

ARTICLE X. COOPER CITY PROCUREMENT CODE

Sec. 2-251. Title.

The provisions of this article shall be known as the "Cooper City Procurement Code."

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-252. Purpose and intent.

- (a) *General.* This article applies to all purchases of supplies, services and construction by the City except as provided herein. In the event of a conflict between the provisions of this article and any applicable Charter provision, state or federal law, the latter shall prevail.
- (b) *Purpose and intent.* The purpose and intent of this article shall be to generally prescribe the manner in which the City shall control the purchase of materials, supplies, equipment and certain contractual services. This article shall be construed and applied to promote its underlying purposes. The underlying purposes are:
 - (1) To obtain in a cost effective and responsive manner the supplies, services and construction required by City departments in order for those departments to better serve the City's residents and businesses;
 - (2) To uphold the highest standards and best practices through the adoption and adherence with the public procurement profession values and guiding principles of accountability, ethics, impartiality, professionalism, service and transparency;
 - (3) To provide fair and equitable treatment of all persons who transact business with the City;
 - (4) To maximize the purchasing value of public funds in the procurement of goods and services;
 - (5) To provide safeguards for the quality and integrity of the City's procurement process;
 - (6) To maintain a high ethical standard for all officers and employees of the City in connection therewith; and
 - (7) To require all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.
- (c) *Contracts to which this article is applicable.* This article applies only to contracts solicited or entered into after the effective date of this article. Nothing in this article shall be construed to prohibit the City from complying with the terms of a grant, gift, or cooperative agreement.
- (d) *Supplementary general principles of law applicable.* Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of the State of Florida shall supplement the provisions of this article.
- (e) *Severability.* If any provision of this Code or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.
- (f) *Determinations.* Written determinations required by this Code shall be retained in the appropriate official contract file of the purchasing agent or the using department.

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- (g) *Public access to procurement information.* Procurement information shall be a public record to the extent permitted by Florida statute as amended from time to time, and shall be available to the public as provided in such statute.
- (h) *Authorization for the use of electronic transmissions.* The use of electronic media, including acceptance of electronic signatures, is authorized consistent with State of Florida applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:
- (1) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
 - (2) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-253. Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this Code, unless:

- (1) The context in which they are used clearly requires a different meaning; or
- (2) A different definition is prescribed for a particular article or provision.

Addendum/addenda means a formal written notification to prospective bidders or proponents which provides clarification of the requirements for a solicitation. Addenda are also used to summarize clarifications made during a pre-bid or pre-solicitation conference. Whenever a potential bidder/proponent requests information or a clarification regarding information that is not clearly referenced in a solicitation document, it is necessary to provide all bidders and proponents with the information in writing, using the addendum document.

Administrative policy means a formal written policy or procedural guideline which governs the operational process for carrying out various fiduciary functions of government on a City-wide basis. Administrative policies are approved and issued by the City Manager.

Advertisement means a formal announcement of an invitation for a solicitation; usually placed in a newspaper of general circulation or on an Internet web-site.

Best and final offer (BAFO) means in a competitive negotiation, the final proposal submitted after negotiations are completed that contains the proposer's most favorable terms for price, services and products to be delivered. Sometimes referred to as BAFO and utilized during the request for proposal method of procurement.

Best value means the highest overall value to the City based on relevant factors that may include, but are not limited to, price, quality, design and workmanship.

Bid bond means a bid security in the form of a bid surety, certified check, cashier's check, or cash that ensures that the bidder will be capable of entering into a contract and subsequently provide the required performance and payment bonds within a specified period of time.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

Business day means a day, Monday through Friday, excluding any day that is a City observed holiday.

Calendar day or day means a consecutive 24-hour period running from 12:01 a.m. to midnight.

Category Three means the dollar threshold defined by F.S. § 287.017(43), which may be amended by the State of Florida from time to time; which shall serve as the formal solicitation threshold for purchases made on

behalf of the City of Cooper City. In the event that the State of Florida amends the Category Three threshold, such change shall be reported to the City Commission and the City Commission shall be required to formally consent to such change prior to such new threshold becoming effective for the City.

Change order means any written alteration or modification to a contract executed by the City in accordance with the terms of the contract, directing the contractor to make changes due to unanticipated conditions or developments, which do not substantially alter the character of the work contracted for, and which do not vary so substantially from the original specifications as to constitute a new undertaking.

Construction means the process of building, altering, repairing, improving, or demolishing any public facility, including any public improvements of any kind to real property, including roadways, utilities, infrastructure, and facility site work. Construction does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings or real property.

Construction manager-at-risk means a construction delivery process allowing the project owner to choose a construction manager who assumes the risk for construction, rehabilitation, or repair of a public facility at the contracted price as a general contractor and provides consultation to the City regarding construction during and after the design.

Consultant's Competitive Negotiations Act (CCNA) means referring to F.S. § 287.055, as amended, governing the procurement of architectural, engineering, land surveyor and mapping or landscape architect services.

Contingent or contingency contract means an agreement whereby the contractor's revenue is generated from a commission, percentage or other fee that is conditional upon the success that a person has in securing a contract, or based on performance on a contract.

Continuing services agreement or contract means a contract for professional services entered into in accordance with F.S. § 287.055, as amended, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the ten current thresholds outlined in F.S. § 287.055, or for work of a specified nature as outlined in the contract required by the City, with no time limitation except the contract must provide for a termination clause.

Contract means all types of City agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction between parties with binding legal and moral force, usually exchanging goods or services for money or other consideration.

Contract modification means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor means any person or business having a contract with a governmental body or that contracts to perform work or services, or provides goods or supplies to the City.

Contractual services means services without limitation, the purchase of insurance, printing, gas, electricity, fuel, cleaning services; the purchase, installation, rental repair and maintenance of equipment and machinery, and other personal property; lease or real property and office space, and all other contractual supplies, materials and equipment and services not specifically excluded from the requirements of this article.

Data means recorded information, regardless of form or characteristic.

Debarment means the disqualification of a person to receive solicitations or the award of contracts by the City for a specified period of time commensurate with the gravity of the offense or the failure or inadequacy of performance.

Design-bid-build means a construction project delivery method in which the City sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

Design-build means a construction project delivery method in which the City enters into a single contract for design and construction of an infrastructure facility as defined in F.S. § 287.055, (CCNA) as amended.

Designee means a person who is chosen to represent or given the authority to act on behalf of another person of authority.

Electronic means refers to electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Employee means an individual drawing a salary from a governmental body, whether elected or not.

Excess supplies (also see surplus property) means any tangible personal property having a remaining useful life but which is no longer required by the City department in possession of the supplies.

Governmental body means any unit or association of units of federal, state or local government, any public authority which has the power to tax, any other public entity created by statute and any other entity which expends public funds for the procurement of supplies, services or construction.

Grant means a contribution, gift, or subsidy made for specific purposes, frequently made conditional upon specific performance by the grantee.

Gratuity means a gift, payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, presented or promised, unless consideration of substantially equal or greater value is received.

