

## REGULATIONS:

### **R2-828.01 Contracts for Public Construction Works**

The City must competitively award all construction projects that are estimated to cost more than \$25,000.00 to an appropriately licensed contractor. The City Commission, by a majority vote, after public notice not less than 14 days prior to the public meeting, may determine that it is in the City's best interest to perform the project using the City's own services, employees and equipment.

## CODE PROVISION:

## ***Sec. 2-829 Approval of Change Orders and Contract Modifications***

### **REGULATIONS:**

#### **R2-829.01 Determination Required**

Prior to the issuance of a change order or contract modification, the Chief Procurement Officer or City Manager shall determine in writing:

- (a) the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed,
- (b) the change is germane to the original contract as signed; and
- (c) the change order or contract modification is in the best interest of the City and authorized by law.

This Regulation shall apply to a change order or series of change orders that authorize an increase or decrease of a contract by a total of \$10,000.00 or more or an increase in the time of completion by a total of thirty days or more. The Chief Procurement Officer or City Manager may require the head of the user department to provide a written justification for the change order or contract modification.

Any contract, change order or modification shall contain a provision that the price to the City shall not be adjusted to include any sums by which the City finds that such price was increased because the cost or pricing information submitted by the contracting party was inaccurate, incomplete or not current.

#### **R2-829.02 Contract Termination**

Upon a written determination by the Chief Procurement Officer or City Manager as to the reasons, and after consulting with the City Attorney, the City may terminate a contract for convenience or default in accordance with the term of the contract.

#### **R2-829.03 Rescission of Award**

Upon a written determination by the Chief Procurement Officer or City Manager as to the reasons, and after consulting with the City Attorney, the City may rescind award of a contract. Reason for rescission, may include, but not be limited to:

- (a) failure to provide performance or payment bonds;
- (b) failure to provide adequate evidence of insurance;
- (c) failure of the awarded party to execute contract documents; or
- (d) the rescission is in the best interest of the City and authorized by law.

#### **R2-829.04 Application of Thresholds**

**R2-829.04.1 Multiple Change Orders or Contract Modifications;** The 15% threshold provided in Sections 2-829(a) and 2-829(b) (Approval of Change Orders and Contract Modifications) shall apply to both individual change orders or contract modifications or the net total of change orders and contract modifications issued on a particular contract.

**R2-829.04.2 City Commission Approval;** In the event that a change order or contract modification causes the amended contract to exceed a threshold requiring City Commission approval, the change order or contract modification and any subsequent change orders or contract modifications to that contract shall require approval by the City Commission.

R2-829.04.3 *City Manager Approval*; The City Manager may approve change orders or contract modifications in excess of 15% of the original contract amount on contracts that did not initially require City Commission approval, provided the contract or purchase order, as amended, does not exceed the threshold requiring City Commission approval pursuant to Regulation R2-829.04.1.

R2-829.04.4 *Delegation of Authority*; The City Manager may delegate authority to the Chief Procurement Officers to approve change orders on small purchases as defined in Section 2-769 (Small Purchases) provided:

- (a) the change order or contract modification or net total of change orders or contract modifications does not exceed 15% of the original contract amount; and
- (b) the change order or contract modification does not cause the amended contract to exceed the threshold requiring City Manager or City Commission approval.

## CODE PROVISION:

### ***Sec. 2-830 Purchase Requests***

#### **REGULATIONS:**

##### **R2-830.01 Verification of Budgeted Funds**

The department head making the request shall ascertain that sufficient unencumbered budgeted funds are available prior to submitting a purchase request to the Procurement Division of the Finance Department.

##### **R2-830.02 Chief Procurement Officer's Authority to Reject**

When the Chief Procurement Officer, after consultation with the requesting department, decides that processing the purchase request is clearly not in the best interest of the City or that further review is needed, the Chief Procurement Officer shall return such purchase request to the requesting department. A statement of the reasons for its return shall accompany the returned requisition. Examples of reasons a purchase requisition may be returned include, but are not limited to:

- (a) the request can be satisfied from existing City contracts;
- (b) the request exceeds department needs;
- (c) the supplies, services, or construction requested could be procured more economically at a different time without detriment to the City; or
- (d) the quality requested is inconsistent with City standards and usage.

##### **R2-830.03 Chief Procurement Officer's Authority to Establish Lead Times**

Upon receipt of a purchase requisition, the Chief Procurement Officer has authority to decide when the procurement will be initiated and the time for response to the solicitation, provided the requesting department is notified if any dates the Chief Procurement Officer establishes exceed those stated by such department in the purchase requisition or will result in deliveries under the contract being later than the delivery date stated in the purchase requisition.

##### **R2-830.04 Direct Payment Requests**

The Finance Director may adopt operational procedures regarding the use of Direct Payment Requests. Appropriate uses may include utilities (gas, water, electric, telephone), travel reimbursement, employee reimbursements, dues and subscriptions, and payments on existing city contracts for services and construction. Except as otherwise specifically provided in the operational procedures, Direct Payment Requests may not be used as a substitute for a Purchase Requests.

## CODE PROVISION:

### ***Sec. 2-831 Fiscal Responsibility***

## REGULATIONS:

### **R2-831.01 Availability of Funds**

The Finance Director shall establish procedures to verify that sufficient budgeted funds are available prior to the issuance of any purchase order, contract, change order or contract modification. Certification of availability of funds may be made by means of an electronic data processing system.

### **R2-831.02 Small Purchases**

The head of a user department shall verify the availability of sufficient budgeted funds prior to making any purchases in accordance with Regulation R2-769.04 (Purchases of \$1,000.00 or Less). Said purchases shall not require prior certification of available funds by the Finance Director. The Finance Director and Chief Procurement Officer may adopt operational procedures regarding the documentation and reporting of said small purchases.

## CODE PROVISION:

### **Sec. 2-832 Commencement of Work**

## REGULATIONS:

### **R2-832.01 Waiver by Chief Procurement Officer**

The City Manager may temporarily waive some or all of the contract document requirements in the following circumstances:

- (a) emergency procurements as defined in Regulation R2-771.01 (Definition of Emergency Conditions);
- (b) where the delay in commencement of work or delivery of supplies will have a detrimental impact on City operations; or
- (c) where the delay would result in additional costs or lost revenues to the City.

The authorization to proceed shall be made by the City Manager in writing to the contractor or confirmed in writing within three business days of a verbal authorization. The temporary waiver does not relieve either the contractor or the City of complying with all contractual requirements within a reasonable period of time. In no event shall any contractual payments be made until all conditions precedent in the contract documents has been met.

## CODE PROVISION:

### **Sec. 2-833 Request for Authority to enter into an agreement**

## REGULATIONS:

### **R2-833.01 Contract approved by City Commission**

For all contracts requiring City Commission approval, the person(s) requesting authority shall provide a copy of the contract and a memorandum to the City Commission identifying the term, cost, critical dates and timelines, termination provisions, insurance and indemnification, warranties and testing, delays and remedies, notice provisions, financial impacts, due diligence report on contractors and subcontractors, identify the person(s) involved in negotiating the contract, the proposed Contract Manager, and a legal sufficiency checklist with appropriate departmental approval. All parties involved in the negotiation of the agreement shall be present at the City Commission meeting at which they are seeking approval.

### **R2-833.01 Contract not approved by City Commission**

For all contracts that do not require City Commission approval, the person(s) requesting authority shall provide a copy of the contract and a memorandum to the City Manager and City Attorney identifying the term, cost, critical dates and timelines, termination provisions, insurance and indemnification, warranties and testing, delays and remedies, notice provisions, financial impacts, due diligence report on contractors and subcontractors, identify the person(s) involved in negotiating the contract, the proposed Contract Manager, and a legal sufficiency checklist with appropriate departmental approval. The final, approved agreement shall be submitted to the City Manager and City Clerk for final execution. The Contract Manager shall initial the agreement indicating final review and approval of its terms.

## CODE PROVISION:

### **Sec. 2-834                      *Contract Administrations***

#### REGULATIONS:

#### **R2-834.01      *Receiving and Inspection***

The City Manager shall appoint a Contract Manager for each contract for supplies, services and/or construction. The Contract Manager shall be accountable for all assigned contracts and must submit a quarterly report on the status of the contracts, including but not limited to, contractor performance information.

#### **R2-834.02      *Complaints***

R2-833.02.1      *Complaint System*; The Chief Procurement Officer shall collect from the user departments complaints concerning contractors' performance and shall provide their findings to the Contract Manager. Complaints may include, but not be limited to:

- (a) delinquent deliveries;
- (b) partial deliveries;
- (c) substitutions;
- (d) nonconformance with specifications;
- (e) damage during shipment; or
- (f) poor service.

