

Purchasing Policy City of Edgewater, Florida



February 6, 2023

Resolution No. 2023-R-05

FOREWORD

The Finance Department prepared this "Purchasing Manual" to serve as the basis for purchasing policies and procedures for the City of Edgewater.

The City Council of Edgewater, Florida, recognizes that some centralized purchasing is a necessary function of effective government and declares it shall be the responsibility of the Finance Department Director to consider opportunities to centralize some purchases of supplies, equipment, and services for various functions within the City.

The purchasing function involves the procurement of materials, supplies, equipment, and services at best value, consistent with the quality needed to meet the required standards established and approved by the Edgewater City Council. Our goal is the promotion of the best interest of the City of Edgewater through intelligent action and fair dealings, resulting in obtaining maximum savings for the City.

Rules and regulations are necessary for the proper operation of the purchasing function and it is essential all who are involved in the purchasing operation be well informed. This manual was developed to aid all employees, volunteers and Board Trustees directly or indirectly associated with the function of purchasing.

All City Departments and Boards shall comply with this Purchasing Policy. Florida Statutes will prevail for all Items not expressly covered within this Purchasing Policy. All individuals required to submit a statement of financial interest with the Supervisor of Elections will do so in accordance with the requirements of the State of Florida.

The objectives of the Finance Department are as follows:

1. To deal fairly and equitably with all vendors wishing to do business with the City of Edgewater.
2. Provide professional procurement services for all our customers within the City.
3. Assure adherence to all laws, regulations, and procedures related to City procurement.
4. Maximize competition for all procurements of the City.
5. Obtain maximum savings through innovative buying and application of value analysis techniques.
6. Purchase goods and services at the best value if not lowest price, consistent with quality performance, and delivery requirements from capable vendors meeting the City's requirements.

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CODE OF ETHICS

The Finance Department of the City of Edgewater embraces and subscribes to the professional standards of the Code of Ethics of the National Institute for Governmental Purchasing.

Those professional standards are:

- Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.
- Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.
- Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
- Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
- Believes that members of the Institute and its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.
- Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.
- Resists encroachment on control of personnel in order to preserve integrity as a professional manager.
- Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.
- Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.

The NIGP Global Best Practices for Ethical Procurement are hereby incorporated by reference (Exhibit "A")

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SECTION I REQUISITION

PURPOSE: The City of Edgewater currently utilizes the Central Square - Naviline purchasing and inventory module for on-line processing. Approved requisitions signify authority to charge a specific fund and cost center, and signify that the department has verified there are sufficient funds for the purchase.

DEFINITION: A requisition is a written or computerized request to the Finance Department for the procurement of goods or services from suppliers.

PURCHASING RESPONSIBILITIES:

1. To become acquainted with the needs of our customers by utilizing purchasing teams made up of department and Finance Department personnel.
2. To aid and cooperate with all departments in meeting their needs for operating supplies and equipment at the best value and least cost to the City of Edgewater.
3. To assist in the preparation or review of specifications for all requirements.
4. To locate the sources and availability of needed products.
5. To process all requisitions and purchases with the least possible delay, in accordance with City procedures.
6. To work with the supplier in correlating all the steps involved in completing a purchase, including purchase order follow-up and tracing.
7. To assist the department with any difficulty after the product has been delivered or service rendered.
8. To notify the user department of any changes in the use of the suggested vendor as proposed by the user department, and any other probable changes such as price or delivery.

DEPARTMENT RESPONSIBILITIES:

1. Allow sufficient time for the Finance Department to process and/or place the order and for the supplier to deliver.
2. Advise the Finance Department if the requisition is a defined emergency as stated in Section III.
3. Write clear and accurate description of materials and equipment to be purchased and its intended purpose. Specifications should be typed and either emailed or hand carried to the Finance Department.
4. Prepare generic specifications for items requiring a technical or engineering background.
5. List anticipated requirements in advance, when possible. Involve the Finance Department at the time the need is determined or as early as possible.
6. Keep the Finance Department advised of any abnormal demands. PLAN AHEAD!
7. Under no circumstances is the City of Edgewater to be obligated by departments in any manner whatsoever without prior approval.
8. Cooperate with the Finance Department by reporting, in writing, the results of purchases -- either favorable or unfavorable. If you have complaints, REPORT THEM.
9. Advise the Finance Department of any known supplier(s).
10. List any quotes obtained by vendor name, individual contacted, and price obtained (by line item). Check with the Finance Department for additional sources.
11. Verify that all sources of funds identified on the requisition are properly coded.
12. Specify correct commodity code of items to be purchased.

13. Be sure funds are allocated and available in the referenced fund/account to support purchases.
14. Be sure the purchase is for a "public purpose", unless specifically exempted by City rules or regulations.

WHEN PREPARED: Purchase Requisitions must be submitted to Finance, far enough in advance to permit the Finance Department to verify competitive prices and to allow sufficient time for deliveries to be made. User Departments should take into account the time necessary to obtain Council award approval and administrative approvals in planning for their procurements. The Finance Department can assist you with this planning.

SPECIAL SITUATIONS: Agencies should identify requisitions requiring special handling for the purchase of materials to prevent downtime but which are not strictly emergencies. These must be held to a minimum. These should only be used in cases of required purchases with a justification as to the urgent need. Competitive verbal pricing should be obtained wherever possible.

WHO PREPARES: All requisitions shall be authorized by the Department Director or designated authority. Requisitions should originate in the department at the level where the purchase is to be used and routed to the designated approval authority prior to being sent to Finance Department. Requisitions not properly authorized will not be accepted by the on-line system.

ROUTING:

1. For all purchases under \$50,000, the requisitioning agency will enter the requisition into the on-line system for issuance of a purchase order. The Department will obtain quotes as:
 - a. Quotes not required under \$5,000
 - i. Estimates are encouraged
 - ii. Preference given to local suppliers
 - b. Three informal quotes \$5000 - \$14,999
 - c. Three formal quotes \$15,000- \$49,999
2. For all purchases \$50,000 or greater, the requisitioning Department will request a formal solicitation to be issued by the Finance Department, and then assure that City Council approval is obtained for award, either of the solicitation or other Council direction.
3. Upon receipt of the requisition in the Finance Department and dependent on the dollar amount, formal quotations, bids or proposals will be solicited. A purchase order or a contract will be issued upon completion of this process.
4. If the requisition is incomplete or not properly prepared, the Finance Department will notify the originating department.
5. For all purchases of capital goods or services, regardless of the dollar amount, the requisitioning Department will enter the requisition into the system assuring appropriate approvals are obtained, unless approved by the Finance Director and under \$25,000.

REVIEW OF SPECIFICATIONS-OTHER DEPARTMENTAL APPROVALS REQUIRED: Prior to issuance of bids or the processing of a requisition with specifications included, review of the items to be purchased and the specifications for certain commodities and services must be made by other departments within the City to assure open competitive bidding, compatibility, standardization, and up-to-date specifications. The following are mandated reviews:

TYPE OF EQUIPMENT/SERVICE REQUESTED DEPARTMENT REVIEW

Information Technology Equipment	Information Technology
Vehicles/Heavy Equipment	Fleet Maintenance
Telephone Systems (Internal System Only)	Information Technology

PLEASE ENSURE THE ABOVE APPROVALS ARE OBTAINED PRIOR TO SUBMITTAL TO THE FINANCE DEPARTMENT.

**SECTION II
PURCHASE ORDERS**

PURPOSE: A purchase order authorizes the vendor to ship and invoice the materials and services as specified. Purchase orders will be written to be clear, concise and complete, preventing any misunderstanding and/or unnecessary correspondence with suppliers.

DEFINITION: A legally binding document prepared by a purchaser to describe all terms and conditions of a purchase.

WHEN ISSUED: Pre-numbered computer generated purchase orders will be issued upon receipt of a properly authorized requisition, after receipt of competitive bids, determination whether funds are available, and Council approval as necessary. No purchase orders will be issued after the fact unless it is a documented emergency situation.

WHO ISSUES: Only the Finance Department shall issue purchase orders. The department will not enter into negotiations with any supplier for the purchase of supplies, services, materials or equipment. The Finance Department will transmit all purchase orders to the supplier.

ROUTING OF ORDER: A standard purchase order form is used to make all purchases. Purchases over \$5,000 require a copy of the purchase order to be provided to the vendor. The purchase order form for purchases under \$5,000 is sent to the vendor upon request by department.

FOLLOW-UP AND TRACING: Departments should track order progress after placing the order. If a problem is incurred, the department should then contact the Finance Department for assistance.

DIFFICULTIES AFTER RECEIPT OF SERVICE OR ITEM: Upon request from the department, the Finance Department shall handle with the vendor any problems or difficulties with outstanding orders or contracts and received items or services. See Section XIV of this manual for further details.

PRE-PAYMENT PROCEDURES: On those items where prepayment is needed, the original documents showing that pre-payment is required will be forwarded to the Finance Department as the authorization to issue a check with a manual check request. These should be kept to a minimum. The purchasing card should be used for items that require pre-payment if under \$5,000.

REGISTRATION FEES AND TRAVEL: Registration fees and travel for seminars and conferences for in-City and out-of-City travel are handled via Travel Authorization forms as per City Policy and Procedures. These requests are processed through the Finance Department.

UTILITY BILLS AND COMMUNICATION INVOICES: Payment for utilities (water, sewer, lights, etc.) and communication service will be made by the Finance Department and the expense allocated to the appropriate department fund.

EMPLOYEE TESTING;

Pre-employment or other such employee testing as required will be processed by the Human Resources Department and the expenses allocated to the appropriate department fund.

DEBT SERVICES;

All debt service payments will be paid by the Finance Department and the expenses allocated to the appropriate department fund.

PURCHASE OF GOODS AND SERVICES \$50,000 or Greater: All purchases of goods and services whose **cumulative total** shall exceed \$50,000 or greater within a 12 month period will be competitively bid.

USE OF FIELD PURCHASE ORDERS: The Field Purchase Order should be used as a payment tool/check request for all items under \$5,000. Common uses include: Subscriptions, Memberships, Advertisement and Registrations requiring a check, Petty Cash Reimbursements and Employee Travel Reimbursement checks. Also, the Field Purchase orders should be used for items under \$5,000 for vendors that do not accept the Purchasing Card.

Invoices that are attached to FPO's need no signatures. Approvals will be tracked by the financial software.

**SECTION III
SOLICITATION AND APPROVAL LEVEL THRESHOLDS**

PURPOSE: To describe the various levels of the competitive process and to identify the levels of authority in the procurement function of the City. The procurement function is designed to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

Threshold Levels:

Informal quotes	-	\$5,000 - \$14,999
Written quotes	-	\$15,000 - \$49,999
Formal Solicitation	-	\$50,000 or greater - within a twelve month period

Even though quotes are not required for every threshold level, every effort will be made to obtain a minimum of 3 quotes / solicitations for each threshold level. In addition every effort will be made to obtain quotes / solicitations from local suppliers.

