

## ORDINANCE 2023-26

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE VII, FINANCE BY AMENDING SECTION 421 DEFINITIONS; BY AMENDING SECTIONS 426 AND 444 TO INCREASE THE CITY MANAGER'S SPENDING AUTHORITY FROM \$20,000 TO \$25,000; BY AMENDING SECTIONS 411, 422 THROUGH 436 AND 438 THROUGH 448 FOR CLARITY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the overall goal of the City's purchasing and procurement policies is to promote accountability, ethics, impartiality, professionalism, transparency, efficiency, and economy in the purchase of goods and services; and

WHEREAS, in 2022, City staff formed a purchasing policy review committee to conduct a comprehensive review the municipal code and the City's Purchasing Policy; and

WHEREAS, after many meetings and discussions with senior City staff, the committee drafted a new Purchasing Policy, reorganizing and editing the document for clarity and readability; and

WHEREAS, included in the draft Policy are updated definitions and a 5,000 increase in spending authority for the City Manager in line with Ordinance 2022-10; and

WHEREAS, Staff recommends amending the current purchasing code to align with proposed changes to the Purchasing Policy.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH AS FOLLOWS:

SECTION 1. It is hereby proposed that Chapter 2, Article VII, Finance, Division 1, Generally, Section 2-411 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

### **Sec. 2-411. Dishonored payment.**

If any check, draft or other order for the payment of money to the City ~~shall be~~ is dishonored, the City ~~shall will~~, in addition to any other penalties that may be imposed, collect a service fee of \$10.00 or five percent of the item, whichever is higher.

SECTION 2. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-421 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

### **Sec. 2-421. Definitions.**

As used throughout this purchasing code, the words and terms defined in this section ~~shall~~ have the meanings set forth below unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular section or portion thereof.

~~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.

~~Bid bond.~~ "Bid bond" means a form of bid security executed by the bidder as principal and by a surety to guarantee that the bidder will enter into the contract within a specified time and furnish any required performance bond. means a surety bond issued by an insurance company or a bank to guarantee that the contractor providing the bid will undertake the contract under the terms at which they bid.

~~Bid deposit.~~ "Bid deposit" means a sum of money or certified/cashier's check deposited by a bidder to guarantee that the bidder will enter into the contract within a specified time and furnish any required performance bond.

~~Business.~~ "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other legal entity through which business is conducted.

~~City.~~ "City" means the City of Fernandina Beach and shall include the City commission, any department, board, committee, institution, authority, agency or other establishment or official of the government of this City.

~~City Manager.~~ "City manager" means the City Manager of the City or the City Manager's designated representative.

~~Confidential information.~~ "Confidential information" means any information which is available to a person only because of said person's status as an employee of this City and which is not a matter of public knowledge or available to the public on request.

~~Construction.~~ "Construction" means the process of building or demolishing any structure, building, roadway, or other improvements of any kind to any real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings, or real property.

Consultants' Competitive Negotiation Act (CCNA) means Florida State Statute 287.055, as may be amended from time to time, pertaining to the acquisition of architects, engineers, land surveyors, landscape architects, and mapping services.

~~Contract.~~ "Contract" means all types of City agreements regardless of what they may be called for the purchase or disposal of supplies or services. It includes contracts for a fixed price, cost, cost plus a fixed fee, or incentive contracts, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. means a legally enforceable agreement that creates, defines, and governs mutual rights and responsibilities among its parties involving the transfer of goods, services, or money.

~~Contract modification.~~ "Contract modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract.

~~Contractor or vendor.~~ "Contractor" or "vendor" means any person having a contract with the City.

~~Cooperative purchasing.~~ "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit. means a situation where the City participates in joint procurement of commodities or services with other public entities within the state to obtain lower prices through greater purchasing volume. The General Services Administration Cooperative Purchasing Program is a federal program that allows eligible entities to purchase from approved industry partners, at any time, for any reason, using any funds available.

~~Cost reimbursement 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 division, and a fee or profit, if any.

~~Data.~~ "Data" means recorded information regardless of form or characteristic.

~~Debarment.~~ means to bar, exclude or preclude a person or entity from consideration for award of a contract(s) with the City in accordance with the provisions of this division.

