

**ORDINANCE NO. 2022-13**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, ESTABLISHING A PURCHASING POLICY FOR THE CITY; AMENDING THE *MUNICIPAL CODE OF ORDINANCE*, SECTION 2-9 HURRICANE EMERGENCY AND RENAMING SECTION 2-9 AS PROCUREMENT; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING CITY PROCUREMENT POLICIES; PROVIDING PROCESSES AND PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND CORRECTIONS OF SCRIVERNRE'S ERRORS; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 287.001, Florida Statutes, recognizes the importance of fair and open competition as a basic tenant of public procurement; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores desires to codify processes for the procurement of goods, supplies and other services; and

**WHEREAS**, the City Manager is the chief administrative officer of the city, responsible to the City Council for the administration of all city affairs placed in the City Manager's charge by or under the Charter; and

**WHEREAS**, the City of Daytona Beach Shores desires to amend the City of Daytona Beach Shores Code of Ordinances to establish policies for the procurement of equipment, services, materials, and supplies for the operation of municipal government.

**WHEREAS**, the City desires to enhance and further its goals as outlined herein and has determined that the provisions of this Ordinance advance a legitimate public purpose and promote and protect the health, safety and welfare of the public.

**WHEREAS**, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

**WHEREAS**, for purposes of this Ordinance, when text is being amended, strikethrough text

represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents deletions.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY OF DAYTONA BEACH SHORES, FLORIDA, that:**

**SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.**

The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the recitals (whereas clauses), City staff report and City Council agenda memorandum relating to this Ordinance as the legislative and administrative findings and intent of the City Council.

**SECTION TWO: AMENDMENT TO CHAPTER 2 ADMINISTRATION ARTICLE I. IN GENERAL HURRICANE EMERGENCY.** Section 2-9(a)-(d)(3), *Code of Ordinances of the City of Daytona Beach Shores*, Florida is deleted in its entirety and replaced with the following:

**Sec. 2-9. - ~~Hurricane emergency.~~ Procurement**

~~(a) Definition. "Hurricane emergency" shall be defined as such weather conditions that result in the establishment of a tropical storm or hurricane watch by the National Weather Service for the City of Daytona Beach Shores and the County of Volusia.~~

~~(b) The city council hereby declares that a state of emergency shall become effective for all purposes when weather conditions constitute a hurricane emergency, subject to the issuance of a written declaration by the city manager.~~

~~(c) The city council hereby authorizes effective upon issuance of a written declaration of hurricane emergency the following:~~

~~(1) An amendment to the current fiscal year budget and an appropriation of funds in an amount not to exceed the unencumbered reserve account of the City of Daytona Beach Shores. Said funds shall be budgeted for the purchase of parts, supplies, materials and services, contracted or departmental, necessary to make emergency repairs to protect property or preserve the peace and to otherwise maintain the operations and services of the municipal government.~~

~~(2) The city manager shall be authorized to cancel regular or special council meetings with the concurrence of the mayor.~~

~~(3) The city manager shall be authorized to act consistent with the charter of the City of Daytona Beach Shores in any manner necessary to provide for the safety, protection and preservation of lives and property located within the City of Daytona Beach Shores.~~

~~(d) Throughout a declared hurricane emergency the following purchasing procedures shall apply:~~

~~(1) The city manager shall be empowered to secure any needed emergency parts, supplies, materials, or services, contracted or departmental, using the most efficient and effective procurement methods in each procurement as determined by the city manager.~~

~~(2) With the approval of the city manager, or finance director if so designated by the city manager, the head of any department may purchase any needed emergency parts, supplies, materials or services, contracted or departmental, using the most effective procurement methods in each procurement, as determined by the city manager or finance director. The head of the department shall provide to the finance director a requisition and a copy of the~~

~~delivery record together with a full written report of the circumstances which made the emergency purchases necessary.~~