Department/Division shall maintain documentation with their requisition on all quotes received or as to why competition was not obtained. All purchase prices must be considered fair and reasonable. Award (non-competitive) shall be made to the business offering the lowest quotation that is determined to be both responsive and responsible. Award based on the overall best value can be made if the department submits a statement to the Finance Department for approval describing the benefits to the City if award is made to other than low. The name of the business submitting a quotation, and the date and amount of each quotation, shall be recorded and maintained as public record.

Types of formal solicitations used for competitive procurement are as follows:

Request for Proposals (RFP) – A solicitation for response for a commodity and/or services for which the scope of work, specifications or contractual terms and conditions cannot reasonably be closely defined. Evaluation of a proposal is based on prior established criteria wherein the RFP shall state the relative importance of price and other evaluation factors.

Invitations to Bids (ITB) - A solicitation inviting potential contractors or vendors to submit sealed, written pricing for specific goods or services in conformance with specifications, terms, conditions and other requirements described in the bid invitation documents.

Request for Information (RFI) - A solicitation for response from interested and prospective vendors/contractors to provide information to determine specifications, qualifications and/or capabilities to satisfy a need rather than a firm specification and in which the respondent may be given latitude in order to develop a product and/or service which will fulfill the need.

Request for Qualification (RFQ) - A solicitation seeking responses for services for which the competitive award will be based on the qualifications of those responding; generally, but not limited to, used in procuring certain professional services, design build services, consulting and construction management services.

The procurement of all goods, material, equipment, services and combinations of goods and/or services by or on behalf of the Council, including those transactions through which the Council shall receive revenue, in an amount equal to or in excess of the mandatory bid amount of \$50,000 within a twelve month period, shall be formally competitively awarded based on the submission of bids (ITBs), proposals submitted in response to an request for proposal (RFP), proposals submitted in response to a request for information (RFI), proposals submitted in response to a request for qualifications (RFQ) or proposals submitted for competitive negotiations, except as otherwise provided herein, or by State or Federal law. Competitive bidding shall be the preferred method of procurement. If a department determines the use of an invitation to bid is not practicable based on 1) lack of time, 2) the award will be made on factors other than price and price-related factors, 3) a need to conduct discussions with the responding bidders about their bid and 4) there isn't a reasonable chance of receiving more than one quote, must submit, in writing, a statement requesting solicitation by Request for Proposals.

Departmental requirements are not to be split to avoid the competitive bidding thresholds. It is in the best interest of the City to combine requirements and competitively bid these requirements to ensure a fair and reasonable price.

All Department Directors or their designee shall have the authority to authorize purchases of goods and services not to exceed \$5,000 without any quotes. Authority is also given in case of an emergency for purchases under \$50,000 when at least one vendor has been contacted and the purchase order is issued through the Finance Department within the next business day. The Finance Department will review the requisition to ensure a fair and reasonable price is received.

The City Manager or designee shall have the authority to award and execute purchases of goods and services not to exceed \$50,000 including change orders and amendments. The City Manager or designee is authorized to renew options on approved contracts, as long as it is per the terms, conditions and renewal period specified in the original contract and the total dollar amount for each contract or purchase order is within the Council approved budget. All purchases of goods and services, in excess of \$50,000 shall be awarded by the Council, except as otherwise provided within this section. The City Manager or designee shall have the authority to approve all purchase orders, contracts, and

Master Agreements up to \$50,000 for projects, goods and services that are detailed in the adopted budget as long as award is to the lowest responsive, responsible bidder in a competitive environment.

The City Manager or designee shall have the authority to approve and execute all change orders and amendments and to approve price escalation/de-escalation changes, according to the terms of the particular contract providing that the change does not exceed 10% (not to exceed \$50,000 in total) of the latest approved contract value for contracts. Amendments to contracts greater than these amounts must be approved by City Council.

The City Manager or designee shall have authority to award and execute purchase orders in any amount on current City cooperative purchasing agreements and contracts from GSA contracts, state agencies, or other units of government and non-profit organizations on capital items and projects that have been detailed and approved by City Council in the adopted budget or amended budget. The City may piggyback on active current agreements and contracts from other governmental entities when competitive bid procedures have been followed and the guidelines utilized by that entity are the same or more stringent than the City's guidelines. All conditions of the agreement or contract must be met. The City may piggyback on previous City bids provided they were received within the previous 12 months and the department is not aware of any interest from other potential vendors.

The City Manager or designee shall have the authority to settle individual claims under contract provided the settlement does not exceed ten percent 10% (not to exceed \$50,000) of the latest approved contract value for contracts. All change orders issued which modify a contract, the original and revised total cost of which exceeds ten percent 10% (not to exceed \$50,000), shall require Council approval, unless otherwise specified herein.

It shall be prohibited for any City employee to order the purchase of any goods or services or make any contract change without the delegation of authority under this section other than through the Finance Department, unless utilizing an authorized procurement card. City employees will be held accountable for unauthorized purchases and appropriate disciplinary action will be taken pursuant to the City Policy and Procedures Manual. The Department committing the unauthorized purchase will document the incident with a memo to the City Manager explaining the details of the unauthorized purchase. These details must include a brief summary of what happened and the corrective action that the Director has taken to prevent unauthorized purchases in the future. The memo shall state any disciplinary action taken, if any, and request the City Manager approve the unauthorized purchase if under \$25,000. Unauthorized purchases of \$25,000 and greater shall be submitted to the Council for approval. Any purchase or contract made contrary to this section hereof shall not be binding on the City unless approved by the Council.

In the purchase of, or contract for, goods or contractual services, the City may give a preference of 3% percent of the bid price to local suppliers; provided, however, that this section in no way prohibits the right of the City Council to recommend award to the vendor that is the best interest of the City. The goods or services must be equal to or greater than the lowest responsive bidder. Local Preference shall only be given if not prohibited by any agreement and or grants associated with this award.

Local is defined as a business holding a City of Edgewater Business Tax Receipt (BTR) and Certificate of Use (CU).

The City Council has the right to award all contracts except as otherwise provided in the Code of Ordinances of the City. As to those contracts which the Council retains the right of award, the Council shall have authority to review, modify or set aside all previous administrative determinations, whether appealed or not, made in the course of the procurement.

SECTION IV EMERGENCY PURCHASES

PURPOSE: It is recognized that situations arise where formal solicitation is not possible. In order to expedite the provision of goods and services, the following procedure will be followed.

DEFINITION: Emergency purchases include those supplies or services necessary because of certain emergency conditions occurring affecting the health, safety and welfare of the City and its citizens or in the event that the City may suffer a financial loss due to inaction. Poor planning will not constitute an emergency.

AUTHORIZATION: Emergency purchases are approved per the spending authority levels outlined in this Policy and subject to review by the Finance Director. The City Manager may approve those exceeding \$25,000 and return to the Council for confirmation of the purchase, unless an executive order has been issued that suspends all requirements during disaster related events.

PROCEDURE: When an emergency exists, a requisition will be entered outlining the nature of the emergency and coded as such. In addition, the department should call the Finance Department to alert them to the need. A purchase order will be issued upon proper approval and processing of the requisition. The Finance Department may obtain additional price quotes prior to issuing a purchase order number. Standing procedures for emergency purchases are included in the emergency management plan.

EMERGENCY PURCHASES - NIGHTS, WEEKENDS, OR HOLIDAYS: If an emergency occurs when the Finance Department is closed, the Department Head shall act to secure the necessary materials or service. The evidence of purchase such as sales ticket, bill, delivery slip, counter receipt, etc., which the supplier normally furnishes, will be submitted concurrently with the requisition by the department to the Finance Department on the next work day following the date of purchase. Such back-up documents will be submitted to Finance. **Emergency Justification form must be forwarded to the Finance Department by the next business day.**

GENERAL INFORMATION: When emergency purchases are made, the department will make the purchase at the best possible price. A true emergency can occur as a result of parts and labor needed for repairs to vehicles or equipment, which must be kept in operating order. Emergencies due to negligence are to be avoided. **Failure to anticipate normal needs, project deadline dates or a desire to expend excess or remaining budgeted funds prior to year-end do not constitute an emergency.**

NOTE: Emergency purchases are costly and should be kept to a minimum. They are usually made hurriedly, on a non-competitive basis, and at top prices. Most vendors charge a premium when supplies must be obtained immediately.

SECTION V CHANGE ORDERS

PURPOSE: Certain conditions surrounding purchases may change in the course of a procurement, which necessitates a clarification or modification to the purchase order to fulfill legal requirements.

DEFINITION: A Change Order to a Purchase Order is an adjustment to funding source, addition or deletion of items, quantity, delivery time, or cost.

PROCEDURE: The department requesting the Change Order shall submit to the Finance Department a Change Order Request indicating the original Purchase Order Number and the reason for the changes. Change Order requests listing a price change with no explanation for the increase or decrease will be returned to the originator. The Finance Department will modify the on-line system to reflect the change. If required, the vendor will be sent a hard-copy purchase order reflecting the change.

Change Orders must be processed for all changes affecting the original purchase order such as quantity increases and those changes that increase 10% or more of the original unit price dollar value. Change orders will not be processed for decreases in the purchase order amount if payment is being finalized or if the decrease to the purchase order line item amount is less than 10%. If a decrease occurs, the department will receive only the amount invoiced. The same procedure applies if the increase is less than 10% of the original purchase order dollar amount. No Change Orders to cancel an item will be processed until the Finance Department has verified that a check has not already been issued for the item.

Cancellations of all purchase orders at any dollar value will require a written change order to be emailed or faxed to contractor. Cancellations and Change Orders will be distributed in the same manner as the original purchase order.

Construction and Professional Services Change Orders will be processed manually using the Professional Service/Construction Change Order form. The Finance Department will make the necessary corrections to the on-line system once approvals are obtained.

SECTION VI BLANKET/INVERTED PURCHASE ORDERS

PURPOSE: Blanket/inverted purchase orders allow multiple transactions to be made over a specified period of time, a practice aimed at reducing the number of small orders, utilizing short-term releases to satisfy demand requirements, while creating efficiencies of effort and decreasing costs.

DEFINITION: A blanket order is a purchase order issued for the purchase of indeterminable miscellaneous items or materials, supplies, parts, etc., over a certain period of time (usually on an annual basis or as approved by the Edgewater City Council). Shipments are made, as requested by the department against the blanket order number for the term of the blanket purchase order. The blanket purchase order generally establishes a maximum dollar limit, the period covered, and terms and conditions. However, since the specific items to be purchased are unknown at the time of issuance of the blanket purchase order, no line item pricing may be shown. Blanket orders may be used as a payment tool for formal contracts.

