

RESOLUTION NO. 2020-07

A RESOLUTION OF THE CITY OF EVERGLADES CITY, FLORIDA, ADOPTING THE CITY OF EVERGLADES CITY COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM PURCHASING POLICY AND CITY COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM MINORITY AND WOMEN BUSINESS ENTERPRISE POLICY; AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Everglades City has been awarded a grant under the Community Development Block Grant ("CDBG") program;

WHEREAS, the City intends to apply for further grants under the CDBG program;

WHEREAS, the CDBG program requires compliance with all applicable federal and state laws, including, but not limited to, OMB Circular A-102; 2 CFR §§ 200.317 – 26; sections 255.0525 and 287.055, Florida Statutes; and chapter 73C-23, Florida Administrative Code;

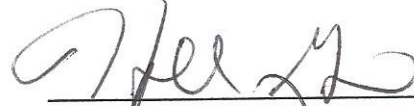
WHEREAS, applicable federal and state law require and encourage a procurement policy and a policy for promoting minority and woman-owned business enterprises for all procurements involving CDBG funds;

WHEREAS, the City Council wants to create a procurement policy as well as a policy for promoting minority and woman-owned business enterprises for all procurements involving CDBG funds.


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVERGLADES CITY, FLORIDA, THAT:

- SECTION 1.** The above recitals are true, correct, and incorporated by reference as if set forth fully herein.
- SECTION 2.** The City Council hereby adopts the City of Everglades City Community Development Block Grant Program Purchasing Policy and City Community Development Block Grant Program Minority and Women Business Enterprise Policy, a true and accurate copy of which is attached as Exhibit A.
- SECTION 3.** This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
EVERGLADES CITY, FLORIDA, THIS MAY 5, 2020.

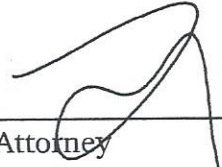


Mayor



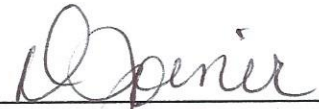
Councilperson

APPROVED AS TO LEGAL FORM:

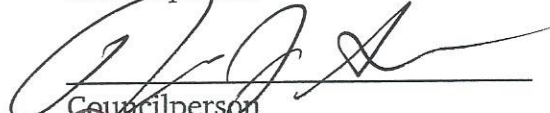


City Attorney

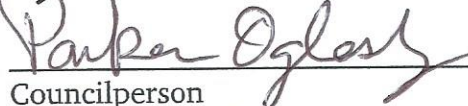
ATTEST:




Dottie Joiner, City Clerk



Councilperson



Councilperson



Councilperson



Councilperson

The City of Everglades City
Community Development Block Grant Program
Purchasing Policy

And

City Community Development Block Grant Program
Minority and Women Business Enterprise Policy

Section 1 – Purpose

These policies are adopted to assure goods and services for the Community Development Block Grant (“CDBG”) programs are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices as well as providing opportunities for minority and women-owned businesses. All City staff and other persons (subgrantees or contractors) with designated responsibility for the administration of CDBG award contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations. These include but are not limited to OMB Circular A-102, attachment O; 2 CFR-Part 200.31.316; sections 255.0525 and 287.055, Florida Statutes; and chapter 73C-23, Florida Administrative Code.

Section 2 – Application of Policy

These policies shall apply to the procurement of all goods and services with funds granted by, or to be reimbursed by, any CDBG program.

Section 3 – Purchasing Director

The City Bookkeeper shall serve as the central purchasing officer (the “Purchasing Officer”) of the City for all purchases described in these policies.

Section 4 – Purchasing and Contract Award Procedures

4.01 Purchasing Categories: Threshold Amounts

Except Sole Source Purchases (Section 4.06), Cooperative Purchasing (Section 4.07), and Emergency Purchases (Section 4.012), all purchases and contract awards are to be made subject to the provisions of the appropriate Section according to the following threshold amounts:

- A. “Small Purchases” (Section 4.02) \$0.01 to \$5,000.00
- B. “Purchasing Quotes” (Section 4.03) \$5,000.01 to the threshold amount provided for CATEGORY TWO in section 287.017, Florida Statutes, as amended.

- C. "Competitive Sealed Bids/Proposals" (Section 4.04 & 4.05) any amount in excess of the threshold amount provided for CATEGORY TWO in section 287.017, Florida Statutes, as amended.

4.012 Emergency Purchases and Exceptions

- A. A purchase may be deemed an "Emergency Purchase" by the Mayor if the purchase is required to protect the health, safety, and welfare of the residents of the City. This determination shall be made by the Mayor and shall be based upon an official statement from the State of Florida or one or more of its agencies that an imminent risk to the health, safety, and welfare exists; or upon the official finding of the State of Florida or one or more of its agencies that a City utility is substantially out of compliance coupled with the Mayor's determination that the purchase is directly related to correcting the applicable finding.
- B. The procedure for Small Purchases shall apply to all purchases deemed Emergency Purchases, except as noted in section 4.02.
- C. An "Emergency Exception" applies to Purchasing Quotes and Competitive Sealed Bidding when the complete advertisement process has been followed, and only one or two potential contractors respond. In that scenario, the Mayor may, deem the procurement subject to the "Emergency Exception" provided the purchase is required to protect the health, safety, and welfare of the residents of the City. If the Mayor determines this to be the case, then the procurement may proceed as if it received 3 responding potential contractors.

