

ORDINANCE 2023-08

AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA, AMENDING CERTAIN SECTIONS OF ARTICLE V – PURCHASE AND CONTRACTS OF CHAPTER 2 – ADMINISTRATION OF THE CODE OF ORDINANCES OF THE CITY OF MADEIRA BEACH TO PROVIDE FOR AN INCREASE OF THE \$15,000.00 SEALED BIDS THRESHOLD TO \$30,000.00; TO PROVIDE THAT NOTICE TO BIDDERS SHALL BE PUBLISHED ON THE CITY’S WEBSITE; TO PROVIDE THAT NOTICE FOR ALL BIDS MAY BE GIVEN BY POSTING A **REQUEST FOR PROPOSALS** ON A WEB-BASED NOTIFICATION AND DELIVERY SYSTEM USED FOR PUBLIC SOLICITATIONS; TO PROVIDE FOR THE DELETION OF PRINTED ADVERTISEMENT, POSTING OR PUBLICATION IN THAT PORTION OF A NEWSPAPER NORMALLY GIVEN TO LEGAL ADVERTISEMENTS AND FOR THE REQUIREMENT THAT ALL BIDS, WHETHER POSTED OR ADVERTISED, BEAR THE TITLE “**REQUEST FOR BIDS**;” TO PROVIDE FOR DELETION OF THE REQUIREMENTS OF A PENAL BOND, A PERFORMANCE BOND AND THAT ALL BIDDERS SHALL POSSESS A MUNICIPAL OR COUNTY OCCUPATIONAL LICENSE; TO ADDRESS NON-RESPONSIVE BIDS; TO ADDRESS THE AMOUNT OF A BID BOND; TO PROVIDE REVISIONS REGARDING THE ACCEPTANCE OF BIDS; TO PROVIDE REVISIONS REGARDING THE EVALUATION OF BIDDER RESPONSIBILITY; TO PROVIDE THAT CHANGE ORDERS SHALL BE APPROVED BY THE CITY MANAGER; TO PROVIDE FOR AN INCREASE TO THE DOLLAR THRESHOLDS IN THE REGULATIONS GOVERNING THE PURCHASE AND SALES CRITERIA; ~~CREATING SECTION 2-194 TO PROVIDE FOR CONTRACTS AND ENGAGEMENTS FOR PERSONAL AND PROFESSIONAL SERVICES OF ATTORNEYS AT LAW, FINANCIAL CONSULTANTS, EXPERTS AND OTHER PERSONAL AND PROFESSIONALS SERVICES WITHOUT COMPETITIVE BIDDING; REPEALING ORDINANCE 2021-03; AND PROVIDING FOR AN EFFECTIVE DATE~~ HEREOF.

WHEREAS, the Director of Finance has reviewed the current provisions of Article V - Purchase and Contracts of Chapter 2 – Administration of the Code of Ordinances and has recommended that certain revisions be updated; and

WHEREAS, the recommendations of the Director of Finance have been found meritorious by the Board of Commissioners; and

WHEREAS, the Board of Commissioners has received input from the public at two public hearings.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Section 2-182 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-182. - When bids required.

The city shall be required to advertise and seek sealed bids from bidders for all contracts wherein the city shall be obligated to pay a sum in excess of \$30,000.00. The city shall not be required to seek bids for contracts for which bids are not required under general law (Florida Statutes) or the ordinances of the city. Further, this article shall not apply to the purchase of items or goods and services at a bona fide public action when such purchases have the prior approval of the board of commissioners.

Section 2. That Section 2-183 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-183. - Notice of bidding.

- (a) Whenever bids are being sought as provided by this article, the bidding authority shall be required to give notice to bidders in the manner set forth in this section.
- (b) Notice may be given by advertisement, in which case the bidding authority will cause to be published a notice conforming to the requirements of this article on the City's website. Such notice shall be published at least one time at least ten days prior to the opening of the bids.
- (c) Notice may be given by posting a request for proposals on a web-based notification and delivery system used for public solicitations.

Section 3. That Section 2-184 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-184. - Requirements of notice.

Any notice given by advertisement or by posting shall conform to the requirements of this section.

- (1) All notices, whether posted or advertised, shall contain a statement of the purpose for which bids are being sought. Such statement shall be

sufficiently particular so as to give interested bidders adequate notice of the purpose for which bids are being sought.