An inverted purchase order is used for payment on contracts where retainage is withheld from the invoices received. Inverted purchase orders use the dollar value of the contract as the quantity and receipts are issued against line items.

HOW PREPARED: Requests for a blanket/inverted purchase order shall be made on a Requisition by the using agency indicating the types of items to be purchased and total amount to be encumbered, either in quarterly increments or for the entire year.

Requests for Blanket purchase orders shall contain the following information:

1. Description and types of items to be purchased.

2. The period of time the order will remain valid.
3. The maximum dollar amount not to be exceeded. If it is apparent the amount will be exceeded, the department via a change order request must request an additional amount. Adequate funds must be available in the department budget.

HOW USED: After the blanket purchase order is issued, the department is authorized to place orders, via telephone or in person, directly with the vendor, when needed.

PROCEDURE: The person(s) listed as authorized by the blanket purchase order may request/place orders directly with the vendor as needed. Items may be picked up or delivered by the vendor. The Department Head or designee shall be responsible for receiving all items acquired using the on-line system.

HOW PAID: The Finance Department will process payment of invoices for received materials or services to obtain any discounts. User agencies must indicate receipt of all goods and services, on-line, in a timely manner. Any invoices received by the Department should be forwarded to the Finance Department after receipt processing.

HOW MONITORED: The Finance Department may actively monitor all or selected purchases or invoices to ensure adherence to City procedures. The Finance Department may cancel blanket purchase orders if misuse occurs.

SECTION VII QUOTATIONS AND BIDS

PURPOSE: Fair and open competition is a basic tenet of public procurement. Such competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically.

DEFINITION: A request to suppliers to make offers to an organization.

PROCEDURE FOR SOLICITING QUOTES:

- Every effort should be made to obtain a minimum of three (3) quotations for each item or group of items required regardless of dollar amount.
- Competitive quotes are not required, but are strongly encouraged, on items, excluding services, under \$5,000 in value.
- Written, emailed or faxed quotes for purchases from \$5,001 to \$14,999 are to be obtained by the department and documentation maintained in the department file and the quote information entered into the on-line system. Finance Department may require a copy of the quote documentation. Services provided on-site require appropriate insurance. Please call the Finance Department for assistance. Capital outlay items may require other approvals prior to purchase. The department should contact Finance Department for assistance in creation of a vendor contact list.
- Purchases of \$15,000 but under \$50,000 will be made by formal written quotations issued by the Finance Department. The Finance Department may coordinate with the department.
- The City's bidding service provider will notify potential suppliers via fax or email of all solicitations exceeding \$50,000 in value. Formal Invitations to Bid will be distributed to prospective suppliers, as feasible, and such Invitations to Bid will indicate the deadline for

receipt of the bid. No bid will be considered if received after the deadline for receipt. Invitations to Bid, documented completely, shall be maintained with the purchase order.

PROCEDURE FOR SOLICITING BIDS:

The Finance Department shall request formal sealed bids on purchases exceeding, or expecting to exceed \$50,000 in a single year. **All advertisements and public notice time frames will be made in accordance with Florida Statutes.** The Finance Department shall solicit bids from responsible prospective suppliers obtained from our subscription notification service, publications and catalogues, suggestions from the user Department, previous suppliers, etc. The Finance Department shall attempt to secure at least three (3) bids.

A tabulation of all bids received with the recommended award(s) will be posted on the City's website and will be available for public inspection in the City Clerk's office during regular business hours for 72 hours after recommendation of award and in accordance with Florida Statutes.

Where requirements are of a technical nature, a multi-step bid process may be used. The conventional multi-step process calls for submission of technical proposals and bid prices at the same time, but in separate sealed envelopes. The proposals are opened and evaluated. The bid price envelopes are then opened for those proposals that are found to be responsive and responsible and award is made based on price alone.

The Finance Department's bidding notification service maintains a "Vendor List" of prospective suppliers via use of a subscription notification service.

A prospective bidder will be placed on the Vendor List by subscribing to the bidder notification service. Information is available in the Finance Department office about the subscription service.

RESPONSIBILITY FOR SPECIFICATIONS:

The preparation of specifications is the responsibility of the department with review (and authority to challenge) by the Finance Department. Specifications will permit competition except on non-competitive materials or services, (see "Purchases Not Requiring Bids").

At least fifteen (15) business days before the intended date of advertising, the requesting Department/Division shall initiate an intake request for bid/proposal/qualification including specifications/documentation in the E-Procurement portal for preparation of the solicitation document. This will allow time for review, verification and approval.

In general, specifications should define the level of performance required rather than specific brand name. For the benefit of vendors and the department, specifications must be clear and concise. The Finance Department reserves the right to challenge specifications to allow open competition.

ENGINEER'S ESTIMATES

An engineer's estimate is a prediction of quantities, cost, and/or price of resources required by the scope of an asset investment option, activity, or project. As a prediction, an estimate must address risks and uncertainties. Estimates are used primarily as inputs for budgeting, cost or value analysis, decision making in business, asset and project planning, or for project cost and schedule control processes. Cost estimates are determined using experience and calculating and forecasting the future cost of

resources, methods, and management within a scheduled time frame. This work is accomplished by a licensed design professional typically engaged by the City for the project being competitively bid.

PROCEDURE FOR ISSUING DEBT:

Long-term debt may only be used for the costs of acquisition, construction or modification of capital facilities and for the refinancing or refunding of such debt. This limitation prohibits any debt being issued to finance operational costs of City departments.

The legal, economic, financial and market conditions associated with the issuance of debt are dynamic, unpredictable and usually in a constant mode of change. Consequently, the decision to issue debt is best made on a case-by-case basis and only after careful and timely analysis and evaluation of all relevant factors. Some of the factors that should be considered include, but are not limited to, the following:

- Current interest rates and other market considerations;
- The financial condition of the City;
- The types, availability and stability of revenues to be pledged for repayment of the debt;
- Type of debt to be issued; and
- The nature of the projects to be financed (i.e., approved schedule of improvements, non-recurring improvements, etc.).

Capital improvements related to enterprise fund operations (e.g., water systems, wastewater systems, refuse disposal systems, etc.) shall be financed solely by debt to be repaid from user fees and charges generated from the respective enterprise fund operations, when practicable.

Capital improvements not related to enterprise fund operations (e.g., roads, parks, public buildings, etc.) may be financed by debt to be repaid from available revenue sources (including ad valorem taxes) pledged for same, when practical.

All capital improvements financed through the issuance of debt shall be financed for a period not to exceed the useful life of the improvements, but in no event to exceed 30 years.

The City shall not construct or acquire a public facility if it is unable to adequately provide for the subsequent annual operation and maintenance costs of the facility.

The City shall at all times manage its debt and sustain its financial position in order to seek and maintain the highest credit rating possible.

In order to maintain a stable debt service burden, the City will attempt to issue debt that carries a fixed interest rate. However, it is recognized that certain circumstances may warrant the issuance of variable rate debt. In those instances, the City should attempt to stabilize debt service payments through the use of an appropriate stabilization arrangement.

When refinancing current debt, the City will seek a savings (net of all issuance costs and any cash contributions to the refunding) as a percentage of the refunding debt of at least 3-5%.

Lease Finance Agreements utilized for competitively bid items shall require a minimum of three (3) quotations. Quotes are to be obtained by the Finance Director and shall be maintained in the department file.

BID INVITATIONS: Notice of Bid will be advertised and posted in City Hall and on the City Website. The City uses an Internet bidding service for document fulfillment purposes. They send notification of Bids to potential vendors via email, fax or mail, depending on the vendor's preference.

METHOD OF SOURCE SELECTION: The City uses the Competitive Sealed Proposals methodology of source selection for this procurement, as authorized by this Purchasing Policy.

The City may, as it deems necessary, conduct discussions with responsible proposers determined to be in contention for being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to solicitation requirements.

PRE-PROPOSAL CONFERENCE: The purpose of the pre-proposal conference is to allow an open forum for discussion and questioning with City staff regarding the Proposal with all prospective proposers having an equal opportunity to hear and participate. Oral questions will receive oral responses, neither of which will be official, nor become part of the RFP. Only written responses to written questions will be considered official, and will be included as part of the RFP as an addendum.

All prospective proposers are strongly encouraged to attend, as, unless requested by the department, this will be the only pre-proposal conference for this solicitation. If this pre-proposal conference is denoted as "mandatory", prospective proposers must be present in order to submit a proposal response.

PUBLIC ENTITY CRIME: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount as provided in Section 287.017, Florida Statutes, for a period of 36 months following the date of being placed on the convicted vendor list.

DRUG-FREE WORKPLACE: In accordance with section 287.087, Florida Statutes, preference shall be given to businesses with drug-free workplace programs. Whenever two or more proposals which are equal with respect to price, quality, and service are received by the City for the procurement of commodities or contractual services, a proposal received from a business that furnishes a form certifying that it is a Drug Free Workplace shall be given preference in the award process.

CONFLICT OF INTEREST: Proposers shall complete the Conflict of Interest Affidavit included with the RFP documentation. Disclosure of any potential or actual conflict of interest is subject to City staff review and does not in and of itself disqualify a firm from consideration. These disclosures are intended to identify and or preclude conflict of interest situations during contract selection and execution.

PROHIBITION OF GIFTS TO CITY EMPLOYEES: No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service or other item of value to any City employee, as set forth in Chapter 112, Part III, Florida Statutes, the current City Ethics Ordinance, and City Administrative Procedure 5311. Violation of this provision may result in one or more of the following consequences: a. Prohibition by the individual, firm, and/or any employee of the firm from contact with City staff for a specified period of time; b. Prohibition by the individual and/or firm from doing business

with the City for a specified period of time, including but not limited to: submitting bids, RFP, and/or quotes; and, c. immediate termination of any contract held by the individual and/or firm for cause.

IMMIGRATION REFORM AND CONTROL ACT: Proposer acknowledges, and without exception or stipulation, any firm(s) receiving an award shall be fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the awarded firm(s) to comply with the laws referenced herein shall constitute a breach of the award agreement and the City shall have the discretion to unilaterally terminate said agreement immediately.

BID BOND/DEPOSITS: By signing the proposal, Proposer acknowledges that it has read and understands the bonding requirements for the proposal, if applicable. Requirements for each solicitation are specified in the Proposal.

Should the contract amount be less than \$500,000, the requirements of Section 287.0935, F.S. shall govern the rating and classification of the surety.

All performance security under the subsequent contract shall be in force throughout the final completion and acceptance of the project awarded.

If the surety for any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the Owner's approval.

INSURANCE REQUIREMENTS: By signing the Insurance Requirements included in a Proposal, Proposer acknowledges these conditions include Insurance Requirements.

It should be noted by the Proposer that, in order to meet the City's requirements, there may be additional insurance costs to the Proposer's firm. It is, therefore, imperative that the proposer discusses these requirements with the Proposer's insurance agent, as noted on the Insurance Check List, so that the Proposer can make allowances for any additional costs.