4.02 Small and Emergency Purchases

The purchase of goods and services which cost less than the threshold set in section 4.01 or that are Emergency Purchases pursuant to section 4.012 do not require solicitation of quotes or bids. Small purchases shall be authorized by the Purchasing Officer or his or her designee(s). Emergency Purchases shall be authorized by the Mayor or his or her designee(s).

4.03 Purchasing Quotes

The purchase of goods and services which cost within the range set for purchasing quotes in section 4.01 shall require competitive quotations from three or more vendors. The quotations shall be obtained and awarded by the Purchasing Officer. If three responsible and responsive quotes are not received, the procurement will be invalid, unless an Emergency Exception applies. If three responsible and responsive quotes are not received and the Purchasing Quote has been solicited two full times, then, so long as the procurement received at least one responsible and responsive

quote, the procurement shall proceed as if it received three responding potential contractors.

4.04 Competitive Sealed Bidding

- A. Conditions for use. All contracts for purchases of goods or services in excess of the set base amount for Competitive Sealed Bids/Proposals, where price, not qualifications, is the basis for contract award, shall be awarded by competitive sealed bidding.
- B. Invitation to bid. An "Invitation to Bid" shall be issued and shall include specifications; all contractual terms and conditions; and the place, date, and time for opening or submittal. No later than five business days prior to the date for the submission of the bids, a vendor shall make a written request to the City for interpretations or corrections of any ambiguity, inconsistency or error which the vendor may discover. The City may respond by issuing a written interpretation or correction, as an addendum. The City is not responsible for oral clarifications. No negotiations, decisions, or actions shall be initiated or executed by the proposer as a result of any discussions with any City employee prior to the opening of proposals. Only those communications which are in writing from the City may be considered as a duly authorized expression on the behalf of the City. Only communications from firms or individuals which are in writing and signed will be recognized by the City as duly authorized expressions on behalf of proposers.
 - (1) Alternates. Alternate bids will not be considered unless authorized by and defined in the terms and conditions of the bid specifications.
 - (2) Approved equivalents. The City reserves the right to determine acceptance of goods as an approved equivalent. Bids which do not comply with the stated requirements for equivalents in the bid terms and conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the general terms and conditions of the bid.
- C. Public notice. Pursuant to section 255.0525(2), Florida Statutes, and rule 73-23.00521(2)(a), Florida Administrative Code, a notice for Request for Proposals must be advertised for proposals that are projected to cost more than \$200,000.00 shall be published in at least one daily newspaper of general circulation in the City as well as the nearby federal Office of Management and Budget (OMB) designed metropolitan statistical area (MSA) at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. Additionally, notice shall be sent to those persons on the City's MBE/WBE solicitation list. Alternatively, the City may substitute the

above notice with any solicitation procedure which generates at least three responsible and responsive bids or proposals which can be considered. However, if three responsible and responsive bids or proposals are not received, the procurement will be invalid, unless an Emergency Exception applies.

- D. Bid opening. Bids shall be opened publicly. The Purchasing Officer or his or her designee shall open bids in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and other such relevant information as may be deemed appropriate by the Purchasing Officer together with the name of each bidder, and all witnesses shall be recorded. The record (the "Bid Report") and each bid shall be open to public inspection.
- E. Bid acceptance and evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include, but not be limited to, criteria to determine acceptability such as: inspection, testing, quality, recycled or degradable material content, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in the evaluation for the award shall be objectively measured, such as discounts, transportations costs, and total or life cycle costs. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid, in regulations, or in this policy.
- F. Bid agenda item. After evaluation, the Purchasing Officer will prepare a recommendation and shall place the item on the agenda of the City Council.
- G. Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid's mistakes, shall be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the Invitation to Bid prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake, of non-judgmental character, was made, the nature of the mistake, and the bid price actually intended. After bid opening time, no changes in the bid price or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw his bid if:
 - (1) the mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or

- (2) the bidder submits evidence which clearly and convincingly shows that a mistake was made. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the Purchasing Officer.
- H. Multi-step sealed bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- I. Award. The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder who meets the requirements and criteria set forth in the Invitation to Bid.

The City reserves the right to waive any informality in bids and to make an award in whole or in part when both conditions are in the best interest of the City. Any requirement which is waived must be documented and kept in the file.