The Contract Manager shall be responsible for expediting, follow-up and resolution of any problems. A record of the complaint, actions taken and final resolution shall be maintained on file for three years and may be a factor in determining a vendor's responsibility and/or past performance.

R2-834.02.2      *Non-Performance*; In the event that the contractor fails to deliver or perform in accordance with the terms and conditions of the contract, the Contract Manager shall:

1. Report the default and/or performance failure to City Manager and Chief Procurement Officer.
2. The City Manager shall report the default and/or performance failure to the City Commission.
3. The report shall include a summary of the default or performance failure and any effort made by the City to bring the agreement into compliance.

The Contract Manager after consulting with the City Attorney may;

- (a) exercise the City's rights under any liquidated damages clause of the contract;
- (b) obtain the goods or services from another source and charge the delinquent contractor the difference in cost; or

- (c) terminate the contract for default, subject to approval pursuant to Section 2-829 (Change Orders and Contract Modifications) of the Code.

R2-834.02.3 *Payments*; The Contract Manager may direct that payments be suspended on any contract where the contractor has failed to perform in accordance with the terms and conditions of said contract until such performance deficiencies have been resolved to the satisfaction of the Contract Manager.

#### **R2-834.03 Supply, Services and Construction**

The Contract Manager shall have the primary responsibility for routine administration of architect, engineer and construction contracts, including periodic inspection of all construction projects for compliance with specifications.

#### **R2-834.04 Past Performance**

R2-833.04.1 *Past Performance on Supply and Service Contracts*; The Chief Procurement Officer shall establish a system to collect and report data with respect to a supplier's performance, including, but not limited to:

- (a) on-time delivery;
- (b) partial deliveries;
- (c) back orders;
- (d) substitutions;
- (e) nonconformance with specifications;
- (f) damaged goods;
- (g) rejections;
- (h) latent defects;
- (i) service;
- (j) any other positive or negative performance data.
- (k) quality of workmanship
- (l) timeliness of performance;
- (m) cost control; and
- (n) business practices, including effective project management.

In accordance with Regulations R2-766.11.5 (Supplier's Past Performance) and R2-768.11.3 (Past Performance) this data may be utilized as a factor for consideration in the award of contracts.

R2-834.04.2 *Past Performance on Construction Contracts*. The Chief Procurement Office shall collect and report data with respect to the performance of contractors and subcontractors on construction projects. Performance factors may include:

- (a) quality and workmanship;
- (b) timeliness of performance;
- (c) cost control; and
- (d) business practices, including effective project management.

In accordance with Regulations R2-766.11.5 (Supplier's Past Performance) and R2-768.11.3 (Past Performance) this data may be utilized as a factor for consideration in the award of contracts. In addition, the City may require the apparent low bidder on a project to replace any proposed subcontractor who has an unsatisfactory record of past performance.

## SUBDIVISION V. INSPECTION OF FACILITY AND AUDIT RECORDS

### CODE PROVISION:

#### *Sec. 2-844                      Approval of Accounting System*

#### REGULATIONS:

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined by the Chief Procurement Officer that;

1. the proposed Contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
2. the proposed Contractor's accounting system is adequate to allocate costs in accordance with general accepted accounting principles.

### CODE PROVISION:

#### *Sec. 2-845                      Right to Conduct Inspections and Audits*

#### REGULATIONS:

##### **R2-845.01      Conduct of Audit, Tests and Inspections**

Whenever possible, audits, tests and inspections shall be performed in order not to unduly or inconvenience the contractor or subcontractors. Contractors shall make available at no charge to the City all reasonable facilities and assistance, in order to facilitate the performance of audits, tests and inspections by City representatives.

##### **R2-845.02      Audit Review Cycle**

Audit review cycle for contracts for Supplies and Services in excess of \$100,000.00 and Construction Contracts in excess of \$25,000.00, and Leases, Short-term contracts may be audited at the end of the contract term. Long-term contracts (over 3 years) may be audited every three (3) years. All existing contracts which are to be renewed or extended shall be audited at a minimum of 90 days prior to the renewal period.

## SUBDIVISION VI. DETERMINATIONS AND REPORTS

### CODE PROVISION:

#### *Sec. 2-869                      Determinations*

#### REGULATIONS:

##### **R2-869.01      Forms**

The Chief Procurement Officer is authorized to prescribe methods and operational procedures to be used in preparing written determinations.

##### **R2-869.02      Retention**

Each written determination shall be filed in the solicitation or contract file to which it applies, shall be retained as part of such file for so long as the file is required to be maintained, and except as otherwise provided by law or regulation, shall be open to public inspection.

### CODE PROVISION:



**REGULATIONS:**

When for any reason, collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the City Attorney for investigation and appropriate action.

**DIVISION 4: SPECIFICATIONS**

**CODE PROVISION:**

**Sec. 2-889      *Duties of Chief Procurement Officer***

**REGULATIONS:**

**R2-889.01      Purpose**

The purpose of a specification is to serve as a basis for obtaining a supply, service or construction item adequate and suitable for the City's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation, as well as initial acquisition costs. It is the policy of the City that specifications permit maximum practicable competition consistent with this purpose. Specifications should be drafted with the objective of clearly describing the City's requirements.

**R2-889.02      Use of Functional or Performance Descriptions**

Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed descriptions to those necessary to meet the needs of the City. To facilitate the use of such criteria, user departments shall endeavor to include as a part of their purchase request the principal functional or performance needs to be met.

**R2-889.03      Preference for Commercially Available Products**

It is the general policy of the City to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided.

**R2-889.04      Development of Specifications**

**R2-889.04.1      General**

- (a) *Application of Section.* This Section applies to all persons who may prepare a specification for City use, including the Chief Procurement Officer, the head of a user department, and the designees of such officers (Contract Manager).
- (b) *Specification of Alternates May Be Included.* A specification may provide alternate descriptions of supplies, services or construction items where two or more design, functional, or performance criteria will satisfactorily meet the City's requirements.
- (c) *Contractual Terms Not to be Included.* To the extent feasible, a specification shall not include any solicitation or contract term or condition.

**R2-889.04.2      Brand Name or Equal Specification**

- (a) *Use.* Brand name or equal specifications may be used when the Chief Procurement Officer determines that:
  - (i) no specification for a common or general use item or qualified products list is available;
  - (ii) time does not permit the preparation of another form of specification, not including a brand name specification;

- (iii) the nature of the product or the nature of the City's requirements make use of a brand name or equal specification suitable for the procurement; or
- (iv) use of a brand name or equal specification is in the City's best interest.
- (b) *Designation of Several Brand Names.* Brand name or equal specifications shall seek to designate three or more different brands as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) *Required Characteristics.* Unless the Chief Procurement Officer determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional or performance characteristics which are required.
- (d) *Nonrestrictive Use of Brand Name or Equal Specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

#### **R2-889.04.3     *Qualified Products List***

- (a) *Use.* A qualified products list may be developed with the approval of the Chief Procurement Officer when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy City requirements.
- (b) *Solicitation.* When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

#### **R2-889.05     *Recycled Products***

Specifications developed by the City shall:

- (a) eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;
- (b) encourage the use of products made of recycled materials; and
- (c) encourage the use of products that may be recycled when they have served their intended use.

### **CODE PROVISION:**

#### ***Sec. 2-890     Standardization***

##### **REGULATIONS:**

#### **R2-890.01     *Review of Standard Specifications***

The Chief Procurement Officer may establish standard specifications for supply, services or construction items used by several user departments or used repeatedly by one user department when the characteristics of the item remain relatively stable while the frequency or volume of procurement is significant.

### **CODE PROVISION:**

#### ***Sec. 2-891     Relationships with User Department***

##### **REGULATIONS:**

There shall be a Contract Manager identified for each agreement and all persons having the responsibility for any portion of the agreement shall provide a quarterly status report to the Contract Manager. The Chief Procurement Officer shall obtain advice and assistance from the Contract Manager of the user departments in the development of specifications and may delegate in writing to a user department the authority to prepare and utilize its own specifications.

#### CODE PROVISION:

##### ***Sec. 2-892      Maximum Practicable Competitions***

#### REGULATIONS:

All specifications shall seek to promote overall economy for the purpose intended and encourage competition in satisfying the City needs, and shall not be unduly restrictive.

### **DIVISION 5: SUPPLY MANAGEMENT**

#### CODE PROVISION:

##### ***Sec. 2-918      Inventory***

#### REGULATIONS:

##### **R2-918.01    General**

Objectives of City supply management include preventing waste, continuing utilization of supplies, and obtaining a fair market return of value upon disposal of supplies. In order to achieve these objectives, sound inspection, testing, warehousing, and inventory practices are called for, and effective means of transferring and disposing of property must be employed.

##### **R2-918.02    Quality Assurance, Inspection and Testing**

The Chief Procurement Officer shall take such steps as deemed desirable to ascertain or verify that supplies, services and construction items conform to specifications. The Chief Procurement Officer may establish procedures for receiving and for systematically collecting data regarding supplier performance.