The Proposer's obligation under this provision shall not be limited in any way by the agreed upon contract price, or the Proposer's limit of, or lack of, sufficient insurance protection.

Proposer also understands that the evidence of required insurance may be required within five (5) business days following notification of its offer being accepted; otherwise, the City may rescind its acceptance of the Proposer's proposal.

The specific insurance requirements for each solicitation are included as part of the proposal.

DISPOSITION OF BIDS: Bids shall be opened in public at the time and place stated in the public notices and all bids received shall be read aloud stating the name of the proposer and any pertinent information related to the solicited bid. At no time shall a bid received not be read aloud.

The City shall not bear the responsibility for proposals submitted via the E-Procurement Portal, past the stated date and/or time indicated, or by any other means.

All bids received and accepted will be made available for public inspection in accordance with Florida Statutes Chapter 119.0701

PROPOSAL, PRESENTATION, AND PROTEST COSTS: The City will not be liable in any way for any costs incurred by any proposer in the preparation of its proposal in response to this RFP, nor for the presentation of its proposal and/or participation in any discussions, negotiations, or, if applicable, any protest procedures.

ACCEPTANCE OR REJECTION OF PROPOSALS: The right is reserved by the City to waive any irregularities in any proposal, to reject any or all proposals, to re-solicit for proposals, if desired, and upon recommendation and justification by the City to accept the proposal which in the judgment of the City is deemed the most advantageous for the public and the City.

Any proposal which is incomplete, conditional, obscure or which contains irregularities of any kind, may be cause for rejection. In the event of default of the successful proposer, or their refusal to enter into the City contract, the City reserves the right to accept the proposal of any other proposer or to re-advertise using the same or revised documentation, at its sole discretion.

REQUESTS FOR CLARIFICATION OF PROPOSALS: Requests by the Purchasing Specialist to a proposer(s) for clarification of proposal(s) shall be in writing. Proposer's failure to respond to request for clarification may deem proposer to be non-responsive, and may be just cause to reject its proposal.

VALIDITY OF PROPOSALS: No proposal can be withdrawn after it is filed unless the Proposer makes their request in writing to the City prior to the time set for the closing of Proposals. All proposals shall be valid for a period of one hundred eighty (180) days from the submission date to accommodate evaluation and selection process unless otherwise stated in the proposal document.

SINGLE RESPONSE: Where only one response is received to a solicitation, an award may be made to such respondent if the City determines: (1) that the price submitted is fair and reasonable; (2) that other prospective respondents had a reasonable opportunity to respond; and (3) that it is in the best interest of the City to proceed with award. Otherwise, a single response to a solicitation may be rejected pursuant to Section VII, and the Purchasing Specialist may: (1) cancel the proposed procurement; (2) solicit new bids, proposals, or sealed replies; or (3) proceed with procurement as otherwise provided in this Manual.

AWARD OF BIDS: Awards of contracts and/or purchases shall be to the lowest, responsive and responsible bidder of goods or services, representing the best value to the City. In determining the lowest, most responsive and responsible bidder and that purchase or contract that will best serve the interests of the City, the Council, the City Manager, and purchasing agent, as appropriate, shall consider, but shall not be limited to, in addition to price, the following:

1. The ability, capacity and skill of the bidder to perform under the terms of the bid documents including past performance, if available.
2. Whether the bidder can perform the contract or provide the materials or service promptly, or within the time specified, without delay or interference.
3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder as reflected in credit reports, Better Business Bureau reports or other records or reports.
4. The quality of performance of previous contracts and the providing of materials and/or services.
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract, or the providing of materials or services.

6. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the materials or services.
7. The quality, availability, and adaptability of the supplies, equipment, or contractual services to the particular use required.
8. The ability and location of the bidder to provide future maintenance and service for the purchase and the financial impact upon the City to receive such future maintenance or service. If a bidder does not currently have a local project office, the evaluation committee shall consider the bidder establishing a local project office to satisfy this requirement
9. The number and scope of conditions attached to the bid.
10. Whether the bidder is in arrears to the city on a debt or is a defaulter on surety to the City; or, whether the bidders' taxes or assessments are delinquent.
11. The bidder has all current local and county Business Tax Receipts and licenses as required by law.

ITBs are the least formal review process and the award of the contract is to the lowest priced, responsive, responsible bidder. The Finance Department coordinates with the requisitioning department to determine if the lowest price bid is responsive (i.e., complies with the City's specification). A review of the bid is required to determine if it conforms to the requirements stated in the solicitation. If the lowest priced bid is found non-responsive, then the next low bidder will be evaluated and so on until a responsive contractor is found. When the lowest bidder is found non-responsive or not responsible, this determination must be in writing with the appropriate documentation.

The Finance Department reserves the right to challenge any award recommendations of the user division/department.

City Council will approve bid award recommendations wherein the award to each vendor exceeds \$50,000, unless previously exempted or approved. The Finance Department is responsible for the drafting of the Council Agenda Request and assuring appropriate approvals are obtained. The Finance Department will then submit the Council Agenda Request to the City Manager. Award shall not be final until issuance of a purchase order or contract by the Finance Department.

AWARD TO OTHER THAN THE LOW BIDDER

If award of a bid is made to other than the low bidder, justification for doing so shall be documented in writing and included in the Bid File. Justification for awarding to other than the low bidder may include: does not meet specifications (must specify how bid does not meet specifications); unsatisfactory performance on previous City contracts; unfavorable references; unable to meet project time or delivery requirements, etc.

CHANGES IN FINALIZED BIDS: Any increase in unit price of any bid formally approved by the Edgewater City Council must be re-submitted to the Council for approval unless the increases were allowed by the bid or contract document.

WAIVER OF IRREGULARITIES: The City Manager on behalf of the City Council shall have the authority to waive any and all irregularities in any and all formal bids.

TIE BIDS: In the event of a tie (with each business certifying that it is a Drug-Free Workplace), **both in individual scoring and in final ranking**, the firm with the lowest volume of work on City projects within the last 5 years will receive the higher individual ranking. This information will be based on information provided by the Proposer, subject to verification at the City's option. If there is a multiple firm tie in either individual scoring or final ranking, the firm with the lowest volume of work shall receive the higher

ranking, the firm with the next lowest volume of work shall receive the next highest ranking and so on. If neither vendor has performed in work in the last five years, the preference will be given to the Proposer within the city limits or principal office closest to City Hall.

CONTRACTS: Whenever required, the successful bidder shall promptly execute a formal contract to be approved as to its form, terms and conditions, and signed by the proper authority. Contract time will be based on engineers' estimates and will be mutually agreed upon by both the City and the successful bidder during contract negotiations. When required, such bidder shall also execute and deliver to the Finance Department a good and sufficient performance and/or payment bond in the amount specified in the Invitation for Bid. Any bidder who has a contract awarded to him/her and who fails to execute promptly and properly the required contract and bond, shall forfeit his/her certified check or bid bond. Upon the execution of the contract by the successful bidder, his/her certified check will be returned or his/her bid bond may be released. The certified checks of unsuccessful bidders shall then be returned.

CITY'S RIGHT TO INSPECT: The City or its authorized Agent shall have the right to inspect the Contractor's facilities/project site during and after each work assignment the Contractor is performing.

WARRANTY REQUIREMENTS:

1. For purposes of this warranty requirement, the term "goods" means any equipment, machines, tools, vehicles, hardware, supplies, component parts or other tangible personal property procured by the city, to which procurement this warranty requirement is made applicable through the specifications. The term "City" means the City of Edgewater, acting through its employees, departments, boards, council.
2. The successful bidder (also referred to herein as "vendor"), by submitting the bid, furnishes the following warranty as provided below:
 - a. Vendor warrants that the goods delivered are newly manufactured, free from defects in materials and workmanship and conform in every respect to City's specifications. Vendor also warrants that if, during the warranty period, all or any portion of the goods: (a) fail for any reason, (b) are discovered to be non-conforming, or (c) are defective in materials or workmanship, vendor will replace such failed, non-conforming or defective goods at no cost to city within the same time limit as the delivery period. This warranty shall run from date of official acceptance of the goods by city, which date is either the installation date or in-service date as shown on city records or the date of formal acceptance of the goods in writing by an authorized city official, whichever occurs first, and end one (1) year after the date of the official acceptance. This warranty shall be unconditional, except that it shall not apply to obvious abuse, misuse or damage caused by city.
 - b. As between vendor and city, the express warranty given in subparagraph (b) (1) is in lieu of any other express warranties. Should this warranty fail of its essential purpose, City will continue to have recourse under applicable Florida law. This warranty is intended for the exclusive benefit of the City and does not create any warranties (express or implied) or causes of action in favor of any third parties.
 - c. If a manufacturer of the goods or of component parts of the goods provides a special or independent warranty which is longer than the period provided for this warranty, or which provides terms more favorable to city than those contained in this warranty as to any other provision, the provisions of this warranty shall not be construed to diminish or conflict with the special or independent warranty given by such manufacturer.
3. The successful bidder, by submitting the bid, agrees to give the following indemnity with respect to the goods:

Vendor shall defend, indemnify, and save harmless the City, its officers, agents and employees, from all suits, actions or claims of any character, type or description brought or made on account of any personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, arising out of or occasioned by any breach of any warranty, express or implied, as to the goods or the fault of subcontractors, in the performance of the contract, purchase order or price agreement; provided, however, that this indemnity shall not apply to any personal injury including (including death), property damage or other harm caused solely by the negligent use, misuse or abuse of the goods by city, or caused solely by any negligent act or omission of city unrelated to the use of the goods. In the event of joint or concurring responsibility of vendor and City, responsibility and indemnity, if any shall be apportioned comparatively in accordance with the laws of the state of Florida, without, however, waiving any governmental immunity available to the City under Florida law. This provision shall not be construed for the benefit of any third party, nor does it create or grant any right or cause of action in favor of any third party against city or vendor, this provision being solely intended to provide for indemnification of City from liability for damage to third persons or property as set forth in this paragraph.

SECTION VIII COMPETITIVE PROCUREMENT

PURPOSE: The City will make award to the proposal that meets the requirements and criteria set forth in the solicitation and whose award will, in the opinion of the City, are in the best interest of the City. Proposals shall be evaluated based on the requirements set forth in the solicitation. Criteria that will affect the price should be considered in the evaluation, and shall be objectively measurable, such as financial capability, references, discounts, transportation costs, past performance, total or life cycle costs and overall responsiveness of the submittal. No criteria should be used in the evaluation that is not set forth in the solicitation.

Factors to be considered in determining whether the standard of responsibility has been met include whether, in the City's determination, a prospective vendor/contractor has:

1. appropriate financial, material, equipment, facility, and personnel resources, experience, knowledge, and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
2. a satisfactory record of performance on similar projects;
3. a satisfactory record of integrity;
4. qualified legally to contract with the City; and
5. supplied all necessary information in connection with the inquiry concerning responsibility including but not limited to any licenses, permits, insurance, price sheets or required organizational papers.

