

Sec. 35.00. Purpose.

The purpose of this article is to prescribe the manner in which the City shall control the purchase of materials, supplies, equipment and services of the City; to maintain a high ethical standard for all officers and employees of the City in connection therewithin; to provide for the fair and equitable treatment of all persons involved in purchasing by the City; to maximize the purchasing value of public funds in procurement; and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec. 35.01. Delegated Purchasing agents.

The City Manager or his or her designee, shall serve as the authorized purchasing agent for the City. The City Manager may designate a department head as delegated purchasing agent for his or her individual department, as provided hereinafter.

Sec. 35.02. Review of Contracts.

The City Attorney shall review and approve all contracts involving expenditures of more than twenty-five thousand dollars (\$25,000.00).

Sec. 35.03. Officers not to approve own purchases.

No member of any department within the City, including the City Treasurer, shall approve his or her own purchases of supplies, materials, and equipment. Nothing contained herein shall be construed to diminish the responsibilities of the City Treasurer under the City Charter.

Sec. 35.04. Ethics in Procurement.

- (a) *Unauthorized contracts and expenditure prohibited.* No delegated purchasing agent or any other employee of the City shall, during any fiscal year, spend or contract to spend any money, incur any liability, or enter into any contract by which its terms involves expenditures of money exceeding the purchasing authority provided to that employee pursuant to the thresholds in Sec. 35.06-35.08 of this code. Any contract, verbal or written, made in violation of this subchapter shall be null and void. Any officer or employee of the City who shall violate any provision of this subchapter shall, upon conviction, cease to hold his or her office or employment, and his or her sureties shall be liable to the City by reason of corrupt or improper approval of any claim on account against the City.
- (b) The City shall also not execute a procurement contract if there has been a violation of this section, any ethics provision of a procurement solicitation, or any local, state, or federal law, including but not limited to:
 - (1) Conflict of Interest;
 - (2) Kickbacks;
 - (3) Solicitation of procurement by payment of a gratuity or offer of employment;
 - (4) Acceptance of a gratuity or offer of employment resulting from solicitation of procurement;
 - (5) Honest services fraud;
 - (6) Prohibited lobbying;

- (7) Any other improper or unlawful attempt to influence the outcome of procurement.
- (c) Nothing in this subchapter, however, shall prevent the making of contracts or the spending of money for capital improvements to be financed in whole or in part by the issuance of bonds, nor the making of contracts of lease or for services for a period exceeding the budget in which the contract is made, when those contracts are permitted by law.

Sec. 35.05. Definitions.

[As used in this article the following terms shall mean:]

Addenda means written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding documents or the contract documents.

Advertise means placement of a notice, as defined in applicable state law, regarding a request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("LOI"), e-bids, or any other formal solicitation and public hearings. (*Cross reference with Public Notice, Sec. 35.05 of the City Code of Ordinances*).

Agreement means any legal instrument, included in the course of dealing, performing, and usage of trade. See "Contract" for additional information.

Apparent Low Bidder means a proposer that submits the lowest price bid.

Award means a proposer that submits the best value bid.

Best Interest of the City means the rationale granting a delegated purchasing agent discretion in taking action most advantageous to the City when it is impossible to interpret adequately a specific response by law or regulation.

Best Value shall have the same definition as defined in Section 35.12.

Bid means a competitive price offer made by an intended seller, normally by written notice, offered as a result of a formal invitation to prospective vendors.

Bid Bond means a form of bid security executed by the bidder as principal and by a surety to guarantee that the bidder will enter into the contract within a specified time and furnish any required performance bond or other security.

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

Budget means the annual appropriations for each using agency established by resolution by City Council, together with resolutions amending annual appropriations.

Change Order means a written document executed to direct a contractor to make changes or additions to a purchase order or contract, including monetary, time and specified changes.

Competitive Solicitation means both formal solicitation and informal bids, as referenced in this section herein.

Cone of Silence means a prohibition of any communication regarding formal solicitations such as a request for proposal, request for qualification, request for information or request for bid, between any potential or actual proposer, bidder, or any other person or entity with the potential for a financial interest in the award, or his or her respective agents or representatives (hereinafter collectively referred to as "bidder"), and any member of the City Council, City professional staff, or any member of the City's selection, evaluation or negotiation committee.

Conflict of Interest means a situation in which a city employee has a private or other interest which is such as to influence or appear to influence, the impartial and objective nature of the procurement process.

Consultant's Competitive Negotiation Act means section 287.055, Florida Statutes, as may be amended, governing the procurement of architectural, engineering, landscape architecture, and registered surveying and mapping services.

Contract means and includes any agreement, bid award, or purchase order, and all requirements of the City associated therewith, regardless of what it may be called, between the City and a person to provide or procure labor, materials, supplies, or services to, for, or on behalf of the City.

Cooperative Purchasing means the action taken when pre-approved industry partners across jurisdictions or two (2) or more public entities combine their requirements to obtain advantages of volume purchases including administrative savings and other benefits; a variety of arrangements whereby two (2) or more public entities purchase from the same supplier or multiple suppliers using a single solicitation.

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

Debarment means a disqualification of a person to receive solicitations or the award of contracts by the City for a specified period of time commensurate with the gravity of the offense or the failure or the inadequacy of performance.

Delegated Purchasing Agent means someone who authorizes, negotiates, and facilitates the buying of supplies/services/goods on behalf of the City, as designated by the City Manager, or his or her designee(s).

Designee means a person who is chosen to represent or given the authority to act on behalf of the City Manager.

Discrimination means the denial of any of the rights of any person to the equal protection of the laws occurring within the jurisdiction of the City of Port St. Lucie or otherwise in City of Port St. Lucie contracting and procurement. It is specifically the intent hereof that such discrimination when used as the basis of race and gender-based remedies must have a substantial basis in evidence and be identified with the particularity required by the Fourteenth Amendment and the United States Supreme Court cases interpreting it.

Electronic Bidding System means the handling of purchasing process tasks, such as requisitioning, sourcing, and purchasing goods and services electronically via the internet.

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

Financial Interest means (i) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the last year has received, or is presently or in the future may receive, any financial benefit; (ii) Ownership of any interest in any business except publicly held stock; (iii) Holding a position in a business, such as an officer, director, trustee, partner, employee or similar position or holding any position of management.

Formal Solicitation means the competitive purchasing via any of the following procurement solicitation documents: Invitation for Bids, Multi-step Competitive Solicitation/Request for Information, Request for Proposals, Request for Qualifications, Invitation to Negotiate, and Sealed Bids, which are used to competitively select vendors to provide the delivery of goods and services to the City.

Informal Bid means formal bid or price quotation for supplies or services that is conveyed by oral or written communication and does not require a sealed bid, public opening, or public reading of bids.

Invitation for Bid (IFB) means a solicitation for competitive sealed bids. The Invitation for Bid is typically used when the City is capable of specifically defining the scope of work for which a contractual service is required or when the City is capable of establishing precise specifications defining the actual commodity or group of commodities required. The term Invitation for Bid means all documents written or electronic, including those attached or incorporated by reference, utilized for soliciting bids.

Invitation to Negotiate means a written or electronically posted solicitation for formal sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services.

Letter of Intent means a document stating the preliminary commitment of one party to do business with another party and outlines the main terms of the prospective deal.

Local Bidder means a vendor with a physical location within the municipal boundaries of St. Lucie, Indian River, Martin, or Okeechobee County. The bidder must hold a business tax receipt required by the City of Port St. Lucie. (*Cross reference with Local preference in purchasing or contracting, Sec. 35.14*).

Notice of Intent to Award means a written notice or announcement by the City posted on the City's electronic bidding system, or as otherwise set forth in a solicitation, as notice to all respondents of the City's intent to take an action with respect to the solicitation, including but not limited to, a decision to award a contract, short list or prequalify respondents, or notify respondents of the final recommended rank order of respondents with respect to the solicitation.

Piggyback means a form of intergovernmental purchasing in which the City will be extended the pricing, terms, or conditions of a competitively solicited contract entered into by another public entity; also referred to as accessing another public entity's contract.

Procurement means the buying, purchasing, renting, leasing or otherwise obtaining any supplies, services, professional services, construction, or any other item(s). It also includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contracts and various phases of contract administration.

Procurement Director means the person holding the position of director and leading the procurement functions for the City.

Procurement Manual means the administrative regulations which implement this article and the internal procedures of procurement services and describes rules, regulations, policies, and procedures to be followed by the Procurement Management Division and the departments it serves.

