

ORDINANCE NO. O-24-19

AN ORDINANCE OF THE CITY OF SEBASTIAN, FLORIDA, RELATED TO CITY OF SEBASTIAN CODE OF ORDINANCES - CHAPTER 2 ADMINISTRATION; AMENDING SECTION 2-10 PROCUREMENT OF GOODS AND SERVICES; ESTABLISHING AND AMENDING PURCHASING THRESHOLDS, PROCUREMENT METHODS AND PROCEDURES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the existing procurement policies for the City of Sebastian contained in Chapter 2, Section 1.10. currently limit the City's ability to efficiently and effectively serve the residents of Sebastian; and

WHEREAS, the City Council of the City of Sebastian hereby finds that it is in the public interest to modify and update provisions of the City of Sebastian Code of Ordinances relating to the Procurement of Goods and Services.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEBASTIAN, INDIAN RIVER COUNTY, FLORIDA, AS FOLLOWS:

Section 1. **AMENDMENT.** *That the Code of Ordinances, City of Sebastian, Florida is hereby amended Section 2-10, which said section shall read as follows:*

Sec. 2-10. Procurement of goods and services.

- (a) *Applicability.* The following procedures shall be used for the ordering, contracting, or furnishing of any goods or services for any City department, office, or agency. The City Manager or his designee, shall serve as the authorized purchasing agent for the City. The City Manager may designate a department head as the delegated Purchasing Officer for the City.
- (b) *Purchasing thresholds.* Any purchase of any type of goods or services, unless otherwise exempted under this section, is subject to competitive bid procedures as follows:
- (1) Up to \$2,500.00— Purchases up to \$2,500 may be purchased by any City employee with delegated purchasing responsibilities on the open market with or without competition. A Purchase Order is not required.
 - (2) \$2,500.01 to \$25,000.00— Purchases greater than \$2,500.01 up to \$25,000.00 may be procured via a minimum of three written quotes by the Requesting Department or through an Alternate Source Contract as defined by Section 2-10(c)(2). The Procurement Division awards contracts to the lowest responsive and responsible bidder. A Purchase Order is required.
 - (3) \$25,000.01 to \$75000.00—Purchases greater than \$25,000.01 up to \$75,000.00 may be procured via a minimum of three written quotes by the Procurement Division or through

an Alternate Source Contract as defined by Section 2-10(c)(2). City Council awards contracts to the lowest responsive and responsible bidder. A Purchase Order is required.

- (4) Over \$75,000.01—Formal sealed bids and City Council authorization required. Sealed competitive solicitation issued by the Procurement Division or an Alternate Source Contract as defined by Section 2-10(c)(2). City Council awards contracts to the lowest responsive and responsible bidder/proposer/respondent. A Purchase Order is required.

(c) Procurement Methods.

(1) Competitive Solicitation

a. Invitation to Bid. A solicitation for competitive sealed bids.

i. Tie Bid Procedure.

(1) First preference shall be given under Florida Statute Section 287.087, to businesses with drug-free workplace programs.

(2) Second preference will be given to businesses under the City of Sebastian's Local Vendor Preference.

(3) In order to break a tie if not settled by the first two preferential methods, the "Coin Flip" procedure shall be followed to break the tie.

b. Request for Proposal (RFP). A solicitation for competitive sealed proposals.

c. Invitation to Negotiate (ITN) – A solicitation for competitive sealed replies to select one (1) or more vendors to commence negotiations for procuring commodities or contractual services.

d. Request for Qualifications (RFQ). A solicitation for sealed qualifications.

(2) Alternate Source Contract

a. State of Florida, Department of Management Services—The Procurement/Contracts Manager should consider the prices available under the Department of Management Services, Division of Purchasing rules. The Procurement/Contracts Manager may use prices established by its state purchasing agreement price schedule under the same conditions for use imposed on state agencies.

b. Piggyback from Other Agency or Groups of Agencies – City Council or designee may make procurements at or below the specified prices from agreements awarded by other city or county governmental agencies, school boards, community colleges, federal agencies, public or governmental agencies of any state, state university systems, or from cooperative, interlocal, or pooled solicitation agreements, when the vendor will permit procurements by the City at the same terms, conditions, and prices (or below such prices) awarded in such contract, and such procurements are to the economic advantage of the City.

c. Procurement Consortium – The City or designee may enter into interlocal agreements as provided in Florida Statute §163.01 to establish a consortium and maximize procurement power for commodities and contractual services. A

consortium may be nationwide, statewide, or regional as appropriate to achieve the lowest cost.