Invitation for bid means a written solicitation for competitive sealed bids with the title, date and hour of the public bid opening designated and specifically defining the commodity, group of commodities, or services for bids that are sought. Unless specifically authorized by this Code, no negotiation is permitted, and the contract award is granted to the lowest priced responsive and responsible bid, which conforms to the requirements set forth in the bid document.

Invitation to negotiate means a written solicitation for competitive sealed replies to one or more vendors with which to negotiate for the procurement of commodities or services.

Job order contracting means a construction delivery method in which the City awards a term contract agreement that provides for unit pricing for individual tasks of a project to provide construction services based on individual quotations prepared on a project-by-project basis. Unit pricing is normally predicated on the compilation of a task guide reflecting local construction market conditions where contractors bid a general discount or add-on factor.

Performance bond means a contract of guarantee, executed subsequent to award by a successful bidder, to protect the City from loss due to the bidder's inability to complete the contract as agreed. The bond insures that the project will be able to be completed in the event that the bonded contractor defaults on their contract.

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

Procurement means refers to buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction including, but not limited to all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement officer means the purchasing agent who serves as head of the Purchasing Division, which is established as the central procurement office of the City of Cooper City.

Professional services means services within the scope of a particular area of practice; such as the practice of architecture, landscape architecture, land surveying and professional engineering which are governed by F.S. § 287.055, the Consultants' Competitive Negotiation Act, as amended. Auditing services, which are governed by F.S.

§ 218.391, and other professions including, but not limited to law, management consulting, medicine, real estate appraising, or other area of expertise.

Public notice means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, posting on a bulletin board, electronic or paper mailing lists, and web site(s) designated by the City and maintained for that purpose. Purchase request means a document whereby a City department requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.

Request for proposal (or competitive sealed proposals) means a written solicitation for competitive sealed proposals with the title, date and hour of deadline for submittal. The request for proposals is used when it is impractical for the agency to define a detailed scope of work. The request for proposal document is used to solicit proposals from potential providers for goods and services (offerors). Requests for proposals are evaluated on various criteria, which may or may not include price. When used as an evaluation factor, price may not be the primary evaluation factor, but the proposal document shall state the relative importance of price as well as any other evaluation criteria. A request for proposal provides for the negotiation of all terms, including price, prior to contract award; and may include a provision for the negotiation of a BAFO. Requests for proposal may be a single step or a multi-step process.

Responsible bidder or offeror means a person, business or contractor who has the capability in all respects to fully perform the contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and record of timely and acceptable past performance that will assure good faith performance for a City project or purchase.

Responsive bidder or offeror means a person, business or contractor whose response to a bid or proposal substantially conforms in all material respects to the requirements and criteria set forth in the invitation or solicitation. This includes such aspects as following bid instructions for proper submittal, completing all necessary forms included with the solicitation, providing information required by the solicitation, and complying with all terms, conditions and specification requirements as enumerated in the solicitation.

Reverse auction means a procurement method wherein bidders, anonymous to each other, electronically submit real time bids on designated supplies or 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.

Signature means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

Single source means refers to a supply source for goods or services to which purchases are directed because of issues related to standardization, warranty, or other factors, even though other competitive sources may be available.

Sole source means refers to a situation created due to the inability to obtain competition. This situation may result because only one vendor or supplier possesses the unique ability or capability to meet the particular requirements of the user, or situations where only one economically viable source is capable of providing the service or item that the City seeks to purchase. Sole sources may be characterized by a marketplace where there is only one vendor because items are patented or geographically franchised.

Specification means a precise description of the physical or functional characteristics of a product, good or construction item. A description of goods and/or services. A description of what the purchaser seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract. Specifications generally fall

under the following categories: design, performance, combination (design and performance), brand name or approved equal, qualified products list and samples. May also be known as a purchasing description.

Supplies means all tangible property, including but not limited to: equipment, materials, and commodities required for ongoing operational City requirements including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Surplus property means any tangible personal property or real property no longer having use to the City. Surplus property includes obsolete supplies, scrap materials, and non-expendable supplies that have completed their useful life cycle.

Term contract or agreement means a contract in which a source or sources of supply are established to provide for needs for a specified period of time for specified services or supplies at an agreed upon unit price(s).

Using agency/department means any department, division, activity, agency, board, commission, or other unit in City government that procures commodities, construction, or services which derive their support wholly or in part from City funds as provided in this article.

Written or in writing means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-254. Purchasing division established; supervision.

There is hereby established a Purchasing Division under the supervision of the Finance Director.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-255. Responsibilities and authority.

- (a) *General.* Except as otherwise provided herein, the purchasing agent shall have responsibility for the general supervision of the Purchasing Division and shall perform all duties required and shall act as the principal public purchasing officer for the City, responsible for the procurement of supplies, services and construction in accordance with this article, as well as the disposal of excess equipment or supplies.
- (b) *Responsibilities and authority.*
 - (1) All purchases of goods and services shall be processed through the Purchasing Division. The purchasing agent is hereby authorized to promulgate procedures for the requisitioning of supplies and services.
 - (2) For all purchases, the financial services department shall verify that the purchase request has sufficient unencumbered funds to cover the purchase, or that a budget amendment or transfer is in process for approval by the City Manager.
 - (3) The City Manager shall have the authority to approve and execute all contracts, contract amendments and contract renewals in the amount of \$20,000.00 or less.
 - (4) The mayor shall have the authority to execute all procurement-related, contracts, contract amendments and contract renewals in excess of \$20,000.00 after City Commission approval. Such execution shall be attested to by the City Manager.

(Ord. No. 19-6-3, § 3, 2019; Ord. No. 21-8, § 2, 3-23-21)

Sec. 2-256. Methods of source selection.

- (a) *General.* Except as otherwise provided by law, this article or by Charter; all contracts of the City involving dollar amounts in excess of the threshold for purchasing Category Three, as defined in F.S. § 287.017, as amended, shall be awarded through the use of a formal competitive process identified within this section.
- (1) *Competitive sealed bidding.*
- a. *Invitation for bid.* An invitation for bid may be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
 - b. *Public notice.* Adequate public notice of the invitation for bid shall be given a reasonable time, not less than ten calendar days prior to the date set forth therein for the opening of bids, in accordance with procedures as may be promulgated by the purchasing agent. The purchasing agent shall designate a means of distribution or determination of information to interested parties using methods that are reasonably available. Such methods may include, but are not limited to, publication in newspapers of general circulation, web-sites designated and maintained for such notification or on a dedicated area on a web-site maintained by the City, or through the use of vendor list which may be maintained by the Purchasing Division on an ongoing basis. Publications in newspapers of general circulation must be at least one time, with the notice published in the "Legal Notices" section of the newspaper at least ten days prior to the bid opening date. Notices published on web-sites must be posted immediately upon release of the invitation for bid, and remain available to the public until the scheduled bid opening date and time. Said notice shall state the place, date and time of the bid opening. When the projected cost of a City construction project exceeds the bid threshold set forth in F.S. § 255.0525(2), as amended, bids for that project shall be advertised in accordance with procedures outlined in said statute.
 - c. *Bid bonds.* When deemed necessary by the purchasing agent, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the purchasing agent has requested surety. A successful bidder shall forfeit any surety required by the purchasing agent upon failure on the part of the bidder to enter into a contract within ten days after the award.
 - d. *Addenda.* After an invitation for bid is issued and before the submission deadline, the Purchasing Division may issue one or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. The purchasing agent or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
 - e. *Bid opening.* The following procedures shall apply to all bid openings:
 1. *Sealed.* Bids shall be submitted sealed to the City Clerk's office and shall be clearly identified in accordance with the terms of the invitation for bid, as bids on the exterior of the envelope or other casing or wrapping sealing the contents of the bid from view.
 2. *Copies.* The appropriate number of copies of the bid as required by the invitation for bid shall be required to be submitted prior to bid opening.
 3. *Opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the purchasing agent deems appropriate, together with the name of each bidder shall be recorded.
 4. *Tabulation.* A tabulation of all bids, and each bid shall be open to public inspection in accordance with the Florida Public Records law.