The solicitation for Proposals shall state the relative importance of price and other evaluation factors. Award can be made to the most responsive, responsible offeror whose proposal is determined to be the most advantageous to the City in accordance with the evaluation criteria contained in the Proposal.

Evaluation of Proposals (Procedure):

The City's procedure for selecting is as follows:

1. The City Manager shall approve an Evaluation Committee to review all proposals submitted in accordance with Statute. At a minimum there will be one member of the

Finance Department as part of the evaluation committee. Plus there shall be a minimum of three members of the committee, but always an odd number. ITB's that are solely priced based will be reviewed by the Purchasing Specialist and Project Manager as described below and will not be subject to the Evaluation Committee process.

2. Request for Proposals issued.
3. Subsequent to the closing of proposals, the Purchasing Specialist and Project Manager shall review the proposals received and verify whether each proposal appears to be minimally responsive to the requirements of the published RFP. Meetings shall be conducted in accordance with Florida's Sunshine Law and the Purchasing Specialist shall publicly post prior notice of such meeting in the lobby of the City Hall at least one 1 day in advance of all such meetings.
4. The committee members shall review each Proposal individually and score each proposal based on the evaluation criteria stated herein.
5. Prior to the first meeting of the evaluation committee, the Purchasing Specialist will post a notice announcing the date, time and place of the first committee meeting. Said notice shall be posted in the lobby of the City Hall not less than 3 working days prior to the meeting. The Purchasing Specialist shall also post prior notice of all subsequent committee meetings and shall endeavor to post such notices at least one 1 day in advance of all subsequent meetings.
6. The committee will compile individual rankings, based on the evaluation criteria as stated herein, for each proposal to determine committee recommendations. The committee may at their discretion, schedule presentations or demonstrations from the top-ranked firm(s), make site visits, and obtain guidance from third party subject matter experts. The final recommendation will be decided based on review of scores and consensus of committee.

**SECTION IX
PROFESSIONAL SERVICES
CONSULTANT'S COMPETITION NEGOTIATION ACT (CCNA)**

PURPOSE: All requirements for CCNA Professional Services, as defined in Chapter 287.055, Florida Statutes shall be publicly advertised once in a newspaper of general paid circulation or as otherwise indicated in Florida Statutes. Allowable exceptions to public advertisement include:

1. Projects involving a public emergency, pursuant to Section IV of the Purchasing Policy.
2. When the basic construction of the completed project is estimated to be less than \$325,000 or defined as category five in Florida Statutes, Section 287.017, whichever is greater.
3. When the fee for professional services for a planning or study activity is estimated to be less than \$35,000 or defined as category two in Florida Statutes, Section 287.017, or as may be amended, whichever is greater.

The Project Manager for acquisition of professional and consultant services under an RFQ (Request for Qualifications) should suggest recommendations for appointment of evaluation committee members who have knowledge and interest in the project. The Evaluation Committee should consist of: Department Head or designee, Project Manager and a staff member outside the requesting Department. The City Attorney's office may also provide a representative who shall participate in an advisory capacity as a non-voting member. The Finance Director or designee shall chair the meetings. The City's policy and procedures concerning the evaluation process will be followed.

The Evaluation Committee shall determine specific qualifications necessary for the project consultant and specify the form for submittal of qualifications by prospective consultants.

For publicly announced requirements, the Department/Division/Office will provide the Finance Department a RFQ request and scope of services; evaluation criteria and the Finance Department will publish the notice in a newspaper of general circulation and shall indicate how interested consultants may apply for consideration. Trade journals or trade magazines may also be utilized for public advertisement for consultant services. Purchasing will administer the opening of the proposals and the selection/negotiation committee meetings.

Florida Statutes require reasonable notice to the public, such as the evaluation/negotiating sessions with consultants. The notice will include the committee's name and purpose, location of meeting, date and time of meeting, and shall be posted 72 hours in advance of the meetings. A copy of the meeting notice shall be posted in City Hall. Part of the notice of public meeting shall include the statement: "Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk, 48 hours in advance of the meeting". The Chairman of the meeting will ensure a record of the meeting is maintained, either through a written or recorded method or in accordance with the Public Records Law of the State of Florida.

The City shall make a finding that the firm or individual to be employed is duly qualified to render the required service. The Evaluation Committee shall review statements of qualification and performance data submitted in response to the public announcement and shall select, in order of preference, no fewer than three (3) firms deemed to be the most highly qualified, if at least three (3) firms respond to the announcement. If there are less than three (3) firms responding and after due diligence and searching it is decided every effort was made to meet Florida Statute 287.055, the City will interview all respondents and proceed with the evaluation process. Consultant evaluation criteria shall include, but may not be limited to: approach to work, the ability of professional personnel; past performance and willingness to meet time; location of no more than 10 percent may be used; recent, current and projected workloads; and volume of work previously awarded to the firm by the City, with the object of effecting an equitable distribution of contracts among qualified firms, provided such equitable distribution does not violate the principle of selection of the most highly qualified firms.

In general, the City wishes to avoid the expense to the City and to proposers of unnecessary oral interviews. Therefore, the City will make every reasonable effort to achieve the ranking using written submittals alone. If no single top-ranked firm can be clearly identified by review of the written submittals alone, then the evaluator(s) will request the Purchasing Agent to schedule the top ranked firm(s) for oral presentations/interviews.

The Evaluation Committee may conduct some type of public discussions with and may require public presentations by a minimum of two (2) firms pertaining to the firms' qualifications, approach to the project, and ability to furnish the required service. Each evaluation committee member will review the statement of qualifications submitted by each firm and will evaluate each firm's qualifications utilizing the specific evaluation criteria established for each RFQ which will approximately resemble the attached Professional Services Evaluation form (PSFE). The scores of the committee members will be added to determine the ranking of the firms (first, second, third) public presentations by firms are not conducted, the ranking established during the "short list" phase, which includes discussion with the minimum of three (3) firms, will be the ranking order of the firms.

The committee shall maintain the summary listing of the rank order of the firms being evaluated, present their recommendations of the three (3) most qualified firms to the Council, if at least three firms

respond to the announcement, and request the Council to approve the ranking and to authorize staff to negotiate a contract with the top firm.

The negotiating committee will be appointed by the City Manager and may consist of the same individuals as the evaluation committee to the extent possible. Upon Council direction, the negotiating committee shall negotiate a contract with the most qualified firm for professional services for compensation, which is determined to be fair, competitive and reasonable.

Detailed discussions must be held by the firm and the City to clearly establish the scope of the project and the exact services to be performed by the Consultant. The committee shall negotiate a contract for professional services with the most qualified firm at a compensation, which the City determines is fair, competitive and reasonable. In making such determination, the City shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.

Should the City be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the City determines to be fair, competitive and reasonable, negotiations with that firm must be formally terminated. The City shall then undertake negotiations with the second most qualified. Failing accord with the second most qualified firm, the City must terminate negotiations. The City shall then undertake negotiations with the third most qualified firm.

Should the City be unable to negotiate a satisfactory contract with any of the selected firms, the City shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with the prior requirements until an agreement is reached

For all lump-sum or cost-plus fixed fee contracts of \$195,000 or defined as category IV in Florida Statutes Section 287.017, whichever is greater, the firm awarded the contract must execute a truth-in-negotiation certificate stating that the wage rates and other factual unit costs are accurate, complete, and current, at the time of contracting. Any contract requiring this certificate shall contain a provision that the original contract price and any additions shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

SECTION X PROCEDURES FOR MULTIPLE CONSULTANTS UNDER COMPETITIVE CONSULTANT NEGOTIATION ACT (CCNA)

PURPOSE: To set standards as to how scopes can be split between those services within the scope of practice as defined by the laws of Chapter 287.055, Florida Statutes.

The Selection Process described below will be followed to select a consultant when awarding master agreements under continuing contracts when multiple qualified consultants are under contract with the City. Whenever possible, the objective is to distribute the work equally amongst the consultants under contract. Equal distribution of the work will be measured by the dollar value of the work awarded; such that each consultant gets (if work requirements permits) an equal share of the total dollars spent annually on the Master Agreements.

1. Selection Process:

When dealing with multiple consultants under a CCNA Master Agreement, the Department, responsible for the project, will select only one of the consultants to solicit for a proposal when criteria items a. or b. apply. On projects where criteria a. or b. do not apply, the Department,

responsible for the project, will prepare a scope of work document that Finance will use to solicit sealed proposals from the qualified consultants under contract with the City for the specified type of work. The following criteria items c. through g., in order of acceptance, will be used to determine which consultant will be awarded the work:

- a. Specific and unique technical expertise not available from any of the other consultants under contract. This criterion will not apply to all master agreements.
- b. Maintain project continuity. This criterion will not apply to all master agreements.
- c. Past performance on previous City work.
- d. Availability of resources to undertake assignment.
- e. Willingness to meet time and budget requirements.
- f. Distribution of dollars awarded to date under the Master Agreement with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most qualified firms.
- g. If the consultant does not choose to participate, the City will select another consultant using the criteria in paragraphs (a - f) above.

When multiple sealed proposals are solicited, the Department responsible for the project shall evaluate the sealed proposals in accordance with the above criteria and select one of the consultants to perform the work.

2. Generating the Master Agreement:

The Department, responsible for the project (User Department), must send a Request for Service/Proposal to the consultant selected (as provided herein) or Finance must send (as provided herein) a Request for Service/Proposal to the multiple consultants under contract. The request asks for a technical memorandum/scope of services and a fee proposal. The Request for Proposal must include:

- a. Statement of Work - The statement of work will provide each consultant with a complete description of the requirement enabling them to prepare a proposal with valid man-hours. The City may ask the consultant for solutions and to identify unacceptable conditions.
- b. Elements - The minimum required elements are the purpose and brief description of the project; description of the work/service to be performed; the location(s) where the work/service is to be performed; the basis for determining the award of the Master Agreement; a contact person for the City for questions or clarifications including the telephone number and the extension number; and what is the required delivery date or period of performance. Any questions or clarifications given must be forwarded to all consultants.
- c. Submittal - The User Department or Finance Department must indicate when the proposal is due back to the City. Be very specific of when and where the proposal is to be delivered, indicating that if the City does not receive the submittal on time, the City understands the consultant has chosen not to participate in the process for that particular project.
- d. Additional information - If additional information is available for the consultant's review and consideration, please indicate the location of those documents and the contact person including telephone number and extension number.
- e. Meeting/Site Visit - If a meeting and/or a site visit are necessary to discuss the project, please indicate the location, time and date of the meeting.