~~Designee.~~ "Designee" means a duly authorized representative of a person holding a superior position.

~~Excess supplies.~~ "Excess supplies" means supplies having remaining useful life, but which are no longer required by the using agency in possession of said supplies.

~~Financial interest.~~ "Financial interest" means:

- ~~(1) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the last year has received or is presently or in the future may receive any financial benefit.~~
- ~~(2) Ownership of any interest in any business except publicly held stock.~~
- ~~(3) Holding a position in a business, such as an officer, director, trustee, partner, employee or similar position or holding any position of management.~~

~~Invitation to bid.~~ "Invitation to bid" means all documents including those attached or incorporated by reference utilized for soliciting competitive sealed bids. means a written or electronically published solicitation for competitive sealed bids. Typically, an ITB includes a description of the product or service to be acquired; instructions for preparing a bid response; the conditions for the purchase; packaging, delivery, shipping, and payment; contract clauses to be included; and the deadline for submitting the response.

~~Performance bond.~~ "Performance bond" means a bond of a contractor/vendor in which a surety guarantees to the City that the work/services will be performed in accordance with the contract documents and may, in the discretion of the City, include a letter of credit issued by a financial institution. means a surety bond issued by an insurance company or a bank to guarantee satisfactory completion of a contract.

~~Person.~~ "Person" means any business, individual, union, committee, club or other organization or group of individuals.

~~Procurement.~~ "Procurement" means the buying, purchasing, renting, leasing or otherwise obtaining any supplies, services, construction or any other item(s). It also includes all functions that pertain to the obtaining of any supplies, services, construction or any other item(s), including description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration. means the procedure for obtaining goods or services for public purposes, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment.

*Procurement officer.* ~~"Procurement officer"~~ means the City Manager and any other employee duly authorized to enter into and administer contracts, and make written determinations with respect thereto.

*Professional services.* ~~"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 as defined and prescribed under F.S.S. 287.055.

*Purchasing agent.* ~~"Purchasing agent"~~ means a City employee and designee of the City Manager who facilitates and conducts the purchase of materials, supplies, equipment, and services used by the City.

*Request for proposals.* ~~"Request for proposals"~~ means all documents including those attached or incorporated by reference utilized for soliciting competitive sealed proposals. a written or electronically posted solicitation for competitive sealed proposals. An RFP is typically used when it necessitates a highly technical product or service.

*Responsible vendor bidder or proposer.* ~~"Responsible bidder or proposer"~~ means a person vendor who has the required qualifications and ~~the~~ capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

*Responsive bidder or proposal proposer.* ~~"Responsive bidder or proposer"~~ means ~~a person who has submitted a bid which conforms in all material respects to the invitation to bid or request for proposals and which is submitted on the correct forms with all required information, signatures, and notarizations.~~ means a bid, or proposal or reply to a bid, Request for Proposal, or Request for Qualifications submitted by a responsive and responsible vendor which conforms in all material respects to the solicitation.

*Services.* ~~"Services"~~ means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term includes "professional services," except professional architectural, engineering, landscape architectural and land-surveying services, but does not include employment agreements or collective bargaining agreements.

*Specifications.* ~~"Specifications"~~ means any description of the physical or functional characteristics, or of the nature of a supply, or service item. It may include a description of any requirement for inspection, testing or preparing a supply or service item for delivery.

*Surety.* ~~"Surety" means an organization which, for a consideration, promises in writing to make good the debt or default of another. The surety must hold a certificate of authority as an acceptable surety on federal bonds as published in the current Circular 570, U.S. Department of the Treasury, and the Federal Register effective July 1 annually, as amended.~~

*Surplus property.* ~~"Surplus property" means any real or personal property which is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function supplies, vehicles, equipment, or other personal property no longer having any use to this City. This includes obsolete supplies or equipment, scrap materials, and non-expendable supplies that have completed their useful life cycle.~~

*Suspension.* ~~"Suspension"~~ means the disqualification of a person to receive invitations to bid or requests for proposals or the award of a contract by the City for a given period.

*Using department.* ~~"Using department"~~ means any department, division, commission, board, committee, institution, authority or other establishment or official of this City which utilizes any supplies, services, or any other item procured under this Code.

