

RESOLUTION NO. 2022-01

A RESOLUTION OF THE CITY OF EVERGLADES CITY, FLORIDA, AMENDING ITS GENERAL PROCUREMENT POLICY FOR THE CITY OF EVERGLADES CITY; AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Everglades City adopted a general procurement policy for the City of Everglades City on December 1, 2020;

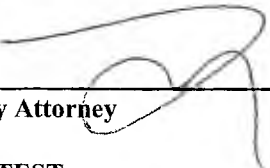
WHEREAS, the City of Everglades City now desires to amend article 4 of its general procurement policy to provide greater specificity in its bid protest procedures.

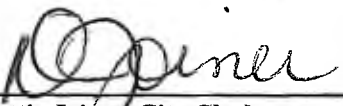
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVERGLADES CITY, FLORIDA, THAT:

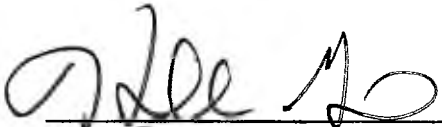
- SECTION 1. The above recitals are true, correct, and incorporated by reference as if set forth fully herein.
- SECTION 2. The City Council hereby adopts and the amended and restated general procurement policy for the City of Everglades City, as its amended procurement policy, a true and accurate copy of which is attached as Exhibit A.
- SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

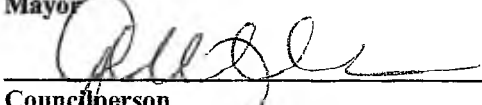
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF EVERGLADES CITY, FLORIDA, THIS JANUARY 25, 2022.

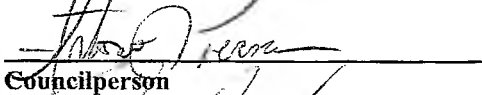
APPROVED AS TO LEGAL FORM:

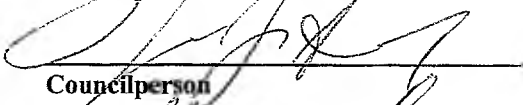
  
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City Attorney

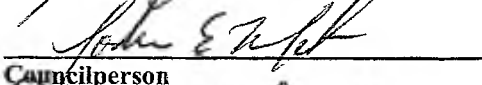
ATTEST:  
  
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Dottie Joines, City Clerk

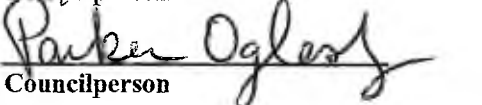
  
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Mayor

  
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Councilperson

## City of Everglades City

### Amended and Restated Procurement Policy

*Last updated January 25, 2022*

#### Article 1. - GENERALLY

##### 1.1. - Purpose.

The purpose of this procurement code is to provide for the fair and equitable treatment of all persons involved in public 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.

##### 1.2. - Application.

This policy applies to contracts and purchase orders for the procurement of construction and capital, supplies and services entered into by the city. It shall apply to every expenditure of public funds by the city for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance, state assistance, or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal, and state laws and regulations. When the procurement specifically involves the expenditure of CDBG funds, the city's Community Development Block Grant Program Purchasing Policy And City Community Development Block Grant Program Minority and Women Business Enterprise Policy shall apply. Nothing in this division shall prevent the city from complying with the terms and conditions of any grant, gift or request that is otherwise consistent with law.

##### 1.3. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Architect, professional engineer, landscape architect, and registered surveyor (includes mapping)* means those professional services within the scope of the practice of architecture, professional engineering, landscape architecture or registered surveying and mapping, as defined by the laws of the state, or performed by an architect, professional engineer, landscape architect or registered surveyor and mapper in connection with his/her professional employment or practice.

*Capital* means all nonexpendable items with an expected useful life of more than one year, such as real property, personal property, or any other thing of value as determined by the mayor or his/her designee.

*Change order* means any material revision to a purchase order that, once issued, affects either price, vendor, delivery, or merchandise.

*Construction* means the process of building, altering, repairing, improving, or demolishing any public structure or property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings, or real property.

*Contract* means any type of agreement, whether oral or written, for the procurement of supplies and/or services.

*Contractor* means any person having a contract with the city.

*Cost data* means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing under the contract.

*Cost-reimbursement contract* means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this article, and a fee or profit, if any.

*Debarment* means to bar, exclude, or preclude a person or entity from consideration for award of a contract with the city in accordance with the provisions of this division.

*Invitation for bid* means any document, whether attached or incorporated by reference, utilized for soliciting competitive sealed bids.

*Person* means a natural person, corporation, partnership, limited partnership, trust, estate, association, or any other legal entity under the laws of the state.

*Price analysis* means the evaluation of price data which may assist in arriving at prices to be paid and costs to be reimbursed.

*Pricing data* means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices.

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

*Professional services* means legal, medical, actuarial, engineering, architectural (including landscape), surveying, mapping, and other services procured as independent professional assistance and provided by persons who are properly licensed as professionals under state law.

*Qualified products list* means an approved list of products and services described by model or catalog numbers which, prior to competitive solicitation, the city has determined will meet the applicable specification requirements.

*Request for proposal* means any document, whether attached or incorporated by reference, utilized for soliciting proposals.

*Responsible bidder/proposer* means a person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity,

reliability, capacity, facilities, equipment, reputation, and credit which will ensure good faith performance.

*Responsive bidder/proposer* means a person who has submitted a bid or proposal which apparently conforms in all material respects to the requirements set forth in the invitation for bid or request for proposal.

*Services* means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product.

