

CITY OF CORAL GABLES, FLORIDA

DRAFT ORDINANCE NO. 2008 -

AN ORDINANCE OF THE CITY OF CORAL GABLES, FLORIDA, AMENDING THE CITY CODE, CHAPTER 2, ENTITLED "ADMINISTRATION", ARTICLE VIII, ENTITLED "PROCUREMENT CODE" BY CORRECTING SCRIVENERS ERRORS; AMENDING THE DEFINITIONS AND APPLICATION SECTIONS TO CONFORM WITH LANGUAGE REQUIREMENTS OF THE CITY CODE, FLORIDA LAWS AND FEDERAL LAWS AND REGULATIONS; IMPLEMENTING A CONTRACT MANAGER SYSTEM; AMENDING THE SECTION ON THE CITY ATTORNEY'S DUTIES BY ADDING A SECTION ON APPEALS OF CITY ATTORNEY DECISIONS; AMENDING THE SECTION ON PROTESTS OF SOLICITATIONS AND AWARDS TO STRENGTHEN THE NOTICE REQUIREMENTS AND CONTENTS FOR PROTESTS; AMENDING THE SECTION ON PERFORMANCE AND PAYMENT BONDS TO REFLECT THE MANDATORY REQUIREMENTS OF BONDS FOR ALL CONSTRUCTION CONTRACTS; AMENDING THE LANGUAGE FOR THE PURCHASE, SALE OR LEASE OF CITY-OWNED PROPERTY TO PROVIDE MORE STRINGENT ANALYSIS FOR SUCH ACTIONS; AMENDING THE CONSTRUCTION MANAGER-AT-RISK SELECTION AND NEGOTIATION PROCESS TO CONFORM WITH THE REQUIREMENTS OF FLORIDA LAW; UPDATE THE CITY'S INSURANCE SECTION TO CONFORM WITH NEW CITY REQUIREMENTS; CHANGING ALL PUBLIC WORKS DEPARTMENT'S RESPONSIBILITIES FOR PROCUREMENT TO THE PROCUREMENT DIVISION OF THE FINANCE DEPARTMENT; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, in 2003 the City Commission adopted a Procurement Code which was a major re-write of the then existing ordinance and rules governing the procurement of services, equipment and construction in the City of Coral Gables; and

WHEREAS, the City Commission of Coral Gables has requested that another re-write of the Procurement Ordinance be done to address specific issues; and

WHEREAS, the Public Works Departments responsibilities for procurement of contracts have been transferred to the Procurement Division of the Finance Department and these modifications have been corrected herein; and

WHEREAS, the Procurement Code had scrivener's errors which have been corrected; and

WHEREAS, the definitions and application sections under the Procurement Code have been updated and amended to conform with those of the City Code, Florida laws and regulations, and Federal laws and regulations; and

WHEREAS, the duties of the City Attorney have been amended to reflect additional City Attorney's duties and the appellate process for all appeals of the City Attorney's decisions; and

WHEREAS, the analysis for the purchase, sale or lease of City property has been amended to provide for a more stringent review; and

WHEREAS, a contract manager system has been implemented to strengthen the procedures for submissions of proposed contracts, administration of all contracts, and performance and payment assessment of all contracts; and

WHEREAS, the project delivery methods for construction contracts section of the Code has been modified to reflect the requirements for the selection and negotiation conform with appropriate Florida law; and

WHEREAS, the insurance requirements reflect the City's current insurance requirements; and

WHEREAS, the section of the Procurement Code regarding protests of solicitations and awards has been amended to strengthen the requirements for the notices of intent to file a protest and the contents of the protest; and

WHEREAS, the section on performance and payment bonds has been amended to reflect the mandatory requirements of bonds for all construction contracts; and

WHEREAS, the City Administration has been able to compare and analyze the prior code provisions with the Code adopted in 2003, 2004 and 2005 and recommends the amendments contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The recitals and findings contained in the Preamble of this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

SECTION 2. The City Commission does hereby approve the amendments to the City of Coral Gables Code as follows:

ARTICLE VIII. PROCUREMENT CODE

DIVISION 1. GENERALLY

Sec. 2-578 Definitions

The following words, terms and phrases defined in this Section shall have the meanings set forth below whenever they appear in this Code, except where:

- (a) the context in which they are used clearly requires a different meaning; or
- (b) a different definition is prescribed for a particular Article or provision.

Words not defined shall be given the meaning provided under their common and ordinary meaning unless the context suggests otherwise.

Addendum means a document that is subsequently issued to add, supplement, delete, modify or clarify any directions, instructions, information, specifications, terms or conditions to a solicitation.

Administrative Regulations means the regulations promulgated by the City Administration to carry out the provisions of this Code.

Architectural, Engineering, Landscape Architectural, and Surveying and Mapping Services means those professional services within the scope of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the appropriate Florida Statutes.

Award means the acceptance of a bid, offer, or proposal by the City and which are deemed to be in the best interest of the City.

Bid means an offer submitted by a prospective vendor in response to an Invitation for Bids issued by the City.

Bid Bond means a surety instrument ~~insurance agreement~~, accompanied by a monetary commitment by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid, the bidder will furnish bonds as required, and if the contract is awarded to the bonded ~~(insured)~~ bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

Bid Security means a sum of money, which could be in a form of a cashier's check, irrevocable letter of credit, money order or a bond issued by a surety, deposited with a bid or proposal guaranteeing the bidder or offeror will not withdraw the bid or proposal for a specific period of time, will furnish bonds as required, and will accept a contract, if awarded, or forfeit the deposit.

Bid Waiver means a process, whereby supplies or services may be procured without a formal competitive bidding process when determined to be in the best interest of the City.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other private legal entity operated for profit or nonprofit.

Change Order means a written alteration to a contract or purchase order, executed by the City Manager, in accordance with the terms of the contract, unilaterally directing the contractor to make changes.

Chief Procurement Officer means the person holding the position as the Director of the Finance Department of the City of Coral Gables, or their designee, that is responsible for procuring supplies, services and construction ~~(b) the person holding the position as the Director of the Public Works Department of the City of Coral Gables for the procurement of Public Works.~~

City shall refer to the City Commission, City Manager or Chief Procurement Officer where appropriate.

City Manager means the City Manager or designee.

Competitive Sealed Proposal means a method for acquiring supplies, services or construction, exceeding the formal threshold, that permits discussions and negotiations with responsible offerors, changes and modifications to proposals, and judgmental factors to be used to evaluate the relative merits of competing proposals.

(b) *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 and/or the City Manager's office, with City department heads, their staff, Selection Committee or Evaluation Committee members.

any communications between a potential offeror, bidder, lobbyist, consultant or City Commissioner and certain members of city staff regarding a particular Request for Proposals ("RFP"), Request for Qualifications ("RFQ"), Invitations to Bid ("IFB"), or any other advertised

~~solicitation from the time a solicitation is advertised to contract award recommendation and does not include written communications on file with the City Clerk.~~

Confidential Information means any information which is available to an employee only because of the employee's status as an employee of this City and is not a matter of public knowledge or available to the public on request.

Construction means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property. Construction shall include any public work or improvement under Section-57 54 of the Coral Gables Charter.

Construction Manager-at-Risk means a construction delivery process allowing the project owner to choose a construction manager who business that assumes the risk for construction, rehabilitation, or repair of an infrastructure facility at the contracted price as a general contractor and provides consultation to the City regarding construction during and after the design.

Contract means all types of City agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.

Contract Manager means the City employee responsible for overseeing and monitoring an agreement for a particular department.

Contract Modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor means any individual or business person having a contract or agreement with the City a governmental body to furnish goods, services or construction for a certain price.

Contractual Services includes, but shall not be limited to, all gas, water, electric light and power service; towel, uniform, cleaning (janitorial), pest control, security guard, tree trimming, ground (landscaping) maintenance services; and the leasing, rental, repair or maintenance of equipment, supplies, machinery and other services for or regarding city-owned personal property.

Cooperative Purchasing means:

- (1) procurement conducted on behalf of two or more governmental units;
- (2) the combining of requirements of two or more governmental units in order to obtain the benefits of volume or bulk purchasing and/or reduction in administrative expenses.

Cost-Reimbursement Contract means a contract that reimburses a contractor for costs that are allowable and allocable under the terms of the contract terms and the provisions of this Code and may include a fee or profit.

Data means recorded information, regardless of form or characteristic.

Debarment means the exclusion of a person or business from participating in a procurement activity for an extended period of time, as specified by law, because of an illegal or irresponsible action.

Department means any office, department, agency, division, commission, board or other entity of the City.

Design-Bid-Build means a project delivery method in which the City sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

Design-Build means a project delivery method in which the City enters into a single contract with a design-build firm for design and construction of an infrastructure facility.

Design-Build Firm means a partnership, corporation, or other legal entity that is certified under the appropriate Florida Statute, including §489.119, to engage in contracting through a certified or registered contractor or a certified or registered building contractor as the qualifying agent; or

is certified under the appropriate Florida Statute, including §471.023, to practice or to offer to practice engineering; or is certified under the appropriate Florida Statute, including §481.219, to practice or to offer to practice architecture; or is certified under the appropriate Florida Statute, including §481.319, to practice or to offer to practice landscape architecture.

Design Criteria Package means concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or response to the City's request for proposals. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, and parking requirements applicable to the project.

Design Criteria Professional means a firm who holds a current certificate of registration under appropriate Florida Statutes, including Chapter 481, to practice architecture, landscape architecture, or a firm who holds a current certificate as a registered engineer under Florida Statutes, including Chapter 471 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.

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

~~Chief Procurement Officer is responsible for procuring supplies, and services and construction as provided in this Code, except Public Works as defined in this Code.~~

~~Public Works Director means the Chief Procurement Officer responsible for procuring Public Works as defined in this Code.~~

Electronic Commerce means conducting business transactions with suppliers and customers electronically.

Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Electronic Posting means the posting of solicitations, determinations and other matters related to procurement on a centralized Internet website designated by the City for this purpose.

Emergency Purchase means a purchase made to alleviate a circumstance threatening the health, welfare, or safety under certain conditions defined as an emergency by the City, that does not allow time for normal, competitive bidding.

Employee means an individual drawing a salary or other compensation for personal services from the City, whether elected or not, but does not include independent contractors.

Excess Supplies means any tangible personal property having a remaining useful life but which are no longer required by the using department in possession of the supplies.

Financial Interest means:

(1) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than One Thousand Dollars and 00/100 (\$1,000.00) per year, or its equivalent;

(2) ownership of five percent (5%) in any property or any business; or

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

Formal Bid means all bids or proposals exceeding Twenty Five Thousand Dollars and 00/100 (\$25,000.00) requiring a sealed bid or proposal, public opening, or public reading.

Governmental Unit means any unit or association of units of federal, state or local government, any public authority which has the power to tax, any other public entity created by statute and

any other entity which expends public funds for the procurement of supplies, services or construction.

Immediate Family means a spouse, children, parents, brothers and sisters, and such other relatives as may be designated by the City Commission.

Informal Bid means a competitive bid or price quotation for supplies or services that is conveyed by letter, telephone, form or other means and does not require a sealed bid, public opening, or public reading of bids.

Independent Contractor means a person doing work for the City for which the City has the right to control or direct the result of the work and not the means and methods of accomplishing the result. No independent contractor may serve on a Selection Committee unless designated by the City Manager and, if so designated, is subject to the same rules, Administrative Regulations and requirements of this Code as applied to City employees.

Informality means a minor or immaterial defect in a bid that is matter of form rather than substance; a variation of a bid or proposal from the exact requirements of the solicitation, which can be corrected or waived without being prejudicial to other bidders, and has no material effect on the price, quality, quantity or delivery schedule for the supplies or services.

