

## **ORDINANCE NO. 23-02**

### **AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA, CREATING CHAPTER 43 OF THE CITY CODE RELATING TO CITY PROCUREMENT; MAKING RELATED FINDINGS; REPEALING CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City's current procurement rules are a compendium of various prior ordinances adopted over time which were never topically organized and codified; and

**WHEREAS**, the City's procurement policies and procedures have not been holistically reviewed for many years; and

**WHEREAS**, modern public procurement methods and options have become more complex and, as the City has developed, its procurement rules should be improved to account for the various methods of procurement now available to the City, to ensure compliance with statutes applicable to municipal procurement, and to allow for easier understanding and use of the rules by City staff and the vendor communities which serve the City's operational and infrastructure needs; and

**WHEREAS**, the City Attorney has developed the provisions of this Ordinance to provide best practices and to ensure compliance with relevant state laws; and

**WHEREAS**, in light of the foregoing, the Holmes Beach City Commission finds that it is in the City's best interests to adopt the procurement regulations set forth in this Ordinance.

**NOW, THEREFORE BE IT ORDAINED** by the City Commission of the City of Holmes Beach, Florida, that:

**Section 1.** Chapter 43 of the Holmes Beach City Code is hereby created to read as follows:

#### **CHAPTER 43. – PROCUREMENT CODE**

##### **Sec. 43-1. – Title and purpose.**

This chapter shall be known and may be cited as the Holmes Beach procurement code. The purpose of this chapter 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.

##### **Sec. 43-2. – Application.**

- (a) This chapter applies to solicitations and contracts entered for the purchase of goods, services, and construction. Any current or subsequent amendment shall only apply to solicitations and contracts issued and entered by the city after the effective date of this

chapter, unless the parties agree to its application to solicitations and contracts issued and entered into prior to the effective date.

- (b) This chapter is to be construed in a manner consistent with any applicable provision of the general and special laws of the State of Florida and shall not apply to the extent any provision is in conflict therewith, provided, however, the provisions of this chapter may supersede such general or special law where the general or special law permits such an application or interpretation.

### **Sec. 43-3. – Exclusions from this chapter.**

This chapter does not govern procurement of the following:

- (a) Grants and gifts. This chapter shall not apply to purchases made with the proceeds from any grant, gift, bequest, or donation to the extent the application of this chapter would conflict with the requirements, conditions, or limitations attached to the grant, gift, bequest, or donation.
- (b) Lease or purchase of real property. This chapter shall not apply to the acquisition of real property by lease, license or purchase, unless the Commission determines to acquire such interest by a competitive solicitation.
- (c) Legal services. This chapter shall not apply to retaining services of law firms or other outside counsel for any reason, nor to expert witnesses, appraisal services, trial consultants or similar persons of firms deemed by the city commission as necessary to address the city's legal needs. Such firms or persons shall be selected by the city commission or, when authorized by commission, the city attorney.
- (d) Non-profit funding agreements. Funds expended by the city in the form of grants to non-profit entities performing economic development, social services, or similar public purposes.
- (e) Insurance policies. This chapter shall not apply to the purchase of insurance policies to protect the property and other interests of the city.
- (f) Where specified by general law, ordinance or policies. This chapter shall not apply to any purchase governed by explicit provisions of general law or other city ordinance or commission policies unless the solicitation indicates the applicability of this chapter, and this chapter shall apply only to the extent set out in the solicitation.
- (g) City bonds. This chapter shall not apply to professional services required for the issuance of city bonds and city investments related thereto.
- (h) Dues, memberships and subscriptions. This chapter shall not apply to the payment of dues for memberships in professional or trade organizations, professional licenses, and trade publications or subscriptions.