Proposal means the response to a formal solicitation that addresses a proposer's experiences, qualifications, approaches, and other factors that may be required by the City in the solicitation documents.

Protest means a challenge to the terms of a formal solicitation or the resulting award of a contract by the City. Protest serves as an official request for the City Manager to facilitate a review of the award and provide ruling on the award.

Public notice means, unless otherwise specified herein, or as otherwise required by Florida Statutes, as amended, mandating a specific form of notice for a specified procurement, means publication on the City's website and/or via the on-line procurement/bidding platform and/or other publication within a reasonable time.

Request for Information (RFI) means a non-binding method whereby the City publishes its need for input from interested parties for an upcoming solicitation and a type of procurement practice used to obtain comments, feedback, or reactions from potential suppliers (contractors) prior to the issuing of a solicitation. Feedback may include best practices, industry standards, technology options, preferred timeframes, innovative approaches, or other related criteria.

Request for Proposal (RFP) means the document used to solicit proposals from potential providers (proposers) for goods and services. Price is usually not a primary evaluation factor. An RFP provides for the negotiation of all terms, including price, prior to contract award. An RFP may include a provision for the negotiation of best and final offers and may be a single-step or multistep process.

Request for Qualification (RFQu) means a document that is issued by a procurement entity to obtain statements of the qualifications of potential responders (development teams or consultants) to gauge potential competition in the marketplace, prior to issuing the solicitation.

Responsible bidder or offeror means a supplier with the financial and technical capacity to perform the requirements of the solicitation and subsequent contract which will assure good faith performance of the contract.

Responsive bid or proposal means a person or firm who has submitted a bid which conforms in all material respects to the requirements set forth in the solicitation.

Services means the furnishing of labor, time, or effort by a contractor. This term includes services from licensed professionals except professional architectural, engineering, landscape architectural and surveying and mapping services, but does not include employment agreements or collective bargaining agreements.

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

Sole Source means a non-competitive method of procurement used when only one supplier possesses the unique ability or capability to meet the particular requirements of the entity or when only one supplier is practicably available.

Specification means a precise description of the physical or functional characteristics of a good, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery. It may also include a reference to a specific brand name, model, or equal.

Surety means an organization which, for consideration, promises in writing to make good the debt or default of another. The surety must hold a certificate of authority as an acceptable surety on federal bonds as published in the current Circular 570, U.S. Department of the Treasury, and the Federal Register effective July 1 annually, as may be amended.

Surplus means any real or personal property no longer having any useful function to the City.

Using Agency means any department, agency, commission, bureau, office, or other entity in the City government that is procuring goods, supplies, materials, equipment or services as provided in this subchapter.

Vendor or supplier means one who sells supplies, services, or professional services, or construction; may be used interchangeably with a supplier or contractor.

Sec. 35.06 Procedure for Purchasing.

The following procedures shall be used for the ordering, contracting, or furnishing of any goods or services for any City department, office, or agency:

- (a) *Non-construction related purchases under \$100,000.00 and construction related purchases under \$200,000.00.* Any purchase of non-construction goods or services in an amount less than \$100,000.00, or any construction related purchase in an amount less than \$200,000.00 must comply with the policy and procedures for making those purchases provided by the Procurement Director. The policy and procedures shall be approved by the City Manager. Construction related purchases include purchases for labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property which have been previously approved by the City Council in the currently adopted annual budget and/or five-year capital program.
- (b) *Formal bidding for non-construction related purchases \$100,000.00 or more and construction related purchases \$200,000.00 or more.* Orders or contracts to furnish any non-construction related goods or services amounting to \$100,000.00 or more, or

construction related purchases amounting to \$200,000.00 or more, shall not be permitted unless the formal bidding procedures are followed as set out in sections 35.07 and 35.08.

Sec. 35.07. Formal bidding procedure.

- (a) Prior to making any non-construction related purchase amounting to \$100,000.00 or more, or construction related purchase amounting to \$200,000.00 or more, the purchasing agent or delegated purchasing agent shall invite competitive bidding under the rules and regulations set out in this subchapter.
- (b) On all purchases in which formal bidding is required, an advertisement for bids shall be posted on the City's Electronic Bidding System. Bids shall be opened at a meeting open to the public and posted on the Electronic Bidding System.
- (c) The City Council shall:
 - (1) award to the bidder whose proposal provides the best value to the City,
 - (2) ~~reject the recommended proposal~~ amend and approve the recommended proposal, or
 - (3) reject all bids and provide staff direction to rebid or cancel the bid.

This subsection shall not apply to procurement projects that are subject to the Consultants' Competitive Negotiation Act.
- (d) Any City employee with delegated purchasing responsibilities found to be dividing purchases or contracts into separate transactions of less than \$100,000.00 each for non-construction related purchases, if in their entirety the amount of the total divided contract or purchase equals or exceeds, or into separate transactions of less than \$200,000.00 each for construction related purchases, if in their entirety the amount of the total divided contract or purchase equals or exceeds \$200,000.00, shall be in violation of this subchapter.

Sec. 35.08. Formal Bidding required for certain purchases; exceptions.

- (a) Any non-construction related purchase amounting to \$100,000.00 or more, or construction related purchase amounting to \$200,000.00 or more, shall be recommended by the City Manager, or his/her designee, to City Council for award ~~awarded~~ to the responsible and responsive bidder whose proposal is determined to provide the best value to the City considering the relative importance of price and other evaluation factors included in the request for proposals, or to the lowest responsible or responsive bidder. The formal solicitation and selection process bidding procedures set forth in subsection 35.07 and 35.08 of this Chapter provisions of this article shall apply to every purchase by the City and the departments that are under the control of the City, excluding the following:
 - (1) Exemptions provided in section 287.057, Florida Statutes, as may be amended;
 - (2) Actuarial services;
 - (3) Advertising;
 - (4) Auditing services that are not subject to the requirements of Chapter 218, Part III, Florida Statutes;
 - (5) Contracts pertaining to the use of Special Magistrate services;

- (6) City-sponsored events held at venues not owned by the City;
- (7) City sponsorships or the solicitation of sponsorships;
- (8) *Consulting Services*. The City may select a consultant with a distinctive field of expertise without competitive selection for services which do not exceed the amount of \$99,999.99;

(9) Professional services shall be solicited and awarded based on the procedures set forth in the Consultants' Competitive Negotiation Act, section 35.21 of this Chapter, the City's polices and procedures, and any other applicable laws.

(910) Cooperative & Piggyback Purchasing.

(a) Whenever advantageous to the City, the City shall have the authority to join any cooperative contract awarded or under contract by the state, county or other governmental entity, and entities within and outside the State of Florida provided that the cooperative contract is established in compliance with the procurement procedures and requirements of the issuing body, entity, authority, or cooperative. If the City utilizes state, county, or other governmental entity bids, competitive bidding will not be required. Cooperative acquisitions where the expenditure by the City is estimated to be in excess of \$100,000.00 shall be subject to approval by the City Council.

(b) *Piggyback Contracts*. The City shall have the authority to utilize (piggyback) a contract entered into by another governmental or public entity and a provider of supplies or services required by the City provided that such contract was awarded on the basis of a competitive process substantially equivalent to those specified in this subsection. If the Procurement Department determines that it is practicable and advantageous for the City to employ this method of purchase, it is required that such contracts specify that they are cooperative procurements, or that the governmental entity otherwise agrees to the use of such contract, in writing. Any such contracts equal to or in excess of \$100,000.00 shall go to the City Council for approval.

(c) Other governmental agencies may purchase from the City's contracts.

(d) The cooperative and piggyback procurement processes shall be further delineated in the Procurement Manual.