*Specification* means any description of the physical or functional characteristics or of the nature of the item being procured. It may include a description of any requirement for inspection and testing.

*Supplies* means all expendable items used in the operations of the city such as office supplies, automotive supplies, etc.

*Surplus supplies and capital* means any supplies no longer having any use to the city. These include obsolete and excess supplies, scrap material and nonexpendable property that have completed their useful life cycle.

#### 1.4. - Public access to procurement information.

Procurement information shall be a public record to the extent provided in chapter 119, Florida Statutes and shall be available to the public as provided in such statute.

#### 1.5. - Bulletin board.

All invitations to bid and requests for proposals shall be posted at City Hall.

#### 1.6. - Purchasing—Authority and duties.

- (a) *Mayor.* The mayor or his/her designee is hereby authorized to purchase all construction and capital, supplies, and services necessary for and incidental to the proper conduct and management of the city as well as the disposal of surplus property.
- (b) *Principal public purchasing official.* Except as otherwise provided herein, the mayor or his/her designee shall serve as the principal purchasing official for the city and shall be responsible for the procurement and management of construction and capital, supplies and services, as well as the disposal of surplus property.
- (c) *Duties.* In accordance with this article, the mayor or his/her designee shall:
  - (1) Procure or supervise the procurement of all construction and capital, supplies and services needed by the city;
  - (2) Exercise general supervision over inventories of supplies belonging to the city;
  - (3) Sell, trade, or otherwise dispose of surplus property belonging to the city; and
  - (4) Establish and maintain programs for specifications development, contract administration, inspection, and acceptance, in cooperation with agencies using the supplies and services.

(d) *Regulations and operational procedures.* Consistent with this article, the mayor or his/her designee:

- (1) Shall have the authority and responsibility to promulgate regulations governing the procurement, management and control of purchasing activities; and
- (2) May adopt operational procedures relating to purchasing activity. These may be set forth in a manual or handbook.

1.6. - Same—Delegations to other city employees.

The mayor may delegate authority to purchase supplies and services to other city employees when such delegation is deemed necessary for the effective procurement of certain supplies or services. Specifically, the mayor may authorize department directors to execute certain contracts in accordance with the city's standard operating procedures for review, drafting and processing of contracts, as may be amended from time to time.

1.7. - Authority to debar or suspend.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the mayor is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. The mayor is also authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, conviction of a public entity crime under state law, or in the performance of such contract or subcontract;
- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, fraud, collusion, racketeering, conspiracy, material misrepresentation, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation of contract provisions, as set forth in this subsection, of a character which is regarded by the mayor to be so serious as to justify debarment action:
  - a. Failure to perform in accordance with the specifications or within the time limit provided in the contract; or
  - b. Unsatisfactory performance in accordance with the terms of one or more contracts with the city or other entity or organization, whether public or private; provided, that unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

- (5) Any other cause the mayor determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this article.

#### 1.8. - Cost principles regulations required.

The mayor shall promulgate regulations setting forth cost principles which shall be used to determine the allowableness of incurred costs for the purpose of reimbursing costs under contract provisions providing for the reimbursement of costs; provided, however, that if a written determination is approved by the city council, such cost principles may be modified by contract.

### Article 2. - SOURCE SELECTION, CONTRACT AND PURCHASE ORDER FORMATION

#### 2.1. - Public-private partnerships (P3).

##### (a) *Purpose and scope; applicability.*

- (1) This section creates a uniform process for private entities and the city to engage in a public-private partnership (P3) consistent with section 255.065, Florida Statutes, as amended.
- (2) When considering a public project, the City may elect to (1) follow this P3 process if consistent with section 255.065, Florida Statutes, as amended, (2) follow any other legally available project delivery process, or (3) not pursue the project.
- (3) The procurement of P3 agreements by the city shall follow the provisions of this section. Requirements of other sections or articles of this policy shall not apply to procurements under this section unless such requirement is expressly included or incorporated by reference in the procurement documents. The city shall ensure that generally accepted business practices for exemptions provided by this section are part of the procurement process or are included in the P3 comprehensive agreement.
- (4) The City may develop and maintain a separate P3 policy containing more detailed procedures and requirements for entering into P3 agreements, consistent with this section.
- (5) When the City procures stand-alone professional services, as defined in the Consultants' Competitive Negotiation Act, codified at section 287.055, Florida Statutes, as amended, or when it procures professional services in the context of a design-build project, the City will not follow the P3 process, but will instead continue to comply with section 287.055, Florida Statutes, as amended.

##### (b) *Definitions.*

- (1) *City* means the City of Everglades City, Florida.
- (2) *Conceptual Proposal* means an Unsolicited Proposal that includes conceptual information sufficient for the City to determine whether the proposed ideas are

attractive enough to justify investment of City resources to undertake a process that may lead to formation of a contract to implement the ideas.

