

ORDINANCE 2021- 23
PROCUREMENT POLICY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, REPEALING AND REPLACING CHAPTER 2, ARTICLE 1, DIVISION 3-PURCHASES AND CONTRACTUAL SERVICES SECTIONS 2-24 THROUGH 2-31; OF THE *CODE OF ORDINANCES OF THE CITY OF PALM COAST*; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in October 2003, City Council adopted an Ordinance amending Ordinance 2002-06, which provides for the City’s procurement policies; and

WHEREAS, in March 2017, City Council adopted an Ordinance amending Ordinance 2002-06, revising and updating the City’s procurement policies; and

WHEREAS, the overall goal of the City’s procurement policies is to provide the most appropriate quality of goods and services needed by the City to provide agreed to services to its’ citizens at the least total public expense considering, as a minimum, initial cost, operating and maintenance costs, and estimated useful life; and

WHEREAS, it is the desire of the City Council of the City of Palm Coast to continue to provide the most cost-effective purchases in the competitive marketplace, as well as ensuring fairness and impartiality in the City’s dealings with vendors; and

WHEREAS, in order to keep with the overall goal and continue to provide the most cost-effective purchases, City Council desires to repeal and replace Chapter 2, Article 1, Division 3 as stated hereinafter.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

SECTION 2. REPEALING AND REPLACING CHAPTER 2, DIVISION 3. The City Council of the City of Palm Coast hereby repeals Chapter 2, Article 1, Division 3- Purchases and Contractual Services, Sections 2-24 through 2-31 of the *Code of Ordinances of the City of Palm Coast* and replaces Division 3 Purchases and Contractual Services as stated hereinafter:

DIVISION 3. - PURCHASES AND CONTRACTUAL SERVICES

Sec. 2-24. – Quotes and Formal Solicitations

A. Informal Quotes (\$5,000 to \$29,999.99)

Except as provided in this division, procurement of goods or services (including leases) with an estimated value greater than or equal to five thousand dollars (\$5,000.00) but less than or equal to twenty-nine thousand, nine hundred ninety-nine and 99/100 dollars (\$29,999.99) require two or more written quotes in accordance with the procedures adopted by the City.

B. Formal Request for Quotes (\$30,000.00 to \$49,999.99)

C. Except as otherwise provided in this division, procurement of goods or services (including leases) with an estimated value greater than or equal to thirty thousand dollars (\$30,000.00) but less than or equal to forty-nine thousand, nine hundred ninety-nine and 99/100 dollars (\$49,999.99) require a formal request for quotes which shall be posted on the City's procurement portal in an attempt to obtain two or more written quotes. The requesting department shall submit the supporting documentation of proper quote vetting to the procurement staff.

D. Request for Formal Sealed Competitive Solicitation (\$50,000.00 or greater) Except as otherwise provided in this division, procurement of goods or services (including leases) with an estimated value greater than or equal to fifty thousand dollars (\$50,000.00) shall require a formal sealed competitive solicitation. Such solicitations may be in the form of an invitation to bid (ITB), request for proposal (RFP), request for statement of qualifications (RFSQ), request for information (RFI) or any other formal solicitation process.

E. Items may not be purchased in divided quantities to avoid the requirements of this division. For example, a department may have several similar items that are needed for their operation throughout the fiscal year and individually these items are less than \$50,000.00 but in aggregate the items are in excess of \$50,000.00. These items should not be split into several requisitions but should be consolidated and procured following the applicable solicitation process.

F. The solicitation of competitive bids or proposals for professional services covered by the Consultants Competitive Negotiation Act (CCNA) shall be accomplished in accordance with the provisions of Section 287.055, Florida Statutes.

G. The solicitation of competitive bids or proposals for any City construction project that is projected to cost more than \$200,000 shall be accomplished in accordance with the provisions of Section 255.0525, Florida Statutes.

H. The solicitation of competitive bids or proposals for City utility projects shall be accomplished in accordance with the provisions of Chapter 180, Florida Statutes.

I. Notwithstanding anything contained herein to the contrary, the City reserves its right to reject any quote, bid, or proposal deemed non-responsive or non-responsible at any time prior to award of a contract.