~~(1011)~~ Durable medical equipment;

~~(1112)~~ Educational or academic programs;

~~(1213)~~ Food Trucks;

~~(1314)~~ Goods and services provided by not-for-profit organizations, including institutions of higher learning, state sponsored institutions, and other governmental and public agencies;

~~(1415)~~ Items purchased for resale to the general public;

~~(1516)~~ Licensed computer software, web-based applications and maintenance for such software and applications, so long as it is part of an existing system;

- (~~16~~17) Magazine subscriptions, periodicals, and publications;
- (~~17~~18) The procurement of dues and memberships in trade or professional organizations;
- (~~18~~19) Proprietary goods or services demonstrated through a pilot program;
- (~~19~~20) Purchases of goods or services related to a project which has or will be awarded based on formal solicitation;
- (~~20~~21) Real estate transaction-related costs, including:
 - (a) Abstract of title;
 - (b) Closing/processing fees;
 - (c) Title insurance;
- (~~21~~22) Shipping services, including postage, overnight delivery, and courier services;
- (~~22~~23) *Sole Source.*

(a) *Condition for use.* Sole source procurement may be used to purchase supplies, services or construction when such supply, service or construction is available from only one source and must be made in accordance with the sole source procedures authorized by this subsection. A requirement for a particular proprietary item does not justify sole source procurement if there is more than one potential bidder or offeror for that item. Examples when a sole source procurement may be used shall include, but not be limited to, the following:

- (1) Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (2) Where a sole supplier's item is needed for trial use or testing;
- (3) Where public utility services are to be procured;
- (4) Where the item is a used item which is subject to immediate sale;
- (5) Where additional supplies or services are needed to complete an existing and ongoing scope of work, even when the supplies or services were not contemplated at the onset of the project; or
- (6) Where the item is a component or replacement part for which there is no commercially available substitute, and which can be purchased only from the manufacturer or distributor.

(b) *Determination.* The determination as to whether the procurement shall be made as a sole source shall be made in writing to the Procurement Director.

(c) *Negotiations.* The Procurement Director, or his or her designees, shall approve negotiations with the sole source supplier, as appropriate, as to price, delivery, and the term and conditions of the award.

(d) *Approvals.* If the purchase of supplies, services, or construction pursuant to this section requires City Council approval, a report shall be made and timely transmitted to City Council with a recommendation concerning acceptance or

rejection thereof, and the City Council shall approve or disapprove the recommendation.

(~~23~~24) Travel expenses, hotel accommodations and hotel services;

(~~24~~25) Utilities, including but not limited to, electric, water, sewer, telephone, cellphone, cable, internet, and satellite services;

(~~25~~26) Vending machines;

(~~26~~27) The foregoing enumeration of services deemed to be not exempt from the formal solicitation procurement requirements is not intended to be an exhaustive or exclusive list.

(b) *Exceptions.* The following, with waiver, are exceptions to the formal solicitation and selective process provisions of this article:

(1) *Emergency Procurement.* Notwithstanding any other provisions of this Code, in the event of or in anticipation of a disaster, including but not limited to, a hurricane, tornado, flood, riot, civil unrest, acts of God, or threats to public health, welfare, or safety, the City may purchase directly those goods or services that warrant immediate procurement, when it is not advantageous or practicable for the City to use competitive bidding methods. All emergency purchases must comply with the definition provided in *Emergency Procurement*, Sec. 35.05 and purchases must be justified with specific and documented explanations.

In the event of a declaration of emergency by either the federal government, the State of Florida, St. Lucie County, or the City, the City Council or Mayor is authorized to declare a state of emergency for procurement purposes and may extend the emergency period and all normal procurement procedures and requirements shall be suspended and the following procedures shall apply.

(a) *By City Manager.* The City Manager shall be empowered to authorize the delegated purchasing agent to secure any needed emergency supplies, materials, equipment, or services using the most efficient and effective procurement methods in each procurement, as determined by the purchasing agent. If the cost of any purchase exceeds the current formal bid threshold, a full report of such purchase shall be made to the City Council at the earliest available Council meeting, including contractor's name, the amount and type of contract, a listing of the item procured under the contract, and the identification number of the contract file.

(b) *By head of department.* With the approval of the City Manager, or purchasing agent if so, designated by the City Manager, the head of any department may purchase any needed emergency supplies, materials, equipment, or services where, using the most effective procurement methods in each procurement, as determined by the department head, which made the emergency procurement necessary. If the cost of any purchase exceeds the current formal bid threshold, a full report of such purchases shall be made to the City Council at the earliest available Council meeting, including contractor's name, the amount and type of contract, a listing of the item procured under the contract, and the identification number of the contract file.

(c) *Other municipalities.* The City Manager, or purchasing agent if so, designated by the City Manager, may request another municipality to purchase for the City any needed

emergency supplies, material, or equipment or the City may purchase from another municipality any needed emergency supplies, materials or equipment such municipality has available. If the cost of any purchase exceeds the current formal bid threshold, a full report of such purchase shall be made to the City Council at the earliest available council meeting, including contractor's name, the amount and type of contract, a listing of the item procured under the contract, and the identification number of the contract file.

- (c) For good cause shown and upon written recommendation by the City Manager, the City Council, by affirmative vote, may waive the provisions of this section and authorize the purchase, or authorize the making of an offer to purchase any goods, supplies, materials, or services without competitive bidding.
- (d) On recommendation by the City Manager, the City Council, by affirmative vote, may authorize the purchase, or authorize the making of an offer to purchase from: one source of supply, surplus, used buildings, furniture, fixtures, equipment, and material without conforming to the requirement for competitive bidding.
- (e) *Offers lower than state contract prices.* Non-construction related contracts for equipment, supplies and materials amounting to \$100,000.00 or more, or construction related contracts amounting to \$200,000.00 or more, may be accepted without publishing an advertisement of bids thereon if the contract is with a person, firm, organization, or corporation whose offer to sell to the City is at a sale price for that commodity equal to or lower than the then existing state contract price for the same or equal commodity as established by the state or any department, board, or commission thereof, and the commodities are available to the state.

Sec. 35.09. Extra services performed or deleted.

- (a) If an existing contract that was below the City Manager's approval threshold and approved under the City Manager's authority is increased and such increase raises the contract price to above the City's Manager's approval threshold, such increase must be authorized by City Council.
- (b) For any existing contracts, previously approved by City Council, the City Manager, or his or her designee(s), shall have the discretion, power, and authority to approve increases (1) up to 25% of the original contract price or (2) \$99,999.99, whichever is less, for non-construction contracts and (1) up to 25% of the original contract price or (2) \$199,999.99, whichever is less, for construction contracts. The aggregate total of any increases of a contract must stay within the thresholds of this subsection.
- (c) Any charges in excess of the aforementioned amounts may be made only when authorized by the City Council
- (d) The City Council may also otherwise alter or extend the terms of any contract upon the written recommendation of the City Manager

Sec. 35.10. Personal services.

Nothing contained in this subchapter shall be construed to prevent the City Manager, with the approval of the City Council, from employing labor for public improvements, necessary extensions

of public services, employing specialized professional services, and negotiations of policy premiums for various insurance coverages.

Sec. 35.11. Acceptance of donations.

The City Manager is authorized to accept donations up to an estimated value of \$50,000.00 on behalf of the City. Any donation exceeding an estimated value of \$50,000.00 requires approval by City Council. Acceptance of donations must still be in adherence with any other ordinances or state law regarding code of ethics and conflict of interests.

Sec. 35.12. Best Value.

- (a) Best value means the overall value to the City, in the City's sole and absolute discretion, as determined by consideration of the following:
 - (1) Skill, workmanship, experience, and past performance demonstrated by the bidder or proposer in performing the same type of work or services as those sought by the City, or the experience, expertise and quality of services demonstrated by the bidder or proposer for professional, consulting and other services;
 - (2) Ability to meet the minimum qualifications or requirements of the solicitation;
 - (3) Adherence to specifications, design, or the approach to the project or study, as applicable;
 - (4) The bidder or proposer's capacity to perform in terms of personnel, equipment, facilities, licensing, and ability to meet time requirements and schedules;
 - (5) The bidder or proposer's capacity to perform in terms of financial viability, ability to provide required insurance and business tax receipts, and bonding capacity, if applicable;
 - (6) Prices, costs, or rates in relation to the goods, supplies, materials, equipment or services sought to be procured, except as provided by Consultant's Competitive Negotiation Act (CCNA), as applicable. Lowest price is not the sole determining factor of best value;
 - (7) Life cycle costs of the goods, supplies, materials, equipment or services to be procured;
 - (8) Any other factor specific to the particular solicitation that is specifically described in the procurement solicitation document;
 - (9) Local preference pursuant to section 35.14 of this Code;
 - (10) The total cost of ownership of the products or services and their impact on the City's budget in future years;
- (b) Any prior conviction for bribery, theft, forgery, embezzlement, falsification, or destruction of records, antitrust violations, honest services fraud or other offenses indicating a lack of business integrity or honesty; or any prior violation of the City's ethical standards may be considered when determining best value and may result in a vendor not being awarded the project.

Sec. 35.13. Cone of Silence.