- (i) Sale or conveyance of city owned real property. This chapter shall not apply to the sale, conveyance or other disposition of real property owned by the city or any interest therein.
- (j) Legal advertisements and postage. This chapter shall not apply to the city's acquisition of legal advertisements, nor to the cost of postage, shipping or courier services.
- (k) Lobbying services. This chapter shall not apply to the city's acquisition of professional lobbyist services.
- (l) Title abstracts and title insurance. This chapter shall not apply to funds expended for real property title abstracts or title insurance.
- (m) Utilities. This chapter shall not apply to the city's acquisition of any utility, including electricity, gas, and communications services.
- (n) Professional development. This chapter shall not apply to costs incurred in authorized professional development activities including registration, lodging, travel and meal costs to attend trade or professional seminars, trainings and conferences.
- (o) Items for resale. This chapter shall not apply to the acquisition of items purchased for resale to the public.
- (p) Instructional materials. This chapter shall not apply to the acquisition of instructional materials or copyrighted materials being purchased from the owner of the copyright.
- (q) City sponsored events. This chapter shall not apply to expenditures related to city sponsored events, including venue and amusement rentals, entertainment and food.
- (r) Service/maintenance agreements. Agreements to maintain or service equipment or software previously acquired by the city are not covered by this chapter.

Notwithstanding the foregoing, with the exception of the acquisition of utility services with rates established by the Florida Public Service Commission, a contract for the purchase of commodities or services exempted in this section must be approved by the commission if the contract requires the expenditure of more than \$25,000.

#### **Sec. 43-4. – Small dollar purchases.**

Purchases of commodities or services with an aggregate annual (fiscal year) cost of less than \$5,000.00 may be made directly by the acquiring department. However, to the extent the services being acquired may generate a significant risk of loss, the acquiring department shall first consult with the mayor or designated risk management professional regarding the need to require the vendor to provide enhanced insurance coverage if the commodities or services at issue could pose a heightened exposure to damage or injury claims.

**Sec. 43-5. – Intermediate purchases.**

Purchases of commodities or services with an aggregate annual (fiscal year) cost between \$5,000.00 and \$25,000.00 will be acquired only after obtaining a minimum of three (3) written quotes, using forms issued and approved by the mayor or finance designee. After quotes are received, purchase orders will be issued to the responsive, responsible vendor which has quoted the lowest price.

**Sec. 43-6. – Purchases requiring formal solicitation.**

Purchases of commodities or services with an aggregate annual (fiscal year) cost exceeding \$25,000.00 will be performed by the use of a formal invitation to bid, request for proposals, invitation to negotiate or request for qualifications, depending on the desired commodity or service. Solicitations in this category shall be published as broadly as practicable to obtain robust competitive responses, to include online solicitation distribution providers, the City's website, newspaper or trade publication advertisements, and directly sending the solicitation to known vendors.

**Sec. 43-7. – Minimum solicitation requirements.**

Solicitations for sealed bids shall include specifications and all contractual terms and conditions applicable to the procurement, shall incorporate, directly or by reference to, the standards and conditions upon which the bids will be evaluated and selected, and, in solicitations for other than sealed bids (such as requests for proposals and invitations to negotiate), shall include the manner in which negotiations shall be conducted. Where a selection criteria other than the lowest responsive, responsible bidder is to be used, that criteria must be set forth in the solicitation document. However, to be considered for award, a responding vendor must be found to be responsive and responsible based on the criteria set forth in the solicitation document.

**Sec. 43-8. – Cancellation of solicitations.**

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids, proposals or offers may be rejected in whole or in part when it is determined to be in the best interests of the city. Each solicitation issued by the city shall state that the solicitation may be canceled, and that any bid, proposal, response or offer may be rejected in whole or in part when, in the city's sole judgment, doing so is in the best interest of the city. Notice of cancellation shall be published or posted in the same manner as notice of the solicitation. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar items.

**Sec. 43-9. – Source selection and waiver of competition.**

- (a) The methods and policies governing the selection of sources shall be those established in this chapter, or by administrative procedures and standards adopted by the mayor, and may include, but shall not be limited to, competitive sealed bids, proposals, requests for

qualifications, invitations to negotiate, proposals submitted for competitive negotiation, proposals for designated professional services, noncompetitive purchases, purchases with limited competition, emergency purchases, sole source purchases, intergovernmental or third-party competitively bid and negotiated and cooperative purchases, and any adopted exceptions to the competitive selection procedure.

