

ORDINANCE NUMBER 24-39

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF EUSTIS, LAKE COUNTY, FLORIDA; DELETING AND REPLACING, IN ITS ENTIRETY, CHAPTER 2, ARTICLE VI, DIVISION 2 PROCUREMENT PROCEDURES OF THE CODE OF ORDINANCES FOR THE CITY OF EUSTIS; REPEALING ANY AND ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; AN EFFECTIVE DATE; AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Eustis has not updated its procurement policies in several years and modifications are warranted; and

WHEREAS, the City Commission finds it in the best interest of the City requiring all commodities, services, and construction that exceed \$100,000 to be brought to Commission for approval; and

WHEREAS, the City Commission finds it in the best interest of the City to modify the small and large procurement thresholds and amend the City Manager's approval authority; and

WHEREAS, the City Commission finds it in the best interest of the City to amend its procurement policies.

NOW, THEREFORE, THE COMMISSION OF THE CITY OF EUSTIS HEREBY ORDAINS:

Section 1. Chapter 2, Article VI, Division 2 of the Code of Ordinances for the City of Eustis is deleted in its entirety and replaced with Exhibit "A" attached hereto.

Section 2. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. The City Commission of the City of Eustis intends that the provisions of this Ordinance shall become and be made part of the City of Eustis Code of Ordinances and that the sections of this Ordinance may be re-numbered or re-lettered and the word "Ordinance" may be changed to "Section", "Article" or such other appropriate word or phrase to accomplish such intentions.

Section 5. This Ordinance shall become effective immediately upon passing.

Section 6. This Ordinance shall be published in accordance with the requirements of law.

PASSED, ORDAINED AND APPROVED in Regular Session of the City Commission of the City of Eustis, Lake County, Florida, this 12th day of December 2024.

**CITY COMMISSION OF THE
CITY OF EUSTIS, FLORIDA**

Michael L. Holland
Mayor/Commissioner

ATTEST:

Christine Halloran, City Clerk

CITY OF EUSTIS CERTIFICATION

**STATE OF FLORIDA
COUNTY OF LAKE**

The foregoing instrument was acknowledged before me, by means of physical presence, this 12th day of December 2024, by Michael L. Holland, Mayor, and Christine Halloran, City Clerk, who are personally known to me.

Notary Public - State of Florida
My Commission Expires:
Notary Serial No:

CITY ATTORNEY'S OFFICE

This document is approved as to form and legal content for the use and reliance of the City Commission of the City of Eustis, Florida.

City Attorney's Office

Date

CERTIFICATE OF POSTING

The foregoing Ordinance Number 24-39 is hereby approved, and I certify that I published the same by posting one copy hereof at City Hall, one copy hereof at the Eustis Memorial Library, and one copy hereof at the Eustis Parks and Recreation Office, all within the corporate limits of the City of Eustis, Lake County, Florida.

Christine Halloran, City Clerk

EXHIBIT A

ARTICLE VI. PURCHASES AND CONTRACTS*

***Cross References: Any ordinance approving, authorizing or otherwise relating to any contract, agreement, lease, deed or other instrument saved from repeal, § 1-9(5); financial matters, § 2-161 et seq.**

DIVISION 1. GENERALLY Secs. 2-311--2-330. Reserved.

DIVISION 2. PROCUREMENT PROCEDURES*

*Editor's note: The sections of this division are derived from former section 2-311 and were renumbered as set forth herein during the 2006 republication of this Code.

Sec. 2-331. Authority.

The provisions of this division are based upon the authority granted to the City Commission in F.S. Chapter 125 and the Charter of the City of Eustis, as amended, April, 1994. (Code 1999, § 2-31 I (a)(1); Ord. No. 02-74, § 1(a)(1), 10-3-2002)

Sec. 2-332. Requirement of good faith.

The provisions of this division require all parties involved in the development, performance, or administration of purchasing to act in good faith. (Code 1999, § 2-31 I (a)(2); Ord. No. 02-74, § 1(a)(2), 10-3-2002)

Sec. 2-333. Supplementary general principles of law applicable.

The city shall comply with all applicable federal and state laws. The principles of law and equity, including the Uniform Commercial Code of this state, laws relative to ethics, laws relative to contract, agency, fraud, misrepresentation, duress, or bankruptcy shall supplement the provisions of this division.

Sec. 2-334. Application.

The provisions of this division shall apply to every purchase/procurement by the city and the departments under the control of the city, regardless of the fund source, including state and federal assistance monies, except as otherwise specified in this division. (Code 1999, § 2-31 I (a)(4); Ord. No. 02-74, § 1(a)(4), 10-3-2002)

Sec. 2-335. Organization.