- (a) "Cone of Silence" is defined to mean a prohibition on:

- (1) Any communication regarding a particular request for formal competitive solicitation, including but not limited to, Request for Proposals ("RFP"), Request for Qualifications ("RFQu"), Request for Letters of Interest ("LOI"), Invitation for Bid ("IFB") or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist, or consultant and the City's professional staff including, but not limited to, the City Manager, and his or her staff;
- (2) Any communication regarding a particular formal solicitation, including but not limited to, RFP, RFQu, LOI, IFB or any other advertised solicitation between the Mayor, City Council or their respective staffs and any member of the City's professional staff including, but not limited to, the City Manager, and his or her staff;
- (3) Any communication regarding a particular formal solicitation, including but not limited to, RFP, RFQu, LOI, IFB or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist, or consultant and any member of the selection/evaluation committee thereof;
- (4) Any communication regarding a particular formal solicitation, including but not limited to, RFP, RFQu, LOI, IFB or any other advertised solicitation between the Mayor, City Council or their respective staffs and any member of the selection/evaluation committee thereof; and
- (5) Any communication regarding a particular formal solicitation, including but not limited to, RFP, RFQu, LOI, IFB or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist, or consultant and the Mayor, City Council, and their respective staffs; and
- (6) Any communication regarding a particular formal solicitation, including but not limited to, RFP, RFQu, LOI, IFB or any other advertised solicitation between any member of the City's professional staff, including but not limited to, the City Manager, and his or her staff, and any member of the selection/evaluation committee therefor. The Procurement Director and the selection/evaluation committee may communicate about a particular selection/evaluation committee's recommendation;
- (7) Any communication not included above but proscribed otherwise in this code where the Cone of Silence is necessary for formal solicitation.
- (8) Communication includes, but is not limited to, oral communication, written communication, communication via social media platforms, including when communication is not directed towards any of the herein listed individuals.

Notwithstanding any other provisions in this code, the Cone of Silence shall not apply to:

- (1) Communications at a duly noticed pre-bid conference, public selection, or negotiation committee meeting, or public City Council meeting at which the City Manager has placed the subject of the solicitation on the agenda;
- (2) Communication regarding the solicitation at recorded contract negotiations, recorded oral presentations, recorded oral question and answer sessions, or recorded contract negotiation strategy sessions in compliance with the exemption in section 286.0113, Florida Statutes;

(3) Written or oral communication at any time with any City procurement staff (not including selection, evaluation or negotiation committee members);

(4) Oral presentations before the designated selection and evaluation committee and participation in forementioned meetings, provided any communication follows specific rules and guidelines proscribed by the City procurement staff;

(6) Responses to a request made by the City's delegated purchasing agent, or the City employee who is delegated as being responsible for administering the procurement process for such solicitation, for clarification or additional information.

(7) The Cone of Silence shall not apply to a competitive process which seeks to enter into a contract or award of money to perform governmental quasi-governmental, social or human services primarily for charitable, benevolent, humanitarian or other philanthropic purposes, such as the award of grants or support assistance to organized nonprofit entities that promote or assist with the care, education, health, standard of living or general welfare of people in the City of Port St. Lucie, or that promote or assist community or neighborhood enhancements.

(b) *Procedure.*

(1) *Imposition.* A Cone of Silence shall be imposed upon each RFP, RFQ, LOI, IFB or any other advertised solicitation when the solicitation is advertised in an electronic bidding system and/or newspaper of general circulation. At the time of imposition of the Cone of Silence, the City Manager, or his or her designees, shall provide for public notice of the Cone of Silence. The City Manager, or his or her designees, shall issue a notice thereof to the affected department(s), the City Clerk, each Council and to the Mayor and shall include in any advertised solicitation a statement disclosing that the solicitation is subject to the Cone of Silence.

(2) *Termination.* Except as otherwise provided herein, the Cone of Silence shall terminate at the time the City Council's approval of the award or the City Manager's approval when proposal amount is below the required formal solicitation threshold, or at such time that bids or proposals are rejected by the City Council or the City Manager; provided, however, that if the bid award is protested, the Cone of Silence shall be reimposed until such time as the City Manager's subsequent written decision. If at any time an award is approved but further contract negotiations or communications are required, the Cone of Silence is reimposed at the discretion of the City Manager, City Attorney, and their designees.

(c) *Penalties.*

(1) Violation of this section by a bidder shall render any award to said bidder voidable by the City Council and/or City Manager.

(2) A violation of this section by a particular bidder, proposer, offeror, respondent, lobbyist or consultant shall subject said bidder, proposer, offeror, respondent, lobbyist or consultant to potential debarment pursuant to this Code.

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

Sec. 35.14. Local preference in purchasing or contracting.

Except where otherwise provided by federal or state law or other funding source restrictions or as otherwise set forth in the purchasing policy, the City of Port St. Lucie shall give preference to local businesses in the following manner:

(a) *"Local Business" defined:*

"Local Business." For the purposes of this section, "Local Business" shall mean a business which meets all of the following criteria:

- (1) Has had a fixed office or distribution point located in and having a street address within St. Lucie, Indian River, Martin or Okeechobee Counties for at least one year prior to the issuance of the request for competitive bids or request for proposals by the City. The fixed office or distribution point must be staffed. Post office boxes are not verifiable and shall not be used for the purpose of establishing a physical address; and
 - (2) Holds any business tax receipt required by the City of Port St. Lucie (City).
- (b) *Certification.* Any vendor claiming to be a Local Business as defined by subsection 35.12(a) above, shall so certify in writing to the City of Port St. Lucie's Office of Management and Budget (OMB). The certification shall provide all necessary information to meet the requirements of subsection 35.14(a) above. OMB shall not be required to verify the accuracy of any such certifications, and shall have the sole discretion to determine if a vendor meets the definition of a "Local Business."

Preference in purchase of commodities and services by means of competitive bid. Under any such applicable solicitation, bidders/proposers desiring to receive local preference will be invited and required to affirmatively state and provide documentation as set forth in the solicitation in support of their status as a Local Business. Any bidder who fails to submit sufficient documentation with their bid offer shall not be granted local preference consideration for the purposes of that specific contract award. Except where federal or state law, or any other funding source, mandates to the contrary, the City will give preference to Local Businesses in the following manner:

Competitive bid (local price match option). When a qualified and responsive, Non-Local Business submits the lowest best value bid, and the bid submitted by one or more qualified and responsive Local Businesses is within five percent (5%) of the price submitted by the Non-Local Business, then the Local Business with the apparent lowest best value bid offer (i.e., the lowest Local Bidder) shall have the opportunity to submit an offer to match the price(s) offered by the overall lowest best value Non-Local bidder. In such instances, staff shall first verify if the lowest Non-Local Bidder and the lowest Local Bidder are in fact qualified and responsive bidders. Next, OMB shall determine if the lowest Local bidder meets the requirements of Section 287.087, Florida Statutes, (drug-free workplace). If the lowest Local bidder meets the requirements of Section 287.087, Florida Statutes, OMB shall invite the lowest Local Bidder, in writing, to submit a matching offer to OMB which shall be submitted in writing to OMB within three (3) business days thereafter. If the lowest Local Bidder submits a written offer that does not fully match the lowest bid from the lowest Non-Local Bidder tendered previously, the next lowest fully qualified Local Bidder will be given the opportunity to match if they are within five percent (5%). This cycle shall be repeated until there are no

remaining Local Bidders within five percent (5%), then award shall be made to the Non-Local Bidder. If the lowest Local Bidder does not respond, declines or is unable to match the lowest Non-Local price(s), then award shall be made to the lowest overall best value bidder. If the lowest Local Bidder does not meet the requirement of Section 287.087, Florida Statutes, and the lowest Non-Local Bidder does, the lowest Local Bidder will be disqualified and the next lowest Local Bidder will be considered if they are within five percent (5%); award will be made to the bidder that meets the requirements of the referenced state law. In the event a Local Bidder is awarded a contract pursuant to this section, all requests for change orders increasing the cost of the project must be approved by the City Council.

- (c) *Preference in requests for proposals.* In purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for which a request for proposals is developed with evaluation criteria, a local preference of the total score may be assigned as follows:

Local Businesses which meet all the criteria for a Local Business as set forth in this section, shall be given a preference in the amount of five percent (5%) of the total score of the Local Business.