Vendor means an actual or potential provider of goods or services.

SECTION 3. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-422 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-422. Purposes; rules of construction; interpretation.**

This code ~~shall~~ will be liberally construed and applied to promote its underlying purposes and policies and:

- (1) To simplify and clarify the law governing procurement by the City; and
- (2) To permit the continued development of procurement policies and practices; and
- (3) To make procurement as consistent as possible among the various departments of this City; and
- (4) To provide for increased public confidence in the procedures used in public procurement; and
- (5) To secure the advantages of a centralized procurement and materials management process; and
- (6) To insure fair and equitable treatment to all who deal with the procurement system of this City; and
- (7) To provide increased economy and to maximize, to the fullest extent practical, the purchasing value of public funds of this City; and
- (8) To promote effective broad-based competition within the free enterprise system; and
- (9) To provide adequate internal safeguards for the maintenance of a quality procurement system.

SECTION 5. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-423 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-423. Supplementary general principles of laws applicable.**

Unless specifically displaced by particular provisions of this Code, the principles of law and equity, the Uniform Commercial Code, the law relative to capacity to contract, principal and agent, fraud, misrepresentation, duress, coercion, mistake or bankruptcy ~~shall~~ supplement the provisions of this Code.

SECTION 6. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-424 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-424. Application.**

- (a) *General application.* This Code applies only to contracts solicited or entered into after the effective date of this Code.
- (b) *Application to City procurement.* This Code ~~shall apply~~ applies to every expenditure of public funds by this City unless exempted in accordance with this Code or by specific action by the City commission.

SECTION 7. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-425 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-425. Centralization procurement authority.**

Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement of supplies and services, and the management, control, warehousing, sale and disposal of supplies and services, now vested in or exercised by any using department, division or office are hereby transferred to the City Manager.

- (1) ~~Relationship with using departments.~~ The City Manager ~~shall~~ reviews and approves the development of specifications and may, as necessary, delegate in writing to a using ~~agency~~ department the approval and authority to prepare its own specifications.
- (2) ~~Collection of data concerning procurement.~~ All using departments ~~shall~~ must furnish such reports as the City Manager may require concerning usage, needs and stock on hand; and the City Manager ~~shall have~~ has authority to prescribe forms to be used by the using departments in requisitioning, ordering and reporting of supplies, services and construction.
- (3) Award of contracts ~~shall~~ will be in accordance with this purchasing code and the purchasing policies of the City.

SECTION 8. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-426 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-426. Exemptions.**

- (a) Unless otherwise ordered by policy, this purchasing code ~~shall~~ does not apply to the purchase of the following supplies/ services but ~~shall~~ will nevertheless be procured, wherever applicable, in accordance with the requirements of this Code:
  - (1) Architectural services or such other professional services as are required to be procured in compliance with the Florida Consultant's Competitive Negotiation Act;
  - (2) Auto allowance;
  - (3) Collective bargaining agreements;
  - (4) Acquisition or disposal of real property, personal or mixed, either by sale or lease;
  - (5) Those limits set by the purchasing policy, as established by the Commission in Resolution ~~2001-47~~ 2023-XX, as may be amended from time to time by the Commission;
  - (6) Legal services; and
  - (7) Expert witnesses or other litigation related services.
- (b) The City Commission expressly reserves the right to enter into any and all contracts for the purchase of services in an amount equal to or greater than ~~\$20,000.00~~ 25,000 or for the purchase, sale or lease of real property as provided for in section 2-352 of this Code of Ordinances, and any and all other contracts or agreements, or modifications thereto, except as specifically delegated to the City Manager in this section.
- (c) Under extenuating circumstances or emergency situations, the City Commission may, by a four-fifths vote, waive the competitive bidding requirement for purchases of goods or services in an amount equal to or greater than ~~\$20,000.00~~ 25,000.