~~(3) The city manager or finance director, if so designated by the city manager, may request another municipality to purchase for the city any needed emergency parts, supplies, materials or services, contracted or departmental, or the city may purchase from another municipality any needed emergency parts, supplies, materials or services, contracted or departmental, that the municipality has available.~~

**Sec. 2-9 (a) In general.** The general purchasing policy of the City of Daytona Beach Shores is that the acquisition of all goods and services shall be conducted on the basis of full and open competition, to the greatest extent possible, with the contract award being made to:

- 1) The best value proposer under qualitative solicitations that involve pricing as a competitive selection factor.
- 2) The highest ranked technical proposer with whom a fair and reasonable price may subsequently be negotiated under solicitations that do not involve pricing as an initial competitive selection factor.
- 3) That all specifications or statements of work included in City purchasing actions accurately describe the essential needs of the city and contain no artificial or arbitrary requirements that limit competition.
- 4) That each purchasing action is conducted in accordance with the best interests of the City, and with the highest level of integrity and fairness to all involved parties throughout the procurement cycle.
- 5) That all City purchasing operations be conducted in compliance with federal, state, and local

laws, as applicable, and ensure the highest degree of ethical standards.

- 6) That transparency be sustained throughout the purchasing process.

**Sec. 2-9 (b) Purchasing agent.** The city manager is the purchasing agent for the city, with ultimate responsibility for all procurement, purchasing, and contracting functions. The city manager may delegate some or all purchasing authority, except the authority to make the final decision regarding administrative actions such as bid protests, to any city employee. The city manager shall have the authority to do as follows:

- (1) Serve as the chief procurement officer of the city.
- (2) Adopt operational procedures governing the internal function of procurement.
- (3) Purchase or contract for the purchase of commodities, services, or construction for the city.
- (4) Negotiate and recommend execution of contracts for the purchase of commodities, services, or construction.
- (5) Act to procure for the city the needed quality in commodities, services, or construction at best value.
- (6) Discourage uniform bidding and encourage full and open competition on all purchases.
- (7) Prepare revisions and amendments to the purchasing ordinances set forth herein, as necessary, and recommend such revisions and amendments to the city council.
- (8) Adopt policies and procedures governing the procurement, management, and control of commodities, services, and construction procured by the city.
- (9) Keep informed of current developments in the field of procurement, purchasing, prices, market conditions and new processes.

- (10) Prescribe and maintain such forms as may be reasonably necessary for procurement and other rules and regulations.
- (11) Establish and maintain programs for the inspection, testing, and acceptance of commodities, services, and construction purchased to ensure conformance with specifications.
- (12) Transfer surplus tangible personal property between city departments or facilities as needed.
- (13) Sell, trade, or otherwise dispose of surplus tangible personal property which has become unnecessary or unfit for the city's use.
- (14) Ensure compliance with this Code and other policies and procedures by reviewing and monitoring procurements conducted by any designee, department, or city employee.

**Sec. 2-9 (c) Quotes and Formal Solicitations.**

- (1) **Informal quotes (\$5,000.00 to \$30,000.00).** Except as provided in this policy, procurement of goods or services (including leases) with an estimated value greater than or equal to \$5,000.00 but less than or equal to \$30,000.00 require two or more written quotes in accordance with the procedures adopted by the City.
- (2) **Formal request (\$30,000.01 to \$50,000.00).** Except as otherwise provided in this policy, procurement of goods or services (including leases) with an estimated value greater than or equal to \$30,000.01 but less than or equal to \$50,000.00 require a formal request for quotes which shall be posted for a minimum of two weeks on the City's website in an attempt to obtain two or more written quotes. The requesting department shall submit the required specifications to the City Clerk.
- (3) **Request for formal sealed competitive solicitation (\$50,000.01 or greater).** Except as otherwise provided in this policy, procurement of goods or services (including leases) with an

estimated value greater than or equal to \$50,000.01 shall require a formal sealed competitive solicitation. Such solicitations may be in the form of an invitation to bid (ITB), request for proposal (RFP), request for statement of qualifications (RFSQ), request for information (RFI) or any other formal solicitation process.