Sec. 2-25. – Exemptions to Quotes and Formal Solicitations

- A. **Small Purchases:** Non-recurring purchases of goods or services under five thousand dollars (\$5,000.00).
- B. **Emergency Purchase:** An emergency exemption occurs when i) certain conditions might adversely affect the life, health, safety and welfare of City employees or citizens of the City, ii) when City property or equipment are endangered, iii) when it is necessary to maintain or restore vital services, or iv) situations arise which may cause major financial impact to the City should immediate action not be taken. In the case of an emergency, the City Manager, or designee may authorize certain imminent needs purchases. Those delegated the authority to implement emergency purchases are authorized to waive the bid process within their authority. A report listing all emergency purchases and the circumstances of the emergency shall be submitted to the City Council on a monthly basis. It shall be the responsibility of all authorized personnel implementing this exemption to ensure such emergency purchase is accomplished in accordance with City policy and that emergency purchase procedures are invoked properly and not used solely to circumvent the regular established procurement procedures.
- C. **Piggybacking:** Piggybacking is a procedure of procuring goods or services without the formal solicitation process by means of utilizing another public entities' award of an Invitation for bid or request for proposal. This procedure includes but is not limited to piggybacks of State Contracts with the State of Florida, Department of Management Services, and Division of Purchasing, SNAPS Contracts, and Federal GSA contracts.
- (1) The City may forego the formal solicitation process by Piggybacking. The award will be in accordance with all the terms and conditions, prices, time frames, and other criteria as included in the other public entities' invitation for bid or request for proposal. Additional options may be included in a procurement unless the total dollar value of the options is in excess of the City's bid limit. Expired bids cannot be piggybacked.
 - (2) The City Manager, Department Head, or designee may make purchases/awards, utilizing other public entity bids, provided the contract being piggybacked is approved by City Council, if applicable, the amounts are within the City Council approved budget and the purchase is made in the best interests of the City. For amounts within the City Manager approval authority, the City Manager must approve the piggyback or contract after review by procurement staff. For amounts within the Department Head's approval authority, the Department Head must approve the piggyback or contract after review by procurement staff.
- D. **Sole Source:** Sole source purchasing is when there is only one person or company that can provide the goods and/or services needed because of the specialized or unique characteristics of the goods and/or services.
- (1) The following criteria must be met in order to procure goods and services that are a sole source.

- a. It is the only item that will produce the desired results (or fulfill the specific need) and,
 - b. The item is available from only one source of supply, or
 - c. The item is available from more than one vendor, but due to other circumstances (such as exclusive sales territory by manufacturer, prohibitive delivery time and cost, etc.), only one vendor is suited to provide the goods or services.
- (2) Any purchase of goods and/or services with an estimated value greater than or equal to the amount established under Florida Statute 287.017, Category 2, that is intended to be purchased from a sole source, must be electronically posted ~~for seven (7) business days~~, in accordance with Florida Statute 287.057(3). The notice must include a request that potential vendors provide information regarding their ability to supply the goods and/or services described.
- (3) Purchases of goods and/or services from a sole source are exempt from competitive requirements upon written approval of the City Manager, or designee and other appropriate City personnel within their expenditure authority as set forth in this section.
- (4) The request for sole source purchases shall set forth the purpose and need, an explanation why the item will exclusively produce the desired results (or fulfill the specific need) and the criteria. Compatibility to existing equipment shall be an acceptable justification for this exemption, provided the item is only available from a sole source of supply.
- (5) The user department and/or the buyer shall attempt to locate competition (alternate sources of supply).
- (6) Procurement staff shall keep a log of sole source purchases, which includes the vendor name, the amount, item description, justification, and the purchase order number, which shall be filed with the City Manager and reported monthly to the City Council.
- (7) Procurement staff shall conduct negotiations, as appropriate, as to price, delivery, and terms.
- E. Special Circumstances: Under circumstances where, after competitive bidding, no bids meeting bid requirements are received or all bids are rejected for failure to meet bid requirements.
- F. Additional Exemptions: The purchase of the following goods and services is exempt from quotes and formal solicitations.
- (1) Water, Sewer, Gas, Electrical and Other Utility Services; Telecommunication Services including, but not limited to, cable television, telephone lines, internet connectivity, data and voice circuits, voice over internet protocol ("VOIP"), cellular/wireless phones, wide area network ("WAN") connectivity, pagers, and wireless adapters for cellular data ("air cards").
 - (2) Postage

- (3) Advertisements
- (4) Membership Fees
- (5) Subscriptions
- (6) Any items covered under the City's travel policy
- (7) Software/Technology Maintenance and Support renewal fees for existing software or technology licenses
- (8) Goods and/or services provided by governmental entities

Sec. 2-26. - Approval requirements.