- (3) *Detailed Proposal* means a proposal (solicited or unsolicited) that contains detail beyond a conceptual level sufficient for the City to compare the proposal competitively to others.
  - (4) *P3* means a public-private partnership, which is an agreement between the City and a Private Entity that allows for greater private sector participation in the delivery of a City Qualifying Project.
  - (5) *P3 Statute* means section 255.065, Florida Statutes.
  - (6) *Private Entity* means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity.
  - (7) *Proposal Review Fee* means the fee paid by the Private Entity submitting an Unsolicited Proposal or by the Private Entity submitting a Detailed Proposal that competes with an Unsolicited Proposal.
  - (8) *Qualifying Project* means a facility or project that serves a public purpose, or a facility or infrastructure that is used or will be used by the public or in support of a public purpose or activity, as defined in the P3 Statute.
  - (9) *Solicitation* means a City-initiated procurement process seeking offers (bids, proposals, or otherwise) for City projects, which may include processes authorized by (1) this Article, (2) sections 255.20 or 287.055, Florida Statutes, or (3) any other law or the City's home rule powers.
  - (10) *Unsolicited Proposal* means a Conceptual Proposal or a Detailed Proposal that a Private Entity submits to the City on its own initiative, and not in response to a Solicitation.
- (c) *Conceptual proposal.*
- (1) A Private Entity may submit a Conceptual Proposal to the City, to gauge the City's potential interest in pursuing the proposed project as a P3. A Conceptual Proposal is not required. A Private Entity may forego submitting a Conceptual Proposal and submit an unsolicited Detailed Proposal.
  - (2) A Private Entity must tender a Proposal Review Fee of \$5,000.00 with its Conceptual Proposal. The City will not review a Conceptual Proposal that is not accompanied by the payment of this fee. Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal or business checks will not be accepted.
  - (3) A Conceptual Proposal must contain information sufficient to inform the City about (1) the overall character of the proposed Qualifying Project, (2) the general experience of the Private Entity, and (3) the general strategies to ensure successful project delivery.

- (4) Within ten (10) business days after receipt of the Conceptual Proposal, the City will either (1) summarily reject the Conceptual Proposal and return the Proposal Review Fee or (2) accept the Conceptual Proposal for substantive review and notify the Private Entity of the anticipated time required for the City to complete the review of the Conceptual Proposal.
  - (5) If the City decides to accept the Conceptual Proposal for substantive review, the City will preliminarily assess whether: (1) the proposed project is a Qualifying Project; (2) the proposed project delivery model offers advantages over traditional models, for example, lower cost, shorter schedule, increased investment, etc.; (3) the proposed project is reasonably likely to satisfy the criteria established by the P3 Statute.
  - (6) Upon completion of review of the Conceptual Proposal, the City will notify the Private Entity in writing of the City's position regarding the proposed project. The City may:
    - a. Decide not to pursue the proposed project;
    - b. Decide to pursue the proposed project, or a similar project, using other procurement methods (in which, if open to private companies, the Private Entity may compete if otherwise qualified); or
    - c. Decide to continue considering the proposed project under the P3 Statute and request the Private Entity to submit a Detailed Proposal (which request shall not constitute a formal Solicitation).
  - (7) The City's disposition of a Conceptual Proposal does not limit its discretion or authority with respect to future projects, whether solicited or unsolicited.
- (d) *Unsolicited detailed proposals.*
- (1) A Private Entity may submit an unsolicited Detailed Proposal to the City, to initiate the City's consideration of whether to deem the proposed project as a Qualifying Project and whether to pursue it further under the P3 Statute. The City is not obligated to pursue a project under the P3 Statute, even if the project satisfies the statutory definition of a Qualifying Project.
  - (2) A Private Entity must tender a Proposal Review Fee of \$25,000.00 with its Detailed Proposal, unless the Private Entity has already paid a fee for review of a substantially similar Conceptual Proposal, in which case the Proposal Review Fee is \$20,000.00. The City will not review a Detailed Proposal that is not accompanied by the payment of this fee. The Proposal Review Fee is non-refundable. Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal or business checks will not be accepted.
  - (3) If the initial Proposal Review Fee is insufficient to cover the City's costs to evaluate the proposal, the City will request, in writing, the additional amounts required. If the Private Entity does not tender the additional requested amount with thirty (30) days of the written request, the City may, in its sole discretion, stop its review of the proposal.

- (4) A Detailed Proposal must contain information sufficient to inform the City about: the detailed quality and character of the proposed Qualifying Project; the detailed experience and capacity of the Private Entity; and the detailed financial and implementation strategies to ensure successful project delivery. This information should include the following:
- a. A description of the Private Entity, including name, address, type of organization, and legal structure.
  - b. Name and complete contact information of the primary point of contact for the Detailed Proposal.
  - c. Names and experience of proposed key project personnel.
  - d. Type of support needed, if any, from the City, for example, facilities, equipment, materials, personnel, financial resources, etc.
  - e. Identification of any proprietary data used and the manner in which it is used.
  - f. Identification of any outside entities or professionals the Private Entity has or intends to consult with respect to the project.
  - g. The names of any other federal, state, or local agencies receiving the same proposal.
  - h. A complete discussion of the objective of the project, the method of approach, the nature of the anticipated results, and the characteristics that make it a Qualifying Project worthy of pursuit by the City.
  - i. A detailed overview of the proposed business arrangements, including the plan for the development, financing, and operation of the project.
  - j. A preliminary project schedule.
  - k. A detailed financial analysis of the proposed project.
  - l. Specification as to when the pricing or terms of the proposal will expire.
- (5) Within ninety (90) business days after receipt of the Detailed Proposal, the City will notify the Private Entity in writing of the City's decision either to reject the Detailed Proposal or to accept the Detailed Proposal for competitive review. During this period, the City may meet with the Private Entity to gain a deeper understanding of the Detailed Proposal, and the City may request that the Private Entity submit additional information. These meetings will be preliminary in nature, and will not include or constitute substantive negotiation of agreement terms. In considering whether to accept the Detailed Proposal for competitive review, the City will assess whether: (1) the proposed project is a Qualifying Project; (2) the proposed project delivery model offers advantages over traditional models, for example, lower cost, shorter schedule, increased investment, etc.; (3) the proposed project is reasonably likely to satisfy the criteria established by the P3 Statute. The City may determine that it requires more

than 90 days to complete its review of the Detailed Proposal and this assessment, in which case it will notify the Private Entity in writing of how much time will be required.