3. The consultant shall submit the following in response to the City's Request for Proposal:

- a. Detailed Scope of Work and Services – The Detailed Scope of Work and Services shall specifically address each aspect of the project and tell in detail how the consultant will accomplish the work. Provide a schedule that, as a minimum shall include a list of milestones and a schedule for completion. Each milestone task must be described in sufficient detail for the Department to evaluate the consultant’s understanding of the project and action plan for completion.
 - b. Fee Proposal – The Fee Proposal shall include as a minimum the level of effort proposed to support the work. This should include a list of man-hours by staff position and the contracted hourly rate for that position. The hourly rate should match the hourly rate included in the Master Agreement, unless the hourly rate is negotiated to a lower rate. Any subcontracted effort must be included in the proposal and supported by a matching fee proposal.
 - c. Acceptability of Proposal from the selected consultant - The proposal received from the selected consultant must be acceptable to the City. Criteria to consider when determining the acceptability may include understanding requirements, technical approach, innovative techniques or solutions, management approach, proposed fee and the ability to meet cost or time constraints. The User Department will determine the acceptability criteria for the Master Agreement.
- 4. If the proposal is found to be unacceptable as submitted, the City will continue to negotiate with the selected consultant until an acceptable resolution is obtained.**
- a. If the proposal as submitted is not fully acceptable, but could become acceptable with relatively minor changes to the scope of services, proposed fee schedule or fee proposal, then the Department will enter into discussions with the consultant to refine the proposal making it acceptable. Based on those discussions, the consultant must submit a revised proposal, which the City finds fully acceptable.
 - b. If the proposal as submitted is so unacceptable that it cannot be made acceptable without major modifications to either the technical scope of services, the proposed fee, or the proposed schedule, then the City has the option to formally terminate negotiations with the consultant and enter into negotiations with the next qualified consultant for the project, and so on, or re-solicit proposals.
- 5. The User Department must provide copies of all documentation to the Finance Department including:**
- a. Request for scope of work and services and fee proposal;
 - b. Originals of the consultant’s submittals;
 - c. Determination of acceptability and recommendation for award (master agreement request form);
 - d. Prepare Council Agenda Request (CAR) for awards greater than \$25,000.

**SECTION XI
PROCUREMENT OF DESIGN-BUILD AND/OR
DESIGN-BUILD OPERATE SERVICES**

PURPOSE: Pursuant to § 287.055(9), Fla. Stat. (2007), the following procedures shall be followed in selecting firms when design-build or design-build-operate services are sought by the City. Definitions contained in § 287.055(2), Fla. Stat. (2007), have the same meaning in this part except "project". "Project" shall mean a fixed capital outlay project described in the public notice including individual facilities; grouping of facilities; and rehabilitation and renovation activities.

1. **Selection of the Design-Criteria Professional**

A design criteria professional shall be selected and contracted with pursuant to § 287.055, Fla. Stat. (2007) or otherwise currently be under contract or employed by the City. The design criteria professional will not be eligible to render services under design-build or design-build-operate contracts executed pursuant to the design criteria package. The design criteria professional may be required to evaluate qualifications and proposals submitted by firms, review detailed working drawings for the project, and evaluate project construction for compliance with the design criteria package.
2. **Design Criteria Package**

The design criteria professional shall prepare a design criteria package on behalf of the City. The purpose of the design criteria package is to provide sufficient information upon which firms may prepare proposals or upon which negotiations may be based. The firm to whom the contract is awarded will be responsible for creation of the project design based on the criteria in the design criteria package.
3. **Minimum Qualifications for Firms Providing Design-Build Services**

Firms seeking to provide design-build or design-build-operate services shall be:

 - a. Certified under § 489.119, Fla. Stat. (2007), to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and
 - b. Certified under § 471.023, Fla. Stat. (2007), to practice or to offer to practice Engineering; or certified under § 481.219, Fla. Stat. (2007), to practice or to offer to practice architecture; or certified under § 481.319, Fla. Stat. (2007), to practice or to offer to practice landscape architecture.
4. **Request for Qualifications**
 - a. The City shall give public notice of each instance in which professional services are being sought for a design-build or design-build-operate project, providing a general description of the project and requesting qualifications from firms. The notice shall be published in appropriate publications as determined based upon the type of project.
 - b. A firm desiring to provide design-build or design-build-operate services for a project shall timely submit a letter of interest to the City, which shall include the following: qualifications, availability and past work. Along with its qualifications, the design-build firm shall file a sworn statement pursuant to § 287.133, Fla. Stat. (2007).
5. **Qualification of Firms**

The City shall determine the relative ability of each interested firm to perform the services required for the project based on the factors set forth in Section XI (3) above. After reviewing the letters of interest, the City shall select no less than three firms deemed to be most highly qualified to provide the required services and request those firms to provide proposals for the project.
6. **Proposal Selection**
 - a. Only firms selected as most qualified will be notified by email by the City to submit sealed proposals. Firms not selected will be notified by email.
 - b. Pursuant to the request for proposals, each selected firm shall timely submit its sealed proposal to the City for evaluation. The proposal shall be based on the criteria in the request for proposal and design-build or design-build-operate package.
 - c. The City shall evaluate each firm's proposal based on price and technical and design aspects of the project. The evaluation process shall be based on criteria and procedures established prior to the solicitation of competitive proposals.
 - d. Where further clarification of proposals or additional information is needed, the City shall require informational presentations by the selected firms.
 - e. The City shall designate and rank not less than three firms, in order of preference, whose proposals the City deems to be most advantageous, having taken

into consideration the evaluation criteria and the Proposer's responsiveness to the request for proposals. A notice of intended action shall be provided by email to the selected firms.

7. Competitive Negotiations

a. The City shall begin contract negotiations with the designated firms in order of rank for fair, competitive and reasonable compensation.

b. Should negotiations with the most highly ranked firm prove unsuccessful, as determined by the City or designee, negotiations with that firm shall cease and negotiations shall begin with the next most highly ranked firm. Negotiations shall continue in accordance with this section until an agreement is reached. The City or designee is authorized to award the contract.

c. If a satisfactory agreement is not reached with any of the designated firms, the City will either:

1. Designate and rank additional responding firms, in order of preference, for competitive negotiations pursuant to (1) and (2) above;
2. Republish the request for qualifications, with any appropriate modifications; or
3. Abandon the process entirely.

8. Rejection of Proposals

a. The City reserves the right to reject any and all proposals, provided such action is done in good faith, and is not arbitrary and capricious.

b. If the City finds it necessary to reject all the proposals, a written statement to this effect shall be placed in the proposal file and the Proposers shall be notified. The City may then republish the request for qualifications, with any appropriate modifications. Any interested firm will have the opportunity to submit or resubmit its qualifications to the City for consideration.

9. Emergency Procurement of Design-Build Services

If the City determines in writing that an immediate danger to the public health, safety, welfare or other substantial loss to the public requires emergency action, the City may proceed with the procurement of the design-build services without competition.

10. Reuse of Plans

When the City reuses existing design criteria packages and resulting plans from a prior project, the requirements of this subpart shall not be applicable.

11. Alternative Procedure for Procurement of Design-Build or Design-Build-Operate Services

In lieu of the policies contained herein, the City may engage in a qualifications-based selection process for design-build or design-build-operate services as set forth in section 287.055(9)(c). This alternative process would allow the City to issue a request for qualifications without price, to rank the respondents and to begin negotiations with the top ranked respondent. The selected firm would then establish a guaranteed maximum price and guaranteed completion date. Should the City elect this alternative process, it shall be made clear in the original solicitation.

Section XII

Evaluation of Proposals and Recommendation for Award

PURPOSE: Once the proposals have been opened, an Evaluation Committee or Technical Reviewer must evaluate them. The Finance Department must be present at each evaluation meeting and shall chair the Evaluation Committee. The Evaluation Committee is structured to provide the skills necessary for the particular project being evaluated. Certain procurement actions may require a technical review, which may be conducted at the discretion of the Department Head. To the extent a

Technical Review is needed, they shall comply with the Sunshine Law and Public Records requirements. Additional skills required for evaluation may include engineering, general business, legal, or information technology. The Evaluation Committee as a whole will meet to arrive at a recommendation for award. When the Department or Technical Reviewer responsible for the project prepares recommendation, the tabulation sheet must be included with the recommendation of award. Once all the steps above are completed, the contract will be prepared and the Council Agenda Request must be written, if necessary.

Evaluation Committee meetings must comply with the State of Florida's Sunshine and Public Records Laws. Reasonable notice of the date, time and place of the meeting must be given. The meeting should be recorded, when possible. If not recorded, minutes must be taken by the person chairing the meeting. At the meeting, the committee members must return all required forms such as the Conflict of Interest Statements and individuals or group evaluation forms and any other pertinent data as necessary for the evaluation of the project.

1. The evaluation process is a key function in the selection of a quality contractor/consultant. It is very important that this process be conducted in a professional and consistent manner; therefore team members need to be flexible and available for all meetings during the evaluation/review process, including demonstrations and presentations. City employees that are nominated to serve on an Evaluation Committee will follow these guidelines and procedures. The Evaluation committee shall review the proposals for references, responsiveness and responsibility of submittals. The Evaluation Committee evaluates the submittals against the established evaluation criteria stated in the solicitation. Evaluation Committee meetings are considered "open meetings" under the Government-in-the-Sunshine Law and must be open, notice posted and minutes taken.
2. For all Proposals, CCNA and special projects, if the procurement has a value of \$250,000 or more per year, then the Department Director must be a member.
3. For contracts awarded under the State of Florida's Consultants' Competitive Negotiation Act (CCNA): This formal evaluation process will identify the firms that best meet our requirements in accordance with the evaluation criteria stated in the solicitation. The Evaluation process requires a review of all proposals independently against the established evaluation criteria as stated in the solicitation. The Finance Department will supply the evaluation criteria as stated in the solicitation. The evaluation sheets shall include comments of the strengths, weaknesses and deficiencies of each proposal that support the staff recommendation. The Evaluation Committee shall evaluate statements of qualifications and performance and shall conduct discussions with and may require public presentations by no fewer than three most highly qualified firms (if more than three firms) selected in order of preference. Each evaluation committee member will review the statement of qualifications submitted by each firm and will evaluate each firm's qualifications utilizing the Professional Services Evaluation Form containing the specific evaluation criteria established for each RFQ which will approximately resemble the attached PSEF form. The scores of the committee members will be added to determine the ranking of the firms (first, second, third). The evaluation sheets will be included in the backup of the agenda or a tabulation form displaying the scores of all committee members can be submitted instead of individual sheets. If public presentations by firms are not conducted, the ranking established during the "short list" phase, which includes discussion with the minimum of three (3) firms, will be the ranking order of the firms.
4. Request for Proposal (RFPs) (Non-CCNA): This process is similar to the above. It includes a price/cost evaluation that the Finance Department will provide as part of the overall evaluation. The method of award must be stated in the solicitation and may be of two types; low price technically acceptable or best value. For low price technically acceptable process, the evaluation process will start with the lowest proposal to determine if they are technically

qualified. If not, then proceed to the next low until an acceptable proposal is found. A pass/fail or yes/no evaluation is required to determine if the proposal meets the technical requirements. For Best value process or an award to other than the lowest price, the team must evaluate all proposals and document the advantages of the recommended firm to support the best value recommendation. The documentation must specifically address why the recommended award is worth the added cost over the lowest (or lower) price(s). The evaluation sheets that support the best value justification will be part of the backup documents.