- (4) Correction or withdrawal of inadvertently erroneous bids are permitted up to the time of bid opening. After bid opening, no changes in bid prices or other provisions are permitted.
- (5) Purchases may not be divided to avoid the monetary threshold for competitive solicitation.
- (6) The solicitation of competitive bids or proposals for professional services covered by the Consultants Competitive Negotiation Act (CCNA) shall be accomplished in accordance with the provisions of Florida Statutes.
- (7) The solicitation of competitive bids or proposals for any City construction project that is projected to cost more than \$200,000.00 shall be accomplished in accordance with the provisions of Florida Statutes.
- (8) The solicitation of competitive bids or proposals for City utility projects shall be accomplished in accordance with the provisions of Florida Statutes.

**Sec. 2-9 (d) Grants.** Grants may be used to procure goods and services.

- 1) All grant applications must be approved by the city manager prior to submission.
- 2) Matching grants must have matching funds budgeted for in year of grant award.

**Sec. 2-9 (e) Waiver of irregularities.** The city council grants the city manager the authority to waive any and all non-substantial or minor irregularities in any and all formal bids. Any waiver will be noted in any award recommendation to the council.

**Sec. 2-9 (f). Integrity of the competitive solicitation process; no-contact period; public records and meetings.** From the time a competitive solicitation is posted until such time as the contract is awarded by the city or the solicitation is cancelled, all bidders, offerors, respondents, including their employees, representatives, and other individuals acting on their behalf, shall be prohibited from lobbying city officers, city employees, and evaluation committee members. Violation of this section may result in rejection/ disqualification from award of the contract arising out of the competitive solicitation. All questions regarding the competitive solicitation must be directed to the city manager or designee, who will respond in writing and post such response to ensure that all respondents receive the same information during the No - Contact Period. The penalty for violating the No - Contact Period may include suspension or debarment.

**Sec. 2-9 (g). Authority to debar or suspend.**

(1) Debarment or suspension. After reasonable notice to the vendor involved and reasonable opportunity for that vendor to be heard, the purchasing agent is authorized to debar or suspend a vendor for cause from further consideration for award of contracts with the city. The debarment or suspension shall not be for a period of more than three (3) years.

(2) The causes for debarment or suspension include one of the following:

a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects responsibility as a city vendor.

c) Conviction under state or federal anti-trust statutes arising out of the submission of bids or proposals.

d) Violation of contract provisions, as set forth below, of a character which is regarded by the purchasing agent to be so serious as to justify debarment action:

i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; and

ii) Recent failure to perform or unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the vendor shall not be considered to be a basis for debarment.

e) Any other cause the purchasing agent determines to be so serious and compelling as to affect responsibility as a city vendor, including debarment or suspension by another governmental entity for any cause listed in this section.

**Sec. 2-9 (h). Debarment procedures**

- 1) The city manager shall issue a written decision to debar. The decision shall state the reasons for the action taken and inform the debarred vendor of the right to appeal to the city council. A copy of the decision of the city manager shall be mailed or furnished immediately to the debarred vendor and the city council.
- 2) A decision to debar shall be final and conclusive unless within ten days after receipt of the decision the debarred vendor files a written notice of appeal to the city council.
- 3) Upon a written notice of appeal to the city council, the city manager shall schedule a hearing before the city council as soon as reasonably possible, and shall provide written notice of the

date and time of the hearing to the debarred vendor. The debarred vendor shall have the opportunity to be heard by the city council.

- 4) The decision of the city manager shall be deemed final and conclusive if affirmed by the City Council by a majority vote of the members present.

**Sec. 2-9 (i). Exemptions to quotes and formal solicitations**

- (1) *Small purchases.* All purchases of goods or services under \$5,000.00.
- (2) *Emergency purchase.* An emergency exemption occurs when:
  - a) certain conditions might adversely affect the life, health, safety and welfare of City employees, or citizens of the City,
  - b) when City property or equipment are endangered,
  - c) when it is necessary to maintain or restore vital services, or
  - d) situations arise which may cause major financial impact to the City should immediate action not be taken.