- (6) An Unsolicited Proposal may be rejected by the City at any time. The City has complete discretion and authority to reject any Unsolicited Proposal it receives.
  - (7) If the City decides to accept an Unsolicited Proposal for competitive review, the City will advertise the potential opportunity and accept competing Detailed Proposals.
    - a. The advertisement will include: a general description of the Qualifying Project; an invitation to submit a competing Detailed Proposal for the Qualifying Project with a Proposal Review Fee, which may propose the identical project, a functionally equivalent project, or an alternative project that achieves the same purpose or uses the same City resources as the proposed project; information about how to obtain more detailed information; and a due date for responding, which ordinarily will be 45 days after initial publication, but which may be up to 120 days as the circumstances warrant.
    - b. The City will advertise the potential opportunity in the Florida Administrative Register at least once a week for three consecutive weeks; in a newspaper of general circulation within the City at least once a week for three weeks prior to the due date for competing proposals; on the City's website in the same manner as competitive Solicitations; and at City Hall in the same manner as other public notices issued by the City.
  - (8) If an Unsolicited Proposal involved architecture, engineering or landscape architecture, the City will engage licensed professionals for review and evaluation of the initial and any subsequent proposals, in accordance with section 255.065(3)(a)5., Florida Statutes (2016).
- (e) *Solicited detailed proposals.*
- (1) The City may on its own initiative determine to issue a Solicitation inviting Private Entities to submit Detailed Proposals for any opportunity that the City has identified as a Qualifying Project.
  - (2) Any Solicitation that the City issues under the authority of the P3 Statute will identify the P3 Statute and the City's related Code sections as the governing procurement process. The Solicitation documents will specify information necessary for interested parties to understand and respond to the Solicitation.
  - (3) If a Solicitation under the P3 Statute includes design work, the Solicitation will include a design criteria package prepared by a licensed architect, landscape architect, or engineer engaged by the City in accordance with section 255.065(3)(c), Florida Statutes.
  - (4) The City is not obligated to proceed under the P3 Statute when soliciting proposals, and may follow any legally available procurement process, regardless of whether the project qualifies as a Qualifying Project and regardless of whether the ultimate transaction may be characterized as a P3.

(f) *Competitive review and negotiation of detailed proposals.*

- (1) Whether received in response to a Solicitation under the P3 Statute or in response to an advertisement concerning an Unsolicited Proposal, within ten days after the receipt of all competing Detailed Proposals the City will designate a negotiation team to conduct negotiations concerning the Qualifying Project. The negotiation team will consist of at least three persons, including one City employee, who collectively have knowledge and experience in contract negotiations, the subject matter related to the Qualifying Project, public procurement, and project management. No person with a financial interest in the outcome of the negotiation team's efforts or in the Qualifying Project may participate on the negotiation team.
- (2) The negotiation team's meetings are temporarily exempt from the Sunshine Law as provided in section 286.0113(2), Florida Statutes (2014) and section 255.065(15), Florida Statutes (2016). The City will record and preserve as required by law any exempt portion of a negotiation team meeting.
- (3) The negotiation team may rely on subject matter experts and staff for information gathering and administrative work, but the negotiation team alone will possess and exercise authority for all recommendations concerning the Detailed Proposals.
- (4) The negotiation team will initially review the Detailed Proposals and determine whether to allow oral presentations for the purpose of gaining deeper understanding of the Detailed Proposals. The negotiation team is not required to allow oral presentations. Any oral presentations will be limited to reviewing and discussing information contained in the Detailed Proposals, and will not include or constitute substantive negotiations related to any Detailed Proposal or the Qualifying Project.
- (5) Within thirty days after its appointment, or after the final oral presentation, whichever is later, the negotiation team will rank the Detailed Proposals in order of preference. The negotiation team may meet as often as it deems necessary before ranking, in order to discuss details and strategies related to the Detailed Proposals and the Qualifying Project. The negotiation team will strive for consensus, but a majority of the team may establish the ranking. The negotiation team may use any reasonable method to rank the Detailed Proposals, and is not required to numerically score them. In ranking the Detailed Proposals, the negotiation team members will consider the Private Entity team members' professional qualifications and experience, the proposed general business terms, innovative project delivery terms (including finance, design, construction, maintenance, and operation, as applicable to the particular circumstance), and any other factors indicated in the advertisement or Solicitation.
- (6) Following its ranking of Detailed Proposals, the negotiation team will commence negotiations with the Private Entity responsible for the top-ranked proposal. The negotiation team will then conduct negotiations in accordance with the P3 Statute.
- (7) In its discretion, the negotiation team may recommend that the City and the Private Entity enter into an interim agreement as described in the P3 Statute. The negotiation team is not authorized to enter into or otherwise bind the City to an interim

agreement. Any recommendation to enter into an interim agreement will be brought to the City council for consideration. Only the City council is authorized to approve an interim agreement.