- (b) Where not otherwise prohibited by law, the mayor is authorized to provide for the limited or complete waiver of competitive source selection policies and procedures upon a determination that the likely, non-speculative cost of competitive purchasing would exceed any potential savings and benefit to the city, or upon a determination that the acquisition of the goods or services should be provided by a unique source or provider based upon particular skills and expertise. Waivers may also be authorized for any purchase where required due to emergency conditions. Recommendations to the mayor for all such determinations shall be made in writing. Procurement activities which otherwise would have required city commission approval must be presented for ratification by the commission at its first regular meeting after the emergency conditions cease, or as soon thereafter as is practicable.

#### **Sec. 43-10. – Construction contracts.**

- (a) If a contract for construction of buildings or infrastructure is estimated, in accordance with generally accepted cost accounting principles, to cost more than the threshold amounts set forth in Florida Statutes § 255.20, such contract shall be competitively awarded to a licensed contractor fully legally authorized to conduct business in Florida by use of the competitive solicitation rules set forth in that statute.
- (b) The selection procedures shall be consistent with this chapter and policies and procedures adopted by the mayor. In addition to such other solicitation publication methods used by the city, construction projects projected to cost more than \$200,000 must be advertised in the manner set forth in Florida Statutes § 255.0525(2)-(5).
- (c) Projects shall not be divided so as to evade the threshold amounts listed in Florida Statutes § 255.20. Unless otherwise defined by law, as used in that subsection, the term “project” shall not include those portions of multiyear capital improvement projects not funded beyond the current fiscal year. The term shall also not include any series of construction activities on a new or existing city facility which, if aggregated, would exceed the threshold amounts, but which were not undertaken contemporaneously with each other, were not part of an overall coordinated construction or renovation effort, and which were not performed under the same construction permit.

#### **Sec. 43-11. – Certain professional services.**

- (a) Unless prevented from doing so based on a valid public emergency, when the city procures architecture, professional engineering, landscape architecture, or registered surveying and mapping services, it shall, when such services must be procured for a project the basic construction cost of which is estimated by the city to exceed the category five threshold

amount, or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in category two, as those categories are set forth in Florida Statutes § 287.017, engage in the competitive solicitation process set forth in Florida Statutes § 287.055.

- (b) Nothing in subsection (a) above shall be construed to prohibit a continuing contract, as defined by Florida Statutes § 287.055(2)(g), between an architecture, professional engineering, landscape architecture, or registered surveying and mapping services firm and the city.

**Sec. 43-12. – Design-build procedures.**

(a) Public announcement. The city shall publicly advertise in a uniform and consistent manner on each occasion when design-build services are required except in cases of public emergencies as declared by the mayor. The advertisement shall include a general description of the project and shall indicate how, and the time within which, interested design-build firms may apply for consideration.

(b) Legal qualification. Any firm or individual desiring to provide design-build services to the city must first be determined legally qualified. To be legally qualified:

(1) Firms must be properly certified to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent;

(2) Firms must be properly certified to practice or to offer to practice engineering, architecture, or landscape architecture; and

(3) The firm shall be duly qualified to perform its proposed service under any other applicable law.

(c) Selection committee. A selection committee appointed by the mayor shall be used to evaluate and rank the design-build firms and their responses for recommendation to the city commission.

(d) Solicitation. The mayor or designee shall develop a request for proposals (RFP) to solicit proposals from interested, qualified design-build firms. Except as otherwise provided in Florida Statutes § 287.055(9)(c), with the use of a qualifications-based selection process, the RFP shall contain as a minimum the following:

(1) The design criteria package defined in Florida Statutes § 287.055(2)(j).

(2) The criteria, procedures, and standards for the evaluation of design-build contract proposals, based on price, technical and design aspects of the public construction project, weighted for the subject.



(3) Requirements for determining qualifications of firms proposing, such as license, list of subcontractors, architect and engineer, and references.

(4) Terms and conditions of proposed agreement.

(5) Other items as required by procedures, laws, ordinances, or prevailing circumstances.

(e) Selection.

(1) All information required by the RFP shall be submitted in a sealed manner (which may include sealed envelope if the submission is required to be in that form or via an electronic proposal submission system if the city requires submission in that manner). Except as otherwise provided in Florida Statutes § 287.055(9)(c), with the use of a qualifications-based selection process, all proposed designs and price proposals shall be submitted separately via the same sealed submission process, and which will be opened and considered by the selection committee for shortlisted firms only.