SECTION 9. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-427 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-427. Methods of source selection.**

- (a) All purchases ~~shall~~ will be made by competitive procedures except:
  - (1) Where otherwise authorized by law or ordinance.
  - (2) As specifically provided in sections 2-426, and 2-431 through 2-434.
  - (3) Where, for good cause shown and in the best interests of the City, the City Manager or the City Commission authorize the procurement of goods or services without strict compliance with the provisions of this division in order to best serve the general public health, welfare or safety.
  - (4) In the case of a properly declared emergency.
- (b) The preferred method of procurement ~~shall be~~ is competitive sealed bidding.
- (c) Where only one bid or proposal is received, an award may be made to such bidder or proposer if the City Manager determines:
  - (1) That the price submitted is fair and reasonable;
  - (2) That other prospective bidders or proposers had a reasonable opportunity to respond; and
  - (3) That there is not adequate time for a re-solicitation.

Otherwise, the bid or proposal may be rejected pursuant to section 2-434, and the City Manager may cancel the proposed procurement.

SECTION 10. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-428 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-428. Competitive sealed bidding.**

- (a) *Invitation to bid.* Where competitive sealed bidding is utilized, an invitation to bid ~~shall~~ will be issued which ~~shall include~~ a purchase description and all contractual terms and conditions applicable to the procurement.
- (b) *Public notice.*
  - (1) Adequate public notice of the invitation to bid ~~shall~~ will be given a minimum of ~~five~~ ten business days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation or posting in City Hall, or such other locations as may be designated, a minimum of five business days prior to bid opening.
  - (2) Where it can be demonstrated that an urgent requirement for supplies or services exists, the requirement for public notice may be waived by the ~~appropriate procurement officer~~ City Manager.
- (c) *Bid opening.* Bids ~~shall be~~ are opened publicly in the presence of one or more witnesses at the time and place designated in the invitation to bid. The amount of each bid, and ~~such~~ other relevant information as ~~may be~~ specified in the invitation to bid, together with the name of each

bidder, ~~shall~~ will be recorded. Bids and bid file ~~shall be~~ are available for public inspection after opening and in accordance with Florida Statutes regarding public records.

- (d) *Bid acceptance.* Bids ~~shall be~~ are unconditionally accepted, except as authorized in this Code.
- (e) *Correction or withdrawal of bids.* Correction or withdrawal of inadvertently erroneous bids ~~shall be~~ is permitted up to the time of bid opening. After bid opening, no changes in bid prices or other provisions ~~shall be~~ is permitted; provided, however, the City Manager ~~shall have~~ has the authority to waive minor irregularities as provided for in Section 2-430 below.
- (f) *Bid evaluation and award.* Bids ~~shall be~~ are evaluated based on the requirements set forth in the invitation to bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award ~~shall~~ will be objectively measurable, such as discounts, transportation costs and total or life cycle costs, ~~etc.~~ The invitation to bid ~~shall~~ sets forth the evaluation criteria to be used which may include criteria to determine acceptability. No criteria may be used in bid evaluations that are not set forth in the invitation to bid, in any law, regulations, purchasing policies or in this Purchasing Code.
- (1) The contract ~~shall~~ will be awarded by written notice to the most responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. In determining "-most responsive, responsible bidder," in addition to the bid evaluation criteria above, the following may be considered:
  - a. The ability, capacity and skill of the bidder to perform the contract, provide the services required, or deliver the supplies required;
  - b. Whether the bidder can perform the contract, provide the supplies/services promptly, without delay or within the time specified;
  - c. The quality of performance of previous contracts or services;
  - d. The character, integrity, reputation, judgment, experience and efficiency of the bidder/proposer;
  - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
  - f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
  - g. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
  - h. The ability of the bidder to provide future maintenance and service, when applicable; and
  - i. The number and scope of conditions attached to the bid.
- (g) *Multistep sealed bidding.* When it is considered impractical (due to insufficient data, uncertain requirements, etc.) to initially prepare a purchase description to support an award based on price, an invitation for proposals may be issued requesting the submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose proposals have been qualified under the criteria set forth in the invitation for proposals.