In the case of an emergency, the City Manager, or designee may authorize certain imminent needs purchases. Those delegated the authority to implement emergency purchases are authorized to waive the bid process within their authority. A report listing all emergency purchases and the circumstances of the emergency shall be submitted to the City Council at the next Council meeting after the purchase and the termination of the emergency. It shall be the responsibility of all authorized personnel implementing this exemption to ensure such emergency purchase is accomplished in accordance with City policy and that emergency purchase procedures are invoked properly and not used solely to circumvent the regular established purchasing procedures.

- (3) *Piggybacking*. Piggybacking is a procedure of procuring goods or services without the formal solicitation process by means of utilizing another public entities' award of an invitation for bid or request for proposal. This procedure includes but is not limited to piggybacks of State contracts with the State of Florida, Department of Management Services, and Division of Purchasing, and Federal GSA contracts.
- (a) The City may forego the formal solicitation process by piggybacking. The award will be in accordance with all the terms and conditions, prices, time frames, and other criteria as included in the other public entities' invitation for bid or request for proposal. Additional options may be included in a procurement unless the total dollar value of the options is in excess of the City's bid limit. *Expired bids cannot be piggybacked.*
- (b) The City Manager, or his designee may make purchases/awards, utilizing other public bids, provided the contract being piggybacked is approved by City Council, if applicable, the amounts are within the City Council approved budget and the purchase is made in the best interests of the City. For amounts within the City Manager's approval authority, the City Manager must approve the piggyback or contract after review by the Finance Director. For amounts within the Department Head's approval authority, the Department Head must approve the piggyback or contract after review by the Finance Director.
- (4) *Sole source*. Sole source purchasing is when there is only one person or company that can provide the goods and/or services needed because of the specialized or unique characteristics of the goods and/or services.
- (a) The following criteria must be met in order to procure goods and services that are a sole source.

1. It is the only item that will produce the desired results (or fulfill the specific need) and,
  2. The item is available from only one source of supply, or
  3. The item is available from more than one vendor, but due to other circumstances (such as exclusive sales territory by manufacturer, prohibitive delivery time and cost, etc.), only one vendor is suited to provide the goods or services.
- (b) Any purchase of goods and/or services with an estimated value greater than the limits set by Section 13 of this ordinance that is intended to be purchased from a sole source, must be electronically posted for at least fifteen business days, in accordance with Florida Statutes. The notice must include a request that potential vendors provide information regarding their ability to supply the goods and/or services described.
- (c) Purchases of goods and/or services from a sole source are exempt from competitive requirements upon written approval of the City Manager, or designee and other appropriate City personnel within their expenditure authority.
- (d) The request for sole source purchases shall set forth the purpose and need, an explanation why the item will exclusively produce the desired results (or fulfill the specific need) and the criteria. Compatibility to existing equipment shall be an acceptable justification for this exemption, provided the item is only available from a sole source of supply.
- (e) The requesting department and/or the buyer shall attempt to locate competition (alternate sources of supply).

- (f) The requesting department shall keep a log of sole source purchases, which includes the vendor's name, the amount, item description, justification, and the purchase order number, which shall be reported quarterly to the City Council.
  - (g) The requesting department shall conduct negotiations, as appropriate, as to price, delivery, and terms.
- (5) *Cooperative purchasing.* The city manager may elect to purchase through or join with other governmental units in cooperative purchasing ventures when the best interest of the city would be served thereby, provided the same is in accordance with all applicable laws. If the city manager should elect to purchase through or join with other governmental agencies in cooperative purchasing ventures, all purchases in excess of \$50,000.00 would require council approval before the purchasing contracts are entered into.
- (6) *Direct Purchase.* Procurement of supplies or materials may be made without competitive selection where the supplies or materials are procured by the city as an owner direct purchase for incorporation into a public work as defined by applicable state law, and the contract for the project was previously awarded by the city and included the cost of the supplies or materials. In such event, the city will procure the supplies or materials in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities.
- a) The city council finds that an exception is warranted for the city manager's purchase order authority when it is necessary to purchase materials pursuant to the direct purchase sales tax savings of a public works construction project.
  - b) The city manager shall have the authority to issue a purchase order for materials that will be incorporated into a public works project of the city, the purchase is pursuant to the owner

direct purchase sales tax savings and the funds for the project, including the materials to be purchased, are included in the city's budget for the project.

c) The city manager will report all purchase orders to the city council that are issued pursuant to this exception at the next council meeting.