(2) The selection committee shall review all proposals (except the separately-submitted proposed designs and price proposals) and shall create a shortlist of no less than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof. In evaluating the proposals and preparing the shortlist, the committee shall consult with the design criteria professional concerning the evaluation of the responses submitted by the design-build firms. Once the committee has shortlisted, except as otherwise provided in Florida Statutes § 287.055(9)(c), with the use of a qualifications-based selection process, the committee shall open the separate envelopes containing the proposed design solutions and the price submitted by the shortlisted firms. The committee shall then rank the shortlisted firms based upon the evaluation criteria and procedures set forth within the request for proposal. The committee may, if necessary, require verbal presentations from all firms in order that the qualifications and/or proposals may be clarified.

(3) After the committee has ranked the shortlisted firms based upon the award criteria set forth within the request for proposal, the ranking shall be presented to the city commission which may approve, disapprove or request modifications to the recommended rankings be brought back at a subsequent meeting. Following the ranking by the city commission, the mayor (assisted as needed by relevant city staff and professional consultants) shall attempt to negotiate a contract within the parameters of the design criteria package or the results of the qualifications-based selection process and in accordance with city commission ranking.

(f) Contract.

(1) Under the oversight of the city mayor, the city's staff (assisted as needed by relevant professional consultants) shall negotiate a design-build contract at a price which the mayor determines is fair, competitive and reasonable. If the city is unable to negotiate a satisfactory contract with the first ranked firm, then it shall formally terminate negotiations with such firm and then undertake negotiations with the second ranked firm and shall continue this process until a satisfactory contract is negotiated.

(2) The contract negotiated by the staff shall be submitted to the city commission for consideration and approval.

(g) Conflict between procedure and law. In the event Florida Statutes § 287.055 is subsequently amended such that its requirements conflict with the provisions of this procedure, the provisions of the statute shall prevail and the mayor shall make such recommendations for revision to these procedures as to conform them to the law.

#### **Sec. 43-13. – Sole source procurement.**

(a) *Commodities or contractual services.* Commodities or contractual services available only from a single source may be excepted from any otherwise applicable solicitation requirements provided in this code. When the city believes that desired commodities or contractual services are available only from a single source, the designated purchasing agent shall electronically post a description of the commodities or contractual services sought for a period of at least five (5) business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. Posting shall not be required for desired small dollar commodities or contractual services. If, after reviewing all relevant information including information received from prospective vendors resulting from a required posting, the purchasing agent determines in writing that the commodities or contractual services are in fact available only from a single source, the city may enter into a sole source agreement.

(b) *Construction materials.* In any case where the city seeks to purchase from a sole source materials for the construction, modification, alteration, or repair of any city-owned facility, the city commission must first make the written findings required by Florida Statutes § 255.04.

#### **Sec. 43-14. – Cooperative procurement, intergovernmental or third-party procurement.**

(a) *Cooperative procurement.* Unless otherwise prohibited by law or grant agreement terms, the purchasing agent is authorized to negotiate with other public procurement officials for the conduct of a joint procurement on behalf of each participating public agency where, in the judgment of the mayor, doing so would leverage the benefits of volume purchases, create clear delivery and/or supply chain advantages, and/or create a demonstrable and substantial reduction of administrative time and expense. Examples of cooperative



procurement events can include joint solicitations or use of a third-party aggregator or broker.

*(b) Intergovernmental or third-party procurement.*

- (1) In any agreement for the acquisition of goods or services between the city and a vendor which has resulted from a competitive solicitation process, the designated purchasing agent is authorized to include a term authorizing the agreement to be utilized by other public agencies to acquire the same goods or services.
- (2) The purchasing agent is authorized to acquire goods or services by use of an existing agreement between a vendor and another public agency where such agreement has resulted from a competitive solicitation process. Contracts made for purchases made in this manner should be reviewed by the city attorney to ensure they do not substantially differ in specification, scope, quality or price from the terms of the initial agreement. The agreement must be consistent with the parameters, requirements and restrictions of the initial agreement.

