

**ORDINANCE NO. 23-15**

**AN ORDINANCE OF THE CITY OF COOPER CITY, FLORIDA; AMENDING CHAPTER 2 OF THE CITY'S CODE OF ORDINANCES, ENTITLED "ADMINISTRATION," BY AMENDING ARTICLE X, ENTITLED "COOPER CITY PROCUREMENT CODE;" SPECIFICALLY AMENDING SECTION 2-252, ENTITLED "PURPOSE AND INTENT;" AMENDING SECTION 2-253, ENTITLED "DEFINITIONS;" AMENDING SECTION 2-256, ENTITLED "METHODS OF SOURCE SELECTION;" AMENDING SECTION 2-257, ENTITLED "SMALL PURCHASE PROCEDURES;" AMENDING SECTION 2-258, ENTITLED "EXCLUSIONS AND EXCEPTIONS TO BID AND PROPOSAL REQUIREMENTS;" AMENDING SECTION 2-259, ENTITLED "BONDS AND SECURITY REQUIREMENTS;" AMENDING SECTION 2-261, ENTITLED "TYPES OF CONTRACTS AND CONTRACT ADMINISTRATION;" AMENDING SECTION 2-263, ENTITLED "PROCUREMENT OF CONSTRUCTION AND PROFESSIONAL DESIGN SERVICES;" AUTHORIZING THE USE OF ELECTRONIC PROCUREMENT AND ELECTRONIC BIDDING SOFTWARE, CONSISTENT WITH THE REQUIREMENTS OF FLORIDA LAW, AS AN OPTION FOR THE COMPETITIVE SOLICITATION OF GOODS AND SERVICES; PROVIDING FOR CONSISTENCY THROUGHOUT THE PROCUREMENT CODE REGARDING PROCUREMENT REQUIREMENTS AND COMPETITIVE SOLICITATION THRESHOLDS; CREATING SECTION 2-270, TO BE ENTITLED "CONE OF SILENCE;" ADOPTING THE CITY'S CONE OF SILENCE POLICY AS A CODIFIED ORDINANCE OF THE CITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on July 16, 2019, the City Commission of the City of Cooper City adopted Ordinance No. 29-6-3, thereby establishing a comprehensive Procurement Code for the City; and

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Words in underscore type are additions

**WHEREAS**, the City has engaged a professional consultant to review the City's procurement procedures and make recommendations relating the City's overall procurement process; and

**WHEREAS**, the City's consultant has recommended several revisions to the Procurement Code, including amending the Code to ensure consistency regarding the procurement thresholds and codifying the City's code of silence; and

**WHEREAS**, in an attempt to streamline its procurement processes and to utilize the most current technology options available related to public procurement, the City further seeks to amend its procurement code to allow for the implementation of electronic bidding; and

**WHEREAS**, the City Commission has held a public hearing in accordance with the requirements of state law; and

**WHEREAS**, the City Commission of the City of Cooper City has determined it to be in the best interests of the citizens and residents of the City amend the City's Procurement Code as set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COOPER CITY, FLORIDA THAT:**

**SECTION 1:** The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

**SECTION 2: Amendments to Chapter 2.** The City Commission of the City of Cooper City hereby amends Chapter 2, entitled "Administration," of the City's Code of Ordinances by amending Article X, entitled "Cooper City Procurement Code," and specifically amending Section

2-252, entitled “Purpose and Intent,” Section 2-253, entitled “Definitions,” Section 2-256, entitled “Methods of Source Selection”, Section 2-257, entitled “Small Purchase Procedures, and Section 2-258, entitled “Exclusions and Exceptions to Bid and Proposal Requirements,” Section 2-259, entitled “Bonds and security requirements,” and Section 2-261, entitled “Types of contracts and contract administration,” as follows:

**Sec. 2-252 Purpose and Intent**

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(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. The City Manager is authorized to take any and all action necessary to effectuate the processing and completion of any grant, gift or cooperative application.

**Sec. 2-253. Definitions**

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~~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.~~

**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~~\$20,000, shall be awarded through the use of a formal competitive process identified within this section.

(1) *Competitive sealed bidding.*

...

m. *Electronic Bidding.* Notwithstanding any provision in this section to the contrary, the City may utilize an electronic procurement process, including electronic bidding software, consistent with the requirements of Florida law.

**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 \$20,000 ~~the purchasing Category Three threshold as defined in the most current version of F.S. § 287.017, as amended.~~ All other expenditures less than \$20,000 shall require the approval of the City Manager, or the City Manager's designee.

...

(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.

EXPAND

\$0.00— <del>\$1,499.99</del> <u>\$4,999.99</u>	<u>Direct purchase by using department.</u>
<del>\$1,500.00</del> <u>\$5,000</u> — <del>\$94,999.99</del>	Minimum of three verbal, documented quotations required.
<del>\$5</del> <u>10,000.00</u> —\$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. The requirement to obtain quotations shall not apply if goods or services are procured using the pricing from a State contract, Broward County Contract, or a contract procured by any governmental agency within the State of Florida.