- (1) Notice of intended award. The contract shall be awarded by written notice.
 - (2) Notice of right to protest. All notices of decision or intended decisions shall contain the statement: "Failure to file a protest within the time prescribed in Section 4.08 of this policy shall be a waiver of Proceedings under this policy."
- J. Cancellation of Invitations for Bids. An Invitation to Bid or other solicitation may be canceled, or any and all bids may be rejected in whole or in part when it is in the best interests of the City, as determined by the City Council. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation, and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.
- K. Disqualification of bidders. For any specific Invitation to Bid, bidders may be disqualified by the City Clerk for the following reasons:
- (1) Failure to respond to bid invitation three consecutive times within the last 18-month period.
 - (2) Failure to update the information on file, including address, project or service, or business description.
 - (3) Failure to perform according to contract provisions.

- (4) Conviction in a court of law of any criminal offense in connection with the conduct of business.
- (5) Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
- (6) Clear and convincing evidence that the bidder has attempted to give a City employee or official a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the City's purchasing activity.
- (7) Failure to execute a Public Entity Crimes Statement as required by chapter 287.133(3)(a), Florida Statutes.
- (8) Any other reason deemed appropriate by the City.

4.05 Competitive Sealed Proposals

All contracts for the purchases of goods or services in excess of the established base amount for Competitive Sealed Bids/Proposals, where qualifications, not price, is the basis for contract award, shall be awarded by competitive sealed proposals. All contracts for the procurement of professional architectural engineering, landscape architectural, and land surveying services will be awarded according to the provisions of Section 4.051. All other contracts required to be awarded by competitive sealed proposals will be awarded according to the provisions of Section 4.052.

4.051 Professional Architectural, Engineering, Landscape Architectural, and Land Surveying Services

- A. Public announcement. The City shall publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the City may require firms to submit a statement of qualifications, performance data, and other related information for the performance of professional services.
 - (1) Scope of project requirements. Prior to submission of the request for proposals for professional as an agenda item for approval by the City Council, the Purchasing Officer shall submit to the City written project requirements indicating the nature and scope of professional services required, including but not limited to:
 - a. The general purpose of the services or study;

- b. The objectives of the study or services;
 - c. The estimated cost of the service or study;
 - d. Whether the proposed study or service would or would not duplicate any prior or existing study or service;
 - e. List of current contracts or prior services or studies which are related to the proposed study or service; and
 - f. The described qualifications, listed in order of importance, of the person or firm applicable to the scope and nature of the services requested.
- (2) Distribution of project requirements. The Purchasing Officer shall distribute the written project requirements as approved by the City Council to all persons on the mailing list who have indicated an interest in being considered for the performance of such professional services and to any additional persons as the Purchasing officer or City deems desirable. The written project requirements shall include a statement of the relative importance of each of the requirements. Project requirements shall be accompanied by an invitation to such persons to submit an indication of interest in performing the required services, and by notification of the date and time when such indications of interest are due. This date shall not be less than 14 calendar days from the date of public notice when the purchasing officer shall publish in at least one newspaper of wide general circulation in the region.
- (3) Modification prohibition. After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Selection Committee (defined in Section 4.051-2(3)) prior to making its selection of those best qualified to be formally interviewed.
- (4) Reuse of existing plans. There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the City is able to reuse existing plans from a prior project. However, public notice of any plans which are intended to be reused at some future time shall contain a statement which provide that the plans are subject to reuse.
- B. Selection committee membership and evaluation. Depending on the expected complexity and expense of the professional services to be contracted, the City

made determine whether a 3 member or 5-member selection committee will best serve the needs of the City.

- (1) Three-member committee composition. Membership of a 3-member selection committee shall be appointed by City Council.
- (2) Five-member committee composition. Membership of a 5-member selection committee shall be appointed by City Council.
- (3) Selection committee evaluation. Only written responses of statements of qualifications, performance data, and other data received in the purchasing office by the publicized submission time and data shall be evaluated. Only those respondents who are determined to be best qualified based upon the evaluation of written responses and selected for formal interview may submit additional data. From amount those persons showing, by timely submission of written responses, an interest in performing the services the Selection Committee shall:
 - a. Prepare an alphabetical list of those persons determined by the Selection Committee to be qualified, interested, and available; and
 - b. Designate no less than three persons on the alphabetical list considered by the Selection Committee to be best qualified to perform the work required.
- (4) Shortlisting. The best qualified respondents shall be based upon the Selection Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed. The Selection Committee shall determine qualifications, interest, and availability by reviewing the written responses that express an interest in performing the services, and by conducting formal interviews of no less than three selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determination may be based upon, but not limited to, the following:
 - a. Competence, including technical educational and training, experience in the kind of project to be undertaken, availability of adequate personnel, equipment, and facilities, the extent of repeat business of the persons, and where applicable, the relationship of construction cost estimates by the person to actual cost on previous projects;
 - b. Current work load;
 - c. Financial responsibilities;