SECTION 11. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-429 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-429. Competitive sealed proposals.**



- (a) *Determination of use.* When the City Manager determines that the use of competitive sealed bidding is either not practical or not advantageous to the City, due to existing market conditions or the type of service/supply required, a contract may be entered into through receipt of competitive sealed proposals. Competitive sealed proposals may also be used for the procurement of professional services.
- (b) *Request for proposals.* Competitive sealed proposals ~~shall be~~ are solicited through a request for proposals.
- (c) *Public notice.* Public notice of the request for proposals ~~shall be~~ is given in the same manner as provided for competitive sealed bidding.
- (d) *Receipt of proposals.* Proposals ~~shall be~~ are opened and held in accordance with the Florida Public Records Law, F.S. ch. 119.
- (e) *Evaluation factors.* The request for proposals ~~shall~~ will state relative importance of cost or revenue to the City and other evaluation criteria, including but not limited to the evaluation criteria used for competitive sealed bids pursuant to section 2-428 above.
- (f) *Discussion with responsible proposers and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible proposers who submit proposals determined to be reasonably acceptable of being selected for award for the purpose of clarification and to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers ~~shall~~ will be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission prior to award for the purpose of obtaining best and final offers. ~~In conducting discussions, there shall be~~ no disclosure of any information derived from proposals submitted by competing proposers is permitted in conducting discussions, except as may be required by the Florida Public Records Law, F.S. ch. 119.
- (g) *Award.* Award ~~shall be~~ is made by written notice to the most responsible and responsive proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the evaluation criteria set forth in the request for proposals. No other factors or criteria ~~shall~~ will be used in the evaluation other than those set forth in the request for proposal, in any law, regulations, purchasing policies or in this purchasing code. The contract file shall contain the basis on which the award was made.

SECTION 12. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-430 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-430. Competitive sealed bids and proposals – Major and minor irregularities.**

- (a) In evaluation of sealed bids and proposals, the City Manager may waive minor irregularities. Minor irregularities ~~shall~~ include, but are not ~~be~~ limited to:
  - (1) Addendum not acknowledged when price not affected;
  - (2) Correct number of copies not submitted;
  - (3) Delivery/payment terms not specified (unless specifically required in bid/proposal);
  - (4) References not provided at time of bid/proposal;
  - (5) Unit prices not extended;
  - (6) Submission of cashier's check instead of a bid bond;

- (7) Failure to submit written evidence that agent signing for an owner had authority to bind the bidder/proposer.
- (b) Irregularities considered to be major and not waivable ~~shall~~ include, but are not ~~be~~ limited to:
- (1) Bidder's or proposer's certification not submitted or submitted but not signed;
  - (2) Bid bond not submitted or not valid;
  - (3) Addendum not acknowledged when it affects bid price;
  - (4) Samples or literature not submitted when specifically required in order to evaluate bid/proposal;
  - (5) Bid or proposal not submitted on time;
  - (6) Bid pricing pages not submitted or submitted in blank.

SECTION 13. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-431 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-431. Open market purchases.**

Where it is determined by the City Manager that it is either not practical or not advantageous to the City to conduct competitive sealed bidding or competitive sealed proposal procedures, purchases may be made in the open market without newspaper advertisement and without strictly observing the procedures otherwise described herein.

- (~~1a~~) *Minimum number of ~~bids-quotes~~.* All open market purchases ~~shall~~, whenever feasible, be based on at least three competitive ~~bids~~ quotes, and ~~shall~~ be awarded to the most responsive and responsible ~~bidder~~ vendor in accordance with standards established in this Code.
- (~~2b~~) *Notice inviting ~~bids-quotes~~.* Bids Quotes ~~shall be~~ are solicited by:
- a. (~~1~~) Direct mail or email request to prospective vendors;
  - b. (~~2~~) Telephone; or
  - c. (~~3~~) Public notice posted in City Hall.
- (~~3c~~) *Recording.* The City Manager ~~shall-keeps~~ a record of all open market orders and the bids submitted in competition thereon, and such records ~~shall-be~~ are available for public inspection after opening.
- (~~4d~~) *Purchase from federal, state, county and other City contracts.* The City Manager ~~shall have~~ has authority to purchase directly from federal, state, county contracts or other similar purchasing alliances or from other City contracts for cooperative purchasing if reasonable due diligence shows that a competitive price can be obtained from using such contracts.

SECTION 14. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-432 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-432. Sole source or negotiated procurement.**

A contract may be awarded for a supply, service, or construction item without competition when the City Manager determines that there is only one source for the required service, supply or

construction item or by negotiation where the procurement by competitive procedures is not feasible or practicable. Such determination should be made in writing, and kept as a part of the record.