**Sec. 43-15. – Best value procurement.**

Unless otherwise prohibited by law, in addition to soliciting commodities or services based on a lowest responsive responsible bidder standard, the purchasing agent is authorized to conduct a solicitation based on best value. The value of procured commodities or services is generally determined by a comparison of costs and benefits. These include comparison of all the benefits from what the city receives and how it uses what it receives, against the costs to purchase, use, and where relevant dispose of it. Value includes the costs and resources necessary to conduct the procurement, purchase price, fiscal tracking and processing costs, storage, maintenance and other operational costs, costs for needed training and special insurance costs. The factors to be considered and statement of who will be evaluating the factors shall be included or referenced in any solicitation issued using the best value procurement method.

**Sec. 43-16. – Public records compliance.**

Pursuant to Florida Statutes § 119.0701, in any agreement entered into by the city wherein the contractor is acting on behalf of the city, the contractor must:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the city in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the city would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

- (d) Meet all requirements for retaining public records and transfer, at no cost, to the city all public records in possession of contractor upon termination of the agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the city in a format that is compatible with the city's information technology systems.

**Sec. 43-17. – Trade secrets.**

- (a) Florida law provides that trade secret information, as defined in Florida Statutes § 812.081(1)(c), is confidential and exempt from public records disclosure.
- (b) Upon receipt of a response to a procurement solicitation, the City will not be aware that a bid, proposal, or other response contains such information. Therefore, bidders, proposers or other persons or entities responding to city solicitations must specifically and clearly identify all portions of their responses which are believed to be a trade secret, as defined by the law, and must, as to each such designation, provide the basis upon which the designated information is a trade secret. The mere designation of an entire submission as "confidential" will be insufficient to comply with this requirement. Absent some unusual justification, a bidder's or proposer's contract price shall not constitute a trade secret.
- (c) While the city will, to the extent possible, cooperate in any court action a bidder, proposer or responder may bring against any third-party requesting to inspect and copy portions of a response asserted to be a trade secret, if a bidder, proposer or responder fails, prior to the submission of their materials to the city, to specifically and clearly designate information therein as a trade secret and to provide the supporting explanation for the designation, the right to assert the exemption may be lost, and the information may be subject to inspection and copying as otherwise provided for under Florida's Public Records Act.
- (d) In the event any record designated as a trade secret is requested under the Act, procurement staff will consult with the city attorney and, if the city attorney counsel agrees with the designation, the city will assert the exemption and redact the relevant materials. If the city attorney disagrees with the designation, city staff will inform the bidder, proposer or responder and that person or entity may file an injunctive or declaratory judgment action and seek such emergency orders as desired to protect the information.

**Sec. 43-18. – Unauthorized purchases, ethical conduct, sanctions.**

- (a) *Prohibition.* Except as provided in this chapter, it shall be a violation of this chapter for any city officer, employee, or other person, to knowingly and willingly order the purchase of any goods, or make any contract for goods or services, sell, trade or dispose of material within the purview of this chapter in the name of or on behalf of the city, except as provided by policies of the mayor and city commission, and the city shall not be bound by any purchase order or contract made contrary to the provisions herein.
- (b) *Ethical conduct and sanctions.* In addition to any sanctions provided for in the city's personnel policies or sections of this code, any city employee who violates subsection (a)

above, or any statute concerning ethical conduct in procurement may, when found by the mayor to have committed such violation, be required to forfeit all or any part of any accrued leave balances he/she may otherwise have as of the date the violation is confirmed by the mayor. In determining whether such forfeiture shall be required, the mayor shall consider the nature and severity of the offense, the relative financial or legal harm to the city, the employee's prior disciplinary record and whether the employee was in a managerial or special trust position.