- d. Ability to observe and advise whether plans and specifications are being complied with, where applicable;
 - e. Record of professional accomplishments;
 - f. Proximity to project involved, if applicable;
 - g. Record of performance; and
 - h. Ability to design an approach and work plan to meet the project requirements where applicable.
- (5) Interview and Council Approval. After conducting the formal interviews, the Selection Committee shall list those respondents interviewed in order of preference based upon the considerations listed in subsection (4) above. The respondents so listed shall be considered to be the most qualified and shall be listed in order of preference starting at the top of the list. The list of best qualified persons shall be forwarded to the Council for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.
- C. Negotiation Staff. Contract negotiations shall be conducted by the Purchasing Officer or a designee of the Purchasing Officer.
- D. Negotiation. The Purchasing Officer or the designee of the Purchasing Officer shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the Purchasing Officer or the designee of the Purchasing Officer determines to be fair and reasonable to the City. In making this decision, the Purchasing Officer or the designee of the Purchasing Officer shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. As part of the negotiation, the Purchasing Officer or the designee of the Purchasing Officer shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price. Should the Purchasing Officer or the designee of the Purchasing Officer be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm will be formally terminated. The Purchasing Officer or the designee of the Purchasing Officer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Purchasing Officer or the designee of the Purchasing Officer shall then undertake negotiations with the third most qualified firm. Should the Purchasing Officer or the designee of the Purchasing Officer be unable to negotiate a satisfactory contract with any of the selected firms, the Selection Committee shall select additional firms in order of their

competence and qualifications, and the Purchasing Officer or the designee of the Purchasing Officer shall continue negotiations in accordance with this section until an agreement is reached or until a determination has been made not to contract for services.

4.052 Other Competitive Sealed Proposals (non-section 287.055, Florida Statutes services)

- A. Conditions for Use. All contracts required by Section 4.05 to be awarded by competitive sealed proposals that are not for the procurement of those services covered by section 287.055, Florida Statutes, as amended, shall be awarded according to the provisions of this section.
- B. Consultant's Competitive Negotiation Act. Professional services within the scope of section 287.055, Florida Statutes, as amended, shall be secured under the provisions of Section 4.051, provided no provision of Section 4.051 is contradictory to section 287.055, Florida Statutes, as amended. If there is any contradiction, section 287.055, Florida Statutes, as amended, shall control.
- C. Council Approval. Proposals anticipated to exceed two times the threshold established in Section 4 for Competitive Sealed Proposals shall be approved by the City Council prior to solicitation.
- D. Public Notice. Public Notice shall be by publication in a newspaper of general circulation at least 12 working days prior to proposal opening. Notice of the Request for Proposals shall give date, time, and place set forth for the submittal of proposals and opening.
- E. Evaluation Factors. The Request for Proposals shall state the relative importance of criteria outlined in the scope of services, fee proposal, and other evaluation.
- F. Proposal Cancellation or Postponement. The Purchasing Officer may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission.
- G. Revisions and Discussions with Responsible Offerors. As provided in the Request for Proposals, and under regulations promulgated by the City Council, discussions may be conducted with responsible offerors who submit proposals determined to be qualified of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting

discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The Purchasing Officer shall prepare a written summary of the proposals and make written recommendation of award to the City Council. As part of the recommendations, the Purchasing Officer shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price.

- H. Award. Award shall be made by the City Council to the lowest responsible offer or whose proposal is determined in writing to be the most advantageous to the City Council, taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation criteria that is not included in the Request for Proposal.

4.06 Sole Source Purchases

- A. Sole Source Certification. The procurement for all professional services and any contract resulting from a non-competitive procurement process must meet the requirements 2 CFR part 200 and section 287.055, Florida Statutes. The Purchasing Officer must conduct a cost or price analysis of all proposed prices on sole source purchases, analysis shall include a review of profit as a separate element.
- B. Additional Purchases from Certified Sole Source. The Purchasing Officer may be authorized, after an initial sole source certification and DEO approval, to make additional purchases from a sole source vendor for not less than one year or until such time and contrary evidence is presented regarding sole source eligibility, whichever period is less.

4.07 Cooperative Purchasing

- A. State Contracts. The Purchasing Officer is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts of the Department of Management Services, subject otherwise to the requirements of this policy.
- B. Other Governmental Units. The Purchasing Officer shall have the authority to join other units of government in cooperative purchasing ventures when the best interest of the City would be served thereby, and the same is in accordance with this policy and with the City and State Law.

4.08 Bid Protests

- A. Right to Protest. Any actual prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of contract may protest

to the City Council. Protestors shall seek resolution of their complaints initially with the Purchasing Officer and secondly with the City Clerk prior to protesting to the City Council.