SECTION 15. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-433 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-433. Emergency procurement.**

Notwithstanding any other provision of this Code, the City Manager or his designee may make or authorize others to make emergency procurement when there exists a threat to public health, welfare, or safety as determined by the City Manager, provided that such emergency procurements ~~shall be~~ are made with such competition as is practicable under the circumstances. A full written determination of the basis of the emergency and for the selection of the particular contractor or supplier ~~shall~~ must be included on the emergency purchase form and ~~shall be~~ filed as a permanent and public record of the purchase.

SECTION 16. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-434 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-434. Cancellation or rejection of invitation to bid or request for proposals.**

An invitation to bid, a request for proposal or other solicitation may be delayed or cancelled, or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation if it is determined by the City Manager that such action is in the best interest of the City.

SECTION 17. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-435 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-435. Pre-qualification of suppliers.**

- (a) Prospective suppliers may be required to be pre-qualified for particular types of supplies or services.
- (b) Solicitation mailing lists of potential contractors ~~shall~~ will include, but not be limited to, such pre-qualified suppliers.

SECTION 18. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-436 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-436. Approval of contracts, bonds, and certificates of insurance.**

SECTION 19. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-438 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-438. Multi-term contracts.**

- (a) *Specified period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period ~~of time~~ deemed to be in the best interest of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contract. Payment and performance obligations for succeeding fiscal periods ~~shall be~~ are subject to appropriation by City Commission of funds~~therefore~~.
- (b) *Cancellation of multi-year contracts due to unavailability of funds in succeeding fiscal periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract ~~shall~~ will be cancelled and the contractor ~~shall be~~ is entitled to reimbursement for the reasonable value of any nonrecurring cost incurred but not advertised in the price of the supplies or services delivered under the contract or otherwise recoverable.

SECTION 20. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-439 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-439. Right to inspect facilities.**

The City may, at reasonable times, inspect the facility or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded or to be awarded by the City.

SECTION 21. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-440 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-440. Right to audit records.**

The City ~~shall be~~ is entitled to audit the books and records of a contractor or any subcontractor to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records ~~shall~~ must be maintained by the contractor for a period of three years from the date of final payment under the contract and by the subcontractor for a period of three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing by the City.

SECTION 22. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-441 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-441. Reporting of anti-competitive practices.**

When for any reason, collusion or other anti-competitive practices are suspected among any bidders or proposers, a notice of the relevant facts ~~shall~~ must be transmitted to the City Attorney for investigation and appropriate action.

SECTION 23. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-442 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-442. Modification and extension of contracts.**

- (a) *Contract clauses.* Subject to review and approval by the City Attorney or ~~his/her~~ their designee, the City Manager is authorized to promulgate and adopt regulations permitting or requiring the inclusion of clauses providing for or relating to change orders, modifications, or adjustments in prices, time of performance or other contract provisions.
- (b) *Additional contract clauses.* Subject to review and approval by City Attorney or ~~his/her~~ their designee, the City Manager is authorized to adopt and promulgate regulations including, but not limited to, regulations permitting or requiring the inclusion in City contracts of clauses providing appropriate remedies covering the following subjects:
  - (1) Liquidated damages as appropriate.
  - (2) Specified excuses for delay or nonperformance.
  - (3) Termination of the contract for default.
  - (4) Termination in whole or in part without cause by the City.
  - (5) Insurance requirements and/or "hold harmless" provisions.
- (c) *Extension of contracts.* Existing contracts may be extended for the same terms and conditions for an additional term if both parties agree to the extension. If the extension was provided for in the bid documents, the contract extension may be authorized by the City Manager. If the extension was not included in the bid documents, authorization must be obtained from the City Commission.

SECTION 24. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-443 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-443. Contractual remedies.**

~~(a) Authority to suspend.~~

~~(1a)~~ Authority to suspend.

~~a(1).~~ The City Manager ~~shall have~~ has the authority to suspend a person from consideration for award of bids/proposals/contracts if there is sufficient cause. The suspension ~~shall~~ may not exceed a maximum period of one year.

~~b(2).~~ Decisions of the City Manager to suspend may be appealed, in writing, to the City Commission within seven calendar days from the date of such decision.