**Sec. 43-19. – Conflicts of interest.**

- (a) Prohibiting contracts where conflicts are found to exist. The city shall not engage in contracts with consultants or professionals whose prior record, work history and experience indicate ongoing business relationships that may be substantially in conflict with the duties and services that will be required by the city.
- (b) Standards and regulations for the determination of potential conflicting contractual obligations. The mayor or designee is authorized to develop standards and regulations for the prospective determination of potential conflicting contractual obligations that may impair the performance of the professionals or consultants solicited by the city. The standards and regulations shall set forth appropriate requirements based upon the nature and scope of the services that are to be procured and shall be narrowly tailored so as to not unduly restrict competition, while assuring the city of undivided loyalty and services of the highest quality. The standards and regulations may require, but shall not be limited to, the inclusion of the following in a request for proposals, invitation for bids, announcement or other solicitation or contract for professional or consulting services:

  - (1) An affidavit providing that the professional or consultant is not currently engaged or will not become engaged in any obligations, undertakings or contracts that will require the professional to maintain an adversarial role against the city or that will impair or influence the advice or recommendations provided to the city;
  - (2) The disclosure of all potentially conflicting contractual relationships and the full disclosure of contractual relationships deemed to raise a serious question of conflicts.
- (c) Consequences for violation of ethical standards. In addition to any other penalty or consequence provided for in law or this code, any professional or consultant submitting false information to or on behalf of the city, disclosing or releasing information concerning an actual or planned procurement activity which information is deemed confidential or is otherwise not known to the general public or otherwise repeatedly failing to comply with the city's ethical standards and regulations shall be deemed to be in violation of this code and shall be subject to prosecution, state ethics complaints, reporting to professional or licensing authorities, contract cancellation, suspension and/or debarment, as the mayor or designee deems appropriate.
- (d) Professional and consultant defined. Professional or consultant as used in this section shall be deemed to include those contractors who, as individuals or duly organized business

entities, have been or will be retained by the city for the purpose of providing recommendations or advice related to planning level or policy level decisions, or who will be engaged in the collection of data or research that will provide the basis for such decisions or future plans and actions of the city, as well as those who will be retained to supervise and monitor the performance of contractors or subcontractors of any nature.

**Sec. 43-20. – Lobbying limitations.**

After the issuance of any solicitation, or during renegotiation of an existing contract, no prospective offerors or their agents, representatives or persons acting at the request of such offerors shall contact, communicate with, or discuss any matter relating to the solicitation or the renegotiation with any city officers, agents or employees other than the designated purchasing agent, unless otherwise provided for in the solicitation or otherwise directed by the purchasing agent. This prohibition includes copying such persons on written communications with the purchasing agent, but does not apply to presentations made to evaluation committees or at a city commission meeting where the commission is considering approval of a proposed contract. The prohibition ends upon execution of the final contract, issuance of a purchase order, or when the solicitation has been canceled or the renegotiation efforts are terminated. Renegotiation will be deemed to have commenced upon vote of the commission directing renegotiation or written notice from the purchasing agent to the existing contractor instituting a renegotiation process. Failure to adhere to this section will result in the offender's bid or proposal being disqualified from further consideration.

**Sec. 43-21. – Prohibition against award to certain persons or entities.**

No person or business entity shall be awarded a contract by the city for the provision of commodities or services if that person or entity:

- (a) Has been convicted of bribery or attempting to bribe a public officer or employee of the city, the State of Florida, or any other public entity, including but not limited to the Government of the United States, any state, or any local government authority in the United States, in that officer's or employee's official capacity; or
- (b) Has been convicted of a conspiracy or collusion among prospective offerors in restraint of freedom of competition, by agreement to offer a fixed price, or otherwise; or
- (c) Has been convicted of a violation of an environmental law that, in the reasonable opinion of the mayor, establishes reasonable grounds to believe the person or business entity will not conduct business in a responsible manner; or
- (d) Has made an admission of guilt of such conduct described in subsections (a), (b) or (c) above, which is a matter of record, but has not been prosecuted for such conduct, or has made an admission of guilt of such conduct, which is a matter of record, pursuant to formal prosecution.