(7) *Special circumstances.* Under circumstances where, after competitive bidding, no bids meeting bid requirements are received, all bids are rejected for failure to meet bid requirements, or no bids are submitted the city council may re-solicit bids, solicit competitive proposals, or make the required purchase by any other legal means.

(8) *Additional exemptions.* The purchase of the following goods and services is exempt from quotes and formal solicitations:

(a) Water, sewer, gas, electrical and other utility services; telecommunication services including, but not limited to, cable television, telephone lines, internet connectivity, data and voice circuits, voice over internet protocol ("VOIP"), cellular/wireless phones, wide area network ("WAN") connectivity, pagers, and wireless adapters for cellular data ("air cards").

(b) Postage.

(c) Advertisements.

(d) Membership fees.

(e) Subscriptions.

(f) Any items covered under the City's travel policy.

- (g) Software/technology maintenance and support renewal fees for existing software or technology licenses. (Does not include new purchases.)
- (h) Goods and/or services provided by governmental entities.
- (9) Competition is favored even though this section may allow an exemption. Such exemptions shall be submitted as formal requests from the requesting department and include a detailed justification for the exemption. The city manager may establish procedures that support the competitive process regardless of the exemption status.

**Sec. 2-9 (j) Single response to solicitation.** If only one response is received for a solicitation, then an award may be made to such respondent pursuant to the following requirements:

The city manager will determine:

- (1) That the price and other terms as submitted are fair and reasonable
- (2) That other prospective respondents had a reasonable opportunity to respond; and
- (3) That the purchase is in the best interest of the city.

**Sec. 2-9 (k) Contract Renewals.** The city manager shall have the authority to exercise, in subsequent years, any renewal options initially included in the bid solicitation, provided they are approved by council at the initial award of the contract, and the terms and conditions as well as current market conditions are favorable for the city. Such renewals are subject to the availability of funds. This shall include all contracts executed by city council prior to adoption of this ordinance.

**Sec. 2-9 (l). Alterations or modifications of contracts.**

- (1). Where in the opinion of the department head it becomes necessary for the prosecution of any work or improvement under contract to make alterations or modifications in such contract, such alterations or modifications may only be affected as follows:

(a) *Unforeseen conditions allowance.* The city manager, or his designee as set forth in writing, shall have the authority to approve expenditures up to the total amount of the allowance for unforeseen conditions if established upon award of the contract.

(b) *Change orders by city manager authority.* The city manager, or his designee as set forth in writing, shall have the authority to approve change orders up to (10%) of the original contract amount or \$50,000.00 per occurrence if an allowance is not included in the contract, but not to go over his authority threshold. Any change order above the city manager's approval threshold must be approved by council.

(c) *Emergency event.* The city manager or his designee as set forth in writing, shall have the authority to approve and execute change orders that increase the contract price beyond the unforeseen conditions allowance only for an emergency event that occurs during the performance of the contract and requires immediate resolution to avoid one or more of the following:

- (i) Additional costs that were not reasonably anticipated;
- (ii) Delay to the project that increases costs; or
- (iii) Endangerment to the public.

Each change order issued because of an emergency event shall be brought to the city council for ratification at the next available meeting if the approval authority of the city manager has been exceeded or if the allowance has been exceeded.

(d) *Scope and time.* City council approval shall be required for changes in project time over thirty (30) days

(2) Except as expressly modified in a change order, all other terms and conditions of the modified contract shall remain in full force and effect.