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5. *Late receipt.* No late bids shall be accepted or opened; if received after the date and time called for in the bid notice, late bids shall be returned unopened to the bidder.
 - f. *Bid acceptance.* Bids shall be unconditionally accepted without alteration or correction except as authorized in this Code.
 - g. *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids shall be permitted up to the time of bid opening. Mistakes discovered before bid opening may be withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. Any modification prior to the bid opening must be submitted in a sealed envelope prior to the scheduled opening of the bid.

After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake may be permitted to withdraw its bid if:

1. The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident, or
2. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids after bid opening, based on bid mistakes, shall be supported by a written determination made by the purchasing agent.

- h. *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the invitation for bids, 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 be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used, including past performance. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.
- i. *Award.* The contract shall be awarded with reasonable promptness to the lowest, fully responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bid. In the event all the low responsive and responsible bids for a project exceeds available funds, the purchasing agent is authorized, when time of economic considerations preclude re-solicitation to negotiate a reduced scope of work and an appropriate adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. In determining the lowest responsive and responsible bidder, in addition to price, City officials may consider other factors that relate directly to the bidder's level of responsibility pursuant to the requirements of subsection 2-256(a)(1)h of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Bid Evaluation").
- j. *Award to other than low bidder.* When award of a solicitation is not granted to the lowest priced, a statement of the reason for award to the next lowest responsive and responsible bidder shall be prepared and made a part of the record file.
- k. *Tie bids.*
 1. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded based on the following criteria to be considered in the following order of priority:
 - (i) A local bidder with a primary business location within the City of Cooper City.

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- (ii) A bidder with a primary business location within Broward, Miami-Dade or Palm Beach Counties.
 - (iii) A bidder with a primary business location within the State of Florida.
 - 2. The City may split the award of a contract when it is to the City's advantage.
 - 3. Where subsections (a)(1)k.1.(a) through 1.(c) of this section is not in effect, and all other potential remedies have been exhausted, the tie bid may be resolved by lottery. Such lottery shall be conducted by the City Manager or designee, and shall be open to the public.
 - I. *No bids received.* If no bids for goods or services are received, the purchasing agent shall have the authority to negotiate terms and pricing with firms which provide the goods or services sought.
- (2) *Electronic auctions/reverse auctions.*
- a. The City may award contracts for supplies and nonprofessional services by electronic auctions, otherwise known as reverse auction, a procurement method where bidders, anonymous to each other, electronically submit real time bids. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation. Award shall be made to the lowest responsive and responsible bid.
 - b. *Public notice.* Adequate public notice of the electronic auction/reverse auction shall be given in the same manner as provided in subsection (a)(1)b of this section, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").
 - c. *Bid bonds.* When deemed necessary by the purchasing agent, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the purchasing agent has requested surety. A successful bidder shall forfeit any surety required by the purchasing agent upon failure on the part of the bidder to enter into a contract within ten days after the award.
 - d. *Addenda.* After an invitation for bid is issued and before the actual occurrence of the electronic auction/ reverse auction, the Purchasing Division may issue one or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. The purchasing agent or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
 - e. *Bid submission.* Bid pricing shall be submitted by electronic means in a manner prescribed procedures as prescribed by the purchasing agent.
 - f. *Acceptance, evaluation and award.* Bids shall be accepted, evaluated and awarded consistent with the requirements of subsections (a)(1)f, (1)h, (1)i, (1)j and (1)l of this section. ("Methods of Source Selection, Competitive Sealed Bidding").
- (3) *Competitive sealed proposals (request for proposals).*
- a. When the purchasing agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by the use of the competitive sealed proposal method.
 - b. *Public notice.* Adequate public notice of the request for proposals (RFP) shall be given in the same manner as provided in subsection (a)(1)b of this section, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").

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- c. *Addenda.* After a request for proposals is issued and before the submission deadline, the Purchasing Division may issue one or more written addenda for the purpose of clarifying specifications or other matters relating to the RFP. The purchasing agent or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
 - d. *Receipt of proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with regulations, and shall be open for public inspection in accordance with F.S. Ch. 119, Florida Public Records Law, as amended.
 - e. *Evaluation factors.* The request for proposals shall state the criteria to be used in the evaluation of the proposals which shall include their relative importance.
 - f. *Evaluation committee.* The City Manager shall appoint an evaluation committee to evaluate and make a recommendation based on the criteria set forth in the request for proposals. The purchasing agent shall recommend to the City Manager, prospective members for the committee who may include but shall not be limited to, representatives of the end user agency, including any assigned project manager, or individuals who may possess a level of skill or expertise related to the scope of work. All meetings of an evaluation committee shall be open to the public in accordance with the Florida Sunshine law, as amended, and public notice shall be conspicuously posted by the City.
 - g. *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably acceptable for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining BAFOs. In conducting such discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. In the event of receipt of an adequate number of proposals, which in the opinion of the evaluation committee require no clarification and/or supplementary information, such proposals may be evaluated without discussion or need for presentations.
 - h. *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the City taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis upon which the award is made. The City reserves the right to waive any and all formalities of the proposal procedure and to award the proposal in the best interest of the City.
 - i. *Continuing services contracts.* Continuing services contracts are defined as contracts for professional services entered into in accordance with F.S. § 287.055, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the then current thresholds outlined in F.S. § 287.055, or for work of a specified nature as outlined in the contract required by the City, with no time limitation except the contract must provide a termination clause. Continuing services contracts shall be awarded using a qualifications based selection procedure in accordance with F.S. § 287.055.
- (4) *Invitation to negotiate.*
- a. *Determination of use.* When the purchasing agent determines that a procurement request is not suitable for an invitation for bid or request for proposals, and that concurrent negotiation with one or more vendors may be necessary for the City to receive the best value, the purchasing

agent may procure commodities and contractual services by competitive sealed replies solicited through an invitation to negotiate. This source selection method does not apply to procurements subject to the Consultants' Competitive Negotiation Act, F.S. § 287.055, unless expressly permitted by statute.