##### **R2-918.03    Warehousing, Storage and Inventory Management**

The Chief Procurement Officer shall exercise general supervision of all receiving, storage, and distribution facilities and services, and over all inventories of tangible personal property, whether warehoused or in use, belonging to the City. This responsibility shall not, however, relieve any department of accountability for tangible personal property and other supplies under its control. All warehouses and similar storage areas shall be inventoried at least annually.

#### CODE PROVISION:

##### ***Sec. 2-919      Excess Supplies***

#### REGULATIONS:

##### **R2-919.01    Authority of the Chief Procurement Officer**

No user department shall transfer, sell, trade-in, or otherwise dispose of supplies owned by the City without written authorization of the Chief Procurement Officer.

##### **R2-919.02    Report of Excess Supplies**

User departments shall notify the Chief Procurement Officer, on such forms and at such times as the Chief Procurement Officer may prescribe, of all excess supplies. In so doing, a user department may suggest a dollar value per item or per lot that it desires to receive from any transfer

or disposition of such excess supplies, but the suggestion shall not constitute the minimum sale or transfer amount.

### **R2-919.03     Transfer of Excess Supplies within the City**

Insofar as feasible and practical, the Chief Procurement Officer shall transfer excess supplies to other City departments. When the Chief Procurement Officer determines that the fair market value of the property to be transferred internally is less than \$1,000.00, there shall be no charge to the receiving department's budget.

## **CODE PROVISION:**

### **Sec. 2-920                      Disposal of Surplus**

## **REGULATIONS:**

### **R2-920.01     Disposition of Surplus Supplies**

R2-920.01.1     *General Requirements*; Surplus supplies shall be disposed of in conformance with the appropriate Florida Statutes, including Chapter 274, as amended from time to time. Surplus supplies may be offered for sale through competitive sealed bids, public auction, electronic auction, established markets or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily by other means. In such cases, and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the Chief Procurement Officer may employ such other means, provided that such officer makes a written determination that such procedure is advantageous to the City.

R2-920.01.2     *Resolution*; All surplus items with an estimated fair market value of \$25,000.00 or more must be declared surplus by a Resolution of the City Commission.

R2-920.01.3     *Public Notice*; For any means of sale, if the Chief Procurement Officer estimates the fair market value of a surplus item to be \$25,000.00 or more, notice of the sale shall be published at least once not less than one week or more than two weeks prior to the sale in a newspaper of general circulation in the City. If the item is to be sold by public auction, the notice shall include the date, time and location of the auction. If the item is to be sold by electronic auction, the Web address of the City or the site conducting the sale shall be included in the notice.

#### **R2-920.01.4     Competitive Sealed Bidding**

- (a) *Solicitation and Opening*. In addition to publication in a newspaper of general circulation, notice shall be given by mailing notices to prospective bidders, including those bidders on lists maintained for this purpose, and by making the solicitation documents publicly available. The invitation for bids shall list the supplies offered for sale, designate their location and how they may be inspected, and state the terms and conditions for sale and instruction to bidders including the place, date and time set for bid opening. Bids shall be opened publicly.
- (b) *Award*. Award shall be made in accordance with the invitation for bids to the highest responsive and responsible bidder, provided that the price offered by such bidder is acceptable to the City. Where such price is not acceptable, the Chief Procurement Officer may reject the bids in whole or in part and negotiate the sale provided the negotiated sale price is higher than the highest responsive and responsible bidder's price, or such officer may re-solicit bids.

R2-920.01.5     *Auctions*; Surplus supplies may be sold at public auction. When appropriate, an experienced auctioneer should be used to cry the sale and assist in preparation of the sale.

R2-920.01.6 *Electronic Auction; Surplus* supplies may be sold via Internet-based auctions. The items shall be posted to the site for not less than ten days. If the auction is not conducted on the City's web site, a link from the City's web site to the auction site shall be established.

R2-920.01.7 *Established Markets; Surplus* supplies may be sold in established markets, which are places where supplies such as livestock and produce are regularly sold in wholesale lots and prices set by open competition.

R2-920.01.8 *Posted Prices; Surplus* supplies may be sold at posted prices as determined by the Chief Procurement Officer when such prices are based on fair market value and the sale is conducted pursuant to written procedures established by the Chief Procurement Officer.

R2-920.01.9 *Trade-In; Surplus* supplies may be traded-in only when the Chief Procurement Officer determines the trade-in value is expected to exceed the value estimated to be obtained through the sale or other disposition of such supplies.

## **R2-920.02 Sale or Transfer to Other Governmental Units or Private Nonprofit Agencies**

Upon authorization by the City Commission, the Chief Procurement Officer may offer surplus supplies for sale or donation to other governmental units or private nonprofit agencies in accordance with the appropriate Florida Statutes, including Chapter 274.

## **R2-920.03 Disposal of Surplus Supplies**

When the Chief Procurement Officer determines that surplus supplies have no resale value, or that the cost of transportation, storage and sale of said supplies will exceed the anticipated sale value, the Chief Procurement Officer is authorized to dispose of said supplies in the most cost effective, environmentally responsible manner. Likewise, if Human Resources/Risk Management or the Chief Procurement Officer determines that due to safety or environmental concerns, the risk from transferring or selling the surplus supplies exceed its value, the Chief Procurement Officer is authorized to dispose of said supplies.

## **CODE PROVISION:**

### ***Sec. 2-921 Credits or Debit of Accounts***

#### **REGULATIONS:**

The Finance Director shall submit documentation and the revenue generated on any such transfer, sale, exchange or trade-in from the surplus property. The department that provided the surplus property shall receive credit therefore, on the amount of revenue received, unless it is determined by the Finance Director that it is in the best interest of the City to credit the General Fund. Any department receiving such surplus property shall receive corresponding debit therefore, such credit and debit to be charged to the respective budgets of the departments involved.

## **DIVISION 6: DISPUTE, LEGAL AND CONTRACTUAL REMEDIES**

## **CODE PROVISION:**

### ***Sec. 2-949 Solicitations or Awards in Violation of Law***

#### **REGULATIONS:**

#### **R2-949.01 Canceling or Revising Solicitation or Proposed Award**

A finding by the City Manager, after consultation with the City Attorney, that the solicitation or proposed award is in violation of law will constitute a cogent and compelling reason to cancel or revise a

solicitation or proposed award. A finding by the City Manager or the City Commission that an award is in violation of the law then, if the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified and affirmed or the contract may be terminated.

## CODE PROVISION:

### ***Sec. 2-950 Resolution of Protested Formal Solicitations and Awards***

#### REGULATIONS:

##### **R2-950.01 Protested Formal Solicitations and Awards**

R2-950.01.1 *Complaint to Procurement Officer;* Complainants should seek resolution of their complaints initially with the Procurement Officer who issued the solicitation. The intent to protest a solicitation or bid specifications may file a notice of intent to file a protest with the City Clerk's office 3 calendar days prior to the date set for opening of the bids or receipt of proposals. The intent to protest an award must be filed with the City Clerk's office within 3 calendar days after notice of the City Manager's written recommendation to the City Commission. In appropriate circumstances, informal discussions between the parties can aid in the resolution of the protest by mutual agreement and are encouraged.

##### R2-950.01.2 *Filing of Protest;*

- (a) The written protest must be filed with the City Clerk within 5 calendar days after the notice of intent was filed and must contain the following:
  - (i) the name and address of the protestor;
  - (ii) appropriate identification of the procurement or contract;
  - (iii) a statement of facts and law upon which the protest is based; and
  - (iv) supporting exhibits, evidence or documents to substantiate any claims.
- (b) The written protest may not challenge the relative weight of the evaluation criteria of the formula for assigning points in making an award determination.

R2-950.01.3 *Report to the City Attorney;* The Chief Procurement Officer shall submit a copy of the protest to the City Attorney within three business days of receipt of the written protest.

R2-950.01.4 *Interested Parties;* The Chief Procurement Officer shall give notice to any actual or prospective bidder or offeror who may be aggrieved by the protest. The Chief Procurement Officer shall, upon written request, make available to any interested party information submitted that bears on the substance of the protest except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation. The Chief Procurement Officer shall notify the interested party of their right to submit information or to attend any public meeting that may be held regarding the protest.

R2-950.01.5 *Requested Information; Time for Filing;* Any additional information requested by any of the parties should be submitted within the time periods established in order to expedite consideration of the protest. Failure of any party to comply expeditiously with a request for information by the Chief Procurement Officer may result in resolution of the protest without consideration of any information that is untimely filed.

