

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, "ADMINISTRATION," ARTICLE VII, "PURCHASE AND SALE OF REAL AND PERSONAL PROPERTY," DIVISION 1, "PURCHASING OF GOODS AND SERVICES," SECTION 2-144, "PROCUREMENT PROCEDURES," AND SECTION 2-150, "APPEALS AND REMEDIES," TO MODIFY THE SELECTION ADVISORY COMMITTEE PROCESS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article VII, Purchase and Sale of Real and Personal Property, Division 1, Purchasing of Goods and Services, Section 2-144, Procurement Procedures and Section 2-150, Appeals and Remedies, are hereby amended to read as follows:

CHAPTER 2: ADMINISTRATION

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ARTICLE VII: - PURCHASE AND SALE OF REAL AND PERSONAL PROPERTY

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DIVISION 1. – PURCHASING OF GOODS AND SERVICES

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§ 2-144 PROCUREMENT PROCEDURES

- (a) *Competitive sealed bidding*

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- (15) *Notice of intent to award bid.* When a recommendation is made to City Council or by the City Council for the award of a bid, a notice of intent to award bid shall be sent to all bidders by U.S. mail, certified, return receipt requested, and shall also be posted in the area of City Hall designated for public notices. The city may also use electronic notification if the vendor indicates that they have electronic capability.

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- (h) *Consultants' Competitive Negotiation Act (F.S. § 287.055).*

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- (3) *Selection advisory committee.* The Selection Advisory Committee (SAC) is hereby established for the purpose of evaluating firms who express interest in contracting with the city for consultant services on a project.

- a. The SAC shall consist of the following persons or their designees: The Financial Services Director, the Utilities Director, the Public Works Director, Capital Improvement Project Director, the Procurement Manager, and the Assistant City Manager.
- b. ~~The City Council shall appoint a City Council member to serve as liaison between the City Council and the Selection Advisory Committee. The Council liaison may discuss and make recommendations but shall not be entitled to vote on ranking the firms.~~
- b. The City Council will not appoint a liaison to serve between the City Council and the Selection Advisory Committee.
- c. All meetings of the SAC shall be open to the public unless otherwise provided by law and notices containing the date, time, place and purpose of all SAC meetings shall be

conspicuously posted in City Hall and on the City's website. The entire meeting will be recorded. Pursuant to Florida Statutes § 286.0113(2)(b) any portions of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation, are exempt from the Sunshine Law. No portion of the exempted meeting may be held off the record. The recording and any records presented at the exempt meeting are exempt from public disclosure until the City provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

- d. When the proposals are numerous, or the nature of the proposals is technical or specialized, the Procurement Manager may convene an Evaluation Committee for the limited purpose of selecting the top three proposals. The Evaluation Committee shall not rank the firms. The top three proposals will be forwarded to the Selection Advisory Committee for ranking. When used, the Evaluation Committee shall, at a minimum, be comprised of the Project Manager, department representative, and the Procurement staff member assigned to the project. All meetings of the Evaluation Committee shall be noticed, open to the public, and minutes will be taken.

(4) *Selection procedure.*

- a. The SAC shall evaluate the statements of qualifications submitted by all proposers, shall conduct discussions with, and may require public presentations by no fewer than three firms, if applicable, regarding their qualifications, approach to the project, and ability to furnish the required services. All expenses, including travel expenses for interview, incurred in the preparation of the proposal shall be borne by the proposer. After presentations and interviews have been completed, no fewer than three firms, if applicable, shall be ranked by the SAC. Notice of the rankings shall be sent to all proposers by United States mail and shall also be posted in the area of City Hall designated for public notices. The city may also use electronic notification if the vendor indicates that they have electronic capability.
- b. The ranking of firms shall be based on the SAC's ability to differentiate qualifications applicable to the scope and nature of the request for proposals. Such determination shall be based on, but not necessarily be limited to:
 - 1. The proposer's demonstrated understanding of the city's requirements and plans for meeting those requirements;
 - 2. The professional qualifications, related experience and adequacy of the personnel assigned to the project;
 - 3. The prior experience and references of the proposer;
 - 4. The prior experience, if any, that the proposer has had with the City of Cape Coral;
 - 5. Whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985; and
 - 6. The size and organizational structure of the proposer.
- c. A local professional will be given additional points or a percentage added when submitting a proposal for "professional services" as the term is defined in F.S § 287.055(2)(a) unless it meets Section 2-144 (a)(11)(c) purchases or contracts which are funded, in whole or in part, by a governmental entity and the laws, regulation, or policies governing such funding prohibit application of that preference. Where the total possible points are 100, additional points will be added. Where the total possible points are other than 100, then a percentage amount will be added to the total score. The following additional points or percentages shall be added to the scores of local professionals:
 - 1. Office in Cape Coral - ten points or 10%;
 - 2. Office in Lee County - seven points or 7%;
 - 3. Office in Charlotte, Glades, Hendry or Collier County - three points or 3%.