- (8) The negotiation team may recommend that the City and the Private Entity enter into a comprehensive agreement as described in the P3 Statute. The negotiation team is not authorized to enter into or otherwise bind the City to a comprehensive agreement. Any recommendation to enter into a comprehensive agreement will be brought to the City council for consideration. Only the City council is authorized to approve a comprehensive agreement.
- (9) In deciding whether to enter into a comprehensive agreement, the City council will consider and determine all reasonable factors, including but not limited to:
  - a. Whether the proposed project is a Qualifying Project.
  - b. Whether the Qualifying Project is in the public's best interest.
  - c. Whether the Qualifying Project involves a facility that is owned by the City or for a facility for which ownership will be conveyed to the City.
  - d. Whether the comprehensive agreement has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default by the Private Entity or cancellation of the Qualifying Project by the City.
  - e. Whether the comprehensive agreement has adequate safeguards in place to ensure that the City or the Private Entity has the opportunity to add capacity to the Qualifying Project or other facilities serving similar predominantly public purposes.
  - f. Whether the Qualifying Project will be owned by the City upon completion or termination of the project and payment of amounts financed.
  - g. Whether there is a public need for or benefit derived from the Qualifying Project.
  - h. Whether the estimated cost of the Qualifying Project is reasonable in relation to similar facilities.
  - i. Whether the comprehensive agreement will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the Qualifying Project.

(g) *Public records.*

- (1) Information made or received by the City in connection with transaction of the City's official business is subject to the Florida Public Records Law. Unsolicited Proposals received by the City are temporarily exempt from the Public Records Law as provided in section 255.065(15), Florida Statutes (2016).
- (2) If a Private Entity believes that any information it submits to the City is exempt from the Public Records Law under any additional statutory exemptions, the Private Entity

must expressly identify the statutory basis of the claimed exemption and segregate the exempt information.

2.2. - Competitive purchasing.

- (a) *Conditions for use.* Purchases of \$50,000.00 or more shall be awarded by sealed bidding or sealed proposals, in the sole discretion of the mayor or his/her designee, except as otherwise provided for in this article.
- (b) *Invitation for bid/request for proposal.* An invitation for bid or request for proposal shall be issued and shall include specifications, the date for submittal of bids or proposals, and all contractual terms and conditions applicable to the procurement, including the criteria for award of the bid or proposal which shall include, but need not be limited to, price.
- (c) *Public notice.* A public notice for invitations for bid and requests for proposal shall be given prior to the bid or proposal opening date set forth in the notice. Such notice may be given by mail or by public posting. The public notice shall state the place, date and time of the bid or proposal opening.
- (d) *Bid/proposal opening.* Bids and proposals shall be opened publicly at a City Council meeting the date, time, and place of which shall be designated in the invitation for bid or request for proposal. If, for any reason, the opening is pushed back to a later City Council meeting, all bidders must be notified of the date, time, and place of same. The amount of each bid or proposal and such other relevant information as the mayor or his/her designee deems appropriate, together with the name of each bidder and proposer, shall be recorded.
- (e) *Bid/proposal acceptance and bid/proposal evaluation.* Bids and proposals shall be unconditionally accepted without alteration or correction, except as provided in this division. Bids and proposals shall be evaluated based on the requirements set forth in the invitation for bid or request for proposal which may include criteria to determine acceptability. Those criteria that will affect the bid price or proposal price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. No criteria may be used in bid or proposal evaluation that are not set forth in the invitation for bid, request for proposal, in any law, regulations, or in this division.
- (f) *Correction or withdrawal of bids/proposals.* Correction or withdrawal of inadvertently erroneous bids or proposals before bid or proposal opening may be permitted where appropriate. Mistakes discovered before the bid or proposal opening may be modified or withdrawn by written notice received in the office designated in the invitation for bid or request for proposal for receipt of notices prior to the time set for bid or proposal opening. After the bid or proposal opening, no changes to bid or proposal prices or other provisions of bids or proposals prejudicial to the interest of the city or fair competition shall be permitted. During the bid or proposal opening, bidders/proposers may be required to give clarifications regarding their bid or proposal submitted. In lieu of bid or proposal

correction, a bidder/proposer alleging a material mistake of fact may be permitted to withdraw its bid or proposal if:

- (1) The mistake is clearly evident on the face of the bid or proposal document, but the intended correct bid or proposal is not similarly evident; or
  - (2) The bidder/proposer submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids or proposals shall be supported by a written determination made by the mayor or his/her designee.
- (g) *Award to responsible and responsive bidder/proposer.* The contract or purchase order shall be awarded by written notice to the qualified responsible and responsive bidder/proposer whose bid or proposal, as determined by the city council, best meets the requirements and criteria set forth in the invitation for bid or request for proposal and the following criteria including, but not limited to:
- (1) The ability, capacity and skill of bidder/proposer to perform the contract, provide the services required, or deliver the supplies required;
  - (2) Whether the bidder/proposer can perform the contract, deliver the goods/supplies, or provide the services promptly, or within the time specified, without delay or interference;
  - (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder/proposer;
  - (4) The quality of performance of previous contracts or services;
  - (5) The previous and existing compliance by the bidder/proposer with laws and ordinances relating to the contract or services;
  - (6) The sufficiency of the financial resources and ability of the bidder/proposer to perform the contract or provide the service;
  - (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required;
  - (8) The ability of the bidder/proposer to provide future maintenance and service, when applicable; and
  - (9) The number and scope of conditions attached to the bid/proposal.
- (h) *Negotiated adjustment.* In the event any or all bids or proposals exceed available budgeted funds, the mayor or his/her designee is authorized, when time or economic considerations preclude resolicitation, to negotiate an adjustment of the bid or proposal price with any and all bidders/proposers.
- (i) *Rejection of bids.* The mayor or his/her designee, or the city council shall have the unqualified authority and right in their sole discretion, when the public interest will be served thereby, to reject all of the bids and/or proposals or parts of bids or proposals and may again request bids or proposals upon a subsequent date. No reason need be stated for

the rejection of all or parts of bids or proposals. Any bid or proposal submitted by a bidder/proposer is submitted at the bidder's/proposer's own risk regardless of the cost or time expended by the bidder/proposer in preparation and submittal of a bid or proposal.