Infrastructure Facility means a building; structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. Included are government office buildings, highways, roads, streets, bridges, utilities, water and wastewater distribution or conveyance facilities, docks, drainage projects, or related types of projects.

Invitation for Bids (IFB) means all documents, whether attached or incorporated by reference, utilized for soliciting bids. The IFB is used when the City is capable of specifically defining the scope of work for which a contract is required or when the City is capable of establishing precise specifications required under a contract.

Job Order Contract means a firm-fixed price indefinite delivery, indefinite quantity contract for the minor construction, repair, rehabilitation, or alteration of an infrastructure facility.

Liquidated Damages means a specific sum stated in the Contract to be paid by the party who is in default, or who breaches the contract, in settlement for damages.

May denotes the permissive.

Must denotes the imperative.

Offeror means a person submitting an offer in response to a Request for Proposals or other solicitation.

Payment Bond means a certificate issued by a surety guaranteeing payments, as required by law, to all persons supplying labor or material for the completion of work under contract by the successful bidder or offeror.

Performance Bond means a certificate issued by a surety to a successful bidder or offeror, to protect the City from loss to due to the bidder or offeror's inability to complete and fulfill the contract requirements as agreed.

Person means any business, corporation, partnership, individual, union, committee, club, organization, or group of individuals.

Piggyback means a form of inter-governmental cooperative purchasing, in which a large public purchaser requests competitive sealed bids and enters into a contract that allows for other public purchasing units to purchase from the selected vendor under the same terms and conditions as itself.

Pre-Bid Conference/Pre-Proposal Conference means a meeting held with prospective bidders or offerors prior to solicitation of bids or proposals, to clarify any ambiguities, answer bidder or offeror questions, and ensure all bidders or offerors have a common basis of understanding regarding the supplies or services required.

Procurement means the buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement/Purchase Card means a card used for making of purchases of One Thousand Dollars and 00/100 (\$1,000.00) or less by certain authorized employees in accordance with written procedures.

Procurement Officer means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

Professional Services means services rendered by members of a recognized profession or persons possessing a specialized skill. Such services are generally acquired to obtain advice, information, instruction, training, and direct assistance.

Proposal means an executed document submitted by an offeror in response to a Request for Proposals to be used as a basis for negotiations for entering into a contract.

Public Notice means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in publication in a newspaper of general circulation in the City, electronic or paper mailing lists, and Internet site(s) designated by the City and maintained for that purpose.

~~Public Works, for the purposes of this Code, means:~~

- ~~(a) the purchase, lease or sale of real property;~~
- ~~(b) procurement of architectural, engineering, landscape architectural, and surveying and mapping services; and~~
- ~~(c) procurement of construction.~~

~~Public Works Director~~ means the chief procurement officer responsible for procuring public works as defined in this Code.

Purchase Order means the City's official document to formalize and authorize a purchase transaction with a contractor. It should contain a description of supplies and/or services ordered, encumbered funds from specific budget code, applicable terms as to payment, discounts, date of delivery/performance, insurance and other factors or conditions relating to the transaction.

Request for Proposals (RFP) means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed proposals. The RFP is used when it is not practical for the City to specifically define the scope of work for the contract requirements or when requesting that a responsible vendor propose the services to meet the specifications of the solicitation.

Request for Qualifications (RFQ) means all documents, whether attached or incorporated by reference, utilized for obtaining qualification and performance data, including but not limited to financial capability, reputation, experience, and competency.

Request for Quotations (RFQ) means the document used for seeking competition on small purchases (informal bids); may also be used for obtaining price and delivery information for sole source and emergencies.

Requisition means an internal document by which the using department requests the Procurement Division to initiate a procurement.

Responsible Bidder or Offeror means a person who has the capability, as determined by the City, in all respects to perform fully the contract requirements, and the experience, capacity, facilities, equipment, credit, integrity and reliability which will assure good faith performance.

Responsive Bidder means a person who has submitted a bid or that conforms in all material respects to the requirements set forth in the Invitation for Bids.

Reverse Auction means a procurement method wherein bidders, anonymous to each other, electronically submit real-time bids on designated goods or services.

Services means the furnishing of labor, time, or effort by a contractor.

Shall denotes the imperative.

Should denotes the permissive.

Signature means a manual or electronic identifier or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same full force and effect as manual signature [Florida State Statutes Chapter 668, Part I Electronic Signatures, as amended].

Small Purchase means any purchase below the mandatory formal bid threshold amount.

Sole Source means the award for a commodity or service to the only known capable supplier, occasioned by the unique nature of the requirement, the supplier or market conditions.

Solicitation means an Invitation for Bids, Request for Proposals, Request for Quotations or any document used to obtain bids or proposals for the purpose of entering into a contract.

Specification means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item; the requirements to be satisfied by a product, material, or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied.

Standardization means the process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for that purpose.

Statement of Work means the detailed description of the work that the City wants the Contractor to perform.

Supplies means all personal property, including but not limited to equipment, materials, and printing and insurance; excludes services and real property.

Surety means a surety company ~~insurer~~ authorized to do business in this state legally liable for the debt, default, or failure of a bidder, offeror or contractor to satisfy the obligations of a bid or contract.

Surplus Property means any tangible personal property no longer having any use to the City. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

Term Contract means a contract in which a source or sources of supply are established for a specified period of time for specified services or supplies at agreed upon unit price(s).

Termination for Convenience means an action by which the City, in accordance with contract provisions, unilaterally cancels all or part of the contract work in the best interest of the City, and with no reflection on the contractor's performance.

Termination for Default means an action by which the City, in accordance with contract provisions, unilaterally cancels all or part of the contract work due to the contractor's failure to perform in accordance with the terms and conditions of the contract.

Terms and Conditions (T's and C's) means all language in a contract, including applicable standard clauses and special provisions, the rules under which all bids must be submitted, and the stipulations, applicable to most contracts, issued by the City.

Vendor means one who sells goods or services; a supplier.

Sec. 2-579 Interpretation

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

Sec. 2-580 Purposes and Policies

The underlying purposes and policies of this Code are:

- (1) to provide the City of Coral Gables (hereinafter "City") a unified system of procurement to obtain the highest quality supplies, services and construction contracts as the best possible prices as determined by the City to be in the best interest of the City and its residents.
- (2) to provide the City of Coral Gables (hereinafter "City") a unified purchasing procurement system with centralized responsibility that allows for the delegation of purchasing authority;
- (3) to provide increased economy in City procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the City;
- (4) to obtain in a cost-effective and responsive manner the supplies, services and construction required by City departments in order for those departments to better serve this City's businesses and residents;
- (5) to provide safeguards for the maintenance of a procurement system of quality and integrity;
- (6) to provide for increased public confidence in the procedures followed in public procurement;
- (7) to ensure the fair and equitable treatment of all persons who deal with the procurement system of this City;
- (8) to simplify, clarify, and modernize the law governing procurement by this City;
- (9) to foster effective broad-based competition within the free enterprise system; and
- (10) to permit the continued development of procurement policies and practices.

Sec. 2-581 Supplementary General Principles of Law Applicable

Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of this State, the law merchant, law relative to ethics, contracts, agency business entities, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Code. All contracts awarded by virtue of this Code, and all procurement by the City pursuant to this Code, shall be governed by and construed under the laws of the State of Florida and the local laws of the City.

Sec. 2-582 Requirement of Good Faith

This Code requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

Sec. 2-583 Application of this Code

(a) *General Application:* The provisions of this Code apply only to contracts solicited or entered into after the effective date of this Code unless the parties agree to its application to a Contract solicited or entered prior to the effective date.

(b) *Application to Procurement:* This Code shall apply to every purchase/procurement of supplies, services and construction ~~public works~~ by the City Commissioners, the City Manager, the City Clerk, the City Attorney and all City departments/divisions, regardless of the source of funds, including state, federal, county assistance monies, except as otherwise specified by law. It shall also apply to the disposal of ~~City supplies~~ surplus. Nothing in this Code or in the Administrative Regulations promulgated hereunder shall prevent the City from complying with terms and conditions of any grant, gift, bequest, or cooperative agreement.

(c) *Federal Assistance or Contract Funds.* When the procurement involves the expenditure of federal assistance or contract funds, the procurement, management, and interpretation shall be conducted in accordance with any mandatory applicable federal law and regulations.

(d) *Authority of City Commission.* If a bid or proposal other than the lowest and most responsive bid or proposal is considered the most advantageous it shall be presented to the Commission for consideration of award. The Commission shall award contracts as it deems necessary in the best interests of the City, and may waive any conditions imposed by the provisions of this Article

upon a four-fifths (4/5ths) [vote] where it finds such waiver to be necessary in order to proceed with the issuance of a contract, proposal or bid which is in the best interests of the City.

Sec. 2-584 Duties of the City Attorney

(a) *Legal Counsel.* The City Attorney or authorized designee in that office shall serve as legal counsel and shall review and render rulings on legal issues. ~~provide legal services to the Chief Procurement Officer.~~

(b) *Legal Review.* The City Attorney shall prepare or review for form and legal sufficiency, all contracts, bonds and other written instruments that require municipal approval or signature.

(c) *Legal Rulings.* Rulings by the City Attorney shall be by independent civil action in accordance with the appropriate Rules of Civil Procedure.

Sec. 2-585. Modifying or altering contract.

When it becomes necessary in the opinion of the City Manager to make alterations or modifications in a contract or agreement for any supplies, services, construction ~~public work~~ or improvement, such alterations or specifications 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

Subdivision II. Procurement Division

Sec. 2- Creation of the Procurement Division

There is hereby created in the City of Coral Gables the Procurement Division, under the Finance Department. The former Purchasing Department shall be hereafter known as the Procurement Division.

Sec. 2-630 Centralization of Procurement Authority

(a) *Finance Department.* Except as otherwise provided in this Code, all rights, powers, duties, and authority relating to the procurement of supplies and services, and the management, control, sale and disposal of supplies, the purchase, lease or sale of real property, and the procurement of construction, now vested in or exercised by any department are hereby transferred to the Finance Department.

(b) *Public Works Department.* Except as otherwise provided in this Code, all rights, powers, duties and authority relating to the procurement of public works are vested in the Public Works Department, including the purchase, lease or sale of real property, procurement of construction, and those services defined in Florida Statutes Section 287.055, Consultant's Competitive Negotiations Act. All other supplies and services required by the Public Works Department shall be procured pursuant to Paragraph (a) of the Section. The Public Works Director shall be the Chief Procurement Officer for the procurement of public works as defined herein.

Subdivision III. City Manager and Chief Procurement Officer

Sec. 2-650. Authority

(a) *City Manager.* As the Chief Administrative Officer of the City the City Manager shall have the authority to:

- (1) promulgate Administrative Regulations necessary to implement this Code;
- (2) perform all duties of the Chief Procurement Officer;
- (3) appoint Chief Procurement Officers;
- (4) delegate authority to other City departments, as provided in this Code;
- (5) recommend to the City Commission all contract awards in excess of One Hundred Thousand Dollars and 00/100 (\$100,000.00) for supplies and services and in excess of Twenty Five Thousand Dollars and 00/100 (\$25,000.00) for construction;
- (6) recommend to the City Commission all change orders and contract modifications that exceed fifteen (15%) percent of the original contract amount for supplies and services and all change orders and contract modifications for construction;
- (7) execute on behalf of the City contracts, agreements, change orders and contract modifications approved by the City Commission;
- (8) approve purchases and awards up to One Hundred Thousand Dollars and 00/100 (\$100,000.00) for supplies and services and up to Twenty Five Thousand Dollars and 00/100 (\$25,000.00) in construction except as otherwise provided in this Code;
- (9) approve change orders and contract modifications for supplies, and services which do not exceed Fifteen (15%) percent of the original contract amount; and
- (10) Approve and sign off on all purchase orders under One Hundred Thousand Dollars and 00/100 (\$100,000.00).