- Method of evaluations: There are two approved methods of evaluations to be used:
 - Weight (points) system, can be a two-step process
 - Rating (adjectival) system can be a two-step process.
5. The Evaluation Committee Leader is responsible for ensuring the Evaluation Committee performs Past Performance or Reference checks, and guiding the team to a consensus recommendation. The Finance Department will monitor the evaluation process and provide guidance at the start of each formal evaluation. If requested, training on the evaluation process can be provided to the team with little or no previous evaluation experience. The Finance Department will review forms for completeness and compliance with the policy. Any forms that are not properly filled out or which lack appropriate comments or documentation to support the award recommendation may result in the delay of the award recommendation. Each team member must be thoroughly familiar with the contents of each proposal and the requirements of the evaluation criteria in the solicitation. Team members should evaluate each proposal on its own merits and in accordance with the requirements stated in the solicitation. At the Evaluation Committee meeting, team members will work towards reaching consensus and will submit a single recommendation for proceeding. The Evaluation Committee Leader, with assistance from the Finance Department Staff, will guide the team's deliberations.
 6. List the Strengths, Weaknesses and Deficiencies using the following guidelines:
 - Strengths: Those areas in which the proposal meets or exceeds the City's requirements.
 - Weaknesses: Those areas where the proposal lacks soundness or effectiveness, which could prevent fully successful performance of the contract.
 - Deficiencies: Those areas where the proposal fails to meet the City's requirements.

These strengths, weaknesses and deficiencies can be used in the negotiations, presentations and discussions during the second step of the two-step process. The Finance Department is responsible for performing a cost or price analysis on each solicitation. The analysis will include a determination of fair and reasonable price for the recommended award. The price/cost proposal of the RFP should be evaluated by the Finance Department personnel using the following ratio:

The lowest price proposal receives the maximum points or is rated highly acceptable. Divide the lowest vendor's price by the next vendor's price to receive a percentage and multiply this percentage by the weights to determine the next score.

If the contract is based upon various hourly rates or level of effort, the Specialist must make some assumption based upon anticipated usage or historical data. This estimated cost must be analyzed using the above process or if developed in the RFP a way to utilize the rates as benchmark. Presentations and interviews must comply with the State of Florida's Sunshine and Public Records Laws. The meeting should be recorded, when possible. If not recorded, minutes must be taken by the person chairing the meeting. If presentations are necessary, the details of the presentations must be discussed such as time for each presentations and the overall schedule. Once the information is collected and compiled, the ranking must be established. The Tabulation Form must be updated and posted in the city's bidding service providers' site.

Once the short listed firms have been identified, staff must ensure compliance with the following process:

- Notify the Consultants by fax or email of the City's determination. The firms must be notified within the next two (2) days of the Evaluation Committee meeting. The notification shall include details of the interviews/presentations including but not limited to the following:
 - Date and time of the interview/presentations.
 - Location of the meeting.
 - Time allotted for each firm.
 - Additional information if requested by the Evaluation Committee.
- Finance will coordinate the schedule of the interviews/presentations with the Evaluation Committee meeting and when applicable will send invitations via email.
- Interviews/Presentations forms must be sent to the User Department requesting information for the evaluation of the firms.
- Prior to the date of the interviews/presentations, staff must ensure that the evaluation forms and the sign-in sheet forms are completed and available for each member of the Evaluation Committee. There must be a sign-in form for each of the firms presenting.

SECTION XIII BONDS AND BID SECURITY

PURPOSE: The City Clerk is responsible for insuring that any required surety bonds are maintained. Before commencing work on the construction of a public building or repairs upon a public building or public work, the contractor shall deliver to the City a payment and performance bond that has been recorded in the public records of Volusia County. The bonds must state the name and principal business address for both the principal and the surety and must contain a description of the project sufficient to identify it.

Requirement for Bid Security: Bid security shall be required for all competitive sealed bidding for capital improvement construction contracts when the price is estimated to exceed \$100,000 or when the City Manager or designee deem appropriate as detailed in the bid document. Bid security shall be an original bond provided by a surety company authorized to do business in the State of Florida or the equivalent in the form of a cashiers or certified check. The City Manager may require bid security for other types of bids and Request for Proposals (RFPs). Amount of Bid Security shall be indicated in the Contract Documents. When the Invitation for Bids (IFBs) or RFPs requires security, noncompliance requires that the bid be rejected.

As determined by the Finance Director or designee or mandated by Florida Statutes (FS 255.05), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:

1. A performance bond satisfactory to the City, executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the City, in an amount equal to one hundred percent (100%) of the price specified in the contract.

2. A payment bond satisfactory to the City, executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

Nothing in this Section shall be construed to limit the authority of the City to require a performance bond or other security in addition to those bonds or in circumstances other than specified in this Section.

SECTION XIV CONTRACTS AND CONTRACT PROCESSING

PURPOSE: The City contracts for a varied number of services and products. Formal contracts attest to definitive detailed obligations of goods, services and/or payments of monies between the City and others, as approved by the City Council or as delegated by the City Council via formal action or ordinance. Contracts will be issued in conjunction with either a blanket or inverted purchase order, which will be used as the payment tool for the contract.

DEFINITION: A written or oral agreement between two or more competent parties that defines a job or service to be performed and which is legally enforceable.

HOW PREPARED: The Finance Department will prepare and coordinate contract activity, including contract preparation; legal reviews; contract amendments; renewals; contract change order preparation, or review if prepared by the City's consultant; change order processing; notice to proceed; pay request review and processing for inverted purchase orders, unless delegated, and any other activity as determined by the City Manager.

PROCEDURE: All requests for contract preparation will be sent to the Finance Department. The dollar thresholds for procurements will be followed unless exempted by code, ordinance or prior Council approval. Contracts with no dollar value will be signed by the City Manager unless he wishes to have Council approve.

A draft contract will be prepared by the Finance Department and sent for review to the Contractor, City Attorney and the requesting department. If required, the Finance Department will submit a Report to Council for the approval of the contract. All review comments will be routed to the Finance Department. All contracts must be physically or electronically signed. The contract will be revised and routed for signature from the following parties:

- Contractor
- Department Head
- Finance Director
- City Attorney
- City Manager
- Mayor

The City Clerk will ensure the Mayor's signature is obtained as required. The City Clerk will then sign and affix the City seal. The City Clerk will return the documents to Finance Department for distribution. Distribution of the original contract is as follows: Vendor, City Department, City Clerk and Finance Department. If multiple departments require the document, copies will be made and distributed to departments. If the contract involves the collection of revenue, the Finance Department receives two

copies of the contract. The City Clerk will record and retain all officially approved and executed original contract documents.

RESPONSIBILITY: The affected department will monitor the contract for compliance with terms and conditions of the contract. The Finance Department will monitor contracts for procedural, legal and statutory compliance, and to assist in dispute resolution.

E-VERIFICATION:

- a. In accordance with Florida Statute Chapter 448.095, A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify System.
- b. The City shall not enter into, or renew, a contract with a vendor/contractor that is not enrolled in E-Verify. Any vendor/contractor that has a contract with the City shall be contractually required to utilize E-Verify to confirm the employment eligibility of any employee hired during the contract term.
- c. The City shall verify the Contractor's /Vendor's participation in the E-Verify Program by confirming their enrollment on the Department of Homeland Security E-Verify Website. Vendor's/Contractor's whose participation cannot be verified on the Department of Homeland Security's E-Verify Website, shall provide acceptable evidence of their enrollment prior to award and the execution of a contract. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding for the business.
- d. A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the contractor hires or employs a person who is not eligible for employment.
- e. Nothing in this section may be construed to allow intentional discrimination of any class protected by law

**SECTION XV
PURCHASES NOT REQUIRING BIDS**

PURPOSE: This section defines the limitations of purchasing without solicitation. Authorization for purchase of these items will follow the threshold approval authority as outlined in this Policy.

SOLE SOURCE AND PROPRIETY SOURCE: The following criteria must be met in order to satisfy the sole source or proprietary source requirement:

- a. It is the only item that will produce the desired results (or fulfill the specific need) ...or
- b. The item is available from only one source of supply ... or
- c. The item is available from more than one vendor but due to extreme circumstances, only one vendor is suited to provide the goods or services.

Sole source and proprietary source purchases are exempt from competitive requirements. However, all sole source requisitions exceeding \$10,000 in value will be electronically advertised for a period of at least 5 business days. The steps to follow for sole source and proprietary source purchases are as follows:

- a. The User Department/Division and the Finance Department shall attempt to locate competition. Staff will also check for piggyback contracts. If no other sources are found, the User Department/Division shall submit to the Finance Department a completed sole source/proprietary source form, indicating the requisition number.
- b. A sole source or proprietary source form shall be used to justify and document the requirement. The form shall state why only one source can produce the desired results (or fulfill the specific need).
- c. The Finance Director shall review and approve or disapprove, in writing; sole source/proprietary source designation.
- d. The User Department/Division shall be notified of disapproved requests and the purchase shall be made in accordance with standard procedures.
- e. When the Finance Director approves a sole or proprietary source, staff shall conduct negotiations on price, delivery, and terms. The price must be determined fair and reasonable.
- f. The Finance Department shall keep a log of sole/proprietary source purchases, which includes the vendor name, the amount, item description, justification, and the purchase order number.
- g. For those instances that services are needed involving multiple years (i.e. maintenance of equipment, warranty, etc.) the request must be combined to capture the project, as a whole, and the proper approval must be obtained.

STANDARDIZATION

DEFINITION: Standardization is the process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for that purpose. Proprietary purchases (usually components) maintain a degree of continuity to the original or existing decor, equipment, or programs.

Where standardization is determined to be desirable by the Finance Director, the purchase of materials, supplies and equipment and certain contractual services may be made by negotiation.

Compatibility to existing equipment will be an acceptable justification for waiver of bidding procedures provided the item meets the other criteria within the definition of sole source item (i.e.; available from only one source and only item that will produce the desired results).

COOPERATIVE PURCHASING

DEFINITION: An approach in which several organizations jointly buy selected items. They may form or utilize a centralized buying service that purchases specified types of items for all members of the group or cooperate informally. The resulting volume buying usually produces significant cost savings for group members.