- (j) *Default and nonperformance.* In the event that a bid or proposal is awarded to a bidder/proposer who subsequently defaults or who otherwise cannot perform, the city council shall have the authority to award the contract to the next most responsive and responsible bidder/proposer from the original solicitation process, providing that such bidder/proposer agrees to abide by the terms and conditions originally stated by such firm in its bid or proposal.

**State Law reference—** Consultants competitive negotiations, § 287.055, Fla. Stat.

### 2.3. - Contracting for professional services.

- (a) *Authority for procuring certain professional services.* The procurement of the professional services of architects, landscape architects, professional engineers, and registered land surveyors (includes mapping), shall be in accordance with section 287.055, Florida Statutes, as amended, and this article.
- (b) *Contracts for legal services.* Notwithstanding the foregoing, the city council may authorize the procurement of legal services by negotiating with a lawyer or lawyers selected or recommended by the city attorney or mayor on the basis of experience and skill.
- (c) *Contracts for audit by an independent certified public accountant.* Notwithstanding the foregoing, the city council shall be responsible for selecting an independent certified public accountant to audit city agencies according to section 11.45, Florida Statutes.
- (d) *Contracts for other professional services.* Notwithstanding the foregoing, the city council may authorize the procurement of other professional services such as accountants, auditors, dentists, physicians, lawyers, veterinarians, artists, entertainers and psychologists by negotiating with organizations selected or recommended by the mayor or his/her designee on the basis of experience and skill.

### 2.4. - Purchase limits.

- (a) *Small purchases by mayor.* Any contract for a purchase by the city that is less than \$50,000.00 may be made in accordance with the purchase procedures adopted by the mayor and without city council approval. Contract requirements shall not be artificially divided so as to constitute a purchase under this subsection.
- (b) *Change orders as purchases.* In the event that change orders are presented to the city by a contractor under a contract with the city, the mayor or his/her designee shall report and transmit to the city council with a recommendation concerning acceptance or rejection thereof, change orders totaling in the aggregate \$50,000.00 or more, and the city council shall thereupon approve or disapprove the recommendation of the mayor or his/her designee. Change orders that do not total \$50,000.00 or more in the aggregate do not

require city council approval, and the mayor shall adopt operational procedures for review and acceptance of such change orders.

2.5. - Exemptions from competitive purchasing procedures.

- (a) *City facilities.* Purchases of food, beverages and entertainment, at the mayor's discretion, shall be exempt from the competitive purchasing procedures set forth in this division.
- (b) *Noncompetitive and "sole source" procurement.* A contract may be awarded without competition when the mayor determines in writing, after conducting a good faith review of potential sources, that there is only one practicable source for a supply or service, or that using competitive purchasing is not in the best interests of the city. The mayor shall conduct negotiations, as appropriate, as to price, delivery and terms.
- (c) *Emergency procurement.* Notwithstanding any other provisions of this division, the mayor may make, or authorize others to make, emergency procurement of supplies or services in the event of a disruption of essential operations or conditions adversely affecting the safety, health, welfare or security of persons or property, and where it is considered unfeasible to remedy such disruption or conditions through the use of normal competitive purchasing procedures. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the items procured under the contract, and the number of the purchase order. For each emergency purchase, the mayor or his/her designee shall prepare an after-the-fact written statement to the city council certifying the conditions and circumstances of the purchase.
- (d) *Used equipment/supplies procurement.*
  - (1) *Generally.* Notwithstanding any other provisions of this division, the purchase of used equipment or supplies shall be made with such competition as is practicable under the circumstances.
  - (2) *Award.* The purchase of used equipment or supplies of a value less than \$50,000.00 may be authorized by the mayor. A written explanation of the circumstances and justification of a purchase for used equipment or supplies of a value equal to or greater than \$50,000.00 shall be submitted to the city council. Upon receipt and approval of such statement, the city council may authorize the purchase.
- (e) Notwithstanding any other provisions of this policy, during a state of local emergency, the mayor may make, or authorize others to make, the procurement of supplies or services without complying with the purchasing procedures set forth in this policy.

2.5. - Required submissions relating to change orders or contract modification.

A bidder, or proposer shall submit cost or pricing data related to any change order or contract modification, including adjustments to contracts awarded by competitive purchasing procedures. The city council shall approve all change orders or modifications involving

aggregate increases or decreases in competitive purchases in amounts equal to or greater than \$50,000.00.

### Article 3. - MATERIAL MANAGEMENT

#### 3.1. - Quality assurance, inspection, and testing.

The mayor shall take such steps as are deemed desirable to ascertain or verify that supplies procured by the city conform to specifications.

#### 3.2. - Authorization to dispose of surplus supplies and property.

No department shall transfer to another agency, sell, trade-in, or otherwise dispose of supplies owned by the city without the written authorization of the mayor or his/her designee.

#### 3.3. - Transfer of excess and surplus supplies.

Insofar as is feasible and practicable, the mayor shall transfer excess supplies to other city departments and other units of government. The price of the supply transferred shall be the fair market price, where possible, or on an appraised value, and shall be mutually agreed upon and approved by the mayor. If agreement cannot be reached, the mayor shall establish the price.

#### 3.4. - Disposition of surplus supplies and property.

Whenever in the judgment of the mayor property belonging to the city has become obsolete or in such condition of disrepair as to make it useless and it is desirable that it be sold and/or disposed of, the mayor is authorized to sell and/or dispose of such property at such price and on such terms as his/her judgment may suggest including, but not limited to, sealed bids, open auction and posted prices, or as otherwise permitted by state statute.