(b) *Chief Procurement Officer.* Consistent with the provisions of this Code and the implementing of Administrative Regulations, the Chief Procurement Officer, under the supervision of the City Manager, shall have the following all rights, powers, duties, and authority relating to the procurement of supplies, services and construction for the City, except that under construction contracts, the Chief Procurement Officer shall consult with the Public Works Director including te:

- (1) procure or supervise the procurement of all supplies, services and construction needed by the City;
- (2) establish and maintain programs for specification development, contract administration, and inspection, testing and acceptance in cooperation with the departments using the supplies, services and construction;
- (3) determine the lowest or highest responsive and responsible bidder or offeror, as the case may be;
- (4) recommend to the City Manager all contract awards in excess of \$100,000.00 Twenty Five Thousand Dollars and 00/100 (\$25,000.00) for supplies, services and \$25,000 for and/or construction;
- (5) approve all purchases and awards up to Twenty Five Thousand Dollars and 00/100 (\$25,000.00) for supplies and services;
- (6) issue those purchase orders, change orders, contract modifications and other documents for the purchase of supplies, services and construction awarded in accordance with the provisions of this Code and implementing Administrative Regulations;
- (7) determine the appropriate method of source selection;
- (8) standardize, to the extent possible, contract clauses, term and conditions, and documents;
- (9) subject to the provisions of this Code and implementing Administrative Regulations, and with the approval of the City Manager, adopt operational procedures, which may be amended from time to time; and publish the Administrative Regulations and operational procedures as a Procurement Manual;

(10) perform all duties of Chief Procurement Officer, maintain complete and accurate records of all requisitions, solicitations, purchase orders, contracts, change orders, leases, disposition of supplies, determinations and other actions, including any transactions by designees or other departments ~~made pursuant to Sec. 2-2-651;~~

(11) submit an annual report on the operation of the City's procurement system to the City Manager, together with recommendations for its improvement;

(12) submit quarterly reports to the City Commission on procurement activities in accordance with Administrative Regulations;

(13) perform such other duties as may be provided for in other sections of this Code, or as directed by the City Manager;

~~(14) (c) Finance Director. In addition to the rights, powers, duties, and authority listed in Paragraph (b) of this Section, the Finance Director shall:~~

(14)(1) approve purchases from current contracts of other governmental units not to exceed Six Hundred Thousand Dollars and 00/100 (\$600,000.00), with the exception of motor vehicles, which may be approved without limitation, subject to availability of appropriated funds;

(15)(2) exercise general supervision and control over all inventories of supplies belonging to the City;

(16)(3) transfer, sell, trade or otherwise dispose of surplus supplies belonging to the City;

(17)(4) ensure compliance with this Code and the implementation of Administrative Regulations by reviewing and monitoring procurements conducted by any designee or department delegated authority ~~under section 2-651;~~

(18)(5) maintain a list of possible sources of supplies, services and construction required by the City;

(19)(6) train and supervise City staff on the procurement of supplies, services and construction in accordance with this Code and implementing Administrative Regulations;

(20)(7) cooperate with the Internal Auditor and External Auditor in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies, services and construction;

(21)(8) require using departments to furnish reports concerning usage, needs, and stocks on hand;

(22)(9) prescribe forms to be used by City departments in requisitioning, ordering, and reporting of supplies, services and construction; and

(23)(10) shall approve and signoff on all purchase orders.

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

Subject to the Administrative Regulations, the City Manager may delegate authority to designees or to any department. Said delegated procurements shall be made by the appropriate designee subject to the requirements of this Code and the Administrative Regulations promulgated hereunder thereunder.

Subdivision IV. Organization of Public Procurement

Sec. 2-677. Authority to Contract for Legal Services

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. Legal services having a unique, specialized skill or knowledge of an area of legal practice as

defined by state law shall be exempt from the Competitive Sealed Proposal provisions of this Code. All attorneys retained or employed by the City, regardless of the nature or kind of service performed or the title or designation under which they render legal service for the City, are hereby placed under the direct supervision and control of the City Attorney.

Sec. 2-678. Exemptions

~~Unless otherwise ordered by Administrative Regulation, The following supplies and services are exempted from this Code and may, or may not be procured through the Procurement Division but shall nevertheless be procured, whenever possible, in accordance with the requirements of this code:~~

- (1) dues and memberships in trade or professional organizations;
- (2) registration fees for trade and career fairs;
- (3) subscriptions for periodicals and newspapers;
- (4) advertisements;
- (5) postage;
- (6) expert witnesses, legal services, mediator services, paralegal services;
- (7) real property, real estate brokerage and appraising, options of title or abstracts of titles for real property;
- (8) title insurance for real property, and other related costs of acquisition or sale of real property;
- (9) public utility services from natural or regulated monopolies, including but not limited to telephone, electric, water and sewer;
- (10) copyrighted materials or patented materials including but not limited to technical pamphlets, published books, maps, testing or instructional materials;
- (11) fees and costs of job-related seminars and training;
- (12) lectures or seminars by individuals;
- (13) meeting rooms;
- (14) works of art for public places, and art design and conservation services;
- (15) graphic design, web design;
- (16) hotel accommodations and travel services on City business as provided in Administrative Regulations 3.05;
- (17) purchase of public transportation services;
- (18) purchase of tickets for special events, tourist attractions and amusement parks;
- (19) City sponsored events as authorized in the yearly City budget;
- (20) entertainment services (including banquets and similar food services) and, artistic services for City sponsored events;
- (21) purchases of motor vehicle license plates from a governmentally regulated monopoly or a government agency;
- (22) procurements made through the Steering Committee process of the South Florida Money Laundering Strike Force.

Subdivision V. Regulations

Sec. 2-700. Promulgation of Administrative Regulations

(a) *Administrative Regulations.* Consistent with this Code, the City Manager shall adopt Administrative Regulations governing the procurement, management, control and disposal of any and all supplies, services and construction procured by the City.

(b) *Procurement Manual.* The Chief Procurement Officer shall develop and promulgate a Procurement Manual in accordance with the applicable provisions of the City Procurement Code and Administrative Regulations.

DIVISION 3. SOURCE SELECTION AND CONTRACT FORMATION

Subdivision I. In General

Sec. 2-733. Cancellations of competitive sealed bids or proposal

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the city in accordance with Administrative Regulations. The reasons therefore shall be made part of the contract file.

Subdivision II. Methods of Source Selection

Sec. 2-765. Method of Source Selection

Unless otherwise authorized by law or ordinance, all City contracts shall be awarded by one of the following methods:

- (a) Section 2-766 (Competitive Sealed Bidding)-(Formal Bids);
- (b) Section 2-767 (Multi-Step Bidding);
- (c) Section 2-768 (Competitive Negotiations/Competitive Sealed Proposals);
- (d) Section 2-769 (Small Purchases)-(Informal Bids);
- (e) Section 2-770 (Sole Source Procurement);
- (f) Section 2-771 (Emergency Procurement);
- (g) Section 2-772 (Special Procurements); and
- (h) Section 2-773 (Revenue Generating and Concession Contracts).

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

(a) *Conditions for Use.* Competitive sealed bidding shall be used for the award of all contracts for supplies, ~~and~~ services over \$25,000.00 and construction over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), except as otherwise provided for in Section 2-765.

(b) *Invitation for Bids.* An Invitation for Bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement, the time and date for the receipt of bids and of the public opening, and the criteria to be used in determining acceptability of the bid.

(c) *Public Notice.* Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with the Administrative Regulations.

(d) *Pre-Bid Conferences.* Pre-bid conferences may be held to explain the requirements of the solicitation.

(e) *Bid Opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place stated in the Public Notice and Invitation for Bids. The amount of each bid and such other relevant information as may be deemed desirable, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection within the time frame specified in the appropriate Florida Statutes, including the Public Records Act, Chapter 119.

(f) *Bid acceptance and evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the

requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used, including past performance. No criteria may be used in bid evaluations that are not set forth in the Invitation for Bids.

(g) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. Except as otherwise provided by Administrative Regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Procurement Officer after consultation with the City Attorney. The bidder who withdraws their bid will forfeit their bond.

(h) *Bid Evaluation.* The Chief Procurement Officer shall recommend to the City Manager award to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the Invitation for Bids.

(i) *Award.* Consistent with the provisions of Section 2-828 (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 Chief Procurement Officer if, after review of past performance under the contract, the City Manager Chief Procurement Officer determines that exercise of the option renewal is in the best interest of the City. The proposal for renewal shall include the price for each year for which the contract may be renewed and the evaluation of the proposals shall include consideration of the total cost for each year as submitted by the vendor.

~~(1) In the event the lowest responsive and responsible bid exceeds available funds, the Chief Procurement Officer, or 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 Chief Procurement Officer 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) (2) 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) (3) *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 One Hundred Thousand Dollars and 00/100 (\$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 One Hundred Thousand Dollars and 00/100 (\$100,000.00) to the next lowest responsive and responsible bidder upon recommendation by the City Manager.

Sec. 2-767 Multi-Step Sealed Bidding

When it is considered impractical to initially prepare specifications to support an award based on price, a Request for Qualifications (RFQ) or a Request for Information (RFI) an Invitation for Bids may be issued requesting submission of unpriced offers to be followed by an Invitation for Bids or Request for Proposal (RFP) limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

Sec. 2-768 Competitive Sealed Proposals

- (a) *Conditions for Use.* A contract may be entered into by competitive sealed proposals:
 - (1) for procurement of professional services, excluding legal services and architectural, engineering landscape architectural, or surveying and mapping services;
 - (2) for procurement of construction manager-at-risk, design-bid and job order contract project delivery methods specified in Division 11 of this Article;
 - (3) for procurement of high technology, electronic, software, and system applications that are available from a limited number of sources; or
 - (4) when the Chief Procurement Officer determines that the use of competitive sealed bidding is either not practicable or not advantageous to the City.
- (b) *Request for Proposals.* Proposals shall be solicited through a Request for Proposals, which shall include a statement of work or specifications, and all contractual terms and conditions applicable to the procurement.
- (c) *Public Notice.* Adequate public notice of the Request for Proposals shall be given a reasonable time prior to the date set forth therein for the receipt of proposals, in accordance with Administrative Regulations.
- (d) *Pre-proposal Conferences.* A pre-proposal conference may be held to explain the requirements of the solicitation.
- (e) *Receipt of Proposals.* Proposals shall be publicly opened in front of one or more witnesses, with only the name of each offeror read and recorded. The record and each proposal shall be open to public inspection within the time frame specified in F. S., Public Records Act, Chapter 119.
- (f) *Evaluation.* The Chief Procurement Officer shall appoint an Evaluation Committee. The Request for Proposals shall state all of the evaluation factors, including the relative importance of price and past performance and other factors. The recommendation of the Evaluation Committee shall be submitted to the Chief Procurement Officer. In the event only one proposal is received, the Evaluation Committee may proceed with the evaluation, or request the Chief Procurement Officer to reject the proposal, whichever is in the best interest of the City.
- (g) *Discussion with Responsible Offerors and Revisions to Proposals.* As provided in the Request for Proposals, and under Administrative Regulations, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining

best and final offers. Such discussions may only occur at publicly noticed meetings in accordance with the Cone of Silence.