- A. City Council approval shall be required for all contracts and bid awards, piggybacking awards, and sole source awards with an estimated value greater than or equal to fifty thousand dollars (\$50,000.00).
- B. The City Manager or designee shall have approval authority as follows:
 - (1) Any purchases less than or equal to forty-nine thousand, nine hundred ninety-nine and 99/100 dollars (\$49,999.99); or
 - (2) Any purchases of capital items, goods and services pursuant to contracts and bid awards, piggybacking awards, and sole source awards approved by City Council and as set out in the annual budget as adopted by the City Council.
 - (3) Any purchases of capital items, goods and services as set forth in a Resolution adopted by City Council.
- C. Department heads or their designee shall have authority to approve purchases of capital items, goods and services less than or equal to thirty thousand dollars (\$30,000.00), where such purchase does not exceed the item and/or department budget limit.
- D. Emergency purchases shall be accomplished in accordance with section 2-25(B).

Sec. 2-27. - Additional procedures/powers of City Manager.

The City Manager is hereby granted authority to adopt any and all such additional administrative policies and procedures supplemental to the provisions of this division that are in the best interests of the City, and not inconsistent with the intent of this division.

Sec. 2-28. - Disposal of surplus property.

Surplus property may be disposed of by trade, sealed bid, donated, or sold at public auction

depending on the item, its value, or other factors all as may be in accordance with law and City policy. If the surplus property is determined to be only of scrap value or have no commercial value, City staff is authorized sell the surplus property as scrap if possible, or dispose in any other appropriate manner. City Council may approve of disposal of surplus property that has commercial value by any method other than as provided herein.

Sec. 2-29 – Intent to Award and Award Protest Procedures

A. Intent to Award Protest Procedure

- (1) In any case where a bidder wishes to protest the results of an intended disposition of any bid, the following action is required:
 - a. The bidder must file a written protest to the Financial Services Director or designee explaining in detail the nature of the protest and the grounds on which it is based. This protest must be received by the Financial Services Director or designee no later than three (3) business days after the City's Notice of Intent to Award.
 - b. The Financial Services Director or designee shall respond in writing to the written protest in a timely manner, determine whether the protest is with or without merit, and revise the administrative decision or recommendation, if necessary.

- (2) In any case where a bidder wishes to appeal the Financial Services Director or designee's protest determination, the following action is required:
 - a. The bidder must file a written appeal to the City Manager explaining in detail the nature of the appeal and the grounds on which it is based. This written appeal must be received by the City Manager no later than three (3) business days after the Financial Services Director or designee's written protest determination. Each written appeal must be accompanied by a bid protest appeal bond in the form of a certified check, cashier's check or money order made payable to the City of Palm Coast, in the amount not less than five percent (5%) of the lowest responsive bid and in an amount to secure any City damages or costs arising from the appeal, to be determined by the Financial Services Director or designee. In the case of request for qualifications where there is no bid amount, the bond amount shall be an amount to be determined by the Financial Services Director, however, in an amount no less than \$10,000.
 - b. Upon timely receipt of the formal written appeal and bid protest appeal bond, the City Manager shall respond in writing to the written appeal, determine whether the appeal is with or without merit, and revise the administrative decision or recommendation, if necessary.