#### 3.5. - Auctions.

When authorized by the mayor, city employees or an experienced professional auctioneer may be used to cry the sale and assist in the preparation of the sale.

#### 3.6. - Posted prices.

Surplus supplies may be sold at posted prices as determined by the mayor when such prices are based on fair market value and the sale is conducted pursuant to written procedures established by the mayor.

#### 3.7. - Trade-in.

Surplus supplies and property may be traded-in only when the mayor determines the trade-in value is expected to exceed the value estimated to be obtained through the sale or other disposition of such supplies or property.

#### 3.8. - Surplus property.

No provision of this division shall be in conflict with state statutes regarding surplus property.

#### Article 4. – PROTESTS, APPEALS, AND REMEDIES

##### 4.1. - Bid protests.

- (a) *Right to protest.* Any actual bidder, proposer, or contractor who is aggrieved in connection with the solicitation of award of a contract (a “protesting party”) must seek resolution of their complaints through a bid protest as outlined herein.
- (c) *Bid Protest.* To protest a recommended award, a protesting party, who was an actual bidder, must submit a Notice of Intent to Protest within 3 calendar days of the issuance of the notice of intent to award. The notice must be provided to the Mayor, with a copy to the City Clerk, and must be accompanied by the filing fee. Any protesting party did not truly submit a bid may not protest a recommended award through this procedure. Failure to submit a Notice of Intent to Protest within the time and manner prescribed by this policy shall constitute a waiver of the right to protest by any protesting party
- (d) *Filing Fee.* As a condition of filing a bid protest, the protesting party shall submit a non-refundable filing fee for the purpose of defraying the costs of administering the protest. The filing fee shall be submitted with the Notice of Intent to Protest. Failure to pay the filing fee shall result in the immediate denial of the protest. The amount of the filing fee shall be \$500.00.
- (e) *Contents of Notice of Intent to Intent to Protest.* The Notice of Intent to Protest shall contain, but not be limited to the following information:
  - (1) Solicitation number and title.
  - (2) Name and address of the protesting party as well as email address for service of documents related to the protest.
  - (3) Confirmation and evidence that the protesting party is an actual bidder, proposer, or contractor.
  - (4) A statement that the protesting party intends to protest the solicitation or recommended award.
- (f) *Statement of Protest and Demand for Relief.* In addition to the Notice of Intent to Protest, a protesting party must submit a “Statement of Protest and Demand for Relief” within 7 calendar days of the timely submission of a Notice of Intent to Protest. The Statement of Protest and Demand for Relief shall contain, but not be limited to the following information:
  - (1) Solicitation number and title.
  - (2) Name and address of the protesting party as well as email address for service of documents related to the protest.
  - (3) A statement of disputed issues of material fact. If there are no disputed material

facts, the Notice of Protest must so indicate.

(4) A concise statement of the ultimate facts alleged and of any relevant rules, regulations, statutes, and constitutional provisions entitling the protesting party to relief.

(5) The protesting party's demand for relief.

(6) Such other information as the protesting party deems to be material to the issue.

A Statement of Protest and Demand for Relief shall contain all of the information required for the Mayor to render a decision.

- (g) *Service of Documents.* All documents shall be deemed served on the protesting party if sent to the email provided in the Notice of Intent to Protest. All documents shall be deemed served on the City if sent to the City Clerk at [dsmallwood@cityofeverglades.org](mailto:dsmallwood@cityofeverglades.org).
- (i) *Decision by City Council.* The City Council shall review the Notice of Intent to Protest and the Statement of Protest and Demand for Relief and hold a quasi-judicial hearing on the bid protest and then issue a decision stating the reasons for the decision.
- (j) *Stay of procurements during protest.* In the event of a timely protest and provided the filing fee has been paid, the Mayor shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Mayor makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the city.
- (k) *Protest Bond Requirement.* For all protests of awards, the protesting party shall post a "Protest Bond" equal to five (5%) of the proposed total cost by the party selected by the recommended award or \$5,000.00, whichever is greater. If the issue cannot be determined as a monetary amount, the Protest Bond amount will be set by the Mayor. The Protest Bond shall be payable to the City. The bond shall be conditioned upon the payment of all costs and charges that are adjudged against the protestor in the bid protest and in any subsequent appellate court proceeding. In lieu of a bond, the City may, in either case, accept a cashier's check, official bank check, or money order in the amount of the bond. If, after completion of the bid protest process and any appellate court proceedings, the City prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the protestor, the bond, cashier's check, official bank check, or money order shall be returned to the protestor.
- (l) *Authority of the Mayor to settle bid protests.* The Mayor is authorized to settle any protest regarding the solicitation or award of a city contract, prior to a quasi-judicial hearing before the City Council or the commencement of an action in a court of competent jurisdiction, but may not settle any such protest for consideration equal to or greater than \$50,000.00 in value without the prior approval of the City Council.

4.2. - Contract claims.

- (a) *Decision of the Mayor.* All claims by a contractor against the city relating to a contract, except bid protests, shall be submitted in writing to the Mayor for a decision. The contractor may request a conference with the Mayor 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 decision.
- (b) *Notice to the contractor of the Mayor's decision.* The decision of the Mayor shall be promptly issued in writing and shall immediately be mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached and shall inform the contractor of his/her appeal rights under subsection (c) of this section.
- (c) *Mayor's decision; contractor's right to appeal.* The Mayor's decision shall be final and conclusive unless, within ten calendar days from the date of receipt of the decision, the contractor files a written notice of appeal with the city council challenging the decision.