- b. *Public notice.* Adequate public notice of the invitation to negotiate shall be given in the same manner as provided in subsection 2-256(a)(1)b of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").
- c. *Addenda.* After an invitation to negotiate is issued and before the submission deadline, the Purchasing Division may issue one or more written addenda for the purpose of clarifying specifications or other matters relating to the invitation to negotiate. The purchasing agent or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
- d. *Receipt of competitive sealed replies by invitation to negotiate.* Responses shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Submittals shall be open for public inspection in accordance with Florida's Public Records Law, as amended.
- e. *Evaluation criteria.* Responsive replies shall be evaluated and ranked against all evaluation criteria as set forth in the invitation to negotiate, and shall select, based on the ranking, one or more respondents with which to commence negotiations.
- f. *Evaluation committee.* The City Manager shall appoint an evaluation committee to evaluate and make a recommendation based on the criteria set forth in the invitation to negotiate. The purchasing agent shall recommend to the City Manager, prospective members for the committee who may include but shall not be limited to, representatives of the end user agency, or individuals who may possess a level of skill or expertise related to the scope of work.
- g. *Negotiations with respondents.* Negotiations may be conducted with respondents. The City may utilize either sequential or concurrent negotiation methods.
 - 1. *Sequential negotiations:* The City may consider the respondent's statements of qualifications without consideration to price, and may select the most qualified respondents as finalists. The City may conduct interviews with all finalists, and rank the responses without regard to price. Exclusive negotiations as to the scope of work, terms and price may be conducted with the respondent providing the proposal ranked as most advantageous to the City. If an agreement is not reached, the City may commence negotiations with the successive ranked respondents until an agreement is attained.
 - 2. *Concurrent negotiations:* The City may consider the respondent's statement of qualification and price; however, both are subject to future negotiations. The City may select a group of the most qualified respondents as finalists and commence simultaneous negotiations with each regarding the scope of work and price. Final BAFOs may be requested of the finalists. In determining the best value, the negotiation team may re-rank the respondents. Award of a contract is made to the respondent representing the best value to the City.
- h. *Award.* Contract award shall be made to the respondent whose negotiated agreement is determined to be the best value to the City considering final negotiated pricing and other criteria as specified in the invitation to negotiate. The contract file shall contain the basis upon which the award was made.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-257. Small purchase procedures.

- (a) *General.* Any procurement not required to be conducted pursuant to the terms and conditions of Section 2-256 of this Code, ("Methods of Source Selection"), shall be made in accordance with the operational procedures and thresholds for informal small purchases.
- (b) *Delegation of authority.* The purchasing agent may establish operational procedures delegating authority for City departments to obtain written or oral quotations and issue small dollar procurements directly to vendors for purchases below the purchasing Category Three threshold as defined in the most current version of F.S. § 287.017, as amended.
- (c) Electrical work in excess of the threshold provided pursuant to F.S. § 255.20(1), as amended, shall be competitively bid.
- (d) *Requirements for quotations.* The purchasing agent, or designee, or by a department or division, as delegated by the purchasing agent, may solicit informal quotations by any one or more of the following methods:
 - (1) By direct mail or requests to prospective vendors;
 - (2) By telephone or e-mail;
 - (3) By public notice posting on a public electronic bulletin board or bulletin board at City Hall;
 - (4) By use of the City-maintained website or third-party internet hosting site;
 - (5) By reverse auction.
- (e) *Quotation threshold.* The following dollar thresholds shall apply to the requirement for quotations for small market purchases made by the City. The Purchasing Division shall develop procedures for processing quotations within the guidelines established.

\$0.00—\$1,499.99	
\$1,500.00—\$4,999.99	Minimum of three verbal, documented quotations required.
\$5,000.00—\$19,999.99	Minimum of three written quotations required.
\$20,000.00 (Formal Threshold)	Formal advertisement, bid and approval is required.

In the event that fewer than three quotations are received, the City may consider those quotations received; however, the purchasing agent or designee reserves the right to validate the availability of suppliers for an item or service.

- (f) *Recording.* The using department purchasing agent shall maintain a record of all small purchases and the quotations submitted in competition thereon, and such records shall also be open to public inspection.
- (g) *Procurement cards.* The purchasing agent shall have the authority to issue City procurement cards to employees at the request of the department director. The purchasing agent shall develop operational policies and procedures for the use of the procurement cards, which shall be adopted as an administrative policy.
- (h) *Petty cash.* The Finance Director may promulgate rules and regulations governing petty cash purchases as appropriate.
- (i) *Unauthorized purchasing practices.* An unauthorized purchase occurs when any employee of the City orders, contracts for or buys any materials or supplies outside the purview of the City Charter and/or this Code. Any individual making an unauthorized purchase may be subject to disciplinary actions as appropriate, which may include termination and/or prosecution. The following are unauthorized purchasing practices:

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- (1) Artificially dividing purchases into multiple segments in an attempt to issue single orders below the dollar threshold requirements as established herein (also known as "stringing" or "splitting purchase orders") is prohibited.
 - (2) Purchasing any supplies or services above the thresholds delineated herein directly from a vendor, bypassing the Purchasing Division.
 - (3) Committing to a purchase without issuance of an authorized purchase order, when one is required.
 - (4) Obtaining items available on an existing City term contract from a supplier that does not hold the contract.
 - (5) Providing false information such as false quotations (without actually contacting and obtaining a quotation, bid or proposal from a vendor).
 - (6) Adding unauthorized purchases to previously approved purchase orders without approval of the appropriate approval authority and subsequent modification of the purchase order.
- (j) *Change orders.* The City Manager or designee is authorized to approve and initiate change orders determined in the judgment of the City Manager or designee to be in the public interest as follows:
- (1) All change orders decreasing the cost of the contract to the City; providing, however, such decrease does not materially alter the character of the work contemplated by the contract;
 - (2) All change orders increasing the cost of the contract to the City, up to the formal competitive purchasing Category Three threshold as defined in the most current version of F.S. § 287.017(3), as amended, and approved by the City Commission, provided that sufficient budgeted funds are available.
 - (3) All other change orders must be formally approved by the City Commission before work may be authorized to begin; and no claim against the City for extra work in furtherance of such change order shall be allowed unless prior written authorization has been provided, notwithstanding any other provision, contractual or otherwise.
 - (4) Change orders shall not artificially be distributed or divided so as to bring the amount within the approval level of the City Manager, and any such proposed change order shall include within it all logically connected work required to be done at the time of the proposal.
 - (5) Work defined by the scope of a change order may not be commenced until obtaining final approval of the change order, except where such work is of an emergency nature as defined in subsection 2-258(C) "Emergency Procurements" of this Code.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-258. Exclusions and exceptions to bid and proposal requirements.