...

(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 \$20,000 ~~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. Unless otherwise provided in this subsection, any change orders which, in the aggregate, exceed the threshold amount set forth in subsection (b) shall be approved by the City Commission.

(3) Any change orders for a capital improvement project which has been budgeted through a previously approved, project-specific contingency shall not require further city commission approval.

(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.

**Sec. 2-258 Exclusions and exceptions to bid and 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 ~~may 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~~ \$20,000, 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.

## Sec. 2-259 Bond and security requirements

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### (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. The City, in its sole discretion and without setting any precedent, may reduce the threshold or eliminate the needs for the Performance and Payment Bonds if the construction cost is less than \$200,000.

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 ~~100-110~~ 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.

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

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(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. The City may enter into an agreement for goods or services utilizing a contract awarded by another governmental agency or not-for-profit entity by a formal competitive process. Such agreements may be renewed concurrently by the City for a renewal term not to exceed three (3) years without seeking Commission approval, provided that the terms and conditions remain acceptable to the City and the renewal is approved by the City Manager.

**SECTION 3: Amendments to Chapter 2.** The City Commission of the City of Cooper City hereby amends Chapter 2, entitled "Administration," of the City's Code of Ordinances by amending Article X, entitled "Cooper City Procurement Code," and specifically creating Section 2-270, to be entitled "Cone of Silence," as follows:

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## Sec. 2-270 Cone of Silence

- (1) Definitions: "Cone of Silence," as used in this section, means a prohibition on any communication regarding this Request for Proposal/Invitation to Bid/Proposal between:

  - (a) a potential vendor, service provider, Proposer, lobbyist, or consultant, and;
  - (b) the City Commissioners, City's professional staff including, but not limited to, the City Manager and his/her staff, any member of the City's selection or evaluation committee.
- (2) Restriction; Notice: A Cone of Silence shall be imposed upon each solicitation after its advertisement. At the time of imposition of the Cone of Silence, the City Manager or his/her designee shall provide for public notice of the Cone of Silence by posting a notice at City Hall. Additional notice thereof shall be provided to the affected departments, and to each City Commissioner. The City may include a statement disclosing the requirements of this section in any public solicitation for goods or services.
- (3) Termination of Cone of Silence: The Cone of Silence shall terminate at the beginning of the City Commission meeting (whether regular or special meeting) at which the City Manager makes a written recommendation to the City Commission for the award of the Contract. However, if the City Commission refers back to the City Manager or staff for further information, the Cone of Silence shall be re-imposed until such time as the Manager makes a subsequent written recommendation.
- (4) Exceptions to Applicability: The provisions of this section shall not apply to:

  - (a) Oral communications at pre-solicitation meetings;
  - (b) Oral presentations before selection or evaluation committees;
  - (c) Public presentations made to the City Commissioners during any duly noticed public meeting; Communications in writing at any time with any City employee, unless specifically prohibited by the applicable solicitation documents; in which case the Proposer shall file a copy of any written communication with the City Clerk. The City Clerk shall make copies available to any person upon request;



(d) Communications regarding a particular solicitation between a potential vendor, service provider, Proposer, lobbyist or consultant and the City's Purchasing Division or City employee designated responsible for administering the procurement process for such solicitation, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

(5) Penalties: Violation of this section by a particular Proposer shall render any award to said Proposer potentially void by the City Commission or City Manager. Any person who violates a provision of this section may be prohibited from serving on a City selection or evaluation committee. In addition to any other penalty provided herein, violation of any provision of this section by a City employee may subject said employee to disciplinary action.

(6) Interpretation: The City's Procurement Officer shall be responsible for responding to any questions concerning "Cone of Silence" compliance.

**SECTION 4:** It is the intention of the City Commission of the City of Cooper City that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Cooper City, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or such other word or phrase in order to accomplish such intention.

**SECTION 5:** All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 6:** If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given affect without the invalid provision or application, and to this end the provisions of this ordinance are to be severable.

**SECTION 7:** This Ordinance shall become effective upon passage and adoption.

**PASSED AND ADOPTED on First Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2023.**

**PASSED AND FINAL ADOPTION on Second Reading this \_\_ day of \_\_\_\_\_,  
2023.**

\_\_\_\_\_  
GREG ROSS  
Mayor

ATTEST:

\_\_\_\_\_  
TEDRA ALLEN  
City Clerk

**ROLL CALL**  
Mayor Ross \_\_\_\_\_  
Commissioner Green \_\_\_\_\_  
Commissioner Shrouder \_\_\_\_\_  
Commissioner Katzman \_\_\_\_\_  
Commissioner Mallozzi \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
JACOB G. HOROWITZ  
City Attorney