(g) (h) *Award.* Consistent with the provisions of Section 2-828 (Contract Award), award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the City taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(1) After reviewing the Evaluation Committee's recommendation, the City Manager may:

- a. approve the recommendation of the Evaluation Committee, written notice of which shall be provided to all offerors, ~~and forward the recommendation to the City Manager.~~ Any contract for supplies and services not exceeding One Hundred Thousand Dollars and 00/100 (\$100,000.00) ~~or a contract for construction not exceeding Twenty Five Thousand Dollars and 00/100 (\$25,000.00)~~ may be awarded by the City Manager. Otherwise, the City Manager shall submit their recommendation to the City Commission;
- b. reject the Evaluation Committee's recommendation and instruct the Evaluation Committee to re-evaluate and make further recommendations;
- c. reject all proposals; or
- d. recommend to the City Commission that all proposals be rejected.

(2) After reviewing the City Manager's recommendation, the City Commission may:

- a. approve the City Manager's recommendation and authorize contract negotiations;
- b. reject all proposals;
- c. reject all proposals and instruct the Chief Procurement Officer to reissue a solicitation; or
- d. reject all proposals and instruct the City Manager to enter into competitive negotiations with individuals or firms possessing the ability to perform such services and obtain information from said individuals or firms relating to experience, qualifications and the proposed cost or fee for said services, and make a recommendation to the City Commission.

(3) Renewals may be exercised in accordance with Section 2-766(i)(j) (Competitive Sealed Proposals; Award).

Sec. 2-769 Small Purchases (Informal Bids)

Any procurement not exceeding the thresholds for competitive bidding in Section 2-766 (Competitive Sealed Bidding), or a lower amount established by Administrative Regulations, may be made in accordance with small purchase procedures; provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section. Procurement/Purchase Cards may be used by certain authorized employees for purchases of One Thousand Dollars and 00/100 (\$1,000.00) or less in accordance with City procedures and Administrative Regulations.

Sec. 2-770 Sole Source Procurement

(a) *Conditions for Use.* A contract may be awarded without competitive bids or proposals when the Chief Procurement Officer, after conducting a good faith review of available sources, determines in writing, pursuant to a written request from a department head, that the contract by its very nature is not suitable to competitive bids or proposals, as there is only one source for the required supply, service or construction item capable of fulfilling the needs of the City.

(b) *Negotiations.* The Chief Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery and terms.

(c) *Approval and Award.* Any sole source contract in excess of the formal bid threshold established in Section 2-766(a) (Competitive Sealed Bidding; Conditions for Use) shall be

approved by the City Commission, upon recommendation of the City Manager, after a properly advertised public hearing pursuant to Administrative Regulations.

Sec. 2-771 Emergency Procurement

Notwithstanding any other provision of this Code, the City Manager the Chief Procurement Officer, or other City official as designated by Administrative Regulation may make or authorize others to make emergency procurements of supplies, services or construction when there exists an immediate threat to public health, welfare, or safety or to prevent or minimize serious disruption of government services; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. Any emergency procurement in excess of One Hundred Thousand Dollars and 00/100 (\$100,000.00) for supplies and services or Twenty Five Thousand Dollars and 00/100 (\$25,000.00) for construction shall be referred to the City Commission at their next regularly scheduled meeting for ratification, whenever possible, but must be ratified the City Commission when all the necessary information and documentation has been received by the City Manager.

Sec. 2-772 Special Procurements/Bid Waiver

Notwithstanding any other provision of this Code, the Chief Procurement Officer Finance Director may, upon review by the City Attorney and approval by the City Manager, and with prior public notice, initiate a procurement where the Chief Procurement Officer Finance Director or City Manager determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Any special procurement under this Section shall be made with such competition as is practicable under the circumstances. The Chief Procurement Officer Finance Director may also conduct negotiations, as appropriate, as to price, delivery and terms. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Chief Procurement Officer Finance Director in the contract file. Any special procurement/Bid Waiver in excess of the formal bid threshold established in Section 2-766(a) (Competitive Sealed Bidding; Conditions for Use) shall be approved by the City Commission, upon recommendation of the City Manager, after a properly advertised public hearing pursuant to the Administrative Regulations.

Sec. 2-773 Revenue Generating and Concession Contracts

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 Article 3 division, except that price shall be evaluated on the basis of the highest bid or offer.

Subdivision III. Qualifications and Duties of Contractual Parties

Sec. 2-798 Responsibility of Bidders and Offerors

(a) *Determination of Non-responsibility.* A written determination of non-responsibility of a bidder or offeror shall be made in accordance with the Administrative Regulations. The unreasonable failure of a person to promptly supply information in connection with an inquiry with respect to responsibility within a reasonable period of time as established by the Chief Procurement Officer may be grounds for a determination of non-responsibility with respect to such person.

(b) If a bidder or offeror who would otherwise have been awarded a contract is found non-responsible, a written determination setting forth the basis of the finding shall be prepared by

the Procurement Officer and sent promptly to such party. The final determination shall be made part of the procurement file.

Sec. 2-799 Pre-qualification

Prospective suppliers may be pre-qualified for particular types of supplies, services and construction. The method of submitting pre-qualification information and the information required in order to be pre-qualified shall be determined by the Chief Procurement Officer. Such pre-qualification, however, does not necessarily constitute a finding of responsibility for any particular contract award nor does it guarantee an amount to be awarded.

Sec. 2-800 Substantiation of Offered Prices

The Procurement Officer may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable. The request for information to substantiate the reasonableness of the price or cost offered is not required when the contract price is:, if the price is not:

- (a) based on adequate price competition;
- (b) based on established catalogue or market price; or
- (c) set by law or regulation.

Subdivision IV. Types of Contracts

Sec. 2-824 Types of Contracts

Subject to the limitations of this section, any type of Contract that will promote the best interests of the City may be used, provided that the use of a cost-plus-a-percentage-of-cost is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

Sec. 2-825 Multi-Year Contracts

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 ~~§40~~ of 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.

Sec. 2-826 Term Contracts

The City may award one or more term contracts for the supply of any given class or type of supplies, equipment or services. After term contracts have been awarded, the Chief Procurement Officer shall certify the sources of supply and the contract prices for the various supplies, material, equipment and services so contracted for. City departments shall purchase from term contracts, unless authorized elsewhere in this Code or the Administrative Regulations promulgated hereunder. The provisions of Section 2-830 (Purchase Requests) and 2-831 (Fiscal Responsibility) are not intended to impair or restrict the ability of the City to enter into term contracts.

Sec. 2-827 Contract Clauses and 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 ~~Finance Director~~ 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 of this Article (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.

Sec. 2-828 Contract Award

(a) *Public Works.* Any public work or improvement may be executed either by contract or direct labor, as may be determined by the Commission. Before authorizing the direct execution of any work or improvement, detailed plan and estimates thereof shall be submitted to the Commission by the City Manager, and there shall be a separate accounting as to each work or improvement so executed. All contracts for the execution of public work or improvement for more than Twenty Five Thousand Dollars and 00/100 (\$25,000.00) shall be awarded to the lowest and most responsive responsible bidder, after public advertising and competition as may be prescribed by ordinance, but the Commission shall have the power to reject all bids and advertise again. All

advertisements as to contracts shall contain a reservation of the foregoing rights. Contracts for public work shall be signed by the City Manager and City Clerk after approval of the Commission.

~~(b) Public Works Director. The Public Works Director may award construction contracts of \$25,000.00 or less.~~

~~(b)(c) Chief Procurement Officers.~~ Any procurement for supplies, and services that does not exceed Twenty Five Thousand Dollars and 00/100 (\$25,000.00) on a single purchase or per annum basis may be awarded by the Chief Procurement Officer.

~~(c) (d) City Manager.~~ Except as otherwise provided in this Code, any procurement for supplies and services that does not exceed One Hundred Thousand Dollars and 00/100 (\$100,000.00) and construction contracts that do not exceed Twenty Five Thousand Dollars and 00/100 (\$25,000.00) on a single purchase or per annum basis may be awarded by the City Manager. However, the City Manager may submit recommendation for award to the City Commission for final determination.

~~(d) (e) City Commission.~~ The City Commission, upon recommendation by the City Manager, has sole authority to award contracts in excess of One Hundred Thousand Dollars and 00/100 (\$100,000.00) of supplies and services and contracts in excess of Twenty Five Thousand Dollars (\$25,000.00) for construction.

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

(a) The City Manager may approve change orders or contract modifications for supplies and services that do not exceed Fifteen (15%) percent of the original contract amount.

(b) The City Commission, upon recommendation of the City Manager, shall approve change orders or contract modifications that exceed Fifteen (15%) percent of the original contract amount for supplies, services and all change orders and contract modifications for construction.

(c) 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.

(d) The City Manager, after consulting with the City Attorney, may rescind an award or terminate a contract that does not exceed One Hundred Thousand Dollars and 00/100 (\$100,000.00) on a single purchase or per annum basis.

(e) The City Commission, upon recommendation of the City Manager, has sole authority to rescind an award or terminate a contract in excess of One Hundred Thousand Dollars and 00/100 (\$100,000.00) on a single purchase or per annum basis.

Sec. 2-830 Purchase Requests

Except as otherwise authorized in this Code or the Administrative Regulations promulgated hereunder, all purchases, ~~except Public Works construction contracts~~, shall be made by submission of a purchase request to the Procurement Division. Prior to submission to the Procurement Division, all purchase requests shall be approved by the department head making the request or by an individual authorized by the department head.

Sec. 2-831 Fiscal Responsibility

(a) *Appropriation of Funds.* No liability shall be enforceable against the City upon any contract not supported by a previous appropriation, nor shall the City be liable for any services, materials, or supplies furnished to the City or to any department, office or division thereof, the financial requirements of which are to be met out of the proceeds of taxes or other funds

controlled by the Commission, unless the Commission shall previously have made an appropriation therefore.

(b) *Appropriation of Funds for Multi-Year Contracts.* In the event that contracts are to extend over a period longer than one year, and which are to be met from current receipts of the City, it shall be lawful for the Commission to make appropriation sufficient to answer the requirements of any such contracts for only one year and the contract shall be legal and binding, subject to the above limitations, notwithstanding no appropriation has been made for the ensuing years over which it is to be operative, and it shall be the duty of the Commission to make appropriations for year to year as required for the purpose of such contracts.

(c) *Verification of Funds.* Prior to the issuance of any purchase order, contract, change order or contract modification, the Finance Director shall verify that sufficient budgeted funds are available for the current fiscal period. The City may establish by Administrative Regulation dollar thresholds below which prior verification is not required.

Sec. 2-832 Commencement of Work

Unless otherwise authorized by the City Manager Chief Procurement Officer, no work shall be commenced, nor any supplies delivered, under any City contract until all conditions precedent as specified in the contract documents have been met, including, but not limited to:

- (a) the contract has been duly executed by the City; and
- (b) the Contractor has furnished, where required, certificates of insurance and endorsements, bid security, performance bonds and payment bonds.

2-833 Request for authority to enter into an agreement.

(a) For all contracts requiring City Commission approval, the person(s) requesting authority shall provide a copy of the draft contract and a memorandum to the City Commission identifying the term, costs, 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 as well as all pertinent information and documentation related to the proposed contract. All parties involved in the negotiation of the agreement shall be present at the City Commission meeting at which the parties are seeking approval.

(b) For all contracts that do not require City Commission approval, the person(s) requesting authority shall provide a memorandum to the City Manager and City Attorney identifying the term, costs, 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.