- (a) *Exclusions.* This article shall not apply to:
- (1) The procurement of dues and memberships in trade or professional organizations; registration fees for trade and career fairs, subscriptions for periodicals and newspapers; advertisements; postage; expert witness; legal and mediation services; lobbying services; abstracts of title for real property; title searches and certificates; title insurance for real property; real estate appraisal services; water, sewer, telecommunications and electric utility services; copyrighted materials or patented materials including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials; fees and costs of job-related seminars and training;
 - (2) Goods purchased with petty cash or City procurement cards in accordance with the City's petty cash and procurement card procedures;

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- (3) Items purchased for resale to the general public; for example, supplies for a City-owned concession area.
 - (4) Purchase of groceries;
 - (5) Artistic services or works of art;
 - (6) Travel expenses, hotel accommodations and hotel services;
 - (7) City-sponsored events held at venues not owned by the City;
 - (8) Entertainment and entertainment-related services for City-sponsored events;
 - (9) Purchase of motor vehicle license plates from a governmental agency;
 - (10) Persons or entities retained as "expert consultants" to assist the City in litigation, or in threatened or anticipated litigation;
 - (11) Educational or academic programs;
 - (12) Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration;
 - (13) Auditing services that are not subject to the requirements of F.S. Ch. 218, Part III;
 - (14) The purchase of items critical to the security of City facilities; and
 - (15) Any services identified in F.S. § 287.057, as may be amended from time to time, as being exempt from competitive bid/request for proposal requirements.

(b) *Sole and single source procurements.*

- (1) A contract may be awarded for a supply, service, or construction item without competition when the purchasing agent or a designee determines in writing that there is only one economically feasible source for the required supply, service, or construction item, or when requirements for standardization, warranty, geographic and territorial restrictions, or other factors create a situation where competition is either not feasible or practicable.
- (2) The purchasing agent or designee shall conduct negotiations, as appropriate, regarding price, delivery and terms. The City department requesting a single, or sole source procurement must submit a written request in the approved format to the purchasing agent for approval, which must be accompanied by a written justification signed by the department head. The justification must document the purpose of the purchase, the reason(s) for the single or sole source purchase, and a summary of attempts to obtain competition.
- (3) Sole source purchase requests in excess of the purchasing Category Three threshold as defined in F.S. § 287.017, as amended, shall be approved by the City Commission. A record of sole source purchases shall be maintained by the City and shall list each vendor's name, the amount and type of each contract and a listing of the item(s) procured under each contract.

(c) *Emergency purchases exceeding City Manager's approval threshold.*

- (1) Notwithstanding any other provision of this Code, the City Manager or designee may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be provided by the City Manager to the City Commission and included in the contract file.

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- (2) The City Manager is authorized to determine if an emergency exists for purposes of emergency purchases and procurements. If an emergency does exist, the City Manager shall authorize emergency expenditures for the procurement or temporary acquisition of supplies, equipment and services necessary to meet the City's needs as a result of the emergency, and may delegate authority for a department head or other designee to secure emergency proposals. The City Manager, the purchasing agent, or the designee shall endeavor to secure proposals from at least two separate sources.
- (3) Any emergency procurement exceeding the award authority of the City Manager shall be reported to the City Commission publicly at the next City Commission meeting.
- (d) *Cooperative purchasing.* When deemed to be in the best interests of the City, the purchasing agent may participate in, sponsor, conduct or administer contracts under a cooperative purchasing program with one or more governmental units for the procurement of any supplies, services, or construction. Such cooperative purchasing programs may include, but not be limited to, joint or multiparty contracts between public procurement units and open ended public procurement term contracts that are made available to other governmental units.
- (e) *Purchases from other governmental entities.* Purchases of goods or services from the federal government, any state or political subdivision thereof, or any municipality are exempt from the requirements of this section.
- (f) *Purchases of goods or services from contracts awarded by other governmental or not-for-profit entities by a formal competitive selection process.* The purchase of goods or services under a contract awarded by the United States Government or another governmental, public or not-for-profit entity by a formal competitive process is authorized provided the purchasing agent makes a determination that time, expense and marketplace factors make it financially advantageous for the City to do so.
- (g) *Professional services.* Contracts for the service of professionals, including but not limited to the practice of law, management consulting, medicine, real estate appraisal, or other area of expertise as determined by the City Manager or designee to be in the best interest of the City, and not otherwise subject to the requirements of F.S. § 287.055, as amended, may be entered into without competitive bidding, however, qualifications, work history and other relevant data shall be reviewed before entering into such contracts. Professional services contracts that exceed the threshold established in subsection 2-256(a) of this Code, ("Methods of Source Selection"), will require approval by the City Commission.
- (h) *Owner direct purchase.* A contract may be awarded for supplies or materials without competition where such supplies or materials are being procured by the City as an owner direct purchase for incorporation into a public works project, the contract for which was previously awarded by the City, which prior award included the cost of such supplies and materials. In such event, the City shall procure the supplies or materials in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities.
- (i) *Waiver of procurement procedures.* The City Commission may authorize the waiver of procurement procedures upon the recommendation of the City Manager that it is in the City's best interest to do so to obtain goods and services which cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors. Purchases authorized by the waiver process shall be acquired with such competition as is practicable under the circumstances and only after a good faith review of all available sources and negotiation as to price, delivery and terms. There shall be no waiver of procurement procedures for procurements that are subject to the provisions of F.S. §§ 287.055 or 255.20, as amended.

(Ord. No. 19-6-3, § 3, 2019; Ord. No. 21-8, § 2, 3-23-21)

Sec. 2-259. Bonds and security requirements.

(a) *Bid security.*

- (1) The purchasing agent may require the submission of a bid security to guarantee full and faithful performance of a solicitation. In determining the amount and type of bid security required, the purchasing agent or designee shall consider the nature of the solicitation and performance required to protect the City during the term of the contract. Bid security shall be a bond provided by a surety company licensed to do business in the State of Florida or the equivalent in cash or otherwise supplied in a form satisfactory to City and approved by the purchasing agent.
- (2) Amount of security. Bid security shall be in an amount equal to at least five percent of the amount of the bid.
- (3) Rejection of bids for noncompliance with bid security requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless, pursuant to regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.
- (4) If a bidder is permitted to withdraw its bid before award as provided in subsection 2-256(a)(1)g, of this Code, ("Methods of Source Selection, "Correction or Withdrawal of Bids; Cancellation of Awards"), no action shall be taken against the bidder or the bid security.

(b) *Performance and payment bonds.*

- (1) When a construction contract is awarded in excess of \$200,000.00, the following bonds as security shall be delivered to the City and shall become binding on the parties upon execution of the contract as required in F.S. § 255.05 and F.S. § 713.01, as either statute may be amended.
 - a. Performance bond: Required to ensure the completion of a project in the event of contract breach or forfeiture by the contractor.
 - b. Payment bond: Required to ensure the payment of sub-contractors and suppliers to a contractor, for work completed in the event of contract breach or forfeiture by the contractor.
- (2) When required.
 - a. The purchasing agent shall require performance and payment bonds for all contracts for the construction of a public building or public work, or for repairs upon a public building or a public work whose estimated construction cost exceeds the thresholds established by subsections 2-259(b)(1) of this Code.
 - b. Performance and payment bonds may also be required, at the discretion of the purchasing agent, for construction work estimated to cost less than the thresholds established by F.S. § 255.05, as amended. Performance and payment bonds shall be executed by a surety company authorized to do business in the State of Florida in an amount equal to 100 percent of the contract price or otherwise secured in a manner satisfactory to the City. The bonds shall be recorded in the public records of Broward County, Florida.
- (3) Reduction of bond amounts. The purchasing agent shall be authorized to reduce the amount of performance and payment bonds when conditions warrant, and when there is no statutory requirement for performance and payment bonds.
- (4) In lieu of a performance and payment bond, the City may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit in the amount of 100 percent of the contract price. Such alternate form of security shall be for the same purpose and shall be subject to the same conditions as a performance and payment bond.