(a) *Purchasing division.* Purchases for requirements and operation of city departments shall be made via departmental requisition or other method that might be approved by the purchasing policies and procedures authorized under this division. The purchasing division, under the supervision of the Finance Director, shall be the agency through which the city will conduct and/or monitor all of its procurement and contracting for all supplies, material, equipment, contractual services, professional and consultant services, construction and/or combination of goods and services. Each field purchase order, requisition or other purchasing method authorized by the purchasing policies and procedures, shall be signed by the director of the requesting department and shall be properly budgeted prior to procurement.

(b) *Principal officer.* Subject to the provisions of this division, the Finance Director shall be responsible for the direction of the purchasing division, who shall be appointed by and under the direction of the City Manager in accordance with the city's Charter, rules and regulations.

(c) *Duties of Finance Director.* In addition to any other powers and duties conferred by this division, the Finance Director under the direction of the City Manager, shall:

- (1) Propose the appropriate policies and procedures for the implementation of these rules and establish the appropriate internal controls necessary that will allow the safeguard to city resources.
- (2) Provide operational support to users in accomplishing their respective missions, goals and objectives with respect to the purchase of goods and services;
- (3) Oversee the procurement function for the city;
- (4) See that the procurement process is conducted in an open, competitive, fair and ethical manner;
- (5) Have the authority to waive irregularities;
- (6) Have the authority to debar a business or vendor from receiving any business from the city for a stated period of time for cause or violation of any other applicable laws, rules or regulations;
- (7) Have the authority to resolve protests;
- (8) Have the authority to resolve contract and breach of contract disputes per limitations of section 2-343;
- (9) Have the authority to require deposits, bonds or other security with bids to ensure the awarded bidder will, in fact, enter into a contract with the city and within the stipulated time;
- (10) Have the authority to require payment, performance, material and maintenance bonds and/or other types of surety or guaranty agreements from a contractor to protect the interests of the city;
- (11) Have the authority to join with other units of government in a cooperative procurement venture when the best interest of the city would be served;
- (12) Have the authority to contract to provide procurement or procurement related services to other governmental entities and collect fees for such services.

(d) *Delegation of authority.* The Finance Director, with the consent of the City Manager, may delegate rights, power and authority to any designee, provided such designee shall comply with all applicable laws, rules and procedures established by the city. The Finance Director shall be responsible for the action of designees. (Code 1999, § 2-31 I (b); Ord. No. 02-74, § II, 10-3-2002)

Sec. 2-336. Written procedures.

The City Manager and the Finance Director are hereby authorized to adopt and maintain such written policies and procedures as may be necessary for the implementation of this section. Such regulations shall become effective when approved in writing by the City Manager. Copies of the policies and procedures shall be on file in the city clerk's office and the Finance Director's office and shall be made available for public inspection during normal business hours.

(Code 1999, § 2-31 I (c); Ord. No. 02-74, § III, 10-3-2002)

Sec. 2-337. Procurement thresholds.

(a) *Small purchases* Total Value of \$5,000.00 or less. Department directors shall be responsible and accountable for such procurements made under this authority, maintaining justification and documentation on each procurement in accordance with city regulations.

The City Manager is authorized to extend this delegation of authority to department directors above the Small Purchases threshold if he/she deems necessary, as long as all purchasing rules, regulations and procedures have been followed.

(b) *Informal invitation process.* All procurements of commodities, services and construction with a total value between \$5,000.01 and \$10,000.00 may be made by informal quotation, soliciting price quotations, with evidence of quotes, from a minimum of three vendors, excluding purchases made from state contract, other governmental cooperative bids and emergency purchases.

(c) *Written quotation process.* When the total estimated value is between \$10,000.01 and \$100,000.00, all commodities, services and construction shall be procured obtaining three written quotations wherever possible, excluding exempt purchases, which include those made from state contracts, other governmental cooperative bids and emergency purchases. The City Manager is authorized to approve the purchase of goods and services in the amount of \$100,000.00 or less, unless otherwise prohibited by law.

(d) *Formal invitation process.* Except as otherwise provided in this division, when the total estimated cost exceeds \$100,000.00, all commodities, services and construction shall be procured through a formal advertised sealed bid or request for proposal process, excluding exempt purchases, which include those made from state contracts, other governmental cooperative bids and emergency purchases. Public notice shall be given a reasonable time prior to the closing date and time specified in the invitation to bid. Bids shall be publicly opened and read aloud. Bids received after the advertised time and date of official opening shall not be considered for award.

(Code 1999, § 2-31 I (d); Ord. No. 02-74, § IV, 10-3-2002)

Sec. 2-338. Exempt procurements.

The following types of procurements may be made without observing the formal invitation process, provided that justification and documentation are maintained on each procurement in accordance with city written procurement rules and regulations.