- (3) In any case where a bidder wishes to appeal the determination by the City Manager, the following action is required:

- a. The bidder must file a written appeal to City Council, addressed to the City Clerk, explaining in detail the nature of the appeal and the grounds on which it is based. This notice must be received by the City Clerk no later than three (3) business days after the date of the City Manager's written response.
 - b. The City Clerk shall schedule the bid protest appeal to be heard at an upcoming City Council meeting and provide all relevant documents in the agenda package.
 - c. The bidder must attend the scheduled City Council meeting. City staff and the bidder will be provided an opportunity to present evidence related to the bid protest appeal.
 - d. At the scheduled City Council meeting, City Council will determine whether the appeal is with or without merit, and revise the administrative decision or recommendation, if necessary.
- (4) Upon receipt by the Financial Services Director or designee of the written protest to the City's Notice of Intent to Award, the final bid award shall be delayed until the entirety of the protest procedure, as herein described, has been completed.

B. Award Protest Procedure

- (1) Should the City Council make an award to a bidder, other than the bidder selected in the Notice of Intent to Award, the only bidder with the right to protest the award and file a written appeal is the selected bidder identified in the Notice of Intent to Award. A City Council decision not to make an award to any bidder is not appealable. Each written appeal must be accompanied by a bid protest appeal bond in the form of a certified check, cashier's check or money order made payable to the City of Palm Coast, in an amount not less than five percent (5%) of the lowest responsive bid and in an amount to secure any City damages or costs arising from the appeal, to be determined by the Financial Services Director or designee. In the case of request for qualifications where there is no bid amount, the bond amount shall be an amount to be determined by the Financial Services Director, however, in an amount no less than \$10,000. The following action is required to protest an award:
- a. The bidder must file a written appeal to City Council, addressed to the City Clerk, explaining in detail the nature of the appeal and the grounds upon which it is based. This notice must be received by the City Clerk no later than three (3) business days after the date of the City Council's award. At that time, the final bid award shall be delayed until the protest procedure, as herein described, has been completed, unless City Council decides to otherwise move forward with the award.
 - b. The City Clerk shall schedule the bid protest appeal to be heard at an upcoming City Council meeting and provide all relevant documents in the agenda package.
 - c. The protesting bidder must attend the scheduled City Council meeting. City staff and the bidder will be provided an opportunity to present their position on the bid

protest appeal and evidence to the City Council.

- d. At the scheduled City Council meeting, City Council shall determine whether the appeal is with or without merit, and revise their prior decision, if necessary, or City Council may, at its discretion, order that the appeal be heard by a Hearing Officer pursuant to Chapter 2, Article III, Division 3 of this Code of Ordinances.
- e. If the City Council refers the appeal to a Hearing Officer, the protesting bidder must attend the Hearing Officer hearing. City staff and the bidder will be provided an opportunity to present their position on the bid protest appeal and evidence to the Hearing Officer. The Hearing Officer will determine whether the appeal is with or without merit and provide a recommendation to the City Council as to whether or not the City Council should revise its prior decision.
- f. The City Council shall have final decision making authority on all award protest appeals.

(2) The bid protest bond shall be forfeited to the City if one of the following occurs:

- a. The bid protest appeal is determined to be without merit or non-valid by the City Manager and no further appeal is filed;
- b. The bid protest appeal is determined to be without merit or non-valid by the City Council, or
- c. The bidder who filed the appeal did not attend the scheduled City Council meeting and/or Hearing Officer meeting.

Sec. 2-30 – Local Business Preference

- (1) Excepted as provided in this division or as may be exempted by applicable State or Federal law, a local business preference shall apply to all purchases or acquisitions of products, materials and services of the City of Palm Coast. Local Business Preference applies to persons, firms, and/or corporations residing or located in the City of Palm Coast, which meet the established criteria, set forth below. In all quotes and formal solicitations covered in Section 2-24 of this division, qualified Palm Coast persons, firms, and/or corporations shall receive a local business preference. The Local Business Preference as set forth herein shall apply and shall result in the otherwise qualified local Palm Coast business being awarded the contract, at the amount of the submitted quote or bid, if the local Palm Coast vendor's quote or bid is the next lowest bid and the bid amount is within the applicable percentage of the lowest bid submitted by a non-local business, as set forth herein.
- (2) If the Local Business Preference does not result in the Palm Coast business being awarded the contract, then the Local Business Preference applies to persons, firms, and/or

corporations residing or located in Flagler County, which meet the established criteria, set forth below. In all quotes and formal solicitations covered in Section 2-24 of this division, qualified persons, firms, and/or corporations shall receive a local business preference. The Local Business Preference as set forth herein shall apply and shall result in the otherwise qualified Flagler County business being awarded the contract, at the amount of the submitted quote or bid, if the local vendor's quote or bid is the next lowest bid and the bid amount is within the applicable percentage of the lowest bid submitted by a non-local business, as set forth herein.