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- (c) *Guidelines and standards for surety companies.* The purchasing agent in consultation with the City's Risk and Safety Manager may establish minimum guidelines and standards for surety companies providing performance and payment bonds to the City on behalf of a contractor.
 - (d) *Use of City forms.* The City reserves the right to require that all bid sureties, performance and payment bonds be submitted on forms prescribed by the City. The purchasing agent or designee shall include copies of any prescribed bond forms as a part of the solicitation document provided to bidders and proposers.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-260. Insurance requirements.

The City Manager, or his or her designee, shall establish guidelines for determining the type and minimum limits of liability, workers' compensation and other forms of insurance coverage that may be required for each type of contract. The City of Cooper City shall be named as an additional insured for any required general liability coverage. From time to time, the City may require a contractor or consultant to provide the City with professional liability errors and omissions coverage. Firms unable to comply with the requirements of this section may be considered to be non-responsive vendors and precluded from doing business with the City.

(Ord. No. 19-6-3, § 3, 2019; Ord. No. 21-8, § 2, 3-23-21)

Sec. 2-261. Types of contracts and contract administration.

- (a) *General.* Firm fixed price contracting is the preferred method; however, any type of contract which will promote the best interests of the City may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.
- (b) *Multi-year contracts.*
 - (1) *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 interests 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 contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for such contract.
 - (2) *Use.* A multi-year contract is authorized where:
 - a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. Such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting efficiencies in City procurement.
 - (3) *Cancellation 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 be cancelled and the contractor shall be paid for any work, supplies or services already delivered under the contract.
- (c) *Contract administration.* The purchasing agent officer shall establish operational procedures to maintain a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation requirements for which the contract was awarded and the terms and conditions of the contract.

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(d) *Contingent contracts.* The use of contingent contracts is prohibited.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-262. Specifications.

- (a) *Maximum practicable competition.* All specifications and statements of work used for formal competitive solicitations shall be drafted to promote overall economy for the purposes intended, to encourage competition in satisfying the City's needs, and shall not be unduly restrictive. This requirement shall apply to all specifications including, but not limited to, those prepared for the City by outside sources.
- (b) *Required characteristics.* All specifications should include required characteristics for performance and design. To the extent practicable, and unless otherwise permitted by this Code, all specifications shall describe the City's requirements in a manner that does not unnecessarily exclude a material, service or construction item. All specifications and statements of work used for competitive solicitations are subject to the final approval of the purchasing agent or designee.
- (c) *Relationship with user departments.* The purchasing agent shall obtain expert advice and assistance from personnel of user departments in the development of specifications and may delegate to a user department the authority to prepare and utilize its own specifications.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-263. Procurement of construction and professional design services.

- (a) *Procurement of construction delivery methods.* Contracts for construction services shall be procured in accordance with Florida Statutes and with established procurement procedures and delivery methods approved by the purchasing agent or designee. Construction delivery methods may include, but are not limited to, design-bid-build, design/build, construction manager-at-risk, task order-contracting, fixed price, or other approved methods.
- (b) *Bonds and insurance requirements for construction projects.* The City shall require bonds and insurance from contractors for construction projects as prescribed in sections 2-259, "Bonds and Security Requirements" and 2-260, "Insurance" of this Code.
- (c) *Professional design services.* Contracts for professional design services, including architectural, professional engineering, landscape architecture or registered surveying or mapping services must be procured in accordance with the Consultants' Competitive Negotiations Act F.S. § 287.055, as amended, in accordance with the requirements of subsection 2-256(a)(2) of this Code, ("Methods of Source Selection; Competitive Sealed Proposals") utilizing a qualifications based procurement process which shall not permit the use of price as an evaluation factor.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-264. Award of contract.

- (a) *City Commission approval.*
 - (1) An initial purchase of, or contract for, commodities or services, in excess of \$20,000.00, shall require the approval of the City Commission, regardless of whether the competitive bidding or competitive proposal procedures were followed. However, emergency purchases as described in § 2-258, shall not require advance City Commission approval. In such emergency situations, the City Manager may approve the purchase or contract, subject to later ratification by the City Commission. Emergency

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purchases are to be made only when the normal function and operation of the City would be hampered to such an extent by submittal of a requisition in the usual manner that it may affect the life, health or convenience of citizens.

- (2) Purchases exceeding the sum of \$75,000.00 in the aggregate shall not be purchased from the same person or entity during any 12 month period, unless the purchases are first authorized by the City Commission. The above provision shall not apply to purchases of utilities or to ongoing contracts.
- (b) *City Manager approval.* Any contract for the purchase of any goods, commodities or services in an amount of \$20,000.00 or less shall require the approval of the City Manager.

(Ord. No. 19-6-3, § 3, 2019; Ord. No. 21-8 , § 2, 3-23-21)

Sec. 2-265. Appeals and remedies.

- (a) *Applicability.* This section shall apply to protests by bidders and proposers regarding claims made by contractors holding a City contract, and shall only apply to protests by bidders or offerors when the City Manager recommends a purchase in excess of the City's formal competitive threshold as established in subsection 2-256(a) "Methods of Source Selection," "General" of this Code.
- (1) *Protests; right to protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the purchasing agent. The protest shall be submitted in writing within five business days after such aggrieved person knows or should have known of the facts giving rise thereto.
 - (2) *Contract claims.* All claims by a contractor against the City relating to a contract shall be submitted in writing to the purchasing agent. The contractor may request a conference with the purchasing agent on a submitted 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 rescission.
 - (3) *Service of a protest.* Service of a protest by mail or courier shall not expand the time frame period allowed for delivery of a protest.
- (b) *Authority to resolve protests and contract claims.*
- (1) *Protests.* The purchasing agent, after consulting with the City Attorney, shall have the authority consistent with this Code to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.
 - (2) *Contract claims.* The purchasing agent, after consulting with the City Attorney, shall have the authority to resolve contract claims, subject to the approval of the City Manager or City Commission, as applicable, regarding any settlement that will result in a change order or contract modification.
- (c) *Decision.* If a protest brought pursuant to subsection (a) of this section is not resolved by mutual agreement, the purchasing agent shall promptly issue a decision in writing to the protesting party upholding or denying the protest or staying the award process for further investigation. A copy of the decision shall be mailed or otherwise furnished to the protestant or claimant and any other party intervening. The decision shall state the reasons for the action taken.
- (d) *Finality of decision.* A decision under subsection (c) of this section shall be final unless within three business days from the date of receipt of the decision, the protestant or claimant files a written appeal with the City Manager.