(c) All contracts approved by the City Commission, which have not been executed by the parties within one hundred twenty (120) days from the City Commission approval, shall be presented to the City Commission at its next available meeting for further review and reconsideration.

Sec. 2-834 Contract Administration

(a) The City Manager shall appoint a Contract Manager for each contract for supplies, services, or construction. The Chief Procurement Officer Contract Manager shall comply with the

~~establish and maintain a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract.~~

(b) The City Manager shall prepare and submit a quarterly report to the City Commission on the status of all existing contracts for supplies and services in excess of One Hundred Thousand Dollars and 00/100 (\$100,000.00), construction contracts in excess of Twenty Five Thousand Dollars and 00/100 (\$25,000.00) and all leases.

(c) All contracts for supplies and services in excess of One Hundred Thousand Dollars and 00/100 (\$100,000.00), construction contracts in excess of Twenty Five Thousand Dollars and 00/100 (\$25,000.00), and all leases which are over thirty (30) days in default and/or performance failure shall be reported by the Contract Manager to the City Manager and the Chief Procurement Officer. The City Manager shall report any default and/or performance failure to the City Commission, the Budget and Audit Advisory Board, the specific advisory board overseeing the agreement, and the City Attorney. The report shall include a summary of the default or performance failure and any efforts made by the City to bring the agreement into compliance.

(d) Any renewal or extension of a contract shall require a report by the City Manager to the City Commission exercising the option to renew or extend the agreement one hundred twenty (120) days before the renewal or extension date. The report shall advise the City Commission that the City is exercising its option for renewal, the basis for extending the contract, a history of past performance with the contract, and the fiscal impact of the renewal or extension.

Subdivision V. Inspection of Facility and Audit of Records

Sec. 2-844 Approval of Accounting System

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 generally accepted accounting principles.

Sec. 2-845 Right to Conduct Inspections and Audits

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

(b) *Audit of Cost or Pricing Data.* The City may, at reasonable times and places, audit the books and records of any person who has submitted data in substantiation of offered prices pursuant to Section 2-800 (Substantiation of Offered Prices) to the extent that such books and records relate to that data. Any person who receives a contract, change order, or contract modification for which such data is required, shall maintain such books and records that relate to such cost or pricing data for a period of three years from the date of final payment under the contract.

(c) *Contract Audit.* The City shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor or subcontractor for a period of three (3) years from the date of final payment.

(d) Audit Review Cycle for Contracts for Supplies and Services in excess of One Hundred Thousand Dollars and 00/100 (\$100,000.00), Construction Contracts in excess of Twenty Five

Thousand Dollars and 00/100 (\$25,000.00), and Leases. Long-term contracts (over 3 years) may be audited every three (3) years. All existing contracts which are to be renewed or extended may be audited at a minimum of ninety (90) days prior to the renewal period.

Subdivision VI. Determinations and Reports.

Sec. 2-869 Determinations

(a) *Finality.* The determinations required by Section 2-766(g) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards); Section 2-770 (Sole Source Procurement); Section 2-771 (Emergency Procurement); Section 2-798(a) (Responsibility of Bidders and Offerors; Determination of Non-responsibility); Section 2-824 (Cost-reimbursement contracts); (Section 2-844 (Approval of Accounting System); and Section 2-1089(b) (Construction Manager-at-Risk) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

(b) *Retention.* Written determinations required by this Code shall be retained in the appropriate official contract file of the purchasing Contract Manager and may be inspected there by the public as permitted by law.

Sec. 2-870 Reporting of Anti-competitive Practices

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

Division 4. SPECIFICATIONS

Sec. 2-889 Duties of Chief Procurement Officer

The Chief Procurement Officer shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services and construction required by the City and shall perform all duties required of them by this Code or the City Manager.

Sec. 2-890 Standardization

The Chief Procurement Officer may establish standard specifications for supply, service 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 procurements is significant.

Sec. 2-891 Relationship with User Department

The City Manager shall appoint a Contract Manager 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 expert advice and assistance from the Contract Manager personnel 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.

Sec. 2-892 Maximum Practicable Competition

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. The Chief Procurement Officer shall review specifications written by the Contract Manager of the user departments to assure that the specifications allow for open and free competition, and that

those specifications that eliminate some brands or vendors do so to reasonably meet the needs of the City. The requirements of this Section shall apply to all specifications prepared other than by City personnel, including, but not limited to, those prepared by architects, engineers, and designers.

Division 5. - SUPPLY MANAGEMENT

Sec. 2-918 Inventory

The Chief Procurement Officer ~~Finance Director~~ shall exercise general supervision and control over all inventories of property supplies and equipment, including requiring inventory control procedures to be used by user departments and specifying information on reports to be filed by user departments.

Sec. 2-919 Excess Supplies

The Chief Procurement Officer, ~~Finance Director~~ with the permission of the Department Director, shall have the authority to transfer excess supplies from one department to another.

Sec. 2-920 Disposal of Surplus

The Chief Procurement Officer ~~Finance Director~~ shall be responsible for the sale or disposition of surplus supplies by a method or methods deemed by the Chief Procurement Officer ~~Finance Director~~ to be most advantageous and in the best interest of the City. The Chief Procurement Officer shall have the authority to sell or dispose of surplus items in any manner authorized by the appropriate Florida Statutes, including Chapter 274, entitled "Tangible Personal Property Owned by Local Governments." All surplus items with an estimated fair market value of Twenty Five Thousand Dollars and 00/100 (\$25,000.00) or more must be declared surplus by a resolution of the City Commission before the Chief Procurement Officer ~~Finance Director~~ may dispose of said surplus supplies.

Sec. 2-921 Credit or Debit of Accounts

The Finance Department 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. – DISPUTES, LEGAL AND CONTRACTUAL REMEDIES

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

(a) *Remedies Prior to an Award.* If prior to contract award, it is the City Manager determineds, after consultation with the City Attorney, that a solicitation or proposed award is in violation of law, then the solicitation or proposed award shall be cancelled or revised to comply with applicable law.

(b) *Remedies After an Award.* If after an award it is the City Manager or City Commission determineds that a solicitation or award of a contract is in violation of law, then:

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

a. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the City; or

b. the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, excluding attorney's fees, prior to the termination.

(2) if the person awarded the contract has acted illegally, fraudulently or in bad faith:

a. the contract may be declared null and void; or

b. the contract may be ratified and affirmed if such action is in the best interests of the City, without prejudice to the City's rights to such damages as may be appropriate.

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

(a) *Right to Protest on Formal Solicitations.* The following procedures shall be used for resolution of protested formal solicitations and awards.

(b) Protest of solicitation. Any actual or prospective bidder or offeror who perceives itself aggrieved in connection with the formal solicitation of a contract or who intends to contest bid specifications or a bid solicitation may file a written notice of intent to file a protest with the City Clerk's office within five three (3) calendar business days prior to the date set for opening of bids or receipt of proposals. A notice of intent to file a protest is considered filed when received by the City Clerk's Office.

(c) Protest of award. Any actual responsive and responsible bidder whose bid is lower than that of the recommended bidder or an offeror who perceives itself aggrieved in connection with the recommended award of contract may file a written notice of intent to file a protest with the City Clerk's Office within three (3) calendar business days after notice of the City Manager's written recommendation to the City Commission for award of contract. A notice of intent to file a protest is considered filed when received by the City Clerk's office. such aggrieved person knows or should have known of the facts giving rise thereto.

(d) *Contents of Protest.* A written protest based on any of the foregoing must be submitted to the City Clerk's office within five (5) calendar days after the date the notice of protest was filed. A written protest is considered filed when received by the City Clerk's office. The written protest shall state with particularity the specific facts and law upon which the protest of the solicitation or the award is based, and shall include all pertinent documents and evidence and shall be accompanied by the required filing fee as provided in subsection (h) below. This shall form the basis for review of the written protest and no facts, grounds, documentation or evidence not contained in the protester's submission at the time of filing the protest shall be permitted in the consideration of the written protest.

(e) *Computation of Time.* No time will be added to the above time limits for service by mail. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the next day which is not a Saturday, Sunday or legal holiday.

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

(g) *Authority to Resolve Protests.* The Chief Procurement Officer, after consultation with the City Attorney, shall issue a written recommendation decision within ten (10) calendar days after receipt of the written protest. Said recommendation decision shall be sent to the City Manager with a copy to the protesting party. The City Manager may then either resolve the protest or reject all proposals. The City Manager's decision shall be sent to the City Commission for approval or disapproval thereof. A protest of an award of a contract by the City Commission may be filed with the Circuit Court pursuant to the Florida Rules of Appellate Procedure. Any aggrieved person may appeal the decision of the city manager to award a solicitation or bid within five days of issuance of a written decision. Upon appeal of the decision of the city manager, the decision shall be submitted to the city commission

(h) Stay of Procurement during Protests. Upon receipt of a written protest filed pursuant to the requirements of this section, the City shall not proceed further with the solicitation or with the award of the contract until the protest is resolved by ~~the City~~ the City Manager or the City Commission as provided in subsection (d)-(f) above, unless the City Manager, after consultation with the head of the ~~user~~ing department, the Chief Procurement Officer, and the City Attorney, makes a written determination that the solicitation process or the contract award must be continued without delay in order to avoid an immediate and serious danger to the public health, safety or welfare and protect substantial interests of the City.

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

(j) Filing Fee Within three business days after filing the written protest, the protestor must submit to ~~the city clerk~~ The written protest must be accompanied by a filing fee in the form of a money order or cashier's check payable to the City in an amount equal to one percent of the amount of the bid or proposed contract, or ~~\$1,000.00~~ Two Thousand Five Hundred Dollars and 00/100 (\$2,500.00), whichever is less. The filing fee shall guarantee the payment of all costs which may be adjudged against the protestor in any administrative or court proceeding. If the protest is denied, the filing fee shall be forfeited to the City in lieu of payment of costs for the administrative proceedings. If the protest is upheld by the City, the filing fee shall be refunded to the protestor less any costs assessed under subsection (i) above.

~~(j) Entitlement to Costs.~~ In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

(k) Compliance with filing requirements. Failure of a party to timely file either the notice of intent to file a protest or the written protest, or submit the filing fee on a timely basis, with the City Clerk's Office within the time provided in subsections (a), (b) and/or (c), above, shall constitute a forfeiture of such party's right to file a protest pursuant to this section. The protesting party shall not be entitled to seek redress before the City Commission or seek judicial relief without first having followed the procedure set forth in this section.

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

Protests of Informal Solicitations. Protests regarding the purchase of supplies, ~~and services, the estimated cost of which does not exceed \$25,000,~~ and construction, the estimated cost of which does not exceed Twenty Five Thousand Dollars and 00/100 (\$25,000.00), shall be governed by Administrative Regulations.

Sec. 2-952 Authority to Debar or Suspend

(a) Authority to Debar or Suspend. After reasonable notice to an actual or prospective contractor, and after reasonable opportunity for said person to be heard, the ~~City Manager~~ Chief Procurement Officer, after consultation with the Chief Procurement Officer and the City Attorney, shall have authority to debar or suspend an actual or prospective contractor for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. The ~~City Manager~~ Chief Procurement Officer, after consultation with the City Attorney, shall also have the authority to suspend an actual or prospective contractor from consideration for award of City contracts if there is probable cause for debarment, pending the debarment determination. The suspension shall be for a period not to exceed three months. The authority to debar or suspend contractors shall be exercised in accordance with Administrative Regulations promulgated hereunder.

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

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or incident to the performance of such contract or subcontract.
- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty 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 City Manager 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; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- (5) Repudiation of an offer by failure to provide bid security (if required), 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 City Manager 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.