- (d) *Notice.* Both bid documents and request for proposal documents shall include notice to vendors of the local preference policy.
- (e) *Waiver of the application of local preference.* The application of local preference to a particular purchase or contract for which the City Council is the awarding authority may be waived upon approval of the City Council.
- (f) *Comparison of qualifications.* The preferences established herein in no way prohibit the right of OMB to compare quality of materials proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids when submitting recommendations for award to the City Council. Further, the preferences established herein in no way prohibit the right of the City Council from giving any further preference permitted by law instead of the preferences granted herein.
- (g) *Purview and administration of this policy.* OMB shall be responsible for developing, implementing and maintaining administrative procedures in support of this policy.
- (h) *Limitations.*
 - (1) The provisions of this section shall apply only to procurements which are above the formal bid threshold as set forth in the City Code and the City of Port St. Lucie Procurement Manual.
 - (2) The provisions of this section shall not apply where prohibited by federal or Florida law or where prohibited under the conditions of any grant.
 - (3) The provisions of this ordinance shall not apply to any purchase exempted from the provisions of the City of Port St. Lucie Procurement Manual.
 - (4) The provisions of this ordinance shall not apply to contracts made under the Consultants Competitive Negotiation Act (CCNA), Section 287.55, Florida Statutes.

- (5) The provisions of this section shall not be applied to any procurement where the local nature of a business has been addressed through the scoring criteria.
- (i) *Incorporation into City of Port St. Lucie Procurement Manual.* Upon adoption, the provisions of the local preference policy and procedures shall be incorporated into the City of Port St. Lucie Procurement Manual.

Sec. 35.15. Bid Protests.

- (a) *Right to protest.* Any actual or prospective bidder or proposer who is affected adversely by the City's decision or intended decision may protest to the Procurement Director. Protestors shall seek written resolution of their complaints initially with the Procurement Director. If not resolved, an official protest shall be filed with the City Manager.
- (b) *Notice of protest.*
- (1) A protesting party must file a notice of protest with the Procurement Director within three (3) business days of the posting date of the notice of intent to award on the Electronic Bidding System.
 - (2) The notice of protest shall identify the solicitation by title and number assigned to the solicitation by the City and specify the basis for the protest.
 - (3) Failure to submit the notice of protest as outlined herein shall constitute a waiver of proceedings.
- (c) *Formal written protest.* The protesting party must then file a formal written protest within seven (7) business days after filing the notice of protest. All formal written protests must be addressed to and filed with the City Manager by delivering the protest to the City Manager via certified or registered mail, electronic mail (e-mail), or hand delivery to the City Manager, or his or her designees. The formal written protest shall contain the following:
- (1) The package containing the protest must be clearly labeled and marked with the word "BID PROTEST" and must clearly identify the procurement solicitation on which the protest is based, including, but not limited to, the title and number assigned to the solicitation by the City.
 - (2) Name and address of the protesting party, the name and title of the protesting party's contact person and the contact person's e-mail address and telephone number, and the contact information of the protesting party's legal counsel, if applicable.
 - (3) A statement of all claimed disputed issues of material fact. If there are no disputed material facts, the formal written protest must so indicate.
 - (4) A concise statement of the facts alleged and the rules, regulations, statutes, or constitutional provisions which entitle the protesting party to relief. Any grounds that are not specifically stated in writing at the time the formal written protest is filed shall be waived by the protesting party.
 - (5) All information, documents, other materials, calculations and any statutory or case law authority in support of the grounds for the protest.
 - (6) A statement indicating the relief sought by the protesting party.

- (7) Any other relevant information that the protesting party deems to be material to the protest.
- (8) The signature of an authorized agent of the protesting party.
- (d) *Additional information requested by City.* The protesting party shall provide any additional information requested by the City within the time-period specified in the City's request. Failure to timely provide the requested information may result in the resolution of the protest without consideration of the requested information.
- (e) *Calculation of days.* The calculation of days shall exclude Saturdays, Sundays, and holidays observed by the City. The day of the notice of intent to award posting shall not be included in the calculation. Service of a protest by mail or courier shall not expand the time-period allowed for delivery of a protest.
- (f) *Protest bond.*
- (1) The protesting party must include with the formal written protest a protest bond in the amount of 5% of the total amount of the recommended purchase award, or \$10,000, whichever is less. If no amount is included in the purchase award recommendation, a protest bond in the amount of \$10,000 must be included with the formal written protest.
- (2) The protest bond shall be in the form of a cashier's check, certified check, attorney's trust fund account check, or money order made payable to the City. The protest bond will be deposited with the City where it will be held in an account and the protesting party will receive a receipt.
- (3) If the City Manager, or his or her designees, denies the protest and further finds that the protest was baseless and/or filed for an improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost to the City or other parties, the protest bond shall be forfeited to the City. If the protest is denied but is not found to be baseless or for an improper purpose, the City shall return the protest bond, after deducting the expenses incurred by the City in processing the formal bid protest and appeal. If a decision is rendered that is favorable in whole or in part to the protesting party, the City shall return/refund the protest bond in full.
- (g) *Stay of procurement process during protest.* Notwithstanding anything contained in this section to the contrary, the Procurement Director shall stay the procurement process as it relates to the applicable protest, unless the City Manager, or his or her designees, makes the determination that the award of the contract without delay is necessary to protect the substantial interests of the City.
- (h) *Authority to resolve protests.* The City Manager, or his or her designees, shall have the authority to settle and resolve timely protests. The judicial rules of evidence shall not apply, and the City Manager, or his or her designees, shall base their decision on such information presented during the proceeding upon which a reasonable person would rely. The City Manager, or his or her designees, shall render a written decision to the protesting party via certified U.S. mail or electronic mail (e-mail) within thirty (30) calendar days of the date the formal written protest is received. The decision of the City Manager shall be final and conclusive as to the protest. If the City Manager determines that the pending award of a contract or any element of the process leading to the award involved a material violation

of law or applicable rule or regulation, all steps necessary and proper to correct the violation shall be taken.

- (i) *Protests barred.* A written protest is considered filed with the City when it is received by the office of the City Manager within the timeframe specified above. Formal written protests shall only be accepted within the time period stated herein. Any protest received outside of the stated time period shall not be considered and shall result in relinquishment of all rights of protest and abrogation of any further protest proceedings. It is the responsibility of all protesting parties to review notices posted by the City to ensure that protests are filed in a timely manner.
- (j) *Exclusive remedy.* The protest procedures herein shall be the sole remedy for challenging a formal solicitation. Any and all costs incurred by a protesting party in connection with a protest pursuant to this section shall be the sole responsibility of the protesting party.
- (k) *Cone of Silence.* The Cone of Silence shall apply during the protest process except as otherwise allowed in this section.
- (l) *Court proceedings.* Nothing in this section is intended to affect the existing powers of the City Council to settle actions pending before the courts. In the event of a court upholding the protesting party's claim, the court awarded damages on behalf of the protesting party shall be solely limited to bid/proposal preparation costs, and reimbursement of the amount of the protest bond as stipulated herein.
- (m) *Procurement Manual.* The protest process may be further delineated in the Procurement Manual.
- (n) *After award.* If, after an award, the Procurement Department, after consultation with the City Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:
 - (1) If the person or firm 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 any actual costs reasonably incurred under the contract, plus a reasonable amount for overhead, prior to the termination; or
 - (2) If the person or firm awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if that action is in the best interest of the City.

Sec. 35.16. Suspension and debarment.

- (a) *Authority.* The Procurement Director may suspend or debar, for cause, the right of a vendor to be included on a vendor database, and prohibit such vendor to bid or propose on any City formal or informal solicitation, and any bid or response from that vendor shall be rejected; provided however, the City Council shall have the power to waive or lift such suspension or debarment.
- (b) *Effects of suspension and debarment.* Suspended and debarred vendors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or

consent to subcontracts with these vendors. Suspended and debarred contractors are also excluded from conducting business with the City as agents, representatives, subcontractors or partners of other contractors.