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- (e) *Authority of the city manager.* The City Manager shall have the jurisdiction to review and determine any appeal by an aggrieved party from a determination by the purchasing agent regarding a protest or contract claim. Such decision shall be final and conclusive.
 - (f) *Protest limitations.* A written protest may not challenge the relative weight of evaluation criteria or a formula for assigning points.
 - (g) *Protest bond required.* Upon the filing of a formal written protest the contractor or vendor shall post a bond, payable to the City of Cooper City, in an amount equal to five percent of the total bid or estimated contract amount, or \$5,000.00, 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.
 - (h) *Consideration of timely protests.* The City's consideration of a timely written protest shall not necessarily stay the award process, as may be in the best interest of the City. The purchasing agent, through the City Manager, may recommend to the City Commission to render moot any written protest that is overtaken by events, in which case the City Commission may abate or dismiss such protest.
 - (i) *Timely submittal of protest or appeal required.* Failure of a party to submit timely a written protest to the purchasing agent within the time provided in this section shall constitute a waiver of such party's right to protest pursuant to this section.
 - (j) *Costs.* Any and all costs incurred by a protesting party in connection with a protest pursuant to this section shall be the sole responsibility of the protesting party.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-266. Authority to debar or suspend.

- (a) *Authority.* The City Manager or designee, after reasonable notice to the person involved and reasonable opportunity for that person or firm to be heard, is authorized to debar a vendor or bidder for cause from consideration for award of contracts. Debarment shall not be for a period of more than three years.
- (b) *Causes for debarment or suspension.* The causes for debarment or suspension include the following:
 - (1) Conviction for the Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals or contracts;
 - (4) Violation of contract provisions, as set forth below, of a character which is regarded by the City Manager or designee to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the contract documents or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance

caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

- c. Refusal to perform a contract after a contract is accepted by the City and awarded to the vendor.
 - d. Any other cause the purchasing agent determines to be so serious and compelling as to affect the responsibility as a contractor, including, but not limited to, debarment by another governmental entity for any cause listed in regulations; and
 - e. Violation of the ethical standards set forth in section 2-267 ("Ethics in public contracting").
- (c) *Decision.* The purchasing agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.
- (d) *Notice of decision.* A copy of the decision under subsection 2-265(c) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- (e) *Appeal.* A decision under subsection 2-265 (c) shall be final unless within ten calendar days from the date of receipt of the decision, the protestant or claimant files a written appeal with the City Manager.
- (f) *Authority of the city manager.* The City Manager shall have the jurisdiction to review the purchasing and contract manager's decision regarding suspension or debarment and decide whether, or the extent to which, the debarment or suspension was in accordance with this section, was in the best interest of the City, and was fair. Such decision by the City Manager shall be final and conclusive.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-267. Ethics in public contracting.

- (a) *Standards of ethical conduct.*
- (1) *Ethical standards for employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the City employee's or elected official's duties is a breach of a public trust.
 - (2) *Ethical standards for non-employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section is also a violation of this article.
- (b) *Standards of conduct for employees, public officials and suppliers.*
- (1) *Failure to follow proper procurement procedures.* It shall be a violation of this section for any employee to order, contract for or purchase any materials, supplies or services except in strict compliance with all procurement procedures as provided herein or as established by administrative policy of the City.
 - (2) *Solicitation or acceptance of gifts.*
 - a. No City official or employee shall solicit or accept anything of value from any vendor or bidder, including a gift, loan, reward, promise of future employment, favor or service, based upon any understanding that the actions of that official or employee would be influenced thereby.
 - b. No bidder, supplier, vendor or contractor shall solicit or provide anything of value to any City official or employee.
 - (3) *Doing business with the city.* No City officer, agent, employee nor any elected public official acting in his or her official capacity shall directly or indirectly purchase, rent or lease any realty, goods or services for the City from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director or proprietor or in which the official or employee or the officer's or employee's spouse or child, or any combination of them, has a material

interest. No City official or employee, acting in a private capacity, shall rent, lease or sell any realty, goods or services to the City.

- (4) *Unauthorized compensation.* No City officer, agent or employee or his or her spouse or child shall, at any time, accept any compensation, payment or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his or her official capacity.
- (5) *Conflicting employment or contractual relationship.* No City officer, agent or employee through outside employment or contractual relationship shall have any financial interests in the profits of any contract, service or other work performed by the City; nor personally profit directly or indirectly from any contract, purchase, sale or service between the City and any person or company through a relationship with any business entity which is doing business with the City. This section, however, shall not be construed to prevent any officer, agent or employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge of the officer or employee's duties in his or her employment with the City.
- (6) *Contingent fees.* No City official or employee shall be retained, or shall retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.
- (7) *Confidential information.* No City official or employee shall disclose or use any information not available to members of the general public and gained by reason of his official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.
- (8) *Prohibition against lobbying.*
 - a. During the solicitation of any bid or proposal, any firm and its agents, officers or employees who intend to submit, or who have submitted, bids or proposals shall not lobby, either individually or collectively, any City Commission members, candidates for City Commission or any employee of the City. Contact should only be made through regularly scheduled commission meetings, or meetings scheduled through the Purchasing Division for purposes of obtaining additional or clarifying information. Any action, including meals, invitations, gifts or gratuities by a submitting firm, its officers, agents, or employees shall be within the purview of this prohibition and shall result in the immediate disqualification of that firm from further consideration.
 - b. During a formal solicitation process, contact with personnel of the City of Cooper City other than the purchasing agent or designated representative regarding any such solicitation may be grounds for elimination from the selection process.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-268. Acceptance of donations.

Donations other than sponsorships of City events, with an estimated value exceeding \$1,000.00, shall be approved by the City Commission prior to acceptance.

(Ord. No. 19-6-3, § 3, 2019)

Sec. 2-269. Public-private partnerships.

- (a) *Purpose.* A public-private partnership is a contractual agreement between a local government and a private sector person or entity organized for the purpose of timely delivering services or facilities in a cost-effective manner that might not otherwise be possible using traditional sources of public procurement. Through this

contractual agreement, the assets and professional skills of each sector (public and private) are shared and leveraged to deliver a service or facility to be used by the general public.

- (b) *Definitions.* For purposes of this section, the words defined in F.S. § 255.065(1), (entitled "definitions") including, but not limited to, "qualifying project" and "private entity" shall have the same meaning in this section.
- (c) *Conditions for use.* The purchasing agent may receive unsolicited proposals for a qualifying project, subject to the conditions and procedures of this section. Any unsolicited proposal shall include sufficient detail and information for the city to evaluate the proposal in an objective and timely manner, and shall be accompanied by the application fee.
- (d) *Proposal contents.* Any unsolicited proposal shall include sufficient detail and information for the city to evaluate the proposal in an objective and timely manner and to determine if the proposal serves a public purpose and meets the criteria set forth in this section.
- (1) The following material and information is required to be submitted:
- a. A description of the project, including the conceptual design of the facility; or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
 - b. A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.
 - c. A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
 - d. The name and address of a person who may be contacted for additional information concerning the proposal.
 - e. The proposed user fees, lease payments or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments and other service payments over time.
 - f. Any pricing or financial terms included in the unsolicited proposal must be specific as to when the pricing or terms expire.
- (2) The following additional material and information must also be submitted in order for the city to review and evaluate the unsolicited proposal:
- a. Description of the need for the project or facility and the public benefit to be served.
 - b. A site plan indicating the location of the project proposed.
 - c. The proposed schedule for development of the project and/or the proposed term for operation of the project, along with an estimate of the life cycle cost of the proposed project.
 - d. A list of all public utilities, railroad lines, navigable waters and flight paths, if any, that will be crossed or affected by the proposed project and a statement of the plan to accommodate such crossings or effects.
 - e. Performance guarantees, if any, and any proposed bonding to be provided by the proposer, including ability to provide statutorily required public construction bonds or performance and payment bonds for construction of public facilities.