**Sec. 2-9 (m). Approval requirements**

- (1) City Council approval shall be required for all contracts and bid awards, piggybacking awards, and sole source awards with an estimated value greater than \$50,000.00.
- (2) The City Manager or designee shall have approval authority as follows:
  - (a) Any purchases less than or equal to \$50,000.00; or
  - (b) Any purchases of capital items, goods, and services pursuant to contracts and bid awards, piggybacking awards, and sole source awards approved by City Council and/or as set out in the annual budget as adopted by the City Council.
- (3) Department heads or their designee shall have authority to approve purchases of capital items, goods, and services up to and including the amount approved by the City Manager, where such purchase does not exceed the item and/or department budget limit.
- (4) Emergency purchases shall be accomplished in accordance with section 3(b).

**Sec. 2-9 (n) Performance and payment bonds.**

- 1) A contractor or vendor may be required to provide a corporate surety bond from a surety company authorized to do business in Florida to guarantee the full and faithful performance of the contract obligations and the payment of labor and material expended pursuant to the contract whenever and in such amounts as are deemed necessary by the city manager. All such bonds shall be approved as to form by the city attorney.
- 2) The city council delegates to the city manager the authority to waive in whole or in part, the payment and performance bond requirements on city projects for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work, unless otherwise required by law, and when the cost of the work to be

completed is estimated to be less than or equal to the City Manager's authority threshold.

**Sec. 2-9 (o) Disposal of surplus property.**

- 1) The city manager has authority to dispose of surplus city tangible personal property by trade, sealed bid, donation, or sale at public auction depending on the item, its value, or other factors all as may be in accordance with law and City policy.
- 2) If the surplus property is determined to be only of scrap value or have no commercial value, the city manager is authorized to sell the surplus property as scrap if possible or dispose in any other manner.
- 3) The city manager may transfer surplus items to another department which has need of it.
- 4) City council approval is required prior to disposal of any real property. Council shall adopt an ordinance to convey or lease or authorize the conveyance or lease of any city real property. Council may authorize the city manager to dispose of the surplus real property by the method or methods deemed most advantageous, convenient, and economical.

**Sec. 2-9(p) Bid Protest Procedures.**

1. In any case where a bidder or interested bidder wishes to protest either the results of or intended disposition of any bid, the following action is required:

(a) The bidder or interested bidder must file a written notice with the City Clerk explaining in detail the nature of the protest and the grounds on which it is based. This notice must be received by the City Clerk no later than three (3) business days after the City's Notice of Intent to Award. At that time, the final bid award shall be delayed until the protest procedure, herein described, has been completed.

(b) The City Clerk shall respond in writing to the written protest in a timely manner, determine whether the protest is with or without merit, and revise the administrative decision or recommendation, if necessary.

2. In any case where a bidder, or interested bidder wishes to appeal the determination by the City Clerk, the following action is required:

(a) The bidder or interested bidder must file a written appeal to the City Manager explaining in detail the nature of the appeal and the grounds on which it is based. This notice must be received by the City Manager no later than three (3) business days after the City Clerk's written response. At that time, the final bid award shall be delayed until the protest procedure, herein described, has been completed. Each written appeal must be accompanied by a bid protest appeal bond in the form of a certified check, cashier's check or money order made payable to the City of Daytona Beach Shores, in the amount not less than five percent (5%) of the lowest responsible bid and in an amount to secure any City damages or costs arising from the appeal, to be determined by the City Clerk.

(b) Upon timely receipt of the formal written protest and bid protest appeal bond, the City Manager shall respond in writing to the written appeal, determine whether the appeal is with or without merit, and revise the administrative decision or recommendation, if necessary.

3. In any case where a bidder, or interested bidder wishes to appeal the determination by the City Manager, the following action is required:

(a) The bidder or interested bidder must file a written appeal to City Council, addressed to the City Clerk, explaining in detail the nature of the appeal and the grounds on which it is based. This notice must be received by the City Clerk no later than three (3) business days after the date of the City Manager's written response. At that time, the final bid award shall be delayed until the protest procedure, herein described, has been completed.