(c) *Decision to Debar or Suspend.* Subject to the provisions of paragraph (a), the City Manager Chief Procurement Officer shall render a written decision stating the reasons for the debarment or suspension. A copy of the decision shall be provided promptly to the debarred or suspended person, along with a notice of said party's right to seek judicial relief. A decision to debar and suspend shall be final and conclusive, unless the debarred or suspended person files an appeal with the City Commission. A decision by the City Commission is final and conclusive.

Sec. 2-953 Resolution of Contract Disputes

(a) *Authority to Resolve Contract Disputes.* All claims by a contractor against the City relating to a contract, except protests of a solicitation in accordance with Section 2-951, shall be submitted in writing to the City Manager. The contractor may request a conference with the City Manager on the claim. Claims include, without limitation, disputes arising under a contract and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The City Manager, after consultation with the City Attorney, shall have the authority to resolve controversies between the contractor and the City in cases involving an amount less than One Hundred Thousand Dollars and 00/100 (\$100,000.00). When

the amount equals or exceeds One Hundred Thousand Dollars and 00/100 (\$100,000.00), the dispute resolution must be approved by the City Commission upon recommendation by the City Manager.

(b) *Contract Dispute Decisions.* If a dispute in excess of the amounts provided in subsection (a) is not resolved by mutual consent, the City Manager shall promptly render a written report stating the reasons for the action taken by the City Commission or the City Manager, whichever is appropriate, which shall be final and conclusive. A copy of the decision shall be immediately provided to the claimant, along with a notice of such party's right to seek judicial relief, pursuant to the Florida Rules of Appellate Procedure, provided that the claimant shall not be entitled to such judicial relief without first having followed the procedure set forth in this section.

Division 7 – COOPERATIVE PURCHASING

Sec. 2-978 Use of Other Governmental Unit Contracts (“Piggyback”)

The Finance Director Chief Procurement Officer may approve any purchases for supplies or services from current contracts of other governmental units, which contracts have resulted from a formal competitive bid process, awarded to the lowest, responsive and responsible bidder meeting specifications, or from current Governmental Services Administration (GSA) contracts or State of Florida SNAPS Agreements. Said purchases not to exceed Six Hundred Thousand Dollars and 00/100 (\$600,000.00), and any purchase of motor vehicles, do not require the approval of the City Manager or the City Commission. Any such purchases which exceed Six Hundred Thousand Dollars and 00/100 (\$600,000.00) shall be presented to the City Commission for approval and award.

Sec. 2-979 Contracts with Other Governmental Units

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

Sec. 2-980 Cooperative Purchasing

The City may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods or services with one or more governmental units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between governmental units and open-ended federal, state, local or cooperative organization contracts that are made available to other governmental units.

Division 8 - RISK MANAGEMENT IN PROCUREMENT

Sec. 2-1004 Bid Security

(a) *Requirement for Bid Security on Construction Contracts.* Bid security shall be required for all construction contracts awarded by competitive sealed bidding when the price is estimated to exceed an amount established by Administrative Regulation. Bid security may be required for construction contracts awarded by competitive sealed proposals or other methods. Bid security shall be a bond provided by a surety company authorized to do business in this State, and in compliance with the provisions of the appropriate Florida Statutes, including §287.0935, or the equivalent in cash or otherwise supplied in a form satisfactory to the City. Nothing herein

prevents the requirement of such bonds on such contracts under the amount set by Administrative Regulation when the circumstances warrant.

(b) *Bid Security on Supply or Service Contracts.* Bid security may be required for supply or service contracts, as the Chief Procurement Officer deems necessary to protect the City's interests. Any security requirements shall be set forth in the solicitation. Bid security shall be a bond provided by a surety company authorized to do business in this State and in compliance with the provisions of the appropriate Florida Statutes, including §287.0935, or the equivalent in cash or otherwise supplied in a form satisfactory to the City. Bid security shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(c) *Amount of Security.*

(1) *Construction Contracts.* Bid security shall be in an amount established by the Public Works Director, after consultation with the Chief Procurement Officer, but not less than five percent (5%) of the amount of the bid. Only original bid bonds, Certified or Cashier's check, irrevocable letter of credit, money order or cash will be accepted to satisfy this requirement.

(2) *Supply or Service Contracts.* Bid security shall be a percentage amount determined by the Chief Procurement Officer, but not less than five percent (5%) of the amount of the bid, if required under subsection (b) above. Only original bid bonds, Certified or Cashier's check, irrevocable letter of credit, money order or cash will be accepted to satisfy this requirement.

(d) *Rejection of Solicitations for Noncompliance with Bid Security Requirements.* When the Solicitation requires security, noncompliance requires that the bid or proposal be rejected unless, pursuant to the Administrative Regulations, it is determined that the bid or proposal fails to comply in a non-substantial manner with the security requirements.

(e) *Withdrawal of Bids or Proposals.* After bids or proposals are opened, they shall be irrevocable for the period specified in the solicitation document, except as provided in Section 2-766(g). Any withdrawal of a bid or proposal, after bid opening, forfeits the return of the bid security. If a bidder or offeror is permitted to withdraw its bid or proposal before award, no action shall be taken against the bidder, offeror, or the bid security.

Sec. 2-1005 Performance and Payment Bonds

(a) Construction Contracts Bonds Required When Necessary. Performance and Payment Bonds or equivalent acceptable shall be required for the construction of a public building or public work, or for repairs upon a public building or public work, at the discretion of the Chief Procurement Officer. (b) Bond must be delivered prior to issuing contract document or purchase order. If required, The performance and payment bond in an amount equal to 100% of the price specified in the contract, executed by a surety company authorized to do business in this State as a surety, or otherwise secured in a manner satisfactory to the City shall be presented to the City prior to issuance of a Contract document or Purchase order. In lieu of a Performance and Payment Bond, the City may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit. The Performance and Payment Bond shall be recorded in the public records in Miami-Dade County. The bond must contain all language required by the appropriate Florida Statutes, including § 255.05 (1)(a).

(b) Supply or Services Contracts. Performance or Payments Bonds or equivalent acceptable may be required at the discretion of the Chief Procurement Officer as provided under the Administrative Regulations promulgated hereunder. If required, the performance and payment bond, executed by a surety company authorized to do business in this State shall be presented to the City prior to issuance of a Contract document or Purchase order. Substitutes for Bonds Acceptable. In lieu of a Performance and Payment Bond, the City may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit. Such alternate form of

security shall be for the same purpose and shall be subject to the same conditions as a Performance and Payment Bond.

(c) *Reduction of Bond Amount.* The City Manager ~~chief procurement officer~~ may reduce the amount of performance and payment bonds required on a specific supplies or services contract. Disclosure of the reduction shall be present in the solicitation or through the issuance of an addendum.

(e) ~~(d)~~ *Authority to Require Additional Bonds.* Nothing in this section shall be construed to limit the authority of the City Manager ~~Chief Procurement Officer~~ to require a Performance Bond or other security in addition to those bonds, or circumstances other than those specified in the Code.

Sec. 2-1006 Indemnification

All City solicitation and contract documents shall include indemnification provisions approved by the City Attorney.

Sec. 2-1007 Insurance Requirements

All City solicitation and contract documents shall include insurance provisions approved by the Risk Management Division.

(a) *Contractor's Insurance.* Administrative Regulations shall be promulgated requiring the contractor and all subcontractors to provide adequate insurance coverage for the duration of the contract.

(b) *Errors and Omissions Insurance and/or Professional Liability Insurance.* Administrative Regulations shall be promulgated that specify when the Chief Procurement Officer shall require professional services firms to provide appropriate errors and omissions insurance and/or professional liability insurance to cover architectural and engineering services and/or other professional services.

(c) *Compliance with Insurance Requirements.* The Risk Management Division shall be responsible for establishing and maintaining a system designed to ensure that a contractor is in full compliance with the insurance requirements section of their contract. ~~monitoring contractor requirements with insurance requirements.~~ Risk Management shall promptly notify the Chief Procurement Officer of any contractor who is not in compliance with minimum insurance requirements applicable to their specific contract. The Chief Procurement Officer shall not allow performance on any contract to proceed until the insurance deficiency has been corrected to the satisfaction of Risk Management Division.

(d) Human Resources/Risk Management or an individual specializing in risk management will review, ~~as requested~~, solicitation documents to advise the Division of Procurement on the insurance requirements needed to be contained therein.

(e) Upon award of a Solicitation, Human Resources Department/Risk Management Division or a specialist in risk management will review Certificates of Insurance and any other required documents ~~insurance certifications~~ for compliance of the insurance requirements listed in the Solicitations. Non-approved Certificates of Insurance or other required documents will be returned to the Division of Procurement with reasons for non-approval and instructions as to how the documents certification may be corrected. Human Resources Department/Risk Management Division or individual specializing in risk management will advise the Division of Procurement of cancellation or failure to maintain insurance upon receipt of notification on any current Contracts. The Division of Procurement shall not allow any Contract to continue without proper insurance in effect after notification of the lapse of the requisite insurance has been received.

(f) Minimum Insurance requirements of all successful proposers shall include, at a minimum, the following:

- (1) A limit of liability of Five Hundred Thousand Dollars and 00/100 (\$500,000.00), single limit coverage per occurrence for Bodily Injury Liability and Property Damage Liability shall apply. If higher limits or other types of insurance coverage are required as part of the solicitation, the higher limits and additional insurance contained in the solicitation shall apply;
- (2) That increased limits and/or other types of coverage may be required by the City to insure special risks;
- (3) That evidence of such insurance coverage shall be provided to the City in the form of a certificate of insurance that is acceptable to the Risk Management Division including copies of all required endorsements. The City shall be entitled to receive a complete copy of any required insurance policy for review upon request.
- (4) That the City shall be named as an additional insured on a primary and non-contributory basis, said liability insurance policy(ies) shall be endorsed to include a waiver of subrogation and under such policies and certificate of insurance shall be furnished to the City. Said policies shall contain a "severability of interest" or a "cross liability" clause without obligation of a premium payment by the City. The City shall be entitled to receive copies of required policies for review.
- (5) That evidence of statutory Worker's Compensation coverage is required, where applicable.
- (6) That evidence of automobile liability insurance with limits of liability equal to or greater than the limits of liability required for personal liability and/or commercial general liability insurance is required, where applicable.
- (7) That all insurance policies evidenced to the City or required by the City shall provide coverage for the indemnification and/or hold harmless provision of any City agreement, lease, contract requirements as required by the Code, and these instruments shall be considered, at a minimum, insured contracts by definition.
- (8) That the Human Resources Director or designee shall be responsible for reviewing and approving insurance requirements for compliance with the requirements as set forth herein or as contained within any agreement, lease, contract, and/or statute and is hereby authorized to approve requested waivers of such insurance requirements.
- (9) All insurance policies evidenced to the City shall contain provisions where the insurance companies providing coverage must give the City the same statutorily required written notice of cancellation and/or non-renewal that is provided to the first named insured of the policy.
- (10) All policies and policy renewals shall be required to comply with the requirements of the City.
- (11) This section is not intended to limit the ability of the City to require additional forms of insurance where potential loss exposure may exist or to require limits of liability greater than the minimums specified above.
- (12) This section is further not intended to limit the amount of recovery the City may seek against a vendor or contractor.

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

Administrative Regulations may be promulgated authorizing the Chief Procurement Officer to require other forms of security to assure timely, faithful, and uninterrupted performance, including, but not limited to, operations period surety bonds, letters of credit, and appropriate written guarantees from the contractor.