##### R2-950.01.6 *Chief Procurement Officer's Recommendation to City Manager;*

- (a) When a protest cannot be resolved by mutual agreement, the Chief Procurement Officer, after consulting with the City Attorney, shall issue a written recommendation to the City Manager within ten days after receipt of the protest. Before issuing a final recommendation, the Chief Procurement Officer shall:
  - (i) review the facts pertinent to the protest; and

- (ii) secure any necessary assistance from legal, fiscal and other advisors.
- (b) The Chief Procurement Officer shall promptly furnish a copy of the recommendation to the protestor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and include in the decision:
  - (i) a description of the controversy;
  - (ii) a reference to pertinent solicitation provisions;
  - (iii) a statement of the factual areas of agreement or disagreement; and
  - (iv) a statement of the Chief Procurement Officer's recommendation, with supporting rationale.
- (c) The written recommendation by the City Manager shall be sent to the City Commission for approval or disapproval thereof. A copy of the written recommendation shall be sent to any interested party who may be adversely affected.

## CODE PROVISION:

### ***Sec. 2-951 Resolution of Protested Informal Solicitations and Awards***

#### REGULATIONS:

#### **R2-951.01 Protested Informal Solicitations and Awards**

##### *R2-951.01.1 Right to Protest on Informal Solicitations and Awards;*

- (a) This regulation shall apply to protests on informal solicitations and awards, the estimated cost of which is greater than \$25,000.00, but which does not exceed the formal bid threshold established in Section 2-766(a) (Competitive Sealed Bidding; Conditions for Use) of the Code.
- (b) Any actual or prospective bidder or offeror who perceives itself aggrieved in connection with the solicitation or award of an informal contract may protest to the Chief Procurement Officer. The protest shall be submitted in writing within three business days from the issuance of a solicitation, addendum, and notice of award, determination or other action by the City.

*R2-951.01.2 Complaint to Procurement Officer; Complainants* should seek resolution of their complaints initially with the Procurement Officer who issued the solicitation. Such complaints may be made verbally or in writing. In appropriate circumstances, informal discussions between the parties can aid in the resolution of the protest by mutual agreement and are encouraged.

##### *R2-951.01.3 Filing of Protest; The written protest shall include:*

- (a) the name and address of the protestor;
- (b) appropriate identification of the procurement or contract;
- (c) a statement of reasons for the protest; and
- (d) supporting exhibits, evidence or documents to substantiate any claims.

*R2-951.01.4 Report to the City Attorney;* The Chief Procurement Officer shall submit a copy of the protest to the City Attorney within three business days of receipt of the written protest.

##### *R2-951.01.5 Chief Procurement Officer's Decision;*

- (a) When a protest cannot be resolved by mutual agreement, the Chief Procurement Officer shall issue a written decision within ten days after receipt of the protest. Before issuing a final decision, the Chief Procurement Officer shall:
  - (i) review the facts pertinent to the protest; and
  - (ii) secure any necessary assistance from legal, fiscal and other advisors.

- (b) The Chief Procurement Officer shall promptly furnish a copy of the decision to the protestor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and include in the decision:
  - (i) a description of the controversy;
  - (ii) a reference to pertinent solicitation provisions;
  - (iii) a statement of the factual areas of agreement or disagreement; and
  - (iv) a statement of the Chief Procurement Officer's decision, with supporting rationale.

## CODE PROVISION:

### ***Sec. 2-952 Authority to Debar or Suspend***

#### REGULATIONS:

##### **R2-952.01 Suspension**

R2-952.01.1 *Initiation*; After consultation with the user department, the City Attorney, and, where practicable, the contractor or prospective contractor who is to be suspended, and upon written determination by the City Manager that probable cause exists for debarment as set forth in Section 2-952 (Authority to Debar or Suspend) of the Code, a contractor or prospective contractor shall be suspended. A notice of the suspension, including a copy of such determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall state that:

- (a) the suspension is for the period of time it takes to complete an investigation into possible debarment, including any appeals of a debarment decision, but not for a period in excess of three months.
- (b) bids or proposals will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension; and
- (c) if a hearing has not been held, the suspended person may request a hearing in accordance with Regulation R2-952.04.

R2-952.01.2 *Effect of Decision*; A contractor or potential contractor is suspended upon issuance of the notice of suspension. The suspension may be ended by the City Manager, or by a court, but otherwise shall only be ended when the suspension has been in effect for three months or a debarment decision takes effect.

##### **R2-952.02 Initiation of Debarment Action**

Written notice of the proposed debarment action shall be sent by certified mail, return receipt requested, or by any other method that provides evidence of receipt, to the contractor or prospective contractor. This notice shall:

- (a) state that debarment is being considered;
- (b) set forth the reasons for the action; and
- (c) state that if the contractor or prospective contractor so requests an informal hearing will be held, provided such request is received by the City Clerk, within ten calendar days after receipt of the notice of the proposed action.

Such notice shall also be sent to the City Attorney and the affected user department(s). Affected user departments are those that have used the supplies, services or construction supplied by the contractor.

##### **R2-952.03 Causes for Debarment or Suspension**

Causes for debarment or suspension include the following;



1. Conviction for commission of a criminal offence as an incident to obtain 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, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor.
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
4. Violation of contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer to be so serious as to justify debarment action:
  - a. Deliberate failure without good cause to perform in accordance with the specifications, terms and conditions or within the time limit provided in the contract; or
  - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provide that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
5. Repudiation of an offer by failure to provide bonds, insurance or other required certificates within a reasonable time period.
6. Refusal to accept a purchase order, agreement, or contract or to perform thereon provided such order was issued timely and in conformance with the offer received.
7. Presence of principals or corporate officers in the business of concern, who were principals within another business at the time when the other business was suspended or debarred within the last three years under the provisions of this section.
8. Violation of the ethical standards set forth in state law and/or local law.
9. Violation of a zoning ordinance or any other City Ordinance or regulation and for which the violation remains noncompliant.
10. 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.
11. Arrears or other default by contractor.
12. Any other cause the Chief Procurement Officer determines to be so serious and compelling as to affect responsibility as a City contractor including debarment by another governmental entity for any cause listed in this code.

#### **R2-952.04 Request for Hearing**

A contractor or prospective contractor that has been notified of a proposed debarment action may request in writing that a hearing be held before the City Commission. Such request must be received by the City Clerk within ten calendar days of receipt of notice of the proposed action. If no request is received, a final determination may be made as set forth in Regulation R2-952.05.

#### **R2-952.05 Hearing**

The City Manager shall send a written notice of the time and place of the hearing by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and shall state the nature and purpose of the proceedings. Copies of the notice shall be sent to the City Attorney and user department(s).

#### **R2-952.06 Effect of Debarment Decision**

A debarment decision will take effect upon issuance of the determination. After the debarment decision takes effect, the contractor shall remain debarred until the City Manager or the City Commission orders otherwise, or until the debarment period specified in the decision expires.

#### **R2-952.07 Maintenance of List of Debarred and Suspended Persons**

The Procurement Division of the Finance Department shall maintain and update a list of debarred and suspended persons. All City departments are barred from making any purchases from any debarred or suspended person.

### **CODE PROVISION:**

#### **Sec. 2- 953 Resolutions of Contract Disputes**

##### **REGULATIONS:**

#### **R2-953.01 Resolution by Mutual Agreement**

It is the City's policy, whenever possible, to try to resolve all contract disputes by mutual agreement. In appropriate circumstances, informal discussions between the parties can aid in the resolution of differences by mutual agreement and are encouraged.

#### **R2-953.02 Contractor's Performance of Work**

The contractor shall not withhold performance of and shall prosecute any work required by the City under the contract during the dispute resolution period. The contractor shall prosecute all of its work, including any disputed work, with the same diligence and effort as if no dispute existed.

#### **R2-953.03 City Manager's Decision**

R2-953.03.1 *Procedures Prior to Issuing Decision;* When a controversy cannot be resolved by mutual agreement, the City Manager shall at the City Manager's own initiative or after written request by the contractor for a final decision, promptly issue a written decision. Before issuing a final decision, the City Manager shall:

- (a) review the facts pertinent to the controversy; and
- (b) secure any necessary assistance from legal, fiscal and other advisors.

R2-953.03.2 *Final Decision;* The City Manager shall promptly furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and include in the decision:

- (a) a description of the controversy;
- (b) a reference to pertinent solicitation or contract provisions;
- (c) a statement of the factual areas of agreement or disagreement; and
- (d) a statement of the City Manager's decision, with supporting rationale.

A copy of the decision shall be furnished to the City Attorney and any affected user department.

#### **R2-953.04 Approval of Settlements**

The settlement or resolution of contract claims in excess of \$100,000.00 is subject to approval by the City Commission.