- (2) All notices, whether posted or advertised, shall also state:
 - a. That bidding shall be by sealed bid;
 - b. That plans, specifications and bidding forms may be obtained and the location where they may be obtained;
 - c. The date and time when bidding shall be closed;
 - d. The location where bids shall be submitted;
 - e. The date, time and location where bids shall be opened;
 - f. That all bids submitted will be read publicly.
- (3) In addition to any other matter set forth in any notice by advertising or posting, every notice shall contain the following statement:

"The city reserves the right to reject any or all bids, to waive any technical defects, and to accept any bid which the bidding authority believes to be in the best interest of the city. This request for bids and all bids submitted are subject to the city ordinances."

Section 4. That Section 2-186 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-186. - Plans, specifications and descriptions.

- (a) It shall be the duty of the bidding authority to prepare plans, specifications, and descriptions of the work to be done under the contract for which bids are being sought. Such plans shall be sufficiently definite to afford a basis for fair competitive bidding on a common standard.
- (b) The bidding authority shall have the discretion to provide alternate plans, specifications and descriptions for work to be done under the same contract for which bids are being sought.
- (c) The bidding authority shall have the discretion to require that bidders submit bids based upon proposals by the bidder for alternate plans, specifications, materials, or methods. In this case, the bidding authority shall prepare guidelines setting forth the object for which bids are being sought, any standards or criteria which must be observed and all other things which are necessary so that bidders can prepare proposals for alternate plans, specifications, materials, or methods.
- (d) All plans, specifications, descriptions and guidelines shall include a section dealing with all terms, conditions and provisions which the city shall require to be included in any contract awarded a successful bidder. Such section will include, where applicable, any provisions dealing with liquidated damages,

actual damages, penalties, time deadlines, indemnification, liability, method of payment and security for work.

Section 5. That Section 2-187 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-187. - Manner in which bids shall be submitted.

- (a) All bids submitted shall be sufficiently definite to allow the bidding authority to make a fair comparison between bids submitted.
- (b) Where the bidding authority has prescribed the manner in which work will be done, including the materials and methods to be used and the standards by which such work will be done, all bids shall indicate that work shall be performed in the prescribed manner.
- (c) Where the bidding authority indicates that the bidder is to submit proposals for alternate plans, specifications, materials and methods, or where the bidding authority does not specify in its plans and specifications the manner in which work is to be done or the methods and materials to be used, all bids submitted shall clearly indicate the manner in which work shall be done, including, where applicable, the materials and methods to be used.
- (d) Bids which are found to be non-responsive to the requirements set forth in the invitation to bid shall not be eligible for award. Bidders found to be not responsible when evaluated against the minimum qualifications and background information required to be provided in the bid shall not be eligible for award. The City reserves the sole discretion to waive minor irregularities in a bid to the extent allowed by law.

Section 6. That Section 2-188 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-188. - Security.

- (a) The bidding authority shall have the discretion to require that all bids be submitted under a bid bond and to determine the amount of such bond. However, the bidding authority must make the determination that a bid bond is required prior to giving notice by advertisement or posting and inform all bidders of the requirement. Where the bidding authority determines that a bid bond is required, the bond shall be required of all bidders on a particular contract. The amount of a bid bond shall not exceed 5% of the estimated contract value or, if no value has been assigned, to the amount budgeted for the acquisition.

- (b) The bidding authority is expressly disallowed from altering or modifying the terms of any bid for the purpose of providing additional monies in order to aid a bidder in obtaining any security as required by this article. This subsection shall not be construed as preventing the city or the bidding authority from doing all other things necessary to satisfy the requirements of any surety.

Section 7. That Section 2-189 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-189. - Qualification of bidders.

- (a) Where state or county law provides for the licensing or certification of any person or firm engaged in the business of the bidder and such licensing or certification is related to the capacity in which a bidder submits a bid under this article, all bidders shall present proof of such licensing or certification at the time of the award. All bidders shall be licensed or certified as provided by law.
- (b) The bidding authority shall have the discretion to require that bidders submit financial and other records with their bids in order to aid the bidding authority in awarding the contract. Moreover, the bidding authority shall have the discretion to require that bidders submit documents or other materials showing the bidder's qualifications to perform under the contract, including but not limited to, documents demonstrating the bidder's degree of expertise, reputation for performance, and possession of facilities.

Section 8. That Section 2-190 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-190. - Nature of the bid.