Division 9 – ELECTRONIC COMMERCE

Sec. 2-1028 On-Line Procurement

(a) *Authorization for the Use of Electronic Transactions.* The City may conduct procurement transactions, including competitive sealed bids, competitive sealed proposals and informal quotations, by electronic means or in electronic form. Regulations shall be adopted regarding identification, security, confidentiality and the utilization of digital signatures.

(b) *Reverse Auctions.* The City may award contracts for supplies and non-professional services by reverse auction. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation. Award shall be made to the lowest responsive, responsible bidder. Procedures regarding public notice, prequalification of suppliers and security shall be established by regulation.

(c) *Electronic Posting.* The City may electronically post solicitations, determinations and other matters related to procurement on a centralized Internet website designated by the City for this purpose.

Sec. 2-1029 Authorization for the Use of Electronic Records

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

Division 10 - ETHICS**Section 2-1054 Application.**

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 Ethics

Any attempt by City employees to realize personal gain by conduct inconsistent with proper discharge of their duties is a breach of public trust. 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.

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

No person who is a City 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.

(1) *Waiver of prohibition.* The requirements of this subsection may be waived for a particular transaction only by four affirmative votes of the City Commission after public hearing upon finding that:

(a) an open-to-all sealed competitive proposal has been submitted by the offeror; or
(b) the proposal has been submitted by a person or firm offering services within the scope of the practice of architecture, professional engineering, or registered land surveying, as defined by the laws of the State of Florida and pursuant to the provisions of the Consultants' Competitive Negotiation Act, and when the proposal has been submitted by an offeror defined above; or
(c) the property or services to be involved in the proposed transaction are unique and the City cannot avail itself of such property or services without entering a transaction which would violate this subsection but for waiver of its requirements; or
(d) that the property or services to be involved in the proposed transaction are being offered to the City at a cost of no more than Eighty (80%) percent of fair market value based on a certified appraisal paid for by the offeror; and
(e) that the proposed transaction will be in the best interest of the City. Such findings shall be spread on the minutes of the Commission. This subsection shall be applicable only to prospective transactions, and the City Commission may in no case ratify a transaction entered in violation of this subsection.

(2) *Provisions cumulative.* This subsection shall be taken to be cumulative and shall not be construed to amend or repeal any other law pertaining to the same subject matter.

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

No person who is a ~~City~~ 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.

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

Should any person who is a ~~City~~ Commissioner, appointed official, member of an advisory board or committee, member of a quasi-judicial board or committee, or employee be employed, by a corporation, firm, partnership or business entity in which that person or the immediate family does not have a controlling financial interest, and should the corporation, firm, partnership or business entity have substantial business commitments to or from the City or any City agency, or be subject to direct regulation by the City or a City agency, then the person shall file a sworn statement disclosing such employment and interest with the Clerk of the City of Coral Gables within fifteen (15) days after the person has actual or constructive notice of the relationship.

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

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

(a) *Purpose and Intent.* It is the intent of this Article to prevent City Commissioners or the City Manager and the City Manager's office, potential vendors, bidders, offerors or service providers from communicating with City department heads, their staff or Selection and Evaluation Committee members during the period of time in which the Cone of Silence is imposed on the Request for Proposals ("RFP"), Request for Qualifications ("RFQ"), or Invitations for Bids ("IFB"). It is further the intent of this Article that Commissioners communicate with only the City Manager, or City Attorney or City Clerk during the time the Cone of Silence is imposed, unless the provisions of this section are waived by the City Commission on a particular Request for Proposals ("RFP"), Request for Qualifications ("RFQ"), or Invitations for Bids ("IFB").

(b) *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 and/or the City Manager's office, with City department heads, the City Departments' staff, Selection Committee or Evaluation Committee members.

(c) *Applicability:*

(1) The Cone of Silence shall be applicable only to Contracts for the provision of supplies, services and construction for amounts greater than Twenty Five Thousand Dollars and 00/100 (\$25,000.00).

(2) The Cone of Silence shall not apply to:

(i) informal bids as defined in the Procurement Code;

(ii) emergency purchases of supplies, services or construction;

(iii) duly noticed pre-bid or pre-proposal conferences;

(iv) duly noticed site visits;

(v) sole source procurements;

(vi) bid waivers;

(vii) oral presentations during duly noticed meetings;

(viii) competitive negotiations;

(ix) public presentations made to the City Commission during any duly noticed public meeting;

(x) contract negotiations and electronic commerce;

(xi) inquiries by the City Commissioners or third parties to the City Manager or Assistant City Managers to determine responsibility or responsiveness of bidders/offerors regarding a particular solicitation, or with regard to the process;

(xii) written communications with the Chief Procurement Officer or staff responsible for administering the procurement process for a particular solicitation, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation;

(xiii) communications with the City Attorney;

(xiv)(d) communications between a City Commissioner, the City Manager, Assistant City Managers, the City Clerk and the City Attorney;

(xv)(e) communications between a City Commissioner, the City Manager, Assistant City Managers, the City Clerk, the City Attorney and potential offerors, vendors, service providers, lobbyists or consultants;

(xvi)(f) communications between the City Manager or Assistant City Managers and the Chairperson of the Selection Committee after the Selection Committee has submitted its written recommendations to the City Manager, ~~the City Manager or Assistant City Manager may communicate with the Chairperson of the committee~~ on any and all matters relating to the recommendations. Should any change occur in the committee recommendation as a result of such communication, the content of the communication and of the corresponding change shall be described in writing and filed by the City Manager with the City Clerk, and be included in any recommendation submitted by the City Manager to the City Commission.

(d) (g) 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 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. Any public solicitation for supplies, services or construction shall include a statement disclosing the requirements of this Article.

(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.

(e) (h) Penalties. Violation of the Cone of Silence by a particular bidder or offeror shall render any award to said person voidable by the City Commission. In addition to any other penalty provided by law, violation of any provision of this ordinance by a City employee shall subject said employee to disciplinary action up to and including dismissal. Any person who violates a provision of this ordinance shall be prohibited from serving on a City competitive Selection or Evaluation Committee unless such appointment is approved by a four-fifths (4/5) vote of the City Commission. A violation of this section by a particular bidder, offeror, lobbyist or consultant shall subject such person or persons to potential debarment pursuant to the provisions of this Chapter.

Sec. 2-1060 Use of Confidential Information

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

Division 11 - PROCUREMENT OF INFRASTRUCTURE FACILITIES

Sec. 2-1087 Project Delivery Methods Authorized

The Public Works Director, upon consultation with the Chief Procurement Officer, shall have the discretion to select one of the following project delivery methods for construction projects:

- (a) Design-bid-build;
- (b) Construction manager-at-risk;
- (c) Design-build; or
- (d) Job order contract.

Sec. 2-1088 Design-Bid-Build

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

- (a) The qualifications based selection process set forth in this 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; or
 - (2) Competitive sealed proposals, as set forth in Section 2-768, for contracts for the construction of buildings and other infrastructure projects, the design and construction of which are governed by accepted building codes and practices.

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

(1) Policy. It is the policy of this City to publicly announce all requirements for a Construction Manager-at-Risk as defined in the appropriate Florida Statute, including § 287.055, Consultants' Competitive Negotiation Act, and, to negotiate contracts on the basis of demonstrated competence and qualification for the type of services required at fair and reasonable prices.

(2) Selection:

(a) For each proposed project, the Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, shall recommend a Selection Committee, with the City Manager's approval, to 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, in conjunction with the Selection Committee, 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 ranking the companies based on qualifications and selection of the most highly qualified firms. The Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, in conjunction with the Selection Committee, 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. In making such determination, the Public Works Director or designee, upon consultation with the Chief Procurement Officer or designee, shall conduct a detailed analysis of the cost of the

professional services required in addition to considering their scope and complexity and shall negotiate a guaranteed maximum price including overhead and profit with approval from the City Manager. For any lump-sum or cost-plus-a-fixed-fee professional service contract over One Hundred Thousand Dollars and 00/100 (\$100,000.00), the Chief Procurement Officer 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 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. All such contract adjustments must be made within one (1) year following the end of the contract.

(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 determined 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, the Chief Procurement Officer shall select additional firms in the order of competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

(4) Award. The Public Works Director shall make a recommendation to the City Commission indicating the guaranteed maximum product. Contracts shall be awarded in accordance with Section 2-828.

(a) Architectural, Engineering, Landscape Architectural, or Surveying and Mapping Services. The qualifications-based selection process set forth in Section 2-1088 shall be used to independently procure professional design services for the project.

(b) Construction Manager-at-Risk. Contracts for construction manager-at-risk shall be procured by competitive sealed proposals, as set forth in Section 2-768. The Public Works Director shall determine, before issuing a Request for Proposals, whether to issue a Request for Qualifications to pre-qualify offerors. Factors to be considered in making the determination shall include the size, estimated price and complexity of the procurement. In using a two-step process the City:

(1) may not request fees or prices in step one; and
(2) must state whether the City intends to select a short list of offerors, selected on the basis of qualifications, for participation in step two.

(c) Construction Contracts.

(1) Submission of Bids or Proposals. The construction manager-at-risk shall publicly advertise and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work. The construction manager-at-risk may seek to perform portions of

the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors and subcontractors and if the Public Works Director determines that the construction manager-at-risk's bid or proposal provides the best value for the City.

(2) **Review of Bids or Proposals.** The construction manager-at-risk and the Public Works Director shall review all trade contractor or subcontractor bids in a manner that does not disclose the contents of the bids or proposals. All bids or proposals shall be made public in accordance with F. S. § 119.07(2)(m).

(3) **Award.** The construction manager-at-risk shall recommend award. If the City requires another bid or proposal be accepted, the City shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any addition cost or risk that the construction manager-at-risk may incur because of the City's requirement that another bid or proposal be accepted.

(4) **Default.** If a selected trade contractor or subcontractor defaults or fails to execute a subcontract, the construction manager-at-risk may, without advertising, fulfill the contract requirements itself or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

Sec. 2-1090 Design-Build

(a) **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 the appropriate Florida Statutes, including Chapter 471, 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.

The qualifications-based selection process set forth in Section 2-1088 shall be used to independently procure a design criteria professional for the project.

(b) **Selection.** Contracts for design-build projects shall be procured by competitive sealed proposals, as set forth in Section 2-768. Before issuing a Request for Proposals, the Public Works Director, after consultation with the Chief Procurement Officer, shall pre-qualify not less than three offerors in accordance with Section 2-799.

Sec. 2-1091 Job Order Contract

(a) **Selection.** Job order contracts shall be procured by competitive sealed bids, as set forth in Section 2-766, or by competitive sealed proposals, as set forth in Section 2-768, subject to the following:

(1) The City shall specify or publish one or more construction unit price books and the applicable division of line items, requiring the offeror to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal; and
(2) The City may award job order contracts to one or more contractors in connection with each solicitation of proposals.

(b) **Work Orders.** The City and the contractor must execute an order for a job or project. The order may be a fixed price, lump sum contract based substantially on contractual unit price applied to estimated quantities or may be a unit price order based on the quantities and line items delivered.

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

(a) *Policy.* It is the policy of this City to publicly announce all requirements for Architectural, Engineering, Landscape Architectural, or Surveying and Mapping Services, or any other services as defined in F. S. § 287.055, Consultants' Competitive Negotiation Act, and, to negotiate contracts on the basis of demonstrated competence and qualification for the type of services required at fair and reasonable prices.

(b) *Selection Process.* Administrative Regulations shall be promulgated regarding:

(1) submission of statements of qualifications, performance data and other information;
(2) creation of evaluation panels to evaluate statements of qualifications and other submittals, to rank providers in order of demonstrated competence and qualifications to perform the services; and

(3) a process for creating qualified consultants lists to perform continuing contracts on an as-needed basis.

