



"A City for All Ages"

CITY OF PORT ST. LUCIE

Office of Management and Budget

Date: August 11, 2023

To: Honorable Mayor and City Council Members

Via: Jesus Merejo, City Manager *JM*
Kristina Ciuperger, Deputy City Manager *KC*

From: Caroline Sturgis, Director, Office of Management and Budget *CS*
Nathaniel Rubel, Assistant Director, Procurement Management *NR*

RE: Chapter 35 Procurement Ordinance Amendment

Background

The City of Port St. Lucie's original Procurement Ordinance, Chapter 35 – "Finance; Purchasing", was adopted in 1980 and has been slightly modified numerous times over the years. In an effort to simplify, clarify, and modernize the local laws governing procurement by the City, a collaborative team comprised of members of the Procurement Management Division (PMD) and the City Attorney's Office (CAO) was assembled. The team conducted a thorough review of the existing procurement ordinance while comparing it to the procurement ordinances of similar sized cities and other nearby municipalities for model examples of public procurement in practice.

The recommended revisions to the Procurement Ordinance are the result of this six-month collaborative effort. The purpose of the recommended procurement ordinance inclusive of these updates 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.

The following is a list highlighting the noteworthy changes and additions to the procurement ordinance recommended to the City Council for adoption.

35.00 – Purpose.

Added section to describe the purpose of the Procurement Ordinance.

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35.01 – Delegated Purchasing agents.

Changes made to define and establish the City Manager's Authority to delegate their purchasing authority to the appropriate agency personnel more clearly.

35.02 – Review of contracts.

Added section to align with the City's Charter requirement under Article IX – Powers of the City, Section 9.04 – City attorney. The City Attorney shall approve all contracts for the City that are greater than \$25,000.

35.03 – Officers not to approve own purchases.

Changes made to clarify that no member of any department shall approve their own purchases.

35.04 – Ethics in Procurement.

Added section to prohibit contracting activity in excess of purchasing authority and when there is conflict of interest or other improper or unlawful influence.

35.05 – Definitions.

Added section to define key procurement terms used throughout the section of the ordinance and commonly used in public procurement.

35.06 – Procedure for Purchasing.

Formerly section 35.03.

The section was updated to increase the formal procurement threshold from \$75,000.00 for non-construction related purchases to \$100,000.00. This change was made to realize costs increases related to inflation and to align the City's thresholds with similar sized cities. See Attachment 2: Purchasing Thresholds Research and Recommendation dated April 21, 2023.

Removed language allowing for City Manager to authorize non-construction related purchases from \$75,000.00 to \$100,000.00 and request Council ratification thereof due to circumstances requiring immediate requisition of goods or services. With the increase of the procurement threshold to \$100,000.00 this isn't necessary. Even if the threshold for this authorization was increased it would likely have limited use. If circumstances warrant, it is better to utilize the emergency procurement procedures.

Removed language allowing for contract extensions without competitive bidding when contractor agrees to provide the identical services for a total charge which is less than 96 percent of the contract stated amount. This practice can limit open competition.

35.07 – Formal bidding procedure.

Formerly section 35.05 – Competitive Bidding Procedure.

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The section was updated to increase the formal procurement threshold from \$75,000.00 for non-construction related purchases to \$100,000.00 because of cost increases relating to inflation and to align the City's thresholds with similar sized cities.

Removed language pertaining to the authorization with Council approval to make purchases from one source of supply without competitive bidding. A new section for Sole Source procurement under formal bidding exceptions (35.08) has been created to detail sole source procurement best practices.

35.08 – Formal Bidding required for certain purchases; exceptions.

Formerly section 35.04 – Competitive Bidding Required for Certain Purchases; Exceptions.

The section was updated to increase the formal procurement threshold from \$75,000.00 for non-construction related purchases to \$100,000.00 due to cost increases resulting from inflation and to align the City's thresholds with similar sized cities.

Created a more comprehensive list of widely industry-accepted competitive bidding exceptions including but not limited to the following:

- Exemptions provided in s. 287.057, Florida Statutes as may be amended.
- Consulting Services for consultants with a distinctive field of expertise in an amount not to exceed \$99,999.99.
- Cooperative & Piggyback Purchasing.
- Licensed computer software, web-based applications and maintenance for such software and applications that are part of an existing system.
- Sole Source procurements.
- Emergency procurements.

Section 35.06 – Offers lower than state contract prices.

The section was removed and added to section 35.08 – Formal Bidding Exceptions with updates to increase the formal procurement threshold from \$75,000.00 for non-construction related purchases to \$100,000.00 as costs have increased due to inflation and to align the City's thresholds with similar sized cities.

Section 35.09 – Extra services performed or deleted.

Relocated, formerly section 35.07 – Extra services performed or deleted.