#### 4.3. - Remedies for solicitation or awards in violation of 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 Mayor determines that a solicitation is in violation of federal, state or municipal law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.
- (b) *Prior to award.* If after the bid opening or the closing date for receipt of proposals, but prior to the award of a contract, the Mayor, after consultation with the city attorney, determines that a solicitation or the proposed award of a contract is in violation of a federal, state or municipal law or ordinance, then the solicitation or proposed award shall be canceled.
- (c) *After award.* If, after an award, the Mayor, after consultation with the city attorney, determines that a solicitation of award of a contract was in violation of an 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 limited to compensation for the actual costs reasonably incurred under the contract, but excluding attorney's fees, prior to the termination; or
  - (2) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void, if such action is in the best interest of the city, and the person awarded the contract is entitled to no compensation.

#### Article 5. - INTERGOVERNMENTAL RELATIONS AND COOPERATIVE PURCHASING

##### 5.1. - Cooperative purchasing authorized.

The city may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public entities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between the public entities and open-ended state contracts which are made available to political subdivisions. The mayor or his/her designee shall have the authority to solicit bids or proposals on behalf of, or to participate with, other public entities in a cooperative purchasing process, if it is deemed, in his discretion, to be in the best interest of the city to do so.

5.2. - Sale, acquisition or use of supplies by other public entities.

The city may sell to, acquire from, or use any supplies belonging to another public entity independent of the requirements of articles 2 and 3.

5.3. - Cooperative use of supplies, services, and facilities.

The city may enter into an agreement, independent of the requirements of articles 2 and 3, with any other public entity for the cooperative use of supplies, services or facilities under the terms agreed upon between the parties.

5.4. - Cooperative purchasing contract awards ("piggybacking").

Notwithstanding any other provisions of this article, the mayor or his/her designee shall have the authority to utilize the contracts of other public entities when to do so is deemed to be in the best interest of the city, and providing that such contracts shall have been awarded on the basis of a public, competitive proposal or bid process by federal, state, county, municipal or other governments or agencies thereof; provided, however, that in the purchase of property, supplies or services valued at \$50,000.00 or more, such contract or proposal shall be subject to approval by the city council.

## ARTICLE 6. - ETHICS IN PUBLIC CONTRACTING

6.1. - Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this division are violations of the state criminal code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article.

6.2. - Employee conflict of interest.

(a) It shall be unethical for any city employee to participate directly or indirectly in a procurement contract when the city employee knows that:

- (1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement contract; or
- (2) Any other person, business or organization with whom the employee or any member of an employee's immediate family is negotiating, or has an arrangement concerning prospective employment, is involved in the procurement contract.

- (b) A city employee or any member of a city employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

6.3. - Gratuities and kickbacks.

- (a) *Gratuities.* It shall be unethical for any person to offer, give or agree to give any city employee or former city employee, or for any city employee or former city employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any 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 in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- (b) *Kickbacks.* It shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of 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 be conspicuously set forth in every contract and solicitation therefor.

6.4. - Prohibition against contingent fees.

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.

6.5. - 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, the employee of any company contracting with the city.

6.6 - Waivers from contemporaneous employment prohibition and other conflicts of interest.

The city council may grant a waiver from the employee conflict of interest provision (6.2) or the contemporaneous employment prohibited provision (6.5) upon making a written determination that:

- (1) The contemporaneous employment or financial interest of the employee has been publicly disclosed;
- (2) The employee will be able to perform his or her procurement functions without actual or apparent bias or favoritism; and
- (3) The award will be in the best interest of the city.

6.7. - Use of confidential information.

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

6.8. - Sanctions.

(a) *Employees.* Consistent with established personnel rules and regulations, the mayor may impose any one or more of the following sanctions on a city employee for violations of the ethical standards in this article:

- (1) Oral or written warnings or reprimands;
- (2) Suspension with or without pay for specified periods of time; or
- (3) Termination of employment.

(b) *Nonemployees.* The city council may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:

- (1) Termination of contracts; or
- (2) Debarment or suspension as provided in section 1.7.

6.9. - Recovery of value transferred or received in breach of ethical standards.

(a) *General provisions.* The value of anything transferred or received in breach of the ethical standards of this article by a city employee or a nonemployee may be recovered from both employee and nonemployee.

(b) *Recovery of kickbacks by the city.* Upon showing that a subcontractor made a kickback to a 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 kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

6.10. - Fraud, collusion, etc., by officers or employees.

Any officer of the city or head or employee of any department thereof who shall aid or assist any bidder or proposer in securing a contract to furnish labor, material or supplies at a higher price than that proposed by any other bidder or proposer, or who shall favor one bidder or proposer over another by giving or withholding any information, or who willfully misleads any bidder or proposer in regard to the character of the material or supplies called for, or who knowingly accepts materials or supplies of any inferior grade to those called for by any contract or specifications, or who knowingly certifies to a greater amount of labor performed, or the receipt of a greater amount of different kind of materials or supplies than has been actually received, or shall defraud the city in any other manner in relation to contracts, shall be guilty of

misfeasance in office and shall be removed from such office and/or terminated from employment with the city.

6.11. - Collusion by contractors.

If at any time it is found that the person to whom a contract has been awarded has colluded with any other person for the purpose of circumventing any other competing bidder or proposer, or has entered into any arrangement by which he/she has made a higher or lower bid or proposal than some other person for the purpose of dividing the contract or profits therefrom between two or more bidders or proposers, then the contract so awarded shall be null and void.