- (c) *Suspension.* A vendor may be suspended for a period not to exceed two (2) years as determined by the Procurement Director based upon the following:
- (1) Vendor has terminated, defaulted, failed to perform, or failed to fully comply with the conditions, time frames, performance, specifications, drawings, or terms of a contract with the City;
 - (2) Vendor commits any fraud or misrepresentation in connection with any formal solicitation or contract with the City;
 - (3) Vendor is charged by a court of competent jurisdiction with a criminal offense in an incident related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (4) Vendor is charged in a court of competent jurisdiction with any of the following: 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 is determined to currently, seriously, and/or directly affect responsibility as a City government contractor. If the charges are dismissed or the vendor is found not guilty, the suspension shall be lifted upon written notification and proof of final court disposition provided by the vendor to the City;
 - (5) Vendor becomes insolvent, has proceedings in bankruptcy instituted, compounds its debts, assigns over its estate or effects for payment thereof, or has a receiver or trustee appointed over its property;
 - (6) Vendor violates the ethical standards set forth in local, state or federal law;
 - (7) Vendor and the City are engaged in an adversarial proceeding (court proceeding, arbitration or administrative proceeding) arising from or relating to the vendor's performance of a contract with the City; or
 - (8) Any other cause the Procurement Director determines to be sufficiently serious and compelling as to materially and adversely affect the responsibility of a business as a City contractor, including but not limited to suspension by another governmental entity for cause.
- (d) *Causes for Debarment.* A vendor may be debarred, for a period not exceeding five (5) years, for the following:
- (1) Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or incident to the performance of such contract or subcontract.
 - (2) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects its responsibility as a contractor.

- (3) Conviction or civil judgment finding under state or federal antitrust statutes arising out of the submission of bids or proposals.
- (4) A determination by a court, hearing officer, administrative official, or any local, state, or federal governmental entity or agency that the contractor has violated the provisions of any local, state, or federal laws or regulations.
- (5) Commission of any fraud or misrepresentation in connection with a bid, quotation, proposal, solicitation, or contract with the City or other public entity, whether or not leading to a conviction.
- (6) Violation of a material solicitation/contract provision with the City or any other person or public entity, including, but not limited to, the following:
 - (a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a bid/contract;
 - (b) Abandonment of a contract;
 - (c) Failure to pay a contractor, sub-contractor, or material provider as required by Florida Statutes;
 - (d) Repudiation of a bid/contract by failure to provide bonds, insurance, or other required certificates within a reasonable time period;
 - (e) Refusal to accept an addendum, agreement or contract, or to perform thereof provided such addendum, agreement or contract was issued timely and in conformance with the bid or solicitation received; or
 - (f) Overall performance of a contract which has been evaluated as "poor" or "unsatisfactory".
- (e) *Process.* After the Procurement Director has determined cause exists to suspend or debar a vendor, the Procurement Director shall notify the vendor in writing of the debarment or the period of suspension and the reasons for the action taken. The suspension or debarment shall be final and conclusive unless the suspended or debarred vendor initiates written protest proceedings pursuant to section 35.16 of the Code within five (5) business days after the notification.
- (f) *Notice of Intent to Debar.* Upon a preliminary determination by the Procurement Director that cause exists for debarment, a contractor or prospective contractor shall be sent a written notice of intent to debar. Such notice shall state:
 - (1) The reasons for the proposed debarment;
 - (2) The proposed length of the debarment;
 - (3) That the preliminary finding of cause and proposed debarment action shall become final, if a request for review is not timely filed in accordance with the provisions of subsection g below;
 - (4) Whether the person has been suspended pending finality of the debarment determination; and

- (5) That suspended and/or debarred persons may not be considered for award or receive new contracts during the period of suspension and/or debarment.
- (g) *Request for Review.* A contractor or prospective contractor that has received a notice of intent to debar may request that the proposed debarment action be reviewed and reconsidered. Such request must be received by the Procurement Director in writing within ten (10) calendar days of issuance of the notice of the intent to debar. Such request for review and reconsideration shall state the basis for review and reconsideration, and shall include such documents, evidence, and other information as the requesting party deems necessary to support its position. If no request for review and reconsideration is received within the time period allowed the determination of the Procurement Director that cause exists for debarment and the proposed length of the debarment shall become final and all rights to request review or appeal shall be deemed waived.
- (h) *Review.* Upon timely filing of a written request for review, the Procurement Director shall review and reconsider the preliminary determination of cause for debarment, with or without a meeting or hearing with the party requesting review, at the option of the Procurement Director. The Procurement Director may request information from, and speak individually or collectively to, any people or entities having information relevant to the debarment determination. The Procurement Director shall render a written decision on the request for review and reconsideration, which shall include the Procurement Director's final debarment decision and action taken, if any, within thirty (30) calendar days following receipt of the request. The time for rendering a written decision may be extended by the City Manager, and his or her designees, in the best interest of the City.
- (i) *Appeal of the Procurement Director's Decision.* The decision of the Procurement Director may be appealed by the person proposed for debarment to the City Manager, and his or her designees, and, thereafter, to City Council.
- (j) *Debarred and Suspended Persons Records.* The Procurement Director shall maintain a record of suspended and debarred persons. Persons which have been suspended or debarred shall be precluded from responding to solicitations or receiving awards of contracts from the City during the period of their suspension or debarment. Any bid or other response received from such a party during the period of their suspension or debarment shall be disregarded and not evaluated for potential award.
- (k) *Other Remedies.* Nothing in this section shall limit the City from pursuing other legal or contractual rights or remedies against a suspended or debarred person, including, but not limited to, during the pendency of any proceedings related to suspension or debarment.

Sec. 35.17. Federal Financial Assistance.

- (a) *General.* When a procurement is funded in whole or in part by federal or state funds, the City shall comply with all mandatory applicable federal, state, and local ordinances governing the procurement of those goods or services (including professional services and construction services). In the event of a conflict, state and federal laws governing the grant shall supersede the provisions of the City's Procurement Code.
- (b) *Requirements.*

- (1) When procuring property and services under a Federal award, the City must follow the same polices and procedures it uses for procuring from non-federal funds.
- (2) When the cost or value of the procurement property or service under a Federal award does not exceed the established threshold, formal procurement methods are not required. Informal methods are used for procurement of property or services below the threshold, including:
 - (a) Micro-purchases
 - (b) Small purchases
 - (c) Noncompetitive purchases, such as sole source, emergency procurement, or cooperative and piggyback purchasing.
- (3) The City, when utilizing federal funds, must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (4) The City, when practicable, should provide preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.
- (5) The City must comply with section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act.
- (6) The City must perform a cost or price analysis in connection with every contract that exceeds the simplified acquisitions threshold, including with price modifications. The City must make independent estimates before receiving bids or proposals.
- (7) The City must negotiate profits as a separate element of the price for each contract in which there is no price competition and in all cases when a cost analysis is performed. Factors to be considered include:
 - (a) Complexity of the work performed
 - (b) Risk borne by the Contractor
 - (c) Contractor's investment
 - (d) Amount of subcontracting
 - (e) Quality of Contractor's past performance
 - (f) Industry profit rates in the surrounding geographical area for similar work
- (8) When analyzing cost, the cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.
- (9) The City must adhere to any bonding requirements for construction or facility improvement contracts.
- (10) The City shall adhere to all requirements related to any federal granted monies, including, but not limited to:
 - (a) Expenditure of the funds within the specified manner and timeframe;
 - (b) Maintenance of proper auditing requirements as specified by the granting federal entity;

(c) Any documentation required including managerial decisions regarding spending of funds, financial statements, criteria for expenditure of funds, history of the procurement, etc.

(d) When necessary, the City may need to designate an agency to perform required audits.

(11) City departments must remain educated on any requirements proscribed by 2 CFR § 200 or any other relevant federal statutes regarding federal funding assistance.

(c) *Compliance utilizing requirements for federal disaster assistance.*

(1) Notwithstanding any conflicting provisions in the City Code and/or the laws of the state, as amended, all procurements of goods, services, equipment, projects, personnel, grants, subgrants, or other resources for which the City intends to seek federal disaster assistance (as defined below) shall follow the federal disaster requirements (as defined below).

(2) As used herein:

Federal disaster assistance means the collective multiple types of major disaster assistance in funding, personnel, equipment, facilities, goods, services, projects, grants, processes, coordination, resources, and other recovery assistance and efforts created and authorized from time to time by the federal government. Federal government means the government of the United States of America. Federal requirements means collectively, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S. C. 5121 et seq., as amended ("Stafford Act"), and all other federal rules, procurement thresholds, compliance, audit and reporting procedures, regulations, and guidelines established for federal disaster assistance from time to time.

(3) The City Council delegates authority to and authorizes the City Manager or designees to procure, negotiate, execute, and approve all necessary procurements, awards, and purchases for the City's recovery from any federally declared disaster for which the City intends to seek federal disaster assistance. The City Manager shall provide to the City Council on a bi-monthly basis a report of such procurements, awards, and purchases through the recovery period and until the completion of recovery, including but not limited to all audit periods related to such federal disaster assistance.