- B. Filing a protest. Any person or persons who is or are affected adversely by the decision or intended decision of the City shall file with the Purchasing Officer a notice of protest in writing within 72 hours after the posting of bid tabulation or after receipt of the notice of intended decision and file a formal written protest within 10 calendar days after he or she filed a notice to protest. Failure to file a notice of protest or failure to file a formal written protest shall be a waiver of proceedings under this section. A written protest is filed with the City when it is delivered to and received in the office of the Purchasing Officer.
- (1) The notice of protest shall contain at a minimum: the name of the bidder; the bidder's address and phone number; the name of the bidder's representative to whom notices may be sent; the name and bidder number of the solicitation; and a brief factual summary of the basis of the protest.
 - (2) The formal written protest shall; identify the protestant and the solicitation involved; include a plain, clear statement of the grounds on which the protest is based; refer to the legal authority which the protestant deems applicable to such grounds; and specifically request the relief to which the protestant deems himself entitled by application of such authority to such grounds.
 - (3) The protestant shall mail a copy of the notice of protest in the formal written protest to any person with whom he or she is in dispute.
- C. Settlement and Resolution. The Purchasing Officer shall; within 14 calendar days of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position. Provided, however, if such settlement will have the effect of determining a substantial interest of another party of business, such settlement must be reached in the course of the proceedings provided herein.
- D. Protest Proceedings. If the protest cannot be resolved by mutual agreement, the Purchasing Officer shall conduct or designate another to conduct a protest proceeding pursuant to the following procedures:
- (l) Protest Proceeding Procedures.
 - (a) The presiding officer shall give reasonable notice to all substantially affected persons or businesses. Otherwise petitions to intervene will be considered on their merits as received.

- (b) At or prior to the protest proceeding, the protestant may submit any physical materials, objects, statements, or affidavits, and arguments which he/she deems relevant to the issues raised.
 - (c) In the proceeding, the protestant, or his/her representative or counsel, may also make an oral presentation of his, her, or its evidence and arguments. However, neither direct nor cross examination of witnesses shall be permitted, although the presiding officer may make whatever inquiries he or she deems pertinent to a determination of the protest.
 - (d) The rules evidence shall not apply, and the presiding officer shall base his or her decision on such information given in the course of the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.
 - (e) Within seven (7) working days of the conclusion of the proceeding, the presiding officer shall render a decision which sets forth the terms and conditions of any settlement reached. Such decision of the presiding officer shall be conclusive as to the recommendation to the City Council.
 - (f) Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.
- (2) Intervenor. The participation of intervenors shall be governed by the terms of the order issued in response to a petition to intervene.
 - (3) Time Limits. The time limits in which protests must be filed as provided herein may be altered by specific provisions in invitation for bids or request for proposal
 - (4) Entitlement to Costs. In no case will the protesting bidder or offeror be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney fees.
- E. Stay of Procurement During Protests. In the event of a timely protest under Subsection A of this Section, the Purchasing Officer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or unless the City Council makes a determination that the award of a contract without delay is necessary to protect the substantial interest of the City.

4.09 Contract Claims

- A. Authority of the Purchasing Officer to Settle Bid Protests and Contract Claims. The Purchasing Officer is authorized to settle any protest regarding the solicitation or award of a City contract, or any claim arising out of the performance of a City contract, prior to an appeal to the City Council or the commencement of an action in a court of competent jurisdiction, but may not settle any such protest or claim for consideration of \$1 ,000.00 or greater in value without prior approval of the City Council.
- B. Decision of the Purchasing Officer. All claims by a contractor against the City relating to a contract, except bid protests, shall be submitted in writing to the Purchasing Officer for a decision. The contractor may request a conference with the Purchasing Officer on the claim.

Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- C. Notice to the Contractor of the Purchasing Officer’s Decision. The decision of the Purchasing Officer shall be promptly issued in and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached and shall inform the contractor of his appeal rights under section 4.09.
- D. Finality of the Purchasing Officer’s Decision: Contractor's Right to Appeal. The Purchasing Officer’s decision shall be final and conclusive unless, within 10 calendar days from the date of receipt of the decision, the contractor files a notice of appeal with the City Council.
- E. Failure to Render Timely Decision. If the Purchasing Officer does not issue a written decision regarding any contract controversy within fourteen calendar days after receipt of a written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been issued.

4.10 Remedies for Solicitation or Awards in Violation of the Law

- A. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Officer after consultation with the City Attorney, determines that solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.
- B. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award contact, the Purchasing Officer after consultation with the City Attorney, determines that a solicitation or a proposed award of a

contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.

- C. After Award. If, after award, the Purchasing Officer after consultation with the City Attorney, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, then:
 - (1) if the person awarded the contract has not acted fraudulently or in bad faith:
 - (a) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the City; or
 - (b) the contract may be terminated, and the person awarded the contract shall be compensated for actual costs reasonably incurred under the contract plus a reasonable profit, but excluding attorney fees, prior to termination; or
 - (2) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interest of the City.

Section 5. – Contract Administration

5.1 Contract Provisions

- A. Standard Contract Clauses and Their Modification. The City after consultation with the City Attorney, may establish standard contract clauses for use in City contracts. However, the Purchasing Officer may, upon consultation with the City Attorney, vary any such standard contract clauses for any particular contract.
- B. Time and Materials Contracts. No contract governed by this policy shall be a Time and Materials contract, as defined by 2 C.F.R. § 200.318(j), as amended, unless there is a finding made by the City Council that no other contract is suitable and includes a ceiling that the contractor exceeds at his/her/its own risk.
- C. Contract Clauses. All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Officer after consultation with the City Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - (1) the unilateral right of the City to order, in changes in the work within the scope of the contract;