## **DIVISION 7: COOPERATIVE PURCHASING**

### **CODE PROVISION:**

#### **Sec. 2-978 Use of Other Governmental Unit Contracts ("Piggybacks")**

##### **REGULATIONS:**

## **R2-978.01 General**

When deemed by the Chief Procurement Officer to be in the best interest of the City, supplies, services, or construction may be procured pursuant to a cooperative purchasing agreement. In determining the best interest of the City, the Chief Procurement Officer should consider:

- (a) the purchase price;
- (b) the reputation of the contractor and of the contractor's goods or services;
- (c) the quality of the contractor's goods or services;
- (d) the extent to which the goods or services meet the City's needs;
- (e) the contractor's past relationship with the City;
- (f) contractual terms and conditions; and
- (g) costs for soliciting and administering contracts.

## **R2-978.02 Recognized Cooperative Purchasing Programs**

The City may participate in the following cooperative purchasing programs:

- (a) Federal Supply Schedules, to the extent permitted by federal law;
- (b) State of Florida SNAPS Agreements;
- (c) Miami-Dade County Contracts;
- (d) U.S. Communities; and
- (e) Other municipalities.

This list is not intended to limit or impair the ability of the City to participate in other cooperative purchasing programs.

## **CODE PROVISION:**

### ***Sec. 2-979 Contracts with Other Governmental Units***

#### **REGULATIONS:**

#### **R2-979.01 Contracts with Other Governmental Units**

Subject to the provisions of Section 2-828(3), the City may enter into an agreement, independent of the requirements of Methods of Source Selection of this Code, with any other governmental unit for the purchase, acquisition or cooperative use of supplies or services.

## **CODE PROVISION:**

### ***Sec. 2-980 Cooperative Purchasing***

#### **REGULATIONS:**

#### **R2-980.01 Approvals**

Approval of procurements made pursuant to this Section shall be in accordance with applicable provisions of Section 2-828 (c) of the Code. For cooperative procurements that require an advance commitment by the City with respect to minimum quantities or participation, said approval shall be obtained in advance in accordance with the terms of the cooperative purchasing agreement.

#### **R2-980.02 Competition**

Procurements that are sponsored by, conducted or administered by the City shall be made in accordance with the provisions of the section on Source Selection and Contract Formation of the

Code and the Regulations promulgated there under, unless the cooperative purchasing agreement provides otherwise. Procurements made by the City as a participant in a cooperative purchasing agreement are an exception to the source selection methods set forth in the section on Source Selection and Contract Formation of the Code.

#### **R2-980.03 Cooperative Purchasing Agreements**

Any cooperative purchasing agreement between the City and another governmental unit shall provide that:

- (a) each governmental unit shall obtain supplies and services by placing orders against the appropriate contract in accordance with the terms and conditions of such contract;
- (b) payment for supplies or services ordered by each governmental unit shall be the exclusive obligation of such jurisdiction;
- (c) inspection and acceptance of supplies or services under cooperative contracts shall be the exclusive obligation of each ordering jurisdiction;
- (d) the exercise of any warranty rights attaching to supplies and services received by each governmental unit shall be the exclusive obligation of such jurisdiction; and
- (e) failure of another governmental unit which is procuring supplies or services under a City contract to secure performance from the contractor in accordance with the terms and conditions of its purchase order will not necessarily require the City or any other governmental unit to consider the default or to discontinue procuring under the contract.

### **DIVISION 8: RISK MANAGEMENT IN PROCUREMENT**

#### **CODE PROVISION:**

##### ***Sec. 2-1004 Bid Security***

#### **REGULATIONS:**

##### **R2-1004.01 Bid Security on Construction Contracts**

The Architect or Engineer assigned to the project shall furnish the Chief Procurement Officer an estimate of the total aggregate cost for each construction project prior to issuance of solicitations. Based upon this estimate, the Chief Procurement Officer shall determine the amount of bid security to be required as follows:

- (a) If the estimated total aggregate amount of the contract is less than \$25,000.00, no bid security shall be required; however, the Chief Procurement Officer may require bid security of not more than ten percent of the total aggregate base bid when the circumstances warrant;
- (b) If the estimated total aggregate amount of the contract is \$25,000.00 or greater, but less than \$100,000.00, the amount of the bid security shall be five percent (5%) of the total aggregate base bid; however, the Chief Procurement Officer may waive the bid security requirement when the circumstances warrant; or
- (c) If the estimated total aggregate amount of the contract is \$100,000.00 or greater, the amount of the bid security shall be not less than five percent (5%), but not more than ten percent (10%), of the total aggregate base bid, the amount to be determined by the Chief Procurement Officer prior to solicitation of bids.

##### **R2-1004.02 Bid Security on Supply and Service Contracts**

Bid security shall be required on supply or service contracts only when the Chief Procurement Officer determines that the time of delivery or other critical circumstance warrants the imposition of a bid deposit requirement. The Chief Procurement Officer shall determine the amount of bid

security to be required to protect the interests of the City. If bid security is required, it shall be not less than five percent (5%) of the amount bid.

#### **R2-1004.03 Acceptable Bid Security**

Acceptable bid security shall be limited to:

- (a) a bid bond in a form satisfactory to the City and executed by a surety satisfactory to the Chief Procurement Officer, subject to the provisions of the appropriate Florida Statute, including but not limited to Section 287.0935;
- (b) a certified check, cashier's check, bank draft of any national or state bank, irrevocable letter of credit or money order made payable to the City of Coral Gables;
- (c) cash.

#### **R2-1004.04 Non-substantial Failure to Comply**

If a bid or proposal does not comply with the security requirements of this Regulation, the bid or proposal shall be rejected as non-responsive, unless the failure to comply is determined by the Chief Procurement Officer to be non-substantial where:

- (a) only one bid or proposal is received, and there is not time to re-bid the contract;
- (b) the amount of the bid security submitted, though less than the amount required by the solicitation, is equal to or greater than the difference in price stated in the next higher acceptable bid or proposal; or
- (c) the bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with Regulation R2-766.10 (Mistakes in Bids) of these Regulations, provided the bidder or offeror increases the amount of the guarantee to required limits within two business days after the receipt of notice of the error.

#### **R2-1004.05 Withdrawal of Bids**

If a bidder or offeror is permitted to withdraw its bid before award as provided in Section 2-766(g) of the Code, the bidder or offeror forfeits the return of the bid security.

#### **R2-1004.06 Bid Security Return**

The bid security shall be returned to the bidder/offeror if the bid/proposal is offered to another vendor. The bid security will be returned with a letter of rejection.

#### **R2-1004.07 Bid Security Forfeiture**

The bid security shall be forfeited to the City upon the failure or refusal of the awarded bidder or offeror to supply the necessary performance bonds, if required, or to proceed with performance under the contract.

### **CODE PROVISION:**

#### ***Sec. 2-1005 Performance and Payment Bonds***

#### **REGULATIONS:**

##### **R2-1005.01 Performance and Payment Bonds on Construction Projects**

- (a) Performance and payment bonds shall be required for all City construction contract projects equal to 100% of the price specified in the contract.
- (b) Performance and Payment bonds may be required for all City Construction, Service and/or Supply contracts at the discretion of the Chief Procurement Officer, but may be reduced by the City Manager. The City Manager is authorized to require a Performance or other security in addition to those specified here.

- (c) The Finance Director or designee shall maintain a list of all sureties filed with the City, by names of guarantors and amounts, and shall report quarterly to the City Manager full details as to all bonds then in effect.

**R2-1005.02            Acceptable Security**

Acceptable security shall be limited to:

- (a) a payment and performance bond in a form satisfactory to the City in accordance with applicable statutory requirements;
- (b) a certified check or cashier's check, payable to the City of Coral Gables;
- (c) an irrevocable letter of credit; or
- (d) cash or money order.

**R2-1005.03            Recording of Bond**

The Performance or Payment Bond must be recorded in the public records of Miami-Dade County.

CODE PROVISION:

***Sec. 2-1006      Indemnifications***

REGULATIONS:

**R2-1006.01            Indemnification Clauses in Contracts and Solicitations**

R2-1006.01.1 *Standard Indemnification Clauses*; Risk Management, in consultation with the Chief Procurement Officer and with the approval of the City Attorney, may establish standard indemnification clauses to be used in various types of solicitation documents, contracts and purchase orders.

R2-1006.01.2 *Modification*; The Chief Procurement Officer, with the approval of Risk Management and the City Attorney, may modify said clauses when deemed appropriate for the specific solicitation or contract.

R2-1006.01.3 *Negotiations*; Nothing in these Regulations shall prohibit the City from negotiating indemnification provisions with any prospective contractor, provided the amended indemnification provisions are approved by the City Attorney prior to award of the contract. However, a bidder's exception to indemnification requirements on an Invitation to Bid shall be cause for a determination of non-responsiveness.