Sec. 35.18. Public-Private partnerships.

(a) The City hereby adopts section 255.065, Florida Statutes, as may be amended, and expressly incorporates it by reference into the City's procurement ordinance.

(b) *Definitions.* For purposes of this section, the words defined in section 255.065(1), Florida Statutes, as may be amended, including without limitation, "qualifying project" shall have the same meaning in this section.

(c) *Conditions for use.* The Procurement Director may receive unsolicited proposals for a qualifying project. Any unsolicited proposal shall include sufficient detail and information for the City to evaluate the proposal in an objective and timely manner, and shall be accompanied by the initial processing fee.

- (d) *Valid Proposal contents.* Any valid unsolicited proposal shall include sufficient detail and information for the City to evaluate the proposal in an objective and timely manner and to determine if the proposal serves a public purpose and meets the criteria set forth in this section. The proposal must be submitted in writing. Any valid unsolicited proposal shall contain the following items, as appropriate to the proposed project:
- (1) A description of the project, including the conceptual design of the facility;
 - (2) Description of the need for the project or facility and the public benefit to be served;
 - (3) A site plan indicating the location of the project proposed;
 - (4) A statement setting forth the proposer's plans for developing, financing, constructing and/or operating and maintaining the project, including identification of any revenue, public or private or proposed debt or equity investment proposed by the proposer. The financing plans shall address any and all means by which the costs of the project will be borne by persons other than the City;
 - (5) The proposed schedule for development of the project and/or the proposed term for operating of the project, along with an estimate of the life cycle cost of the proposed project;
 - (6) A statement setting forth a method by which the private entity proposes to secure any property interests required for the proposed project;
 - (7) A financial plan for the entire time period of the proposed private entity involvement in the project, including major assumptions, internal rate of return of government funds are assumed, and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the proposed agreement;
 - (8) The proposed user fees, lease payments, or other service payments over the term of an agreement, and the methodology for and circumstances that would allow changes for the user fees, lease payments, and other service payments over time;
 - (9) A list of all public utilities, railroad lines, navigable waters and flight paths, if any, that will be crossed or affected by the proposed project and a statement of the plan to accommodate such crossings or effects;
 - (10) Performance guarantees, if any, and any proposed bonding to be provided by the proposer including ability to provide statutorily required public construction bonds or performance and payment bonds for construction of public facilities;
 - (11) A listing of all proposed obligations and requirements of the City and any other governmental agencies, including, but not limited to, contributions to the project financing, development approvals and permitting;
 - (12) Identification of whether the proposal involves turning over any operation, maintenance or other responsibilities to the City, along with an estimate of costs;
 - (13) Statement regarding ability to add capacity to protect if necessary;
 - (14) Proposed safeguards to protect the City from additional costs or service disruption in the event of default or termination of contract;

(15) The names of owners, directors and officers of the proposer, and such information as may be necessary to evaluate the qualifications of the critical personnel to be engaged in the project;

(16) Names and addresses of person who may be contacted for further information concerning the proposal;

(17) Information on how the project would benefit local contractors within the City;

(18) A list of all engineering or construction firms to be proposed on the project and their qualifications and a description of their role in the proposal and project;

(19) Is signed by a responsible official or other representative authorized to obligate the proposer contractually;

(20) Such additional material and information required by City in order to review and evaluate such proposal.

(e) *Fees.* The City shall charge fees, pursuant to a resolution by City Council, to the private entity proposer to cover the costs of processing, reviewing, and evaluating any unsolicited proposal, including fees to cover the costs of staff time, and attorneys, engineers, consultants, and financial advisors retained to evaluate the proposal, advertise, provide recommendations to the City and/or negotiate a contract.

(1) *Application fee.* All unsolicited proposals shall be accompanied by an application fee in the amount established by resolution of the City Council, payable to the City in the form of a money order or cashier's check. Proposals submitted without the application fee shall not be accepted. The application fee is intended to cover the initial costs of review and consideration by the City and the costs for advertisement and notice. The application fee may be waived or reduced by the Procurement Director upon finding that the estimated cost of evaluation will be less than the initial processing fee. Unsolicited proposals submitted by governmental entities shall be exempt from the payment of the application fee.

(2) *Evaluation fee.* If the City Manager, and his or her designees, approves further evaluation of the unsolicited proposal pursuant to this section, the applicant shall, within ten days of the City Manager's decision to proceed with evaluation, pay to the City the evaluation fee, in the amount established by resolution of the City Council, payable in the form of a money order or cashier's check. The evaluation fee is intended to cover the costs of staff time, and the fees of attorneys, engineers, consultants, and financial advisors retained to evaluate the proposal, provide recommendations to the City and/or negotiate a contract.

(3) *Increase fee.* If the evaluation fee is not sufficient to pay the City's cost of attorneys, engineers, financial advisors, and other consultants retained to evaluate the proposal or to provide guidance in negotiating a contract with a proposer, the evaluation fee shall be increased to cover the City's actual costs. The proposer will be notified and will promptly pay the balance needed to cover the costs incurred by City for both staff and outside consultants. The proposer shall pay the requested additional fee within thirty (30) days. Failure to pay any additional fee shall result in rejection of the proposal or the suspension or termination of contract negotiations. If the additional fees paid are not sufficient to cover the costs of staff time, and attorneys, engineers, consultants, and financial advisors to

complete the evaluation of the proposal, ranking and contract negotiations, the City may require further additional fees from the proposer to ensure that all City's costs are paid for or reimbursed by the proposer.

(4) *Refund.* City shall refund any portion of the application fee, evaluation fee or subsequent additional fees collected which are in excess of the costs of evaluation the proposal, advertising and negotiating the contract, after the evaluation and/or negotiation is complete.

(f) *City Council consideration.* If the City receives an unsolicited proposal for a qualifying project pursuant to this section and the City desires to further evaluate the proposal or negotiate an agreement based on the proposal, the Procurement Director shall first notify the City Manager, and his or her designees, of the receipt of said unsolicited proposal to proceed with the evaluation and negotiation of a project based on the unsolicited proposal.

(g) *Public notice.* If the City Council approves proceeding with further evaluation and negotiation for a project based on an unsolicited proposal, the Procurement Director shall advertise in the Florida Administrative Register and a newspaper of general circulation in the City, at least once per week for two weeks, stating receipt of the unsolicited proposal for the qualifying project. Such proposals shall contain the information required under subsection (b) of this code section. The timeframe for allowing other entity submitting the original unsolicited proposal may submit a more detailed proposal in response to the City's notice. A copy of the notice must be mailed to each local government in the affected area of the qualifying project which shall mean St. Lucie County and/or any special district in which all or a portion of the qualifying project is located.

(h) *Receipt of proposals.* Sealed proposals in response to the public notice must be received in the Procurement Department no later than the time and date specified for submission in the publication. Sealed proposals shall be accompanied by the application fee and the evaluation fee. The name of each proposer of a proposal timely received shall be recorded by the Procurement Department and shall be made available to the public.

(i) *Evaluation.* The selection of a proposer with whom to negotiate shall be based on the best value to the City. The City may seek the advice of internal staff or outside advisors, attorneys, consultants, or any combination thereof, with relevant experience for comprehensive evaluation of the proposal(s). Such determination may be made by the Evaluation Committee. Proposers may be invited to make oral presentations regarding their proposals. The Evaluation Committee shall rank the proposals in order of preference, utilizing the criteria required for the proposals, the evaluation factors set forth in this Code, any criteria specifically included in the public notice and any other factors appropriate to the particular proposal. The ranking of proposals is not subject to protest or appeal. The recommendations of the Procurement Department shall be submitted to the Procurement Director. In the event only one proposal is received, the City may proceed with evaluation or reject the proposal, whichever is in the best interests of the City. After reviewing the Evaluation Committee's recommendation, the Procurement Director may (1) Approve the recommendation of the Procurement Department, written notice of which shall be provided to all proposer's; (2) Reject the Procurement Department's recommendation and instruct the Procurement Department to reevaluate and make further recommendations; or (3) Reject all proposals.