(3) Direct Negotiation

a. The Procurement/Contract Manager may approve agreements using direct negotiations where law allows. The Procurement/Contracts Manager shall maintain adequate documentation commensurate with the value of the contract, reflecting the rationale for using direct negotiation as the procurement method and the basis for determining that the resulting contract is in the City's best interest.

b. Finding of No Acceptable Proposal or Less than Two (2) Responsive Proposals – Where competitive solicitations have been requested in the manner prescribed by this policy, and the City, through the Procurement/Contracts Manager, makes a specific finding in writing that:

i. No valid or acceptable firm proposal has been received within the prescribed time, the Procurement/Contracts Manager may enter into direct negotiations with a vendor providing such commodities and contractual services. The Procurement/Contracts Manager shall document that a re-solicitation is not likely to generate sufficient competition or has been determined to not be in the City's best interest and that it has been appropriately sourced to allow for competition.

ii. Less than two (2) responsive proposals for commodities or contractual services were received; the Procurement/Contracts Manager may negotiate on the best terms and conditions or reject all proposals. The Procurement/Contracts Manager shall document why negotiating terms and conditions with a particular vendor is in the City's best interest instead of re-soliciting proposals.

(d) Cone of Silence. A "cone of silence" is hereby established for all competitive selection processes, including Invitations to Bid (ITB), Request for Proposal (RFP), Invitations to Negotiate (ITN), and Request for Qualifications (RFQ) for the provision of commodities and contractual services. The cone of silence is designed to protect the integrity of the procurement process by shielding it from undue influences before the recommendation of contract award. This cone of silence shall be imposed on these procurements after advertisement and terminates when the City Council acts on a written recommendation from the City's Procurement Division regarding contract award.

a. The cone of silence prohibits any communication regarding a competitive solicitation between:

1. A potential vendor, service provider, bidder, lobbyist, or consultant and the staff of the City, including department directors; and
2. A potential vendor, service provider, bidder, lobbyist, consultant, and any member of the City Council or member-elects.

- b. Violation of this policy by a particular bidder, proposer, respondent, and representative may, at the discretion of the City, result in the rejection of said bidder, proposer, respondent, and representative's bid, proposal, or offer and may render any contract award to said bidder, proposer, or respondent voidable.
- c. In addition to any other penalty provided by law, a city employee's violation of this policy may subject said employee to disciplinary action up to and including dismissal from service.

(e) Protests Arising from Solicitation or Contract Award Process

- a. Appeals. Appeals shall be determined in accordance with procedures provided in Chapter 120, Florida Statutes, such that any person who is adversely affected by the terms, conditions, or specifications outlined in this bid or who is adversely affected by a decision of the City concerning the solicitation shall file a Notice of Intent to Protest, in writing within 72 hours after the solicitation document is posted or after the notice of decision is posted, respectively, excluding Saturdays, Sundays, and state holidays. A formal written protest shall be filed no later than 10 days after the Notice of Intent to Protest is filed, excluding Saturdays, Sundays, and state holidays. The formal written protest must be accompanied by a protest bond, cashier's check, or money order in the amount of one percent (1%) of the total estimated contract value. The Notice of Intent to Protest and formal written protest shall be filed at the following address: Procurement/Contracts Manager, 1225 Main Street, Sebastian, FL 32958. The formal written protest shall state, with particularity, the facts and law upon which the protest is based. Failure to file a Notice of Intent to Protest, formal written protest, or failure to post the bond, cashier's check, or money order within the time frames or in the manner described above shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.
- b. Decision. If the protest is not resolved by mutual agreement, the Procurement/Contracts Manager shall promptly investigate the basis of the protest and, after consultation with the originating department, the City Attorney, or any other person or entity deemed necessary, the Procurement/Contracts Manager shall issue a decision in writing. A copy of the decision shall be furnished immediately to the protestor and any other party determined by the Procurement/Contracts Manager to be directly affected by the decision. The decision shall state the decision and the basis for the decision, and set forth the protestor's right to administrative review.
- c. Administrative Review. If the protestor disagrees with the decision of the Procurement/Contracts Manager, the protestor may appeal the decision to the City Manager, provided the protestor shall submit written notice of such appeal to the Procurement/Contracts Manager within seven (7) calendar days of receipt of the decision to award. Any appeal of the decision by the City Manager shall be heard by the City Council or other appropriate administrative or legal body.

- d. Stay of Procurement. In the event of a timely and properly filed protest, the Procurement/Contracts Manager shall not proceed further with the solicitation or award until all administrative remedies have been exhausted or until the City Manager or City Council, as appropriate, makes a determination on the record that the award of a contract is necessary to protect substantial interests of the City.
- (f) *Competitive Solicitation Waived or Not Required*
- (1) *Single/Sole source purchases.* Per Florida Statute §287.057, commodities or contractual services available only from a single source may be excepted from the competitive-solicitation requirements. If an agency believes that commodities or contractual services are available only from a single source, the agency shall electronically post a description of the commodities or contractual services sought for at least 15 business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the agency, after reviewing any information received from prospective vendors that the commodities or contractual services are available only from a single source, the agency shall provide notice of its intended decision to enter a single-source purchase contract in the manner specified in Florida Statute §120.57(3).
- (2) *Emergency purchases.* Where the Procurement/Contracts Manager, with approval of the City Manager, finds it in the City's best interest, they may declare an emergency procurement condition and suspend any or all procurement and contracting policy provisions. Spending authority under this provision shall not exceed \$25,000; however, in the event of declaration of a State or Local State of Emergency covering the City, the limit shall be raised to \$50,000.00. All emergency purchases over \$25,000.00 shall be reported to the City Council as soon as practical. As used in this section, the term "emergency" means a sudden, unexpected turn of events that causes:
- a. An immediate danger to the public health or safety;
- b. An immediate danger of loss of public or private property;
- c. An interruption in the delivery of an essential governmental service; or
- d. An interruption in the normal function and operation of any city department that would result in a work stoppage or other substantial monetary loss.
- (3) *Change orders.* The purchasing officer may approve cumulative changes of up to 15 percent of the total contract price. Changes in excess of 15 percent of the total contract price or any change in excess of \$15,000.00 must have the prior approval of the city council.
- (4) *Contract renewals.* Any contract containing a provision for renewal may be renewed in accordance with its terms. Authorization for approval shall be in accordance with the dollar threshold established by this section.
- (5) *Intergovernmental/not for profit purchases.* Purchases between the council and nonprofit organizations, other governments, or other public entities, and intragovernmental services.