CODE PROVISION:

***Sec. 2-1007      Insurance Requirements***

REGULATIONS:

**R2-1007.01            Insurance Requirements**

R2-1007.01.1 *Standard Insurance Requirements*; Risk Management, in consultation with the Chief Procurement Officer and with the approval of the City Attorney, may establish standard insurance requirements to be used in various types of solicitation documents, contracts and purchase orders. Risk Management, in consultation with the Chief Procurement Officer shall establish a process to ensure that for each solicitation, contract or purchase order the appropriate Insurance Requirements are attached to the solicitation prior to the release or advertisement of the bid.

R2-1007.01.2 *Modification of Insurance Requirements*; The Director of the Human Resources Department or designee may modify said requirements when deemed appropriate for the specific solicitation, contract or purchase order. The extent of this authority is granted by the current City Resolution related to Minimum Insurance Requirements.

R2-1007.01.3 *Negotiations of Insurance Requirements*; Nothing in these Regulations shall prohibit the City from negotiating insurance requirements with any prospective contractor, provided the amended insurance requirements are approved by the Human Resources Director or designee prior to the award of the contract. However, a bidder's exception to insurance requirements on an Invitation to Bid shall be cause for a determination of non-responsiveness.

R2-1007.01.4 *Review and Approval of Evidence of Insurance*; The Director of the Human Resources Department or designee shall be required to review, approve or reject the evidence of insurance provided by the contractor for compliance with the insurance requirements contained in the solicitation, contract or purchase order. It is the responsibility of the contract manager to obtain the evidence of insurance. The Director of the Human Resources Department or designee shall notify the Chief Procurement Officer and the Contract Manager should any contractor not be in compliance with the insurance requirements contained with any solicitation, contract or purchase order. The Chief Procurement Officer shall not allow performance on any contract or purchase order to proceed until the insurance deficiency has been corrected to the satisfaction of the Risk Management Division.

#### CODE PROVISION:

##### ***Sec. 2-1008 Other Forms of Security on Construction Contracts***

#### REGULATIONS:

##### **R2-1008.01 Types of Security**

The Chief Procurement Officer may require one or more of the following forms of security to assure the timely, faithful and uninterrupted performance on construction contracts:

- (a) operations period surety bonds that secure the performance of contractor's operations and maintenance obligations under project delivery methods set forth in Regulation R2-1090.01 (Alternate Forms of Design-Build );
- (b) letters of credit in an amount appropriate to cover the cost to the City of preventing infrastructure service interruptions for a period up to twelve months under the design-build project delivery method set forth in Section 2-1090 (Design-Build) of the Code;
- (c) appropriate written guarantees from the contractor to secure the recovery of re-procurement costs to the City in the event of a default by the contractor of operations and maintenance obligations under project delivery methods set forth in Regulation R2-1090.01 (Alternate Forms of Design-Build); and
- (d) warranty/maintenance bond guarantying that the contractor will maintain or repair the project during a warranty period following completion.

## **DIVISION 9: ELECTRONIC COMMERCE**

#### CODE PROVISION:

##### ***Sec. 2-1028 On-Line Procurement***

## REGULATIONS:

### **R2-1028.01            Electronic Bidding**

**[RESERVED]**

### **R2-1028.02            Procedure for Phase One of Reverse Auction Process**

R2-1028.02.1 *Form*; Reverse auctions shall be initiated by the issuance of an Invitation for Bids in the form required by Regulation R2-766.01.1 (The Invitation for Bids), except as hereinafter provided. In addition to the requirements set forth in Regulation R2-766.01.1, the reverse auction Invitation for Bids shall provide:

- (a) notice that suppliers are being pre-qualified in accordance with Section 2-799 of the Code;
- (b) that bidders are to provide bid samples, descriptive literature, technical offers or other information to permit the City to determine if the supplies, services, or construction items offered are responsive;
- (c) that it is a multi-step procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced offers are found acceptable with respect to responsiveness and responsibility in the first phase; and
- (d) instructions for participating in the electronic reverse auction.

R2-1028.02.2 *Public Notice*; Public notice shall be given in the same manner as provided in Regulation 2-766.03 (Public Notice).

R2-1028.02.3 *Use of Bidders Lists*; Bidders lists compiled and maintained in accordance with Regulation R2-766.04 (Bidders Lists) may serve as a basis for soliciting competitive sealed bids by means of reverse auction.

R2-1028.02.4 *Pre-Bid Conferences*; Pre-bid conferences may be conducted in accordance with Regulation R2-766.05 (Pre-Bid Conferences).

R2-1028.02.5 *Amendments to Invitation for Bids*; Prior to the submittal of phase one statements and technical information, amendments may be issued in accordance with Regulation R2-766.06 (Amendments to Invitation for Bids). After receipt of phase one statements and technical information, amendments shall be distributed only to bidders who submitted offers.

R2-1028.02.6 *Receipt of Statements of Qualification and Technical Information*; The Chief Procurement Officer shall establish operational procedures for the submittal and receipt of said documents. Submittals shall be opened in the presence of one or more witnesses at the date and time stated in the Public Notice. Only the name of each bidder shall be recorded with each submittal remaining closed; the record and each submittal shall be open to public inspection with the time frame specified in Florida Statutes, Public Records Act, and Chapter 119. If documents are to be submitted electronically, they shall remain in a lockbox until the date and time established for receipt.

R2-1028.02.7 *Evaluation of Statements of Qualification and Technical Information*; With the exception of bid price, submittals shall be evaluated in accordance with Regulation R2-766.11 (Bid Evaluation and Award).

R2-1028.02.8 *Notice of Unacceptable Submittal*; After evaluation of the submittals, the Procurement Officer shall notify bidders who are not pre-qualified for participation in Phase Two.

### **R2-1028.03            Procedure for Phase Two of Reverse Auction Process**

R2-1028.03.1 *Reverse Auction*; Price offers shall be obtained during a real-time bidding process conducted on the Internet, where suppliers qualified in phase one, anonymous to each



other, submit bids to supply the supplies, services or construction items. The Chief Procurement Officer shall adopt operational procedures for conducting the auction, identifying participants and ensuring the security of offers being submitted.

R2-1028.03.2 *Notice*; The Procurement Officer shall notify suppliers qualified in phase one of the date, time and Internet address of the reverse auction.

R2-1028.03.3 *Award*; Award shall be made to the low bidder.

R2-1028.03.4 *Documentation of Award*; Following award, a record of the bids received and the basis for determining the successful bidder shall be made a part of the procurement file and subject to public inspection.

#### **R2-1028.04 Mistakes in Bids during Reverse Auction Process**

Mistakes may be corrected or submittals may be withdrawn during phase one at any time. During Phase Two, mistakes may be corrected or withdrawal permitted in accordance with Regulation R2-766.10 (Mistakes in Bids).

### **CODE PROVISION:**

#### ***Sec. 2-1029 Authorizations for the Use of Electronic Records***

##### **REGULATIONS:**

##### **R2-1028.01 Authorization for the Use of Electronic Records**

In accordance with Florida Statute Section 668.50, Uniform Electronic Transactions Act, wherever this Code or the regulations promulgated hereunder require a record to be in writing, an electronic record is authorized.

## **DIVISION 10: ETHICS**

### **CODE PROVISION:**

#### ***Sec. 2-1054 Application***

**R2-1054.01** This Division shall be applicable to all City personnel defined herein, and shall constitute the minimum standards of ethical conduct and behavior.

#### ***Sec. 2-1055 Public Trust***

##### **REGULATIONS:**

##### **R2-1055.01 Public Trust**

Any attempt by City employees to realize personal gain by conduct inconsistent with proper discharge of their duties is a breach of public trust. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Division is also a breach of ethical standards. The provisions of City ordinances, county ordinances, and state statutes shall be strictly enforced to preserve the public trust.

### **CODE PROVISION:**

#### ***Sec. 2-1056 Prohibition on Transacting Business with the City***

##### **REGULATIONS:**

##### **R2-1056.01 Prohibition on Transacting Business with the City**

No Commissioner, appointed official, member of an advisory board or committee, member of a quasi-judicial board or committee, or employee shall enter into any contract or transact any business in which that person or a member of the immediate family has a financial interest, direct or indirect with the board or committee of the City of Coral Gables on which that person serves, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. Willful violations of this subsection shall constitute malfeasance in office and shall affect forfeiture of office or position. Nothing in this subsection shall prohibit or make illegal (1) the payment of taxes, special assessments or fees for services provided by the City government; (2) the purchase of bonds, anticipation notes or other securities that may be issued by the City through underwriters or directly from time to time. This provision shall not apply to Boards and Committees which have been exempted by the City Commission from the requirement of the City's Ethic Code. All solicitations for City Contracts shall include language advising of applicable code provisions.