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- f. A listing of all proposed obligations and requirements of the city and any other governmental agencies, including, but not limited to, contributions to the project financing, development approvals and permitting.
 - g. Identification of whether the proposal involves turning over any operation, maintenance or other responsibilities to the city, along with an estimate of costs;
 - h. Statement regarding ability to add capacity to the project if necessary.
 - i. Proposed safeguards to protect the city from additional costs or service disruption in the event of default or termination of contract.
 - j. The names of owners, directors and officers of the proposer, and such information as may be necessary to evaluate the qualifications of the critical personnel to be engaged in the project.
 - k. Information on how the project would benefit small business enterprises and local contractors within the city.
 - l. A list of all engineering or construction firms to be proposed on the project and their qualifications and a description of their role in the proposal and project.
 - m. Is signed by a responsible official or other representative authorized to obligate the proposer contractually.
- (e) *Application fee.* The city shall charge fees to the private entity proposer to cover the costs of processing, reviewing and evaluating any unsolicited proposal, including a fee to cover the costs of staff time, and attorneys, engineers, consultants and financial advisors retained to evaluate the proposal, advertise, provide recommendations to the city and/or negotiate a contract.
- (1) All unsolicited proposals shall be accompanied by an initial application fee of \$15,000.00 payable to the city in the form of a money order or cashier's check or other non-cancelable instrument. Personal checks will not be accepted. Proposals submitted without the application fee shall not be accepted.
 - (2) The city shall refund the application fee if the city determines that it will not evaluate the unsolicited proposal.
- (f) *Commission consideration.* If the city receives an unsolicited proposal for a qualifying project pursuant to this section and the city manager deems it to be in the best interests of the city to further evaluate the proposal or negotiate an agreement based on the proposal, the city manager shall notify the commission of the receipt of the unsolicited proposal by placement of an item on the next available commission agenda to obtain the commission's approval to proceed with the evaluation and negotiation of a project based on the unsolicited proposal.
- (g) *Commission decision to proceed with evaluation.* If the city commission votes to proceed with the evaluation of an unsolicited proposal involving architecture, engineering or landscape architecture, it must ensure a professional review and evaluation of the design and construction proposed by the initial or subsequent proposers to assure material quality standards, interior space utilization, budget estimates, design and construction schedules and sustainable design and construction standards consistent with public projects. Such review shall be performed by an architect, a landscape architect or an engineer licensed by the State of Florida qualified to perform the review and such professional shall advise the city through completion of the design and construction of the project.
- (h) *Prior to review.* If the initial application fee does not cover the city's costs to evaluate the unsolicited proposal, the city shall request in writing the additional amounts required. The private entity must pay the requested additional amounts within 30 days after receipt of the notice. The city may stop its review of the unsolicited proposal if the private entity fails to pay the additional amounts.

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- (i) *Public notice.* If the city determines that it is interested in further considering any unsolicited proposal, it shall publish a notice of receipt of same and invite competing bids during a competitive bidding period. The publication shall be accomplished in a manner that encourages competition to provide private entities interested in submitting alternative and perhaps competing proposals to provide a reasonable opportunity to submit a bid. The entity submitting the original unsolicited proposal may submit a more detailed proposal in response to the city's notice. A copy of the notice must be mailed to each local government in the affected area of the qualifying project which shall mean Broward County and/or any special district in which all or a portion of the qualifying project is located.
- (j) *Receipt of proposals.* Sealed proposals in response to the public notice must be received in the purchasing and contract administration division no later than the time and date specified for submission in the publication. Sealed proposals shall be accompanied by the initial application fee.
- (k) *Evaluation.* The selection of a proposer with whom to negotiate shall be in accordance with the evaluation committee procedures set forth within section 2-256 of the city's Code of Ordinances.
- (l) *Evaluation criteria.* When performing an evaluation of any proposal under this section, the following factors, along with all of the information required to be provided in the proposal, shall be considered, in addition to any others appropriate for the particular proposal:
- (1) The proposal business terms, including the finance plans;
 - (2) Unique, innovative and meritorious methods, approaches, concepts, design techniques or cost reductions demonstrated by the proposal;
 - (3) Overall scientific, technical or socioeconomic merits of the proposal;
 - (4) The proposer's capabilities, related experience, facilities, techniques or unique combinations of these;
 - (5) The professional qualifications, capabilities and experience of the proposer's team or key personnel critical to achieving the proposal objectives;
 - (6) The general reputation and financial condition of the proposer and its team members; the proposed finance plan; the financial viability and feasibility of the proposed project or facility; and the cost, if any, to the city to proceed with implementation of the proposal, including on-going operational or maintenance costs. The city may require the proposer to provide a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies;
 - (7) Any other information the city deems appropriate for evaluation of the proposed project or facility.
- (m) *Rejection of proposals.* If an unsolicited proposal, or competing proposal received after public notice, is not deemed by the purchasing agent to be complete or in sufficient detail, it may be rejected by the city commission. The city shall have no responsibility to itemize or advise the proposer of the incomplete items or terms of the proposal. The city shall refund any portion of the application fee paid which, in the determination of the purchasing agent, exceeds the direct costs associated with evaluating the proposal up to the time of rejection. The city, in its discretion, reserves the right to reject all proposals at any point in the process prior to the full execution of a comprehensive agreement with a proposer.
- (n) *Comprehensive agreement.* The comprehensive agreement with the private entity shall contain at a minimum the terms and conditions set forth within F.S. § 255.065(7). The comprehensive agreement may authorize the private entity to impose fees to members of the public for the use of the facility in accordance with the provisions set forth within F.S. § 255.065(8).
- (o) *Public records.* Pursuant to F.S. § 255.065(15):
- (1) An unsolicited proposal received by a responsible public entity is exempt from F.S. § 119.07(1) and Section 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.

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- (2) If the city rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and the city concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the city provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the city withdraws the reissued competitive solicitation for such project.
 - (3) An unsolicited proposal is exempt for no longer than 90 days after the initial notice by the city rejecting all proposals.
 - (4) If the city does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by the city.
 - (5) Any portion of a meeting of the city during which an unsolicited proposal that is exempt is discussed is exempt from F.S. § 286.011 and Section 24(b), Art. I of the State Constitution.
 - a. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.
 - b. The recording of, and any records generated during, the exempt meeting are exempt from F.S. § 119.07(1) and Section 24(a), Art. I of the State Constitution until such time as the city provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the city if the city does not issue a competitive solicitation for the project.
 - c. If the city rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from F.S. § 119.07(1), and § 24(a), Art. 1 of the State Constitution until such time as the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.
 - d. A recording and any records generated during an exempt meeting are exempt for no longer than 90 days after the initial notice by the city rejecting all proposals.

(Ord. No. 21-20 , § 2, 7-27-2021)