The Finance Director shall have the authority to join with other units of government in cooperative purchasing ventures when the best interests of the City would be served and the same is in accordance with City Ordinances. Purchases in any amount may be made against established G.S.A, State of Florida, or other units of government and non-profit organizations including established and approved Cooperative Purchasing Associations (i.e., OMNIA Partners, The Cooperative Purchasing Network -TCPN, National Joint Powers Alliance - NJPA, The Interlocal Purchasing System

- TIPS USA, BuyBoard etc.) term contracts without bidding, provided they are in the best interest of the City.

Purchases from the current City cooperative contracts, state term purchasing contracts, or state university system cooperative bid agreements, non-profit organizations, and approved Cooperative Purchasing Associations will be an acceptable alternative procedure for bidding, providing all terms and conditions of the contract apply.

PURCHASE OF USED VEHICLES, EQUIPMENT AND FURNISHINGS

The City Manager or designee may determine on a case-by-case basis, the method(s) of purchasing used motor vehicles, equipment or furnishings. Such methods may include for example, purchase from auctions, dealers, public agencies and private agencies and citizens. Prior to purchasing, an analysis will be completed which documents that the purchase price is considered fair and reasonable and is in the best interest of the City.

CITY DIRECT PURCHASE OF MATERIALS FOR USE IN A CONTRACTED CITY PROJECTS

It may be to the City's advantage to directly purchase materials, components, or systems to be used in a construction project. This allows savings in sales tax (the City is tax-exempt, contractors are not), and the contractor's mark-up. If so doing, the construction contract shall contain language to make the contractor responsible for expediting, receiving, storing, protecting, installing the goods, arranging for training of staff by the supplier, and providing the suppliers' and manufacturers' warranties. Also, long-lead-time items may be ordered by the City, while the bidding/contract negotiation process is ongoing.

In the event the City elects to make direct purchases, the responsibilities of both, the City and the Contractor relative to direct purchase items shall be governed by the terms and conditions contained herein, in the solicitation and in the contract and in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities. FS Section 212.08(6).

OTHER NON-COMPETITIVE PURCHASES:

The following items can be paid by PO, FPO, pre-payment procedures or paid directly by Finance

- Governmental Contracts: Usage of other City resources, such as Environmental Services for parking lot improvements, may be exempt from bidding practices, unless competition is desired;
- Resale: Items for resale, such as those being marketed by an enterprise function, shall be exempt from bid requirements;
- Copyrighted Materials: The purchase of educational tests, textbooks, printed instructional materials, films, filmstrips, videotapes, disk or tape recording or similar licensed or copyrighted audio-visual materials and computer software to include Software as a Service products, periodicals, and other copyrighted materials are exempt from competitive solicitation requirements. This exception applies when purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent within the state, a governmental agency or a recognized educational institution;
- Software/Technology Maintenance and Support renewal fees for existing software or technology licenses;

- Acquisition of Real Property, such as land, easements, rights-of-way, existing buildings, structures, or improvements, resulting from negotiations and approved by the City Council;
- Court-ordered fines and judgments, resulting from litigation;
- Exceptional disbursement as authorized by the City Council;
- Court-ordered fees, resulting from the judicial process, processed by the Clerk of the Court, and recorded against the budget for such fees;
- Cash transfers and investment transactions for fiscal management purposes, recorded against general ledger accounts;
- Accrued or current liabilities already charged against the budget, recorded against general ledger accounts;
- Debt service payments charged against budgetary accounts as authorized by the City Council;
- Postage or other delivery services;
- Utility refunds;
- Employee deduction;
- State or County license and permit renewals;
- Auto Tags;
- Refunds of current or prior year revenues charged against budgetary accounts;
- Grant disbursements to federal, state, or local government agencies, or to private groups or agencies;
- Insurance including but not limited to liability, property, medical, and workers compensation insurance or payments from any loss fund established for such purpose;
- Dues and memberships in trade or professional organizations, subscriptions for periodicals, advertisements, copyrighted material, part-time, authorized hospitality expenses, and fees and costs of job-related travel, seminars, tuition registration and training as allowed by the City budget;
- Legal services, expert witnesses, court reporter services, and all other related expenses of claims and/or litigation;
- Consultant Services, other than those regulated by § 287.055, Fla. Stat.;
- Title insurance, title commitments, title searches, and ownership and encumbrance searches; and
- Transactions by Inter-local Agreement.

WAIVER OF COMPETITIVE SELECTION REQUIREMENTS.

The City Council may waive the written quote and formal bidding requirements where solicitation of bids is deemed not to be in the best interest of the City taking into consideration cost, delivery time, prior dealings with the vendor or product, consistency of product use, compatibility of product with existing equipment and such other considerations as deemed appropriate by the City Council.

If the City Council elects to waive the competitive selection requirements of this article for a procurement in any instance, the Council will state its findings as to why the waiver is in the city's best interest.

A waiver of the competitive selection requirements of this article does not constitute a waiver of competitive selection requirements for public works projects governed by F.S. §§ 255.103 or 255.20. Any required waivers from the application of F.S. §§ 255.103 or 255.20 will be in strict accordance with those statutory provisions unless the city Council adopts an emergency ordinance.

SECTION XVI PURCHASING CARD

PURPOSE: The purchasing card program is a delegation of procurement authority by the Finance Department to the Departments. Each Department Head must control the proper use of his or her Department's cards.

PURCHASING CARD ADMINISTRATION: Each Department Head shall determine who in their Department should have a City purchase card. The "Purchase Card Form" is used to apply for a purchase card. The application must be completely filled out and signed by the appropriate Department Head. Requests that exceed any of the established "Cardholder Controls" must have the City Manager's approval. New cardholders will receive training and must sign a "Cardholder Agreement" signifying they understand and accept the responsibility associated with the purchase card.

MAKING CHANGES TO THE PURCHASING CARD: The "Purchase Card Form" is also used to make changes to the purchasing card. Any changes to "Cardholder Controls" will require the Department Head's signature approval. Any change to "Cardholder Controls" that exceed the established amounts must have the City Manager or designee's signature of approval. Changes to fields other than "Cardholder Controls" can be made with only the cardholder's and the approving official's signatures.

TRANSFERRING THE CARD BETWEEN DEPARTMENTS: The purchasing card can be transferred from one Department to another with the receiving Department Manager or Department Head's approval. If an employee moves to a new Department, the losing Department is required to notify the Finance Department of the transfer by email. The Finance Department will verify approval of the card transfer with the receiving department. Once approval is received the card will be moved to the receiving department's group.

LOSING THE CARD ACCOUNT: If an employee leaves the City or no longer requires a card, the Department Head is responsible for collecting the purchasing card. The card should be cut in half once and submitted to the Finance Department along with the "Purchase Card Form" marked to close the account. The Finance Department will contact the issuing Bank to close the account. If the card cannot be collected from the terminated employee, treat the card as a "Lost or Stolen" card and follow those procedures.

LOST OR STOLEN CARDS: If a card is lost or stolen, immediately notify the issuing Bank and the Finance Department. The cardholder must also notify his approving official.

CARDHOLDER SPENDING LIMITS:

1. The delegation of purchasing authority that the card provides to each cardholder sets the maximum dollar credit limit amount per month. Each time a cardholder makes a purchase with the card, the limit will be checked, and the authorization request will be declined should the purchase amount exceed the available credit amount. The maximum credit limit amount is set at \$10,000 and cannot be exceeded without the approval of the City Manager or designee. Each cardholder's credit limit is recommended by the cardholder's supervisor on the "Purchase Card Request Form" and must be approved by the cardholder's Department Head and by the Purchasing Card Program Administrator. Requests for a credit limit exceeding \$10,000 must be justified in writing and approved by the City Manager or designee prior to submission to the Finance Department.
2. The City's single transaction limit for goods is set at \$5,000. Single item purchases exceeding \$1,000 but under \$5,000, are allowed with supporting documentation.

3. The single transaction purchase limit is defined as the total transaction dollar limit for a single transaction. The maximum single purchase limit is set at \$5,000 and cannot be exceeded without prior coordination with the Finance Department and approved by the Finance Director. Each cardholder's single purchase limit is recommended by the cardholder's supervisor on the "Purchase Card Request Form" and must be approved by the cardholder's Department Head and by the Finance Department Administrator (or designee). Finance in conjunction with the Department may change the single transaction limit based on operation. Requests for a single purchase limit exceeding \$5,000 must be justified in writing and approved by the City Manager prior to submission to the Finance Department.
4. The City's Emergency Operation Center will designate personnel involved during declared emergency. Limits of designated cardholders will be increased as necessary for recovery efforts. The maximum credit limit amount is set at \$250,000. Purchases made with emergency purchase cards must follow emergency purchasing procedures.
5. The Finance Department may use the P-Card as a payment method to pay for any invoice, in any amount. Any payment over \$50,000 will require the City Manager's prior approval.
6. Fleet may exceed single transaction limits of \$5,000 on sole source/standardized items related to Fleet Maintenance items only, with supporting documentation.

PURCHASING CARD USE:

1. The purchasing card is to be used for **CITY PURPOSES ONLY**. The purchasing card may be used for all legitimate City purchases unless specifically prohibited in this section. The City is exempt from paying sales tax.
2. The purchasing card has the cardholder's name embossed on it and is to be used only by that cardholder only. No other person is authorized to use the card.
3. Each transaction may be comprised of multiple items, but each item(s) cannot exceed the single item purchase dollar limit. Purchases will be denied if the authorized monthly purchase limit, the single purchase limit, or the daily transaction limit is exceeded. Purchases are not to be split in order to stay within the single transaction purchase limit.
4. All items purchased over the counter to be paid by using the card must be immediately available. Back ordering is not permitted.
5. All items purchased by telephone order or from the Internet that will not be confirmed with a written order and will be paid by using the card must be delivered by the vendor within the thirty (30) day billing cycle. The order should not be placed without this assurance.
6. The purchasing card **MAY NOT** be used to purchase fuel, oil, personal items, telephone calls, or items listed on the "Do Not Buy List"
7. The purchasing card **MAY** be used to purchase fuel when on overnight and or out of state travel. Fuel purchase may be made only for a city owned vehicle or rental vehicle **ONLY**. Employee must be on designated travel status.
8. The purchasing card **MAY NOT** be used to make cash advances or to write VISA checks.
9. The purchasing card cannot be used to purchase like items totaling over \$25,000 annually. These items should be purchased using competitive purchasing procedures. The use of the purchasing card is not intended to replace effective procurement planning which enables volume discounts.
10. Cardholders must follow their department's control of funds procedures to ensure that sufficient funds are available prior to making a purchase.
11. The least expensive item that meets the City's basic needs should be sought

PURCHASING CARD TRAINING:

1. Initial Training: Each cardholder will be provided with initial training prior to issuance of the purchasing card. The training will cover the proper use and restrictions of the purchasing card.
2. Annual