(2**b**) *Causes for suspension.* The causes for suspension include, but are not limited to, the following:

~~a(1)~~—Conviction or commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract or incident to performance of such contract or subcontract;

~~b(2)~~—Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving of stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a contractor;

~~c(3)~~—Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

~~d(4)~~— Violation of material bid/contract provision;

~~e(5)~~—Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the bid/ contract;

~~f(6)~~—A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more bids/contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor ~~shall~~ is not ~~be~~ considered to be a basis for debarment;

~~g(7)~~— Failure of bidders/proposers to respond to bid/proposal invitation three consecutive times; or

~~h(8)~~. Any other cause/material factor affecting responsibility as a City contractor, including debarment by another governmental entity for any of the causes listed in this section or violation of the ethical standards of the City.

(3a) *Decision.* A decision to suspend ~~shall~~ must be in writing and ~~will~~ shall:

~~a(1)~~— State the reasons for the action taken.

~~b(2)~~— Inform the suspended person involved of his right to administrative or judicial review as provided in policy and procedures.

(4b) *Notice of decision.* A copy of the decision under this section ~~shall~~ will be mailed or otherwise furnished immediately to the suspended person and any other affected party.

(5c) *Right to appeal.* Decisions of the City Manager may be appealed to the City Commission. A written request ~~shall~~ must be submitted to the City Clerk requesting a hearing before the City Commission within seven calendar days from the date of such decision.

(6d) *Hearing procedure.* The procedure for any hearing required by this division ~~is~~ shall be:

~~a(1)~~— The City ~~shall~~ will ~~cause to be~~ served upon the person a notice of hearing stating the time and place of the hearing. The notice of hearing ~~shall~~ will be sent by certified mail, return receipt requested, to the mailing address of the person.

~~b(2)~~ The person ~~shall have~~ has the right to be represented by counsel, to call and examine witnesses, to introduce exhibits and to cross-examine opposing witnesses.

~~e(3)~~ In any hearing before the City Commission, irrelevant, immaterial or unduly repetitious evidence ~~shall~~ will be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs ~~shall be~~ is admissible whether or not such evidence would be admissible in a trial in the courts of the state.

~~(7e)~~ *Notice of decision.* A copy of the City Commission's decision under this section ~~shall~~ will be mailed or otherwise furnished immediately to the person and any other affected party.

~~(8f)~~ *Finality of decision.* Any decision under this section ~~shall be~~ is final and conclusive upon the person.

SECTION 25. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-444 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-444. Bid protests.**

- (a) *Right to protest.* Any actual or prospective bidder, proposer or contractor who is aggrieved in connection with the solicitation of award of a contract may seek resolution of their complaints initially with the City Manager prior to protesting to the City Commission. A protest with respect to an invitation for bid or request for proposal ~~shall~~ must be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know or could not have been reasonably expected to have knowledge of the facts giving rise to such protest prior to the bid opening or the closing date for proposals. The protest ~~shall~~ must be submitted within ~~six calendar~~ five business days after such aggrieved person knows or could have reasonably been expected to know of the facts giving rise thereto. The City Manager ~~shall~~ will notify the contractor or other person of the decision in writing within 14 calendar days of receiving the written bid protest.
- (b) *Right to protest to City Commission.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of contract may protest to the City Commission, after following the bid protest procedures in subsection (a) above. A protest with respect to an invitation to bid or request for proposal ~~shall~~ must be submitted in writing to the City Clerk within six calendar days after such aggrieved person receives the written decision of the City Manager. The City Commission ~~shall~~ will hear the bid protest at a public hearing within 30 calendar days of it being submitted by the aggrieved party to the City Clerk. The City Commission ~~shall~~ will notify the aggrieved person of its decision in writing within two calendar days of the public meeting when the bid protest is considered.
- (c) *Stay of procurements during protest.* In the event of timely protests under paragraph (a) or (b) of this section, the City Manager ~~shall~~ will not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the City Manager makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the City.
- (d) *Entitlement of costs.* In addition to any other relief, when a protest is sustained, the protesting bidder or proposer ~~shall be~~ is entitled to the reasonable costs incurred in connection with the solicitation, including bid or proposal preparation costs but excluding attorney's fees.