#### CODE PROVISION:

##### ***Sec. 2-1057 Further Prohibition on Transacting Business with the City***

#### REGULATIONS:

##### **R2-1057.01 Further Prohibitions on Transacting Business with the City**

No Commissioner, appointed official, member of an advisory board or committee, member of a quasi-judicial board or committee, or employee shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which that person or any member of the immediate family has a controlling financial interest, direct or indirect, with the City board or committee on which they serve, or with any person or agency acting for the City board or committee, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. Waiver of this section may only be obtained by following the provisions of Section 2-1056.

Additionally, no Commission member shall vote on or participate in any way in any matter presented to the City Commission if that person has any of the following relationships with any persons or entities which would be or might be directly or indirectly affected by any action of the City Commission: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the Commission member in a manner distinct from the manner in which it would affect the public generally. Any Commission member who has any of the specified relationships or who would or might, directly or indirectly, realize a profit by the action of the City Commission shall not vote on or participate in any way in the matter.

#### CODE PROVISION:

##### ***Sec. 2-1058 Compulsory Disclosure by Employees of Firms Doing Business with the City***

#### REGULATIONS:

##### **R2-1058.01 Disclosure Requirement**

The disclosure required by Section 2-1058 (Compulsory Disclosure by Employees of Firms Doing Business with the City) of the Code shall be made to the City Clerk within fifteen calendar days after the City employee has actual or constructive notice of the relationship. Such disclosure shall be made in a written report that sets forth:

- (a) the name of the City employee and the name of the business involved;
- (b) the dollar amount and nature of the business commitments; and
- (c) the nature and extent of any benefit received or to be received.

CODE PROVISION:

***Sec. 2-1059 Cone of Silence, Contracts for the Provision of Goods and Services***

REGULATIONS:

**R2-1059.01 Cone of Silence, Contracts for the Provision of Goods and Services**

**R2-1059.01.1 "Cone of Silence" is defined to mean a prohibition on:**

- (1) any communication regarding a particular Request for Proposals ("RFP"), Request for Qualifications ("RFQ"), Invitation for Bids ("IFB") or any other advertised solicitation between a potential offeror, vendor, service provider, bidder, lobbyist, or consultant and City department heads, their staff, selection committee or evaluation committee members;
- (2) any communication regarding a particular Request for Proposals ("RFP"), Request for Qualifications ("RFQ"), Invitation for Bids ("IFB") or any other advertised solicitation between the City Commissioners, the City Manager's office, with City department heads, the City Department's staff, selection committee or evaluation committee members.

**R2-1059.01.2 Applicability**

- (1) The Cone of Silence shall be applicable only to Contracts for the provision of supplies, services and construction for amounts greater than \$25,000.00.

**R2-1059.01.3 Procedure**

- (1) Imposition. A Cone of Silence shall be imposed upon each Request for Proposals ("RFP"), Request for Qualifications ("RFQ"), Invitation for Bids ("IFB") and any other solicitation when advertised. At the time of imposition of the Cone of Silence, the City Manager, or designee shall provide for public notice of the Cone of Silence and shall advise the affected department (s) in writing. The affected departments includes, but is not limited to, Selection Committee members, user departments, department heads, City Attorney, City Manager, Assistant City Manager(s), and the City Commission.
- (2) Termination. Except as otherwise provided herein, the Cone of Silence shall terminate at the time of 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 Commission refers the City Manager's recommendation back to the City Manager or staff for further review, the Cone of Silence shall be re-imposed until such time as the City Manager's subsequent written recommendation is received by the City Clerk.

CODE PROVISION:

***Sec. 2-1060 Use of Confidential Information***

REGULATIONS:

**R2-1060.01 Prohibited Communications**

R2-1060.01.1 *Specifications*; It shall be a breach of ethical standards for any employee to knowingly convey, either directly or indirectly, any information concerning a solicitation that is not publicly available in the solicitation documents, or pre-bid or pre-proposal conference. It shall not be an ethical violation to convey information intended to clarify plans or specifications

regarding a public contract where such disclosure of information is also made generally available to the public.

R2-1060.01.2 *Subcontractors*; It shall be a breach of ethical standards for any employee, either directly or indirectly, to knowingly inform a bidder or offeror that the bid or offer will be accepted or executed only if specified persons are included as subcontractors.

#### **R2-1060.02 Bidder or Offeror Responsibility**

Any bidder or offeror who is the recipient of communications from a City employee that the bidder or offeror reasonably believes to be prescribed by Regulation R2-1060.01 (Prohibited Communications) shall notify the City Attorney.

## **DIVISION 11: PROCUREMENT OF INFRASTRUCTURE FACILITIES**

### **CODE PROVISION:**

#### ***Sec. 2-1087 Project Delivery Methods Authorized***

##### **REGULATIONS:**

#### **R2-1087.01 Selection of Project Delivery Method**

In selecting the project delivery method, the Public Works Director, upon consultation with the Chief Procurement Officer, should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill City requirements.

### **CODE PROVISION:**

#### ***Sec. 2-1088 Design-Bid-Build***

##### **REGULATIONS:**

#### **R2-1088.01 Design-Bid-Built**

Contracts for the design-bid-build project delivery method shall be procured as follows:

- (a) The qualifications based selection process set forth in Section 2-1092 (Architectural, Engineering, Landscape Architectural, or Surveying and Mapping Services) shall be used to procure architectural, engineering and land surveying services; and
- (b) Construction may be procured by:
  - (1) Competitive sealed bidding, as set forth in Section 2-766 (Competitive Sealed Bidding); or
  - (2) Competitive sealed proposals, as set forth in Section 2-768 (Competitive Sealed Proposals), for contracts for the construction of buildings, or other infrastructure projects, the design and construction of which are governed by accepted building codes and practices.

### **CODE PROVISION:**

#### ***Sec. 2-1089 Construction Manager-at-Risk***

##### **REGULATIONS:**

#### **R2-1089.01 Construction Manager-at-Risk**

Contracts for the construction manager-at-risk project shall be procured as follows:

- (1) Selection:

(a) For each proposed project, the Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, shall evaluate current statements of qualifications and performance data on file with the City, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services.

(b) The Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, may consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the City, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. The Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under subsection (2) below.

(3) Negotiation:

(a) The Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, shall negotiate a contract with the most qualified firm for professional services at compensation which the Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, determines is fair, competitive, and reasonable.

(b) Should the Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price they determine to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, must terminate negotiations and shall then undertake negotiations with the third most qualified firm.

(c) Should the Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, be unable to negotiate a satisfactory contract with any of the selected firms, they shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

## CODE PROVISION:

### ***Sec. 2-1090 Design-Build***

#### REGULATIONS:

Design Criteria Professional. The firm shall hold a current certificate of registration under the appropriate Florida Statutes, including Chapter 481, to practice architecture or landscape architecture or the firm shall hold a current certificate as a registered engineer under Chapter 471, or any other appropriate Florida Statutes, to practice engineering and who is employed by or under contract with the City for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

## **R2-1090.01    Alternate Forms of Design-Build**

R2-1090.01.1 *Design-Build-Operate-Maintain* means a project delivery method in which the City enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the funds required for the services provided by the contractor during the contract period are either appropriated by the City prior to award of the contract or secured by the City through fare, toll or user charges.

R2-1090.01.2 *Design-Build-Finance-Operate-Maintain* means a project delivery method in which the City enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. No City funds are appropriated to pay for any part of the services provided by the contractor during the contract period.

## **R2-1090.02    Request for Qualifications**

The Request for Qualifications shall include general information on the project site, project scope, budget, special systems, selection criteria and other information that may assist potential design-build firms in submitting proposals for the project.

## **R2-1090.03    Design Criteria Package**

The Request for Proposals shall provide sufficient information to permit a design-build firm to prepare a response, and specify criteria the City considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirements.

## **R2-1090.04    Construction Documents**

The design-build firm shall supply a signed and sealed set of construction documents for the project to the City at the conclusion of construction.

## **CODE PROVISION:**

### ***Sec. 2-1091    Job Order Contract***

#### **REGULATIONS:**

#### **R2-1091.01    Limit of \$100,000.00 per Project**

The Public Works Director, upon consultation with the Chief Procurement Officer, shall develop a scope of work and a price estimate for the project. If the contractor's project cost is deemed fair and reasonable based upon the department's estimate, the Public Works Director, after consulting with the Chief Procurement Officer, may approve work orders not to exceed \$100,000.00 per project, subject to Regulation R2-831.01 (Availability of Funds). Any project in excess of \$100,000.00 must be submitted to City Commission for approval.

#### **R2-1091.02    Emergencies**

Job order contracts are the preferred method for resolving emergency repairs to infrastructure facilities. In accordance with Section 2-771 (Emergency Procurements) of the Code, and the regulations promulgated there under, the City Manager or the Public Works Director, after consultation with the Chief Procurement Officer, may direct the contractor to commence work immediately to resolve an emergency. In that event, the work order shall be a unit price order based on the quantities and line items delivered.