- (6) Arts advertising or cultural displays. Purchases of advertising, works of art for public display, shows/displays/cultural events sponsored by the city.
 - (7) Professional medical services. Medically-related professional services and employee benefit-related purchases.
 - (8) Real property purchases. Purchase of real property.
 - (9) Professional Services. Professional and personal service contracts, including but not limited to attorney, appraiser, and expert witness services, shall be approved by the city council if they exceed \$15,000.00.
 - (10) Franchise, sponsorship or joint enterprise agreements.
 - (11) Risk Management. The Procurement/Contracts Manager may, except as otherwise required by statute, utilize the competitive solicitation process or enter into direct negotiations and contract with a vendor or supplier that best meets the city's needs when acquiring insurance, entering risk management programs, or contracting with third-party administrators. The procurement of employee group insurance must be competitively selected per F.S. 112.08.
 - (12) PRIDE/RESPECT. The Procurement/Contracts Manager may procure commodities and contractual services from PRIDE (Prison Rehabilitative Industries and Diversified Enterprises, Inc.) or RESPECT (Florida's preferential purchasing program for individuals with disabilities), as authorized by the Florida Statutes.
 - (13) Regulated Utilities--. - The Procurement/Contracts Manager may procure regulated utilities or government-franchise services (i.e., water, utility services, postage).
 - (14) Grant or Law--. - The City Manager may enter into a contract where state or federal law, a grant, or state or federal agency contract prescribes with whom the City must contract or if the payment rate is established during the annual appropriation process.
 - (15) Maintenance/Service/Warranty. The Procurement/Contracts Manager may award maintenance and/or service agreements on various types of technical equipment that are offered and/or supplied only by the original manufacturer or its representative which are required to maintain the integrity of the manufacturer's warranty, or that are part of the manufacturer's rental/lease/lease procurement agreement terms and conditions.
 - (16) Any situation where compliance with this code will place the city in conflict with mandatory provisions of state law, federal law or the terms of any grant.
- (g) Prohibitions. No contract or purchase shall:
- (1) Be purposely subdivided to circumvent any requirements of this section.
 - (2) Be made in excess of the amounts allocated from the general fund for the general classification of expenditures in the budget for the then current budget year, nor shall any expense of a special fund exceed the amount of money available to that fund.
- (h) Waiver. When in the best interests of the City, the City Council may, by affirmative vote, waive the provisions of this Section and authorize the purchase of any good or services without competitive bidding or waive bidding requirements unless doing so would otherwise violate applicable Florida or Federal law.

Section 2. CODIFICATION. The sections of the Ordinance shall be codified within part of the Procurement of Goods and Services Code and may be renumbered or re-lettered to accomplish such, and the word “ordinance” may be changed to “section,” “division,” or any other appropriate word.

Section 3. CONFLICTS. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. SEVERABILITY. In the event a court of competent jurisdiction shall determine that any part of this Ordinance is invalid, the remainder of the Ordinance shall not be affected and it shall be presumed that the City Council of the City of Sebastian did not intend to enact such invalid provision. It shall further be assumed that the City Council would have enacted the remainder of this Ordinance without said invalid provision, thereby causing said remainder to remain in full force and effect.

Section 5. SCRIVENER’S ERRORS. Sections of this Ordinance may be renumbered or re-lettered and corrections of typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager’s designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

Section 6. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its adoption by the City Council.

The foregoing Ordinance was moved for adoption by Council Member Nunn. The motion was seconded by Council Member Jones and, upon being put to a vote, the vote was as follows:

Council Member Dodd	<u>aye</u>
Council Member Dixon	<u>aye</u>
Council Member Jones	<u>aye</u>
Council Member McPartlan	<u>aye</u>
Council Member Nunn	<u>aye</u>

The Mayor thereupon declared this Ordinance duly passed and adopted this 20th day of November, 2024.

CITY OF SEBASTIAN, FLORIDA

By: Bob McPartlan
MAYOR Bob McPartlan

ATTEST:



Jeanette Williams

JEANETTE WILLIAMS, MMC
CITY CLERK

Approved as to form and legality for
reliance by the City of Sebastian only:

J. Cockcroft

JENNIFER COCKCROFT, ESQ., BCS
CITY ATTORNEY