(3) Local Business Preference Amounts and Limit are as follows:

- a. Five percent (5%) of the net quote or bid price up to \$200,000.00 as referenced on the quote tabulation or bid price schedule.
- b. Three percent (3%) of the net bid price above \$200,000.00 as referenced on the bid price schedule.
- c. The total local business preference shall be limited to \$20,000.00 for each quote or project.

Example: Local Business Bid of \$250,000 would be provided a Local Business Preference of \$11,500.00. $((5\% \times \$200,000.00) + (3\% \times \$50,000.00))$

(4) To qualify as a Palm Coast person, firm and/or corporation, a vendor must have its headquarters, manufacturing facility, or locally-owned franchise located in, or having a street address within, the legal boundaries of the City of Palm Coast for at least one (1) year immediately prior to the request for a quote or formal bid solicitation (Post office boxes do not qualify as a verifiable business address).

(5) To qualify as a Flagler County person, firm and/or corporation, a vendor must have its headquarters, manufacturing facility, or locally-owned franchise located in, or having a street address within, the legal boundaries of Flagler County for at least one (1) year immediately prior to the request for a quote or formal bid solicitation (Post office boxes do not qualify as a verifiable business address).

(6) Local Business Preference shall not apply to:

- a. Purchases that are funded in whole or part by assistance from any federal, state, or local agency that disallows local preference;
- b. Purchases exempt from obtaining quotes or soliciting formal proposals or bids as described in Sec. 2-25. – Exemptions to Quotes and Formal Solicitations.

(7) The local business preference established in this section does not prohibit the right of the City Council or other purchasing authority to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare

qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids or proposals.

- (8) Application of local businesses preference to a particular purchase, contract, or category of contracts for which the City Council is the awarding authority may be waived upon written justification and recommendation by the City Manager and approval of the City Council.
- (9) The local business preference established in this section does not prohibit the City Council, or other authorized purchasing authority, from giving any other preference permitted by law in addition to the local business preference.

Sec. 2-32 – Public-Private Partnerships

- A. The submission by private entities and the processing by City of public-private partnership (P3) Proposals, whether solicited or unsolicited, shall be in accordance with Section 255.065 Florida Statutes.
- B. The City Manager may establish a reasonable application fee for the submission of unsolicited P3 proposals. If the initial application fee does not cover the City’s costs to evaluate the unsolicited proposal, the City Manager may request in writing the additional amounts required. The private entity must pay the requested additional amounts within 30 days after receipt of the noticed request. The City may stop its review of the unsolicited proposal if the private entity fails to pay the additional amounts. If the City does not evaluate the unsolicited proposal, the City must return the application fee.
- C. The City Manager or designee shall have the authority to decide whether to evaluate any unsolicited proposals. Should the City Manager or designee decide not to evaluate the unsolicited proposal, the City shall return the evaluation fee.
- D. The City Manager or designee shall have the authority to solicit proposals from other parties in accordance with Section 255.065 Florida Statutes for the same or similar P3 concept of any unsolicited proposal, whether or not the unsolicited proposal has been evaluated.

SECTION 3. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance

SECTION 4. CODIFICATION. It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Palm Coast, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, “Ordinance” may be changed to “Section,” “Article,” or other appropriate word.

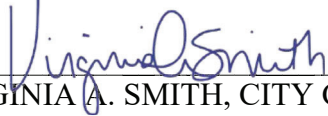
SECTION 5. CONFLICTS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

Approved on first reading this 21st day of September, 2021.

Adopted on second reading after due public notice and hearing this 5th day of October, 2021.

ATTEST:



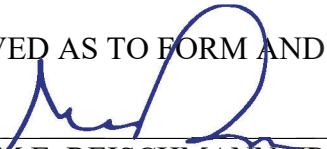
VIRGINIA A. SMITH, CITY CLERK

CITY OF PALM COAST, FLORIDA



DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:



WILLIAM E. REISCHMANN, JR., ESQ.