- (j) *Evaluation criteria.* When performing an evaluation of any proposal under this section, the following factors, along with all of the information required to be provided in the proposal, shall be considered, in addition to any others appropriate for the particular proposal:
- (1) The proposal business terms, including the finance plans;
 - (2) Unique, innovative and meritorious methods, approaches, concepts, design techniques or cost reductions demonstrated by the proposal;
 - (3) Overall scientific, technical, or socioeconomic merits of the proposal;
 - (4) The proposer's capabilities, related experience, facilities, techniques, or unique combinations of these;
 - (5) The professional qualifications, capabilities, and experience of the proposer's team or key personnel critical to achieving the proposal objectives;
 - (6) The general reputation and financial condition of the proposer and its team members; the proposed finance plan; the financial viability and feasibility of the proposed project or facility; and the cost, if any, to the City to proceed with implementation of the proposal, including on-going operational or maintenance costs. The City may require the proposer to provide a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies.
- (k) *Rejection of proposals.* If an unsolicited proposal, or competing proposal received after public notice, is not deemed by the City to be complete or in sufficient detail, it may be rejected at the sole discretion of the City Manager, or his or her designees. If the City Manager, or his or her designees, determines that it is in the best interests of the City to do so, the City may reject, in whole or in part, any or all proposals in accordance with section 35.08. The City shall have no responsibility to itemize or advise the proposer of the incomplete items or terms of the proposal. The City shall refund any portion of the application fee paid which, in the determination of the Procurement Director, exceeds the direct costs associated with evaluating the proposal up to the time of rejection. The rejection of a proposal shall create no rights in the proposer and such decision is not subject to protest or appeal. The City, in its discretion, reserves the right to reject all proposals at any point in the process prior to the full execution of a contract with a proposer.
- (l) *Contract negotiations.* The City may negotiate with the highest-ranked proposer to arrive at a mutually satisfactory agreement in accordance with section 287.05712, Florida Statutes. If the City is not satisfied with the results of the negotiations, the City may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order of their ranking. Notwithstanding this paragraph, no proposer is guaranteed the award of a contract as a result of being favorably ranked. The ranking of proposals is not subject to protest or appeal. If only one proposal is received, the City may negotiate in good faith, and if the City is not satisfied with the results of the negotiations, the City may terminate negotiations with the proposer. All agreements shall be in a form acceptable to the City Attorney. For agreements that involve finance plans or long-term financing wherein the City would incur a debt obligation, such contract provisions shall be reviewed and approved by the Procurement Director. The Procurement Director shall review all documents related to the proposer's past performance, payment of

subcontractors and similar responsibilities. The Risk Manager shall review all insurance and related requirements.

- (m) *Contract award.* Execution of any contract or agreement relating to an unsolicited proposal is subject to approval by the City Council, except if all funds to be paid by City for such project or contract have been previously identified in the budget detail. If an unsolicited proposal involves the use of any federal funds or land procured using federal funds, in whole or in part, the award and execution of any contract or agreement relating to the unsolicited proposal is contingent upon the satisfaction of any applicable federal requirements and the federal agency's approval.
- (n) *Waiver of irregularities.* The Procurement Director shall have the authority to waive all nonmaterial irregularities on any and all proposals except timeliness and signature requirements.
- (o) *Cone of Silence.* The Cone of Silence provisions of section 35.13 apply to unsolicited proposals and competing proposals provided in response to public notice of an unsolicited proposal, and such prohibition shall be in effect from the date on which the unsolicited proposal is received by the City or the date of public notice, whichever is earlier, through the date of contract execution.
- (p) *Public records.* Proposal documents submitted by private entities are public records under Chapter 119, Florida Statutes, subject to any exemption otherwise provided by law. If a proposer claims an exemption to the public records laws, the proposer must: (i) invoke the exemption when the proposal data or materials are submitted to the City or before such submission, (ii) identify the specific data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary, citing the specific exemption to Chapter 119, Florida Statutes, or the applicable statute providing confidentiality, that the proposer believes applies. The City's determination as to such exemption or confidentiality shall be final and binding upon the proposer. The proposer shall bear all attorneys' fees and costs associated with litigation for public access to claimed confidential or exempt documents.

Sec. 35.19. Pilot Programs.

- (a) In order to allow the City to evaluate new or innovative products, technologies and services, a vendor may offer a demonstration or pilot program for a product, technology or service without formal selection, only under the terms and conditions set forth in this section.
- (b) *Requirements.* Any demonstration or pilot program shall meet each of the following requirements:
 - (1) *Term.* The demonstration or pilot program shall be for the least amount of time necessary to adequately demonstrate the product or service or savings, and in no event shall exceed one (1) year.
 - (2) *Cost.* Any cost to the City for such demonstration or pilot program shall not exceed \$99,999.99. Any demonstration or pilot program costing \$100,000.00 or more requires approval from City Council.

- (3) *Contract.* The vendor shall enter into a written contract with the City which shall provide the timeframe for the pilot program, the performance standards to be achieved or evaluated; the requirements for the vendor's insurance coverage with the City named as an additional insured, the removal of all equipment at the expiration of the demonstration period, and any other term deemed necessary by the Procurement Department Management, with the contract form approved by the City Manager.
- (4) *Compliance.* The demonstration must comply with all applicable City Code provisions, master plans, permitting and other requirements, and may require additional approval at the discretion of the City Manager, and his or her designees.
- (5) *Removal and restoration.* Upon completion of the demonstration or pilot program period, vendor's equipment or other installation shall be removed, and the area restored to a condition similar to that prior to the demonstration or pilot program.
- (6) *No obligation.* The demonstration will in no way, express or implied, obligate the City to purchase, rent, lease, contract for or otherwise acquire the goods, equipment, technology or service demonstrated, furnished or loaned for evaluation.
- (7) *No transfer.* During the demonstration or pilot period, the goods, equipment, technology and/or materials, including all data rights to proprietary commercial software or other protected intellectual property involved in the demonstration, are and shall remain the exclusive property of the Vendor.
- (c) *Report.* The applicable City department or division evaluating the demonstration or pilot program shall provide a written report of its evaluation to the Procurement Director.
- (d) *Competitive solicitation.* In the event the City intends to procure the goods or services demonstrated by the pilot program, a formal request for proposals or other form of competitive selection, as determined by the Procurement Director, shall be issued by the City to receive proposals for similar goods, technologies or services. All proposals shall comply with all applicable City Code provisions, master plans, insurance, permitting and other requirements. The fact that the vendor already installed equipment or technology as part of the demonstration or pilot program shall not be grounds to avoid competitive selection. The City shall not develop formal requests for proposals in which the scope caters to the services, goods, technologies, or program originally piloted by the vendor. Competitive solicitation shall not be required if any of the exceptions under Sec. 35.08 apply.
- (e) *Cone of Silence.* The Cone of Silence provisions of section 35.13 apply to demonstration and pilot programs, with the exception that the vendor may be in contact with the staff of the Procurement Department, and the department or division hosting the demonstration or pilot program, but only for the purposes of installation or set up of the demonstration, training on the use of the product, equipment or technology, to answer City staff's questions regarding the product, equipment or technology and to coordinate removal at the end of the demonstration. Contact with the Mayor, any City Council member, or other City staff during the demonstration period, except as provided in this subsection, is prohibited. Such prohibition shall be in effect from the date on which the pilot program contract is executed through the date on which the City determines that it does or does not intend to procure such goods, equipment, technology or services.

- (f) *Public records.* Documents submitted by the demonstration vendor, and all written data, information and reports are public records under Chapter 119, Florida Statutes, subject to any exemption otherwise provided by law. If a proposer claims an exemption to the public records laws, the proposer must: (i) invoke the exemption when the proposal data or materials are submitted to the City or before such submission, (ii) identify the specific data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary, citing the specific exemption to Chapter 119, Florida Statutes, or the applicable statute providing confidentiality, that the proposer believes applies. The City's determination as to such exemption or confidentiality shall be final and binding upon the proposer. The proposer shall bear all attorneys' fees and costs associated with litigation for public access to claimed confidential or exempt documents.

Sec. 35.20. Surplus Property; Real Property; Personal Property.

The City disposes of both real and personal property in the manner which is in the best interest of the City, pursuant to the policies and procedures. No real or personal property owned by the City is considered surplus until declared as such by the City, pursuant to the policies and procedures.

Sec. 35.21. Professional services as defined in the Consultants' Competitive Negotiation Act; Award of Professional Agreements by City Council.

(a) *Applicability.* This section applies to all professional services procured under the Consultant's Competitive Negotiation Act, and to any applicable City purchasing procedures interpreting the Consultants' Competitive Negotiation Act.

(b) *Award.* After reviewing the City Manager's, or his/her designee's recommended award, the City Council may:

(1) Approve the recommended award; or

(2) Reject the recommended award and provide staff with direction.