(a) Notwithstanding a bidder's failure to sign any form contract document contained in an invitation to bid, a bidder's submission of a bid shall constitute an offer inviting and authorizing acceptance by the city in the manner provided in this article. In no way shall any action by the city or the bidding authority be deemed an offer. No contractual relationship between the city or the bidding authority and any bidder shall arise until the bid is accepted in the manner provided in this article.

(b) Unless the invitation to bid provides that award will be made to the lowest responsive, responsible bidder, the city shall not be obligated to award a contract to the lowest bidder. However, if award will be based on factors other than or in addition to price, those factors shall be set forth in the invitation to bid. The city reserves the right to waive any defects in the bid.

Section 9. That Section 2-191 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-191. - Award of the contract.

- (a) When evaluating a bidder's responsibility, the city shall consider the quality of the bidder's work on other similar projects, the bidder's expertise and experience related to the project's scope of work, the bidder's reputation for performance as evaluated by the bidder's listed references and other information the city independently acquires, the bidder's financial, legal and technical abilities to perform, the bidder's ability to timely fulfill its obligations under the contract in light of other current or awarded work, whether the bidder or its officers or key personnel to be performing the work have been indicted or convicted of bribery, extortion, collusion, fraud, or any other crime which, in the city's sole discretion, is reasonably related to the bidder's contracting practices, whether the bidder has been suspended or debarred by the city or any other governmental agency, the bidder's historical performance of prior work for the city, as well as any other criteria or minimum qualifications set forth in the invitation to bid.
- (b) Notwithstanding any term in an invitation to bid or any action of any city official to the contrary (including a staff recommendation of a bidder as the lowest responsive, responsible bidder, the issuance of a notice of intent to award, or a vote by the ~~city commission~~ **board of commissioners** to authorize award), only the execution of a contract (including the issuance of a purchase order) by an authorized city official shall constitute acceptance of a bid and the formation of a contract.

Section 10. That Section 2-192 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-192. - Modification of the contract.

- (a) In no event shall plans, specifications, descriptions, guidelines or the proposed contract be modified after notice by advertisement or posting and before the award of the contract.
- (b) After the contract has been awarded, the city may, in its discretion, supplement or modify the contract as awarded subject, however, to the following requirements:
 - (1) A contract may be modified by supplemental agreement or change order only. Supplemental agreements shall be reduced to written contract form,

approved by the bidder's surety (if applicable) and executed by the city and the bidder in the same manner that the original contract was executed. Change orders shall be in writing and approved by the City Manager, consulting engineer, or other authorized city official.

- (2) Supplemental agreements may be entered into only for the purpose of clarifying the plans or specifications of a contract, providing for unforeseen work, changes or alterations in plans which could not reasonably have been contemplated or foreseen in the original plans, changing the limits of construction to meet field conditions, or to make the project functionally operational in accordance with the intent of the original contract.
- (3) Written change orders may be issued by the city or the bidding authority and accepted by the bidder in order to make minor changes in the plans, specifications, or quantities of work, within the scope of the contract, but in no event shall such change orders extend the physical limits of the work.

Section 11. That Section 2-193 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended to read as follows:

Sec. 2-193. - Regulations governing the purchasing and sales criteria of the city manager and department heads.

The following regulations regarding the purchasing of goods and services are hereby established:

- (1) Items with a cost of less than \$5,000.00 may be purchased by telephone call or other contact between the city manager, department head, or his/her designee and supplier, based on the buyer's experience and knowledge.
- (2) Items with a cost from \$5,000.00 to \$30,000.00 will be purchased by the city manager, department head, or his/her designee requesting quotations via a formal sales quote or similar proposal from the supplier. After a minimum of three (3) quotations are received. Purchase orders will be issued to the vendor who has quoted the most acceptable products or services at the lowest cost.

Any expenditure amount as identified in item number (2) above requires commission notification on a bi-weekly basis via e-mail. As well as, a line by line accounting of these expenditures be included in the city manager's monthly report.