- (1) Sole source is defined as:
 - a. A Commodity or service available from only one supplier; or
 - b. A commodity where compatibility of equipment, accessories, replacement parts permit only one reasonable source of supply.
- (2) A commodity or service available from an established state contract, PRIDE or GSA or

another governmental agency contract;

- (3) Public utility services including but not limited to electric, cable, internet and telephone;
 - (4) Legal services, including attorney, expert witness, arbitrator or mediator services;
 - (5) The procurement of real property;
 - (6) Dues or membership in trade or professional associations, printed copyright material, periodicals, postage, seminars, tuition, registration and training;
 - (7) Used equipment;
 - (8) Recurring expenses that are time sensitive in nature: pension, utility, fuel, purchasing card, insurance payments, etc.
 - (9) Monthly, quarterly, or annual note payments made on a previously approved debt;
 - (10) Previously approved payments on continuing contracts including but not limited to refuse/recycling, engineering, architectural and other consulting for non-specific services;
 - (11) On line or physical bidding for equipment.
- (Code 1999, § 2-311 (e), Ord. No. 02-74 § V, 10-3-2002)

Sec. 2-339. Professional services.

The procurement of professional services and design build projects as defined by F.S. ch. 287.055 shall be conducted in accordance with F.S. ch. 287.055 or as otherwise required by state law.

(Code 1999, § 2-311(f); Ord. No. 02-74, § VI, 10-3-2002)

Sec. 2-340. Emergency procurement.

Notwithstanding any other provision of this division, the City Manager may make emergency purchases that temporarily exceed a department's budget appropriations when it is absolutely necessary and in the best interest of the City. In cases where the emergency purchase exceeds \$100,000, it will be reported immediately to each City Commissioner and a budget amendment shall be submitted for approval at the next regularly scheduled commission meeting.

This section also applies when a Declaration of Emergency as provided for in Florida Statutes Chapter 252 is in effect. The City Manager, or his designee, has authority to expend funds as may be required under the emergency situation. This includes the ability to expend or encumber those funds identified as Emergency Reserves.

(Code 1999, § 2-311 (g); Ord. No. 02-74, § VII, 10-3-2002)

Sec. 2-341. Negotiation with bidders.

When the best offer in response to an invitation exceeds available funds, the Finance Director, or designee, may negotiate with the lowest bidder(s) to reduce the scope of work, to provide value engineering or eliminate items specified in the invitation in order to bring the offer within the amount of available funds. In the event no response is received to an invitation, the Finance Director, or designee, may negotiate with any vendor that can provide the commodity, service or construction. The award of the contract shall be in accordance with section 2-342.

(Code 1999, § 2-311 (h); Ord. No. 02-74, § VIII, 10-3-2002)

Sec. 2-342. Award of contracts.

(a) *Reservation.* The city reserves the right to accept or reject any and all offers and/or to make award to the best value bidder who meets the requirements and criteria set forth in the invitation and whose award will, in the opinion of the city, be in the best interest of and most advantageous to the city.

(b) *Tie bids.* On bids where 2 or more bidders submit the same bid, the City shall give preference to the local vendor with the closest physical address to Eustis City Hall who maintains written policies for a drug-free workplace. If after preference is given, each tied bidder still has equal standing, the City may choose either bidder in its sole and absolute discretion by any legal means.

(c) *Award thresholds.* All contracts shall be awarded providing the best value to the city in accordance with the following:

(1) If the total value of a contract is \$5,000.00 or less, the contract may be awarded by the Department Director.

(2) Awards for capital equipment approved in the budget that come in under the budget amount may be awarded by the Finance Director or designee.

(3) If the total value of a contract is less than \$100,000.00, the contract may be awarded by the City Manager, Finance Director or designee.

(4) Any contract with a total value of \$100,000.00 or greater shall be awarded by the City Commission, or the commission may delegate to the City Manager the authority to award the contract.

(5) The City Commission may authorize the waiver of procurement procedures upon the recommendation of the City Manager, or designee, when 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, under the circumstances and only after a good faith review of all available sources and negotiation as to price, delivery and terms of said good or service. The formal approval for the pre-approved good or service will be brought before the Commission as soon as possible. (Code 1999, § 2-31 I (i); Ord. No. 02-74, § IX, 10-3-2002)

Sec. 2-343. Contract disputes.

The City Manager or the Finance Director, or designee may resolve contract disputes with the concurrence of the city attorney where the monetary value does not exceed \$100,000.00. Contract disputes over \$100,000.00 shall require approval of the City Commission. (Code 1999, § 2-31 I (j); Ord. No. 02-74, § X, 10-3-2002)

Sec. 2-344. Contract change orders.

(a) The department director may approve change orders on procurements where the total of the expenditure including the change order does not exceed \$5,000.00.

(b) A contract change order that changes only the period of performance of the contract and does not increase the cost to the city may be approved by the Finance Director or designee.