(b) The City Clerk shall schedule the bid protest appeal to be heard at an upcoming City Council meeting and provide all relevant documents in the agenda package.

(c) The bidder or interested bidder must attend the scheduled City Council meeting. City staff and the bidder or interested bidder will be provided an opportunity to present evidence related to the bid protest appeal.

(d) At the scheduled City Council meeting, City Council will determine whether the appeal is with or without merit, and revise the administrative decision or recommendation, if necessary.

4. The bid bond protest bond shall be forfeited to the City if one of the following occurs:

(a) The bid protest appeal is determined to be without merit or non-valid by the City Manager and no further appeal is filed.

(b) The bid protest appeal is determined to be without merit or non-valid by the City Council, or

(c) The bidder or interested bidder who filed the appeal did not attend the scheduled City Council meeting.

**Sec. 2-9 (g). Procurement by lease and multi-year procurements.**

1) A procurement contract may be entered into for any period of time deemed to be in the best interest of the city unless otherwise prohibited by law. Threshold spending limits are based on the life of the contract (excluding extensions) not on the individual annual amounts.

2) Unless the city council expressly approves otherwise or the contract states otherwise, every contract for procurement of goods by lease will provide the city the right to terminate without cause on 90 or fewer days' notice or the right to terminate based on non-appropriation.

3) Unless the city council expressly approves otherwise or the contract states otherwise, every contract for a multi-year procurement will provide the city the right to terminate without cause on 90 or fewer days' notice, or the right to terminate based on non-appropriation; and will further provide that in the event of termination as described above the maximum reimbursement available to the

contractor will be the reasonable value of goods and services delivered and accepted through the termination date.

**Sec. 2-9 (r) Indefinite quantity contracts.** The city council may award indefinite quantity contracts whenever it is impractical to determine in advance the precise quantities of goods or services needed. In approving an indefinite quantity contract, the city council may authorize the city manager to make expenditures up to a maximum stated amount or to expend such sums as may be budgeted and appropriated for purchase orders under the contract.

**Sec. 2-9 (s). Conflicts of interest.** No employee of the city shall contract with or for any business dealing with the city whereby he may derive income or benefits other than those provided as remuneration from the city for his employment except when the city council has made a prior determination that such dealings are in the best interest of the city.

**Sec. 2-9 (t). Encumbrance of funds.** Except in cases of emergency, the city manager shall not issue any order for delivery on a contract or purchase, unless there is to the credit of the department concerned a sufficient funds on deposit to defray the amount of such an order, or a budget amendment/transfer is in process for approval by the city council.

**Sec. 2-9 (u). Appropriations lapse at end of year.** All appropriations shall lapse at the end of the budget year to the extent they shall not have been expended.

**SECTION THREE: Severability.** If for any reason any provision, paragraph, word, section, or article of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections shall not be affected and shall continue in full force and effect.

**SECTION FOUR: Codification.** This Ordinance shall be incorporated into the City of Daytona Beach Shores Code. Any section, paragraph number, letter and/or any heading may be changed or modified by the code codifier as necessary to effectuate the foregoing. Grammatical,

typographical and similar or like errors may be corrected, and additions, alternations, and omissions not affecting the construction of meaning of this Ordinance or the City Code may be freely made.

**SECTION FIVE: Conflicts.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION SIX: Effective Date.** This Ordinance shall become effective upon passage of charter amendment and adoption by the City Council.

**CITY OF DAYTONA BEACH, FLORIDA**

**NANCY MILLER, MAYOR**

\_\_\_\_\_  
**KURT D. SWARTZLANDER, CITY MANAGER**

**CHERI SCHWAB, CITY CLERK**

**Approved as to form and legality:**

\_\_\_\_\_  
**JOHN CARY, CITY ATTORNEY**

Passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2022.

Adopted on second reading this \_\_\_\_ day of \_\_\_\_\_, 2022.