- (e) *City Manager authority to settle bid protests.* The City Manager is authorized to settle any protest regarding the solicitation or award of a City contract, prior to an appeal to the City Commission 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 ~~\$20,000.00~~ \$25,000 in value without the prior approval of the City Commission. The City Manager ~~shall~~ will notify the City Commission in writing of every bid protest filed and the City Manager's decision regarding each bid protest.
- (f) *Failure to follow bid protest procedure.* Any aggrieved person who fails to follow the procedure as specified in section 2-444 or fails to file a protest in the prescribed time, has no further recourse with the City. ~~per the section are deemed to be null and void.~~

SECTION 26. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-445 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-445. Contract claims.**

- (a) *Decision of the City Manager.* All claims by a contractor against the City relating to a contract, except bid protests, ~~shall~~ must be submitted in writing to the City Manager for a decision. The contractor may request a conference with the City Manager 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 City Manager's decision.* The decision of the City Manager ~~shall~~ will be promptly issued in writing and ~~shall immediately be mailed or otherwise~~ furnished to the contractor. The decision ~~shall~~ will state the reasons for the decision reached and ~~shall~~ inform the contractor of his appeal rights under paragraph (c) of this section.
- (c) *City Manager's decision; contractor's right to appeal.* The City Manager's decision ~~shall be~~ is final and conclusive unless, within ten (10) calendar days from the date of receipt of the City Manager's decision, the contractor files a written notice of appeal with the City Clerk for the City Commission challenging the City Manager's decision.

SECTION 27. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-446 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-446. 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 City Manager determines that a solicitation is in violation of federal, state or municipal law or ordinance, then the solicitation ~~shall~~ will 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 City Manager, 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~~ will be canceled.



- (c) *After award.* If, after an award, the City Manager, 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~~ will 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.
  - (3) The City Manager shall notify the City Commission in writing of any solicitation or contract award in violation of federal, state or municipal law or ordinance and the action taken by the City Manager to remedy such violation.

SECTION 28. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-447 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-447. Collusion, etc., 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 they have~~ 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~~ will be null and void.

SECTION 29. It is hereby proposed that Chapter 2, Article VII, Finance, Division 2, Purchases and Contracts, Section 2-448 of the Code of Ordinances, City of Fernandina Beach, Florida is amended to read as follows:

**Sec. 2-448. Penalties.**

- (a) *Generally.* A determination or finding of a violation of ~~any provision set forth in sections 2-447 above~~ this Division regarding purchasing and contracts by any person may be punished as provided herein or in accordance with the provisions of City of Fernandina Beach Code section 1-12.
- (b) *Penalties for bidders or proposers.* In addition to any other penalties provided herein, violation of this code by a particular bidder or proposer may render any contract, request for proposal (RFP) award, request for qualification (RFQ) award, bid award or any other procurement proposal award to said bidder or proposer voidable. ~~Any person who violates a provision of sections 2-447 above shall be prohibited from serving on a City of Fernandina Beach competitive selection committee.~~
- (c) *Voiding transactions in violation of chapter; recovery by City.* The City Commission may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, certificate, ruling, decision, opinion or other benefit that has been awarded,

granted, paid, furnished or published, in relation to which there has been a final determination of any violation of sections 2-444 or 2-445 above. The City ~~shall be~~ is entitled to recover, in addition to any penalty prescribed by law or in a contract, the amount expended or the thing being transferred or delivered on its behalf, or the reasonable value thereof.

- (d) *Prohibition against misuse and frivolous claims.* Individuals covered by this division ~~shall~~ may not use its provisions to further frivolous claims against another. Frivolous claims ~~shall be~~ are those forwarded with knowledge that the claim contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this division.

SECTION 30. SEVERABILITY. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, the holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 31. This Ordinance shall become effective immediately upon enactment.

ENACTED this 5<sup>th</sup> day of July, 2023.

CITY OF FERNANDINA BEACH

\_\_\_\_\_  
BRADLEY M. BEAN  
Mayor - Commissioner

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
CAROLINE BEST  
City Clerk



\_\_\_\_\_  
TAMMI E. BACH  
City Attorney

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