(c) *Negotiation.* The Chief Procurement Officer, after consulting with the Public Works Director, shall negotiate a contract with the most highest qualified firm for Architectural, Engineering, Landscape Architectural, or Surveying and Mapping Services at compensation that the Chief Procurement Officer, after consulting with the Public Works Director, determines in writing to be fair and reasonable to the City. In making this decision, the Chief Procurement Officer, after consulting with the Public Works Director, shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Chief Procurement Officer, after consulting with the Public Works Director, be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the Chief Procurement Officer, after consulting with the Public Works Director, determines to be fair and reasonable to the City, negotiations with that firm shall be formally terminated. The Chief Procurement Officer, after consulting with the Public Works Director, shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Chief Procurement Officer, after consulting with the Public Works Director, shall formally terminate negotiations. The Chief Procurement Officer, after consulting with the Public Works Director, shall then undertake negotiations with the third most qualified firm. Should the Chief Procurement Officer, after consulting with the Public Works Director, be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Chief Procurement Officer, after consulting with the Public Works Director, shall select additional firms in order of their competence and qualifications, and the Chief Procurement Officer, after consulting with the Public Works Director, shall continue negotiations in accordance with this Section until an agreement is reached.

(d) *Award.* Contracts shall be awarded in accordance with Section 2-828 6.

(e) *Contingency Fee.* 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."

Division 12. PURCHASE, SALE or LEASE OF PUBLIC PROPERTY

Sec. 2-2011. Purchase, sale or lease of public lands.

Whenever the City proposes to purchase, sell or lease public lands or buildings, the provisions of this section shall apply, unless the City Commission upon a four-fifths (4/5ths) vote finds that the public interest would be served by waiving any or all the provisions of this article.

Sec. 2-2012. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: *City property* includes but is not limited to any land, water or air rights.

Lease of City property means any right to lease City property by way of agreement, irrespective of consideration being paid to the City, and irrespective of the City's also utilizing or being allowed to utilize the property for any purpose during the term of the lease. For purposes of this article, the term "lease" shall not include special event permits, revocable permits, concession agreements, management agreements, use agreements or leases for a term of not more than three years, including option periods.

Sale of City property means any conveyance, transfer, gift, exchange or other transaction in which legal title passes from the city to any person or entity, whether or not the City retains any partial title, interest, reservation, easement, right-of-way, restriction or license in regard to the property. This definition shall include any sale of development rights as defined in the City Code, and transfer development rights. This definition shall not include a vacation or abandonment of a City public right-of-way, including streets or alleys, or the encroachment thereupon.

Sec. 2-2013. City-owned property sale or lease--Generally; advertised public bidding process.

Notwithstanding any provision to the contrary contained in the City Code, and except as provided below, the City Commission is prohibited from favorably considering any sale or lease of City-owned property unless (a) there shall have been, prior to the date of the City Commission's consideration of such sale or lease, an advertisement soliciting proposals for said sale or lease published in a daily newspaper of general paid circulation in the City, allowing not less than 60 days for the City's receipt of proposals from prospective purchasers or lessees, said advertisement to be no less than one-fourth page and the headline in the advertisement to be in a type no smaller than 18-point and, (b) except as provided below, there shall have been at least three written proposals received from prospective purchasers or lessees; however except, if there are less than three such proposals received, and the guaranteed return under the proposal whose acceptance is being considered is at least equal to market value, and the City Commission determines that the contemplated sale or lease at that time will be in the City's best interest.

Sec. 2-2014. Appraisals required for purchases, sales and leases.

(a) Whenever the City purchases, sells or is involved in a lease of real estate, whether as lessor or lessee, and the fee simple value of the property being bought or sold, or the annual value of the property being leased is in excess of Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000.00), the City shall, prior to consummating the purchase, sale or lease, have the property appraised by two real estate appraisers holding the M.A.I. designation in order to determine the estimated market value.

- (b) Should the purchaser or lessee be willing to pay the cost of such appraisal, then any such cost may be deducted from a bid bond or similar deposit made in a bid process.
- (c) In all lease or sales of property, the conditions of this section may be waived upon a four-fifths (4/5ths) vote of the City Commission upon a finding by the City Commission that the public interest would be served by waiving such conditions of bidding and/or appraisal for the disposition of the property.
- (d) The City Commission shall be informed of each of the appraisals prior to City Commission approval or disapproval of the transaction.

Sec. 2-2015. Payment of costs.

All costs associated with the sale or lease procedures addressed in this article shall be, at the option of the City, paid by the purchaser or lessee.

Sec. 2-2016. Analysis for the purchase, sale or lease of city property.

In order for the City Commission and the public to be fully apprised of all conditions relating to the proposed purchase, sale and/or lease of city property, the City Manager through a report by the finance, economic development, parking, public works, planning and historic preservation departments, with an analysis from the Parking Advisory Board and Historic Preservation Board, when applicable, shall prepare an analysis with recommendations of the proposed purchase, sale and/or lease of City property, including answers to the appropriate questions below, as well as The Budget and Audit Advisory Board, the Property Advisory Board and the Economic Development Board, by whatever name as they the Boards shall ever be known, shall prepare an analysis using the following criteria:

(1) Budget and Audit Advisory Board:

- (a) Is the purchase, sale and/or lease consistent with the property appraisal as required under Section 2-2014?
- (b) What is the immediate impact on the current fiscal budget and the long term effect on future budgets, i.e. the long-term overall effect on the City?
- (c) Considering the City's mission statement, are there other alternatives to entering into the proposed transaction?

(2) Property Advisory Board:

- (a) Does the proposed use conform to the City's comprehensive plan and is it compatible with the surrounding neighborhood?
- (b) Analyze the positive or negative impacts on adjacent property including, but not limited to, open space, traffic, access considerations, noise level, property values, improved development patterns and provision for necessary services including municipal utilities and other infrastructure systems and the needs and costs associated with the needed improvements. To the extent needed, traffic studies and other professional studies required shall be the responsibility of the proposed purchaser, developer, or lessee.
- (c) Are the terms and conditions of the proposed purchase, sale, or lease of City property; or the proposed purchase or lease by the City of non-City property based on market terms and value?

(3) Economic Development Board:

- (a) Is the proposed use in keeping with City goals and objectives?

(b) What is the economic impact to the City including, i.e. is the proposed use in keeping with a public purpose and community needs, such as expanding the City's revenue base, reducing City costs, creating jobs, creating a significant revenue stream, and improving the community's overall quality of life?

(c) Are there alternatives available for the proposed disposition, including assembly of adjacent properties and can the project be accomplished under a private ownership assembly?

The Finance, Economic Development, Parking, Public Works, Planning and Historic Preservation Departments, with an analysis from the Parking Advisory Board and Historic Preservation Board, when applicable, along with the Budget and Audit Advisory Board, the Property Advisory Board and the Economic Development Board's analysis may address such other issues as these Boards may deem appropriate in analysis of the proposed disposition.

- (1) Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city comprehensive plan.
- (2) The impact on adjacent property, including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level or enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the city shall determine the potential impact of the project on city utilities and other infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is needed, the proponent shall be responsible for obtaining a traffic impact analysis from a reputable traffic engineer.
- (3) The economic impact to the city including a determination as to whether or not the proposed use is in keeping with a public purpose and community needs, such as expanding the city's revenue base, reducing city costs, creating jobs, creating a significant revenue stream, and improving the community's overall quality of life.
- (4) Determination as to whether or not the development is in keeping with the surrounding neighborhood, will block views or create other environmental intrusions, and evaluation of the design and aesthetic considerations of the project.
- (5) The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.
- (6) A determination as to whether or not alternatives are available for the proposed disposition, including assembly of adjacent properties, and whether the project could be accomplished under a private ownership assembly.
- (7) Within the constraints of public objectives, the administration should examine financial issues such as job generation, providing housing opportunities, and the return to the city for its disposition of property.
- (8) Such other issues as the administration may deem appropriate in analysis of the proposed disposition.

Sec. 2-2017. Purchase, sale, lease of real property.

- (a) Prior to the City's entering into any contract, agreement or lease relating to the purchase, sale or leasing of real property by, to or from the City, all individuals, corporations, partnerships, joint ventures or other legal entities having any interest of any kind in the property to be purchased, sold or leased, shall file with the City a document identifying the extent of its ownership interest in the subject real property.

(b) Failure by any party to comply with the requirements of subsection (a) hereof shall render the entire agreement to purchase, sale or lease voidable.

Sec. 2-2018. Hearing.

Prior to the purchase, sale and/or lease of City property, the City Commission shall hold ~~a two~~ public hearings, advertised not less than 15 days prior to the hearing, in order to obtain citizen input into any proposed purchase, sale and/or lease.

Sec. 2-2019. Authority of city commission to purchase, sell or lease public property.

(a) Ordinance requirement/super majority vote for property for sale above ~~\$500,000.00 One Million Dollars and 00/100 (\$1,000,000.00)~~ or lease for a term in excess of ten (10) years.

(1) Sale of property with an estimated market value ~~under One Million Dollars and 00/100 (\$1,000,000.00)~~, ~~in excess of \$500,000.00~~. Except as otherwise provided herein, ~~No~~ sale of City land or buildings with an estimated market value ~~under One Millions Dollars and 00/100 (\$1,000,000.00)~~ are exempt from this section. ~~shall be approved except by authority of an ordinance passed by a recorded affirmative vote of a majority four-fifths of all the members of the city commission.~~

(2) Leases for terms exceeding ten years. Except as otherwise provided herein, no lease of City lands or buildings exceeding ten years shall be approved except by authority of an ordinance passed by a recorded affirmative vote of four-fifths of all the members of the City Commission.

(3) Purchase of property with an estimated market value in excess of ~~One Million Dollars and 00/100 \$1,000,000.00~~ ~~\$500,000.00~~. Except as otherwise provided herein, no purchase of property shall be approved except by authority of an ordinance passed by a recorded affirmative vote of four-fifths of all the members of the City Commission.

(4) ~~Leases for terms under ten years. Except as otherwise provided herein, leases of City lands or buildings for terms under ten years are exempt from this section.~~

(b) *Resolution requirement.*

(1) *Sale of City owned lands or buildings.* Notwithstanding any provision to the contrary contained ~~herein in the Charter or the City Code~~, the City Commission is authorized to approve by resolution, the sale of any city owned land with an estimated market value below ~~\$500,000.00, One Million Dollars and 00/100 \$1,000,000.00~~ by simple majority.

(2) *Lease of City owned lands or buildings.* Notwithstanding any provisions to the contrary contained ~~herein in the Charter or the City Code~~, the City Commission is authorized to approve by resolution the lease of City owned land or buildings for a term not to exceed ten years, including all options. All other leases or use agreements must comply with the requirements of subsection (a)(2) above.

(3) *Purchase of property with an estimated market value below \$500,000.00 One Million Dollars and 00/100 (\$1,000,000.00).* Notwithstanding any provisions to the contrary contained ~~herein in the City Charter or Code~~, the City Commission is authorized to approve by resolution the purchase of any land or building.

Section 3. Severability.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 4. Repealer.

All ordinances or parts of ordinances in conflict herewith, be and the same, are hereby repealed.

Section 5. Codification.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. Effective Date.

This ordinance shall become effective immediately upon the date of its adoption by the City Commission.

PASSED AND ADOPTED this _____ day of _____ 2008.

DONALD D. SLESNICK II, MAYOR

ATTEST:

WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ELIZABETH M. HERNANDEZ
CITY ATTORNEY