- (2) the unilateral right of the City to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- (3) variations occurring between estimated quantities or work in contract and actual quantities;
- (4) defective pricing;
- (5) time of performance and liquidated damages;
- (6) specified excuses for delay or nonperformance;
- (7) termination of the contract for default;
- (8) termination of the contract in whole or in part for the convenience of the City;
- (9) suspension of work on a construction project ordered by the City; ⁽¹⁰⁾site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract
 - (a) when the contract is negotiated;
 - (b) when the contractor provides the site or design; or
 - (c) when the parties have otherwise agreed with respect to the risk of differing site conditions;
- (11) value engineering proposals;
- (12) remedies;
- (13) access to records/retention records;
- (14) environmental compliance; and
- (15) prohibition against contingency fees;
- (16) insurance to be provided by contractor covering employee property damage,
liability and other claims, with requirements of certificates of insurance and cancellation clauses;
- (17) bonding requirements as set by the City Council;
- (18) causes of and authorization for suspension of contract for improper contractor activity.

5.2 Price Adjustments

- A. Method of Price Adjustment. Adjustments in price during the term of a contract shall be computed in one or more of the following ways upon approval by the City:
- (1) by agreement on a fixed price adjustment before adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) by unit prices specified in the contract or subsequently agreed upon;
 - (3) by costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the City;
 - (4) in such other manner as the contracting parties may mutually agree; or
 - (5) in the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the City, subject to the provisions of this Section.
- B. Costs or Pricing Data Required. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

5.3 Change Orders and Contract Amendments

Change orders and contract amendments, which provide for the alteration of the provisions of a contract may be approved by an appropriate person based upon the dollar value of the change or amendment. The purchasing categories thresholds designated in Section 4.01 shall govern the appropriate level of approval.

5.5 Assignment of Contracts

No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the City nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the City.

5.6 Right to Inspect Plant

The City may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performances of any contract awarded, or to be awarded, by the City. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the City.

Section 6 – Rights of City Council

Nothing in this policy shall be deemed to abrogate, annul, or limit the right of the City Council when acting in the best interest of the City. The City Council reserves the right to reject all bids received in response to a request, to determine in its sole discretion the responsiveness and responsibility of any bidder, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when desirable for public good as long as such action does not violate state or federal law and/or program requirements. All allocated CDBG funds must meet the requirements 2 CFR Part 200 and Sections 255.0525 and 287.055 of the Florida Statutes.

Section 7 – City Procurement Records

7.1 Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file.

7.2 Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules established by the State of Florida.

Section 8 – Specifications

8.1 Maximum Practicable Competition

All specifications shall be drafted to promote overall economy and encourage competition in satisfying the City needs and shall not be unduly restrictive. The policy applies to all specifications including, but not limited to, those prepared for the City by architects, engineers, designers, and draftsmen.

8.2 Use of Brand Name or Equivalent Specifications

- A. Use. Brand name or equivalent specifications may be used when the City determines that:
- (1) no other design, performance, or qualified product list is available;
 - (2) time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) the nature of the product or the nature of the City requirements makes use of a brand name equivalent specifications suitable for the procurement; or

- (4) use of brand name or equivalent specification is in the City's best interest.
- B. Designation of Several Brand Names. Brand names or equivalent specifications shall seek to designate three, or as many different brands as are practicable, as "or equivalent" references and shall further state the substantially equivalent products to those designated may be considered for award.
- C. Required Characteristics. The brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.
- D. Nonrestrictive Use of Brand Name or Equivalent Specifications. Where a brand name or equivalent specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- E. Determination of Equivalents. Any prospective bidder may apply, in writing, for a pre-bid determination of equivalence by the Purchasing Director. If sufficient information is provided by the prospective bidder, the Purchasing Director may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.
- F. Specifications of Equivalents Required for Bid Submittal. Vendors proposing equivalent products must include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.

8.3 Brand Name Specifications

- A. Use of Brand Name Specifications. Because the use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Director makes a determination that only the identified brand name item will satisfy the City's requirements.
- B. Competition. The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 4.06, Sole Source and Emergency Purchases.

Section 9 – Ethics in Public Contracting

9.1 Criminal Penalties

To the extent that violations of the ethical standards of conduct set forth in this section are violations of the criminal laws of the State of Florida they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

9.2 Employee Conflict of Interest

- A. Participation. It shall be unethical for any City employee, officer, or agent to participate directly or indirectly in a procurement or administration of a contract. A conflict of interest will arise when:

- (1) the City employee, officer or agent;
- (2) any member of his immediate family;
- (3) his or her partner; or

(4) an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The officer's employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, or parties to sub-agreements.

9.3 Contemporaneous Employment Prohibited

It shall be unethical for any City employee who is participating directly or indirectly in the procurement process to become or to be, while such a City employee, the employee of any person contracting with the City.

9.4 Use of Confidential Information

It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of other persons.

9.5 Gratuities and Kickbacks

- A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any City employee, officer, or agent to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with the decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or

controversy, or other particular matter, subcontract, or to any solicitation or proposal thereto.