- (3) Items with a cost in excess of \$30,000.00 shall be competitively bid as required by section 2-182 of this article, except under the following circumstances:

- a. When such proposed expenditure may be consummated through use of state, county, district or other municipal contract lists, such as piggybacking or cooperative purchase agreements, the competitive process shall be waived. To comply with this exception, the contract upon which the city seeks to piggyback must contain language which authorizes subsequent parties to piggyback on it and must be for the same prices and material conditions as are contained in the original contract. Any cooperative purchasing agreement relied upon to support a purchase without competition must provide that the city is a party to the agreement, and demonstrate that the lead agency engaged in a competitive solicitation on behalf of the agreement's parties.
- b. Where the commodities or contractual services are available only from a single source. When the city believes that desired commodities or contractual services are available only from a single source, the city manager or designee shall electronically post a description of the commodities or contractual services sought for a period of at least five business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. Posting shall not be required for desired commodities or contractual services below \$5,000.00. If it is determined in writing by the city manager or designee, after reviewing all relevant information including information received from prospective vendors as a result of a required posting, that the commodities or contractual services are in fact available only from a single source, the city is authorized to enter a sole source purchase contract. In any case where the city seeks to purchase materials for the construction, modification, alteration, or repair of any city-owned facility from a sole source, the city commission board of commissioners must first make the written findings required by Florida Statutes § 255.04.
- ~~c. Personal and professional service contracts as provided for in section 2-194 of this article. (Delete (c.))~~
- d. Emergency purchases, which shall be awarded as provided in subsection (9).
- e. Purchases of used equipment, including equipment acquired at a lawfully-conducted public auction.
- f. Insurance policies, utilities, and real property.
- g. Procurements where the city attorney confirms that the use of a different vendor would void an existing warranty the city desires to maintain.
- h. Purchases made pursuant to a state or federal grant contract where the terms of the contract require the city to use a procurement method inconsistent with this code.

- (4) The city manager will secure the board of commissioners approval for the purchases which have not previously been approved by the commission or when such purchases exceed \$30,000.00.
- (5) The board of commissioners, upon recommendation of the city manager, may waive the above procedures by four-fifths vote whenever the strict imposition of these procedures would not be in the best interests of the city. Such waiver shall be by motion and shall occur at a public meeting. All rental of city-owned property, whether personal or real property, shall be by motion of the board of commissioners and shall be done at a public meeting.
- (6) All contracts for construction of any project by the city shall be in accordance with the procedures set forth above for the purchase of other property, unless other procedures are required by state statute.
- (7) The city may either participate in, sponsor, conduct or administer a cooperative purchasing program involving the combining of requirements of two or more public entities to obtain the advantages of volume purchases, a reduction in expenses, or other public benefits. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between the public entities and open-ended state or county contracts which are available to political subdivisions. This cooperative purchasing subsection shall be independent of and in lieu of subsections (1) and (2).
- (8) The city manager, as purchasing agent of the city, may designate a representative of the city who shall be authorized to issue purchase orders for approved expenditures on his/her behalf.
- (9) When a state of emergency is declared in Pinellas County in the event of, or in anticipation of, a natural or manmade disaster including, but not limited to, a hurricane, tornado, flood, fire, riot or other act of God, or an act of domestic terrorism, the city manager shall have the authority to suspend all normal purchasing policies and to waive the procedures and formalities otherwise required by law or ordinance pertaining to:
 - a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety and welfare of the community;
 - b. Entering into contracts;
 - c. Incurring obligations;
 - d. Employment of permanent and temporary workers;
 - e. Utilization of volunteer workers;
 - f. Rental of equipment;
 - g. Acquisition and distribution, with or without compensation, of supplies, materials and facilities;
 - h. Appropriation and expenditure of public funds.

Section 12. ~~That Section 2-194 of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby created and shall read as follows:~~**Sec. 2-194. -- Personal and professional services.**

~~— Contracts and engagement of personal and professional services may be obtained and entered into by the city commission board of commissioners without competitive bidding. The fixing and payment of salaries to city employees and contracts for the services of attorneys at law, financial consultants, experts and other personal and professional services shall not be subject to the requirement for competitive bids where doing so does not conflict with state or federal law. Notwithstanding the foregoing, where the city seeks to acquire architectural, engineering, landscape architecture, or registered surveying and mapping services, it shall comply with the requirements of Florida Statutes § 287.055. External auditors shall be retained pursuant to the procedures set forth in Florida Statutes § 218.391. External auditors shall be retained pursuant to the procedures set forth in Florida Statutes § 218.391. (Strike Section 12. and entire paragraph, titled Sec. 2-194.)~~

Section 13. That Ordinance 2021-03 is hereby repealed in its entirety.

Section 14. This Ordinance shall be in full force and effect from and after its adoption and approval in the manner approved by law.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, THIS _____ day of _____, 2023.

John B. Hendricks, Mayor

ATTEST:

Clara VanBlargan, MMC, MSM, City Clerk

APPROVED AS TO FORM:

Thomas J. Trask, City Attorney