- d. The City Manager or designee shall negotiate a contract with the top ranked firm.
 - e. If the City Manager or designee is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm shall be terminated and the City Manager or designee shall undertake negotiations with the second ranked firm. If the City Manager or designee fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm shall be undertaken. If the City Manager or designee is unable to negotiate a satisfactory contract with any of the selected firms, the SAC shall select additional firms in the order of their competence and qualifications and continue negotiations as specified in this article until an agreement is reached.
- (5) *Council approval.* The City Manager shall submit the negotiated contract to the City Attorney for review and shall then submit the contract to City Council for consideration. No contract will take effect unless approved by City Council.
- (i) Contracting for goods and/or services through a request for proposals (RFP).
- (1) *Applicability.* Contracts for goods and/or services which are not subject to the consultant's competitive negotiation act and for which uniform detailed specifications cannot be provided, may be obtained in accordance with this section. At the option of the City Manager or the designee, the contracts may be procured by utilizing the SAC as specified in subsections (h)(3) and (4) above.
 - (2) As an alternative to the SAC procedure described in Section (h)(4) above, the City Council may elect to waive some or all of the provisions of this Code and serve as the direct procurement authority for the procurement of goods and services. In the role of direct procurement authority, the City Council performs the role that would otherwise be performed by the Selection Advisory Committee.
- The determination by City Council to serve as the direct procurement authority will be based upon one of the following findings:
- a. The choice of goods or services to be procured: 1. Is anticipated to have substantial citywide impact, including, but not limited to, on the City's economy, jobs, branding and marketability, infrastructure, or environment, or the quality of life of City residents, visitors, or employees; or 2. Involves unusually high levels of investment of public funding or other resources;
 - b. The goods or services to be procured are susceptible to delivery by materially different options, and the choice among those options requires the exercise of substantial discretion that may affect citywide policy; and
 - c. The procurement will likely require policy choices for which the procedures of this Code are unsuitable.
- (3) In keeping with the anti-lobbying provisions in Section (h)(2)e. of this Code, when the City Council serves as the direct procurement authority, no City Councilmember and no staff or office personnel of any City Councilmember may initiate contact with a vendor or a vendor's representative during the solicitation process until the agreement resulting from the solicitation is awarded or the City Council takes other action that ends the solicitation.
- (2)(4) *Public announcement and request for proposals.* The city shall provide reasonable notice of the need for such goods and/or services through a request for proposals (RFP). The RFP shall describe the goods and/or services required, list the types of information and data required of each proposer, and state the relative importance of particular specifications or qualifications and pricing.
- (3)(5) *Addenda.* After a request for proposals is issued and before the submission deadline, the Procurement Division may issue one or more written addenda for the purpose of clarifying specifications or other matters relating to the RFP. Questions concerning the proposal will not be accepted within eight calendar days of the submission deadline. No addenda will be issued within five business days prior to the submission deadline without extending the submission date.

- ~~(4)~~(6) *Statement of qualifications.* Persons and firms interested in providing goods and/or services to the city in response to an RFP issued pursuant to this section may submit statements of qualification and expressions of interest in providing those goods and/or services. Price may not be the primary factor in the award.
- ~~(5)~~(7) *Ranking.* The proposals may be ranked by the City Manager, City Manager's designee, or the SAC, and a notice of the rankings shall be sent to all offerors by United States mail and shall also be posted in the area of City Hall designated for public notices.
- ~~(6)~~(8) *Negotiations.* The City Manager or designee may conduct negotiations with any proposer who has submitted an RFP to determine such proposer's qualifications for further consideration and to negotiate a contract.

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§ 2-150 APPEALS AND REMEDIES

(a) *Bid and request for proposals protests.*

- (1) *Right to protest.* Any person or firm who is affected adversely by the city's decision or intended decision may protest to the City Council.
- (2) *Time limits and form of protest.* A protest with respect to an invitation for bids or request for proposals shall be submitted in writing to the Procurement Manager prior to the opening of bids or the closing date of proposals. A written notice of intent to protest an intended bid award shall be filed with the city Procurement Manager within five business days (excluding Saturdays, Sundays and legal holidays) after the date of mailing of the notice of intent to award the contract pursuant to § 2-144(a)(15) above. A written notice of intent to protest the ranking of proposals submitted in response to a request for proposals shall be filed with the Procurement Manager within five business days (excluding Saturdays, Sundays and legal holidays) after the date of mailing of the notice of ranking by the SAC or by the City Council pursuant to § 2-144(h)(4)a. or by the City Manager or designee pursuant to § 2-144(i)(5)(7) above. Only those persons or firms who have submitted a bid/proposal or who have been interviewed and ranked shall be permitted to file a protest. A formal written protest shall be filed within ten calendar days after the filing of the initial written notice of intent to protest and shall be delivered in a manner that requires a signature by a representative of the city. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest within the time limits prescribed herein shall constitute a waiver of the right to protest. Upon the filing of a formal written protest the contractor or vendor shall post a bond, payable to the City of Cape Coral, in an amount equal to five percent of the total bid or estimated contract amount, or \$5,000, whichever is less. The bond shall be conditioned upon the payment of all costs which may be adjudged against the protesting contractor or vendor in the event the protest is resolved adversely to the protester. An irrevocable letter of credit or other form of approved security, payable to the city, will be accepted. Failure to submit a bond simultaneously with the formal written protest shall invalidate the protest and the city may proceed to award the contract as if the protest had never been filed.

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SECTION 2. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION
THIS 6th DAY OF April, 2022.


JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER	<u>Aye</u>	NELSON	<u>Aye</u>
TATE	<u>Aye</u>	WELSH	<u>Wye</u>
SHEPPARD	<u>Aye</u>	LONG	<u>Aye</u>
HAYDEN	<u>Aye</u>	COSDEN	<u>Aye</u>

ATTESTED TO AND FILED IN MY OFFICE THIS 8th DAY OF April, 2022.

Kimberly Bruns
KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:

Dolores D. Menendez
DOLORES D. MENENDEZ
CITY ATTORNEY
ORD\Procurement Procedures - 2-22-22