- B. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or behalf a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order,
- C. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this section shall conspicuously set forth in every contract and solicitation therefore.

9.6 Sanctions

- A. Employee Sanctions. Upon violation of the ethical standards by an employee, officer, or agent of the City, or other appropriate authority, the Mayor or City Council may:
 - (1) impose one or more appropriate disciplinary actions up to and including termination of employment; and;
 - (2) may request investigations and prosecution.
- B. Non-employee Sanctions. The Mayor or City Council may impose any one or more of the following sanctions on a non-employee for violation of the ethical standards:
 - (1) written warnings;
 - (2) termination of contracts; or
 - (3) debarment or suspension as provided in Section 5.1.

9.7 Recovery of Value Transferred or Received in Breach of Ethical Standards

- A. General Provisions. The value of anything being transferred or received in breach of the ethical standards of this policy by a City employee or non-employee may be recovered from both the City employee and non-employee.
- B. Recovery of Kickbacks by The City. Upon a showing that a subcontractor made a kickback to prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such a kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

Section 10 – Federal Policy Notice

10.1 Patents

If a contract regulated by this policy involves research and development, experimental, or demonstration work and is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions addressing the following:

- A. Notice to Contractor. The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or inventions arising out of the contract.
- B. Notice by Contractor. The contract shall require the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

10.2 Notice of Federal Public Policy Requirements

- A. Applicability. If a contract regulated by this policy is being funded in whole or in part by assistance from any federal agency, the contract is subject to one or more federal public policy requirements including, for example:
 - (1) equal employment opportunity;
 - (2) affirmative action;
 - (3) fair labor standards;
 - (4) energy conservation;
 - (5) environmental protection; or
 - (6) other similar socio-economic programs.
- B. Notice. The Purchasing Officer shall include in a contract regulated by this policy all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Purchasing Director shall include in the contract provisions the requirement that the contractor give similar notice to all of its subcontractors.

Section 11 – Payment to Vendors

In addition to any requirements herein, all payment to vendors shall be in accordance with the "Prompt Payment Act", Chapter 89-297, Florida Statutes, as amended.

Section 12 – Minority and Women Business Enterprise Participation Program

- A. Purpose and Scope. The purpose of the Minority and Women Business Enterprise Program is to enhance the participation of qualified "Minority", as defined by section 288.703, as amended, owned business enterprises ("MBEs") and woman owned business enterprises ("WBEs") in providing goods and services and construction contracts required by the City and funded by CDBG funds. This program describes procedures to accomplish this purpose and to monitor and evaluate progress for procurements involving CDBG funds. All departments and divisions under the jurisdiction of the City Council are responsible for implementing this program for all procurements involving CDBG funds.
- B. Policy Statement.
- (1) It is the policy goal of the City that 2% of the City approved, CDBG related procurement, as contained with both operating and capital improvement budgets (exclusive of in-house services and construction), shall be identified and let through the competitive bid process to MBEs, WBEs. The program is based on an in-depth evaluation of all actual, as well as projected procurement (CIPs, equipment, commodities and services), and on the marketplace. Procurement identified to establish a base for this program are not limited to those items only. This evaluation is the main factor in building a realistic program with attainable targets.
- (2) All departments and divisions under the jurisdiction of the City Council are responsible for implementing this program and for making every reasonable effort to utilize MBEs and WBEs when opportunities are available. The Purchasing Officer will take the lead role in this process by taking active steps to encourage MBEs and WBEs.
- (3) Regarding the implementation of this policy, it is the City Council's intent to foster economic development in the City's area by establishing its MBE and WBE goals based on availability of MBEs and WBEs located within the City. This is no way intended to limit or restrict competition. Rather, availability of area companies will be used to guide MBE and WBE goals. Such geographical preferences may be adjusted, amended or repealed by the City Council, with or without a public hearing, as deemed necessary.
- C. Definition. MBE and WBE as used herein, means a "Minority Business Enterprise" as defined in section 288.703(3), Florida Statutes, as amended.
- D. Administrative Responsibilities. The Purchasing Officer is responsible for the coordination of the Minority and Women Business Enterprise Program and registration.

(1) Capital Improvement Projects

(a) REVIEW

The Purchasing Officer and an appropriate department representative shall review each proposed project or bid to determine potential for utilization of MBE/WBEs and report their findings to the City Council. This review is based on known availability of capable MBE/WBEs in the City, and in Collier County, in relation to the scope of the bid package and considers how a project might be broken down into sub-bids.

(b) PRE-BID ACTIVITY

- a. Language regarding the Minority and Women Business Enterprise Program will be inserted into bid specifications to assure that prospective bidders are aware of a requirement to make good faith efforts to utilize MBE/WBEs.
- b. Registered MBE/WBEs in the City and in Collier County, and the U.S. Minority Contractors Association, will be notified in writing regarding pre-bid conferences where information on project scope and specifications will be presented, along with other types of technical assistance.
- c. Available plans and specification will be sent to the U.S. Minority Contractors Association along with any special instructions on how to pursue bids.
- d. Majority (prime) contractors on a bid list will be sent a letter outlining the Minority and Women Business Enterprise Program procedures, the supportive documentation required for submittal with their bid, and a list of MBE/WBE contractors in the City and in Collier County.
- e. No contractor will be awarded a bid until the contractor has provided specific detailed documentation on how MBE/WBEs will be utilized, and such a plan is approved by the City Council.
- f. The MBE/WBE participation plan for a specific project and the contractor commitment to carry out the program will become a part of the contract awarded by the City. Failure to keep these commitments will be deemed noncompliance with the contract and may result in a breach of contract.