(c) The City Manager and the Finance Director or designee shall have the authority to approve all contract change orders where the total of the contract including all previous change orders does not exceed \$100,000.00.

(d) For contracts in excess of \$100,000.00, the City Manager shall have the authority to approve all change orders where the total of the contract change order does not exceed, either

solely or cumulatively, 25 percent of the original purchase amount where funds are available, unless the change order exceeds \$100,000.00.

(e) The Finance Director or designee shall have the authority to approve a contract change order for any contract where the final cost is less than the awarded amount.

(f) Change orders over \$100,000.00 and any change orders requiring appropriation of funds from contingency shall require City Commission approval.

(Code 1999, § 2-311 (k); Ord. No. 02-74, § XI, 10-3-2002)

Sec. 2-345 Performance Incentives.

When there is a benefit to be derived by the City to have contracted services and projects completed before the contracted deadline, performance incentives may be used.

Sec. 2- 346. Unauthorized procurements.

Except as provided in this division, it shall be unlawful for any city officer or employee to procure any commodity or service or to make any contract within the purview of this division other than through the established policies and procedures. Any contract made contrary to the provisions herein shall not be approved and the city shall not be bound thereby.

(Code 1999, § 2-311(1); Ord. No. 02-74, § XII, 10-3-2002)

Sec. 2- 347. Conflicts of interest.

Neither the Finance Director nor any member of the purchasing staff, nor any other employee of the city engaged in the procurement of goods and/or services for the city shall have a financial interest or any personal beneficial interest, directly or indirectly, in any purchase or contract for any supplies, materials, equipment or services used by or furnished to the city. Such conflict of interest may include, but not be limited to, an individual ownership in whole or in part of a firm seeking to contract with the city.

(Code 1999, § 2-311 (m); Ord. No. 02-74, § XIII, 10-3-2002)

Sec. 2- 348. Equal opportunity.

The city shall use its best efforts to ensure that minority businesses shall have an equitable opportunity to participate in the city's procurement process and that no business shall be excluded from participation in, denied benefits of, or otherwise discriminated against in connection with the award and performance of any contracts with the city on the grounds of race, creed, color, national origin, gender or physical impairment.

(Code 1999, § 2-311 (n); Ord. No. 02-74, § XIV, 10-3-2002)

Sec. 2-348. Performance Incentives.

The Purchasing Department may implement performance incentives for projects which are completed prior to a specified deadline if in the City's best interests.

Sec. 2-349. Bid Protests.

(a) Any actual or prospective bidder/proposer who is allegedly aggrieved in connection with the issuance of a bid/proposal package or pending an award of a contract may protest to the City Manager.

(b) Posting. The Purchasing Department shall post the formal award on the departmental website no less than three full business days after the decision to recommend the award to the bidder/proposer is made.

(c) Requirements to Protest.

(1) If the protest relates to the content of the bid/proposal package, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after issuance of the bid/proposal package.

(2) If the protest relates to the award of a contract exceeding \$50,000 or any contract for the procurement of professional services or design build projects, as defined by F.S. ch. 287.055 a formal written protest must be filed no later than 5 :00 p.m. on the fifth business day after posting of either the contract award recommendation or the contract award itself. The formal written protest shall identify the protesting party and the solicitation involved; include a clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances or other legal authorities which the protesting party deems applicable to such grounds; and specifically request the relief to which the protesting party deems itself entitled by application of such authorities to such grounds.

(3) A formal written protest is considered filed with the City when the City Manager receives it. Accordingly, a protest is not timely filed unless it is received within the time specified above. Failure to file a formal written protest within the time period specified shall constitute a waiver of the right to protest and result in relinquishment of all rights to protest by the bidder/proposer.

(d) Sole remedy. These procedures shall be the sole remedy for challenging an award of bid. Bidder/proposers are prohibited from attempts to influence, persuade, or promote a bid protest through any other channels or means.

(e) Authority to Resolve. The City Manager or his designee, with the assistance of the City Attorney, shall resolve the protest in a fair and equitable manner and shall render a written decision to the protestant no later than 5:00 p.m. on the fifth business day after the filing thereof.

(f) Review of decision.

(1) The protesting party may request a review of the City Manager's or his designee's decision by the City Commission by delivering a written request for review of the decision to the City Manager by 5:00p.m. on the fifth business day after the date of the written decision and by tendering a \$500.00 review fee to the City. The written notice shall include any written or physical materials, objects, statements and arguments, which the bidder/proposer deems relevant to the issues raised in the request for review.

(2) Should the City Commission determine that the solicitation or award is in violation of law or the regulations or internal procedures of the purchasing department, the City Manager shall immediately cancel or revise the solicitation or award as deemed appropriate.

(3) Should the City Commission determine that the solicitation or award should be upheld, the decision shall be final and conclusive pursuant to Florida law.