This section has been updated to define the threshold approval amounts requiring Council approval and the section removed the requirement of Council's approval for contract decreases and deletions.

For any existing contracts, previously approved by City Council, the City Manager shall have the authority to approve increases:

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- (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.

Section 35.10 – Personal services.

Relocated, formerly section 35.08 – Personal Services.

Section 35.09 – Disposal of supplies, materials and equipment found to be obsolete or surplus.

Section removed in its entirety and added a new section 35.20 – Surplus Property; Real Property; Personal Property.

Section 35.10 – Unauthorized contracts and expenditures prohibited.

Section removed and added as part of Section 35.04 – Ethics in Procurement.

Section 35.11 – Emergency purchasing procedures.

Section removed and added as part of Section 35.08 – Formal Bidding Required for Certain Purchases; Exceptions.

Section 35.11 – Acceptance of donations.

The current ordinance is silent on this therefore it was added to establish thresholds and authority for the City to accept donations.

Section 35.12 – Best Value.

Added section to create a more balanced basis for competition and selection, enabling the City to qualify providers as needed, and base selection on qualifications, project approach, and various types of price and cost information, along with other criteria the City deems important to a successful project.

Section 35.13 – Cone of silence.

The section was updated to expand on and further define the cone of silence provisions, exceptions, and penalties. It was also updated to include communications via social media as a prohibited form of communication during the cone of silence.

Section 35.14 – Local preference in purchasing or contracting.

Formerly section 35.12, no noteworthy changes to the local preference policy.

Section 35.15 – Bid Protests.

Formerly section 35.14 – Protests.

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Updated to align with current procurement procedures for awarding contracts. Provides the detailed process and establishes the timeline the protestor and the City must follow when protesting the City's intended decision for awarding formally solicited contracts.

Since processing bid protests can be time-consuming and create a burden on personnel resources, in the event that the protest is denied but not found to be baseless or improper, the ability to deduct expenses from the protest bond to cover costs incurred by the City to process the denied bid protest was added.

Added guidance on after award procedures if it is determined that a solicitation or award of a contract was in violation of applicable law.

Section 35.16 – Suspension and debarment.

Formerly section 35.15

Provided the period for debarment to not exceed five (5) years.

Added additional causes for debarment for more comprehensive application.

Provided more specific information on the debarment determination and appeal process.

Section 35.17 – Federal Financial Assistance.

This section was added to provide guidance on the necessary procurement procedures to comply with the applicable federal, state and local ordinances governing the procurement when funded in whole or in part by federal or state funds. Noteworthy requirements include:

- Affirmative steps the City must take to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- Preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.
- Requirement to perform a cost or price analysis on purchases that exceed the federal simplified acquisition threshold.
- Prohibits the use of cost plus a percentage of cost contracting methods.
- Reference to the Code of Federal Regulations Uniform Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200).

Added the requirement for compliance when receiving federal disaster assistance.

Section 35.18 – Public-Private partnerships.

Adopts the Florida Statute § 255.065 Public-Private Partnerships prescriptive process when procuring public-private partnerships and the receipt of unsolicited proposals.

Allows the City to collect a fee to cover the costs associated with reviewing unsolicited proposals.

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Section 35.19 – Pilot Programs.

Outlines a process that allows the City to evaluate new or innovative products, technologies, or services without going through an initial formal selection process.

Establishes that a formal selection process is required in the event the City intends to procure the goods or services demonstrated by the Pilot Program. This keeps vendors from offering low cost “pilot programs” to get their foot in the door and obtaining exclusive no-bid contracts.

Section 35.20 – Surplus Property, Real Property; Personal Property.

Replaces Section 35.09 – Disposal of supplies, materials and equipment found to be obsolete or surplus.

Places the responsibility for relinquishing surplus assets and real property in procurement.

Indicates that the surplus process shall be followed pursuant to the policies and procedures. Currently the Procurement Policies and Procedures Manual as well as Council Directed Policies #18-01 ccd, #18-02 ccd, and 19-01 ccd outline the guidelines and responsibilities for disposing of surplus assets and real property. Eliminated the conflict between the ordinance and processes outlined in the City’s policies.

Conclusion

The Procurement Ordinance Chapter 35 – “Finance; Purchasing” will be presented to the City Council on August 28th and September 11th for adoption. Prior to, members of the Procurement Management Division and the City Attorney Office will provide a briefing to each Councilmember. The recommended amendment advances optimal purchasing and procurement efficiency for City departments so they may deliver services effectively to our growing City and residents.

Thank you for your attention and for allowing us to provide you with this update.

Attachment 1: Chapter 35 Ordinance Amendment 08-11-2023

Attachment 2: Purchasing Thresholds Research and Recommendation 04-21-2023

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