(2) Contractor Responsibilities

- (a) Contractors must indicate all MBE/WBEs, contracted for quotes regarding a particular scope of work and submit a completed "Intent to Perform" sheet containing information and documentation obtained from each MBE/WBEs.
- (b) A contractor who determines that a MBE/WBE, named in the bid submittal, is unavailable or cannot perform, will request approval from the Purchasing Officer to name an acceptable alternate MBE/WBE ("Alternate MBE/WBE Request"). The Purchasing Officer shall approve such requests when adequate documentation of cause for the change is presented by the contractor.
- (c) A contractor's MBE/WBE plan will utilize MBE/WBEs to perform commercially useful functions in the work bid. A MBE/WBE is performing a commercially useful function when it is responsible for the management and performance of a distinct element of the total work.
- (d) Contractors are required to make good faith efforts to obtain MBE/WBE participation when so stipulated by bid specifications and/or contracts. If these efforts are unsuccessful, the contractor will submit a non-availability or refusal to participate and will request waiver of MBE/WBE participation.
- (e) The contractor who is the successful bidder will attend pre-construction conferences with appropriate City representatives to review the project scope and the MBE/WBE utilization plan.
- (f) The contractor who is the successful bidder must request a change order for any modification to the MBE/WBE plan, except for Alternate MBE/WBE Requests. Change orders require Council approval and are contingent on contractor documentation of MBE/WBE involvement in the change requested and documentation of cause for these changes.

(3) MBE/WBE Contractor's Responsibilities

- (a) MBEs/WBEs must register with the Purchasing Officer in order to participate the Minority Business Enterprise Program.
- (b) MBEs/WBEs should attend pre-construction conferences to obtain information and technical assistance on projects and bid procedures in which they (MBEs/WBEs) have submitted bids.

E. Joint Venture Responsibilities.

- (1) The use by MBE/WBEs or prime contractors of "minority fronts" or other fraudulent practices which subvert the true meaning and spirit of the Minority Business Enterprise Program, will not be tolerated and may result in termination of participation.
- (2) A joint venture consisting of minority and non-minority business enterprise will be credited with MBE/WBE participation on the basis of the percentages of the dollar amount of the work to be performed by the MBEs/WBEs.
- (3) Contracts subject to this policy shall contain provisions stating that liquidated damages may be assessed against the general contractor and/or the MBE/WBE specifications in the contract(s). Such liquidated damage provisions shall be in a form approved by the City Council,

F. Fulfilling MBE/WBE Participation Requirements.

For the purpose of this policy, a general contractor may utilize the services of a MBE/WBE subcontractor, manufacturer, and/or supplier in estimating and satisfying the scope of work, provided that written contract/agreement is executed between the general contractor and the subcontractor , manufacturer, and/or the supplier.

G. Payment.

In addition to any requirements herein, all payment to MBE and WBE vendors shall be in accordance with the "Prompt Payment Act", Chapter 89-297, Florida Statutes, as amended.

H. Waiver of Bid Bond Requirements.

The Council may, at its discretion, waive any of the requirements of this Section when it is determined to be in the best interest of the City.

I. MBE/WBE Bid List.

- (1) An MBE/WBE bid list for the purpose of bid solicitations for procurement regulated by this policy shall be maintained by the City. The list shall consist of firms that apply.
- (2) The City may remove firms from the bid list for any of the following reasons:
 - a. consistent failure to respond to bid invitations (three (3) consecutive instances) within the last eighteen-month period; or
 - b. failure to update the information in file including address, product or service description or business description.

- (3) The Council may remove firms from the bid list for the following reasons:
- a. failure to perform according to contract provisions;
 - b. conviction in a court of law of any criminal offense in connection with the conduct of business;
 - c. clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals or the awarding of contracts;
 - d. clear and convincing evidence that a vendor has attempted to give a Council employee, officer or agent a gratuity of any kind for the purpose of influencing recommendation or decision in connection with any part of the City Council purchasing activity;
 - e. violation of circumvention of the Minority Business Enterprise Program; or
 - f. other reasons deemed appropriate by the of City Council

I. Reporting.

The Mayor or appropriate person will report, at least annually, to the City Council on the Status of the Minority Business Enterprise Program. Records will be maintained reflecting participation of local minority and women owned businesses and shall be reported.

J. Severability Clause.

Each separate provision of the program in this section is deemed independent of all other provisions herein so that if any provision or provisions be declared invalid, all other provisions hereof shall remain valid and full force and effect.