**Sec. 43-22. – Protests.**

- (a) Purpose and intent. The purpose of this section is to provide an expedient administrative remedy for those participating in the city's procurement process. The proceedings under this section are not intended to be, and shall not be interpreted as judicial or quasi-judicial, unless otherwise clearly specified. It is not the intent of the city to provide any rights to protesters not otherwise required by law. Rather, the city's intent in creating a process for administrative review of solicitation award protests is to allow for errors in the solicitation process to be raised for the benefit of the taxpayers. Successful participation in any protest review does not ensure an award of a contract, and the city expressly reserves all rights it has under law.
- (b) Opportunity to protest. Any actual bidder, proposer, or contractor who is aggrieved in connection with the notice of intent to award a contract (protestor), where such grievance is asserted to be the result of a violation of the requirements of this procurement code or any applicable provision of law by the officers, agents, or employees of the city, may file a protest to the procurement agent.
- (c) Protest procedure and requirements.
- (1) The protest shall be made in writing and filed with the procurement chapter by 4:00 p.m. on the fifth business day following the date of the electronic posting of the notice of intent to award. A protest is considered filed upon receipt by the city clerk. Failure to file a written protest within the time period specified shall constitute a waiver of the right to protest.
  - (2) The written protest shall identify the protesting party and the solicitation involved, including a statement of the grounds on which the protest is based and the applicable statutes, laws, ordinances or other legal authorities which the protestor deems applicable to the grounds for the protest.
  - (3) The protest shall not include challenges to the solicitation requirements, chosen procurement method, the evaluation criteria, the relative weight of the evaluation criteria, the formula specified for assigning points to the evaluation criteria in its protest, or the protester's opinion regarding its qualifications or the qualifications of other responding vendors.
  - (4) The procurement process shall not be stayed during the protest process unless the mayor, in his or her sole discretion, deems it to be in the best interests of the city to stay the process.
- (d) Authority to resolve protests. The city's designated procurement agent shall have the authority to settle and resolve a protest concerning the intended award of a contract. The procurement agent shall promptly investigate the protest and issue a written decision within thirty (30) days of the date the protest is received.
- (e) Review of the procurement agent's protest decision.



- (1) Following the procurement agent's written decision on the protest, protestor may file a request for a review of the procurement agent's decision with the mayor. The request for review shall be made in writing and filed with the procurement office by 4:00 p.m. on the fifth business day following notification of the procurement agent's decision.
- (2) The mayor shall issue a written decision within thirty (30) days of the date the request for review is received.
- (f) *Final decision.* The decision of the mayor shall be final and conclusive as to the protest. The protest process is an opportunity to bring valid mistakes to the city's attention, it is not a quasi-judicial process. Therefore, the mayor's disposition of a protest is not reviewable by an appellate court.
- (g) *Protest bond or security.* The city commission may, by separate resolution, establish a requirement for a protest bond. If a protest bond is required, the written protest must be accompanied by a security in the form of a protest bond (in a form and with such terms as approved by the city attorney) or cash in the amount set by the commission. If the mayor determines that the protest does not require reversal of the city's initial decision, the city shall be entitled to recover the amount of the protest bond or security to offset the costs associated with the review process and delay in completing the procurement process.

**Section 2.** For purposes of codification of any existing section of the Holmes Beach Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

**Section 3.** If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Commission would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

**Section 4.** All ordinances adopted prior to this Ordinance addressing the City's procurement rules and procedures, including any which were or are contained in the City's Administrative Code are hereby repealed in their entirety.



**Section 5.** The Codifier shall codify the substantive amendments to the Holmes Beach City Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

**Section 6.** Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

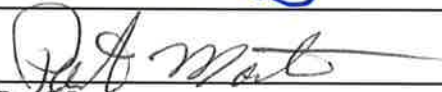
**ADOPTED ON** <sup>Second</sup> ~~FIRST~~ **READING** on the 14<sup>th</sup> day of February, 2023, by the Holmes Beach City Commission.

**PASSED AND ADOPTED**, by the City Commission of the City of Holmes Beach, Florida, in regular session assembled, this 14<sup>th</sup> day of February 2023.

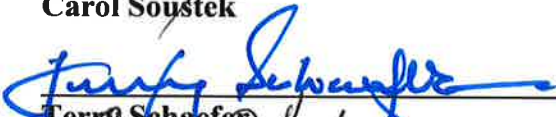
**First Reading:** 1-24-23

**Publication Date:** 2-3-23

**Second Reading and Public Hearing Date:** 2-14-23

  
Pat Morton

  
Carol Soustek

  
Terry Schaefer

  
Greg Kerchner

  
Dan Diggins

**APPROVED THIS** 15<sup>th</sup> **DAY OF** February, 2023.

  
Judy Titsworth, Mayor

**ATTEST:**   
Stacey Johnston, MMC, City Clerk