## **CODE PROVISION:**

**Sec. 2-1092     Architectural, Engineering, Landscape Architectural or Surveying and Mapping Services**

**REGULATIONS:**

Each contract for services of an architect or engineer must contain a prohibition against contingency fees as follows: “The architect or engineer warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect or engineer to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for an architect or engineer any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.”

**R2-1092.01     Continuing Contracts for Professional Services**

R2-1092.01.1 *Definition.* Florida Statutes Section 287.055(2)(g) define “a ‘continuing contract’ is a contract for professional services entered into in accordance with all of the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which construction costs do not exceed \$1,000,000.00, for study activity when the fee for such professional service does not exceed \$50,000.00, or for work of a specified nature as outlined in the contract required by the agency, with no time limitation except that the contract must provide a termination clause.”

R2-1092.01.2 *Creation of Qualified Consultants List(s):*

- (a) *Work Categories.* The Public Works Department shall biannually prepare a list of the categories of work for which professional services will be purchased and the estimated dollar amount for each work category identified.
- (b) *Solicitation.* The Chief Procurement Officer shall issue a Request for Qualifications (RFQ) package, including instructions for preparing submittals, to each interested consultant qualified to perform the types of work. Public notice shall be given in the same manner provided for as Invitation for Bids under Regulation R2-766.03 (Public Notice).
- (c) *Qualifications Statement.* The RFQ shall include a request for a qualifications statement consisting of the information listed in Regulation R2-799.01.2 (Prequalification for Construction Projects, Form) plus:
  - (i) Standard Form 254, Architect-Engineer and Related Services Questionnaire; or
  - (ii) Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project; or
  - (iii) a qualifications statement based on a questionnaire specifically developed by the City; or
  - (iv) any combination of the above.
- (d) *Evaluation Criteria.* The RFQ shall include a description of the evaluation criteria to be applied for each category of work identified in the advertisement.

R2-1092.01.3 *Competitive Selection Process and Assignment of Consultants to Qualified Consultants Lists:*

- (a) *Evaluation Panel.* The Chief Procurement Officer shall appoint an evaluation panel composed of three or five voting members. The panel shall include at least one technical expert from outside the City.
- (b) *Scoring.* The evaluation panel shall review the qualifications statements submitted in response to the RFQ, score the qualifications statements using an evaluation criteria form for each category of work identified in the advertisement, and assign consultants to the appropriate Qualified Consultants List(s). The evaluation panel shall determine the minimum acceptable score for consultants to be placed on the Qualified Consultants

List for each category of work. Only consultants with the minimum acceptable score or better shall be placed on the list. Evaluation points shall be used to establish rank order. The consultant awarded the most evaluation points shall be considered the highest ranked consultant.

- (c) *Award.* The evaluation panel shall submit the evaluation results and copies of the recommended Qualified Consultants Lists to the Chief Procurement Officer who shall review the list and confirm that each consultant meets the City's requirements. The Chief Procurement Officer has the authority to remove a consultant from the recommended list. Upon recommendation by the City Manager, the recommended Qualified Consultants Lists shall be submitted to the City Commission for approval.

**R2-1092.01.4** *Selection of Consultants for "As-Needed" Projects Not to Exceed \$50,000.00:*

- (a) *Shell Agreement.* For each consultant deemed "qualified," the Public Works Department shall prepare and process a shell agreement, subject to the approval of the City Attorney, listing those categories of work for which the consultant is included on the Qualified Consultants List.
- (b) *Reservation of Rights.* The City cannot guarantee that consultants on the Qualified Consultants List will be assigned projects. Each shell agreement shall include a provision stating: "the as-needed contracts are for the convenience of the City and are not meant to give consultants on the Qualified Consultants List the right to perform services for the City. The City reserves the right to use any approved consultant selection process for any project."
- (c) *Requests for Services.* As the need arises, the Public Works Department shall prepare a draft scope of work and a cost estimate for the project. The Chief Procurement Officer may establish an order of preference of up to four qualified consultants for the project based upon the highest qualified firm for the category or categories of work required, satisfactory performance on similar projects, and special skills or experience.
- (d) *Statements of Interest.* The Chief Procurement Officer may, but is not required to, solicit informal letters of interest from firms on the Qualified Consultants List. These letters of interest may include project understanding, project approach, schedule and capacity of the firm to perform the project.
- (e) *Negotiations.* The Chief Procurement Officer shall select the most qualified firm for the proposed project. The selected consultant will be given an opportunity to review the scope of work and prepare a fee estimate. The Chief Procurement Officer and consultant will negotiate a final scope of work and fee schedule. If the selected consultant is not available to perform the work within the City's cost requirements or schedule, the Chief Procurement Officer shall begin negotiations with the next most qualified consultant.
- (f) *Contract Work Order.* Subject to the approval by the City Attorney for form and legal sufficiency, the Chief Procurement Officer shall execute a contract work order for each individual project. The awarded value of any project under this section shall not exceed \$50,000.00. Contract work orders are subject to the provisions of Regulation R2-828.6.01 (Availability of Funds).

**R2-1092.01.5** *Consultant Selection – Non-Standard Requirements:*

- (a) *Unique Requirements.* In certain unique instances, projects may require a consulting specialty that a consultant on the Qualified Consultants List cannot reasonably provide. When this occurs, the Public Works Director may select a consultant that is not on a Qualified Consultants List. Nothing in this Regulation R2-1092.01 (Continuing Contracts for Professional Services) shall preclude the City from utilizing the selection process in Regulation R2-1092.02 (Contracts for Projects Exceeding \$50,000.00 or Unique Requirements) for professional services of \$50,000.00 or less.



- (b) *Emergencies.* Emergency acquisition of professional services shall be made in accordance with Section 2-771 (Emergency Procurements) of the Code.

R2-1092.01.6 *Term;* Each shell agreement shall be awarded for a term not to exceed two years. The Chief Procurement Officer may extend the agreement not to exceed two additional years, subject to a continuing need for that category of work and satisfactory performance by the consultant. The contractor shall have one year from the expiration date of the shell agreement to complete work on projects; however, no additional work orders under the agreement may be issued during this period.

## **R2-1092.02 Contracts for Projects Exceeding \$50,000.00 or Unique Requirements**

### **R2-1092.02.1 Consultant Solicitation and Selection Procedure;**

- (a) *Solicitation.* The Public Works Department shall prepare a detailed scope of work for the proposed project. Based upon the scope of work, the Chief Procurement Officer shall prepare solicitation documents, including a request for qualifications and statement of interest in the proposed project. The request for qualifications shall be in a form similar to that in Regulation R2-1092.02.1(c) (Creation of Qualified Consultants List(s), Qualifications Statement). The statement of interest may include, but not be limited to, project understanding, project approach, schedule and capacity of the firm to perform the project
- (b) *Public Notice.* Public notice shall be given in the same manner provided for an Invitation for Bids under Regulation R2-800.03 (Public Notice).
- (c) *Evaluation Panel.* The Chief Procurement Officer shall appoint an evaluation panel composed of at least three and not more than five voting members. The panel shall include at least one technical expert from outside the City and the individual who will serve as the City's project manager for the resulting project.
- (d) *Scoring.* The evaluation panel shall review the proposal documents submitted in response to the request, and score the consultants using an evaluation criteria form.
- (e) *Interviews.* At the discretion of the evaluation panel, it may extend an invitation to not less than the top three ranked consultants to present their proposals to the panel at an interview. The interview shall be evaluated and ranked by the panel in accordance with predetermined evaluation criteria.
- (f) *Ranking.* For each project, evaluation points shall be used to establish rank order for the consultants. When interviews have been held, the consultant with the highest combined score shall be the highest ranked consultant.
- (g) *Negotiation.* The City shall negotiate a contract with the most qualified firm for a professional service at compensation which the City determines is fair, competitive, and reasonable. In making such determination, the City shall conduct a detailed analysis of cost of the professional services required in addition to their scope and complexity. For any lump-sum or cost-plus-a-fixed-fee professional service contract over \$50,000.00, the City shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- (h) *Award.* The evaluation panel shall submit the evaluation results to the Chief Procurement Officer, who will review the ranking of consultants and confirm that the highest ranked consultants meet the City's requirements. The Chief Procurement Officer shall submit their recommendation to the City Manager. In the event that either the Chief

Procurement Officer or City Manager does not concur with the recommendation of the evaluation panel, the City Manager may refer it back to the panel for reconsideration. The City Manager shall authorize negotiations with the most qualified firm(s) for contracts estimated not to exceed \$100,000.00, or the City Commission shall authorize negotiations with the most qualified firm(s) for contracts exceeding \$100,000.00, as well as alternate firms should the City be unable to reach agreement with the first. Award shall be made in accordance with Section 2-828 (Contract Approval) of the Code, and is subject to Section 2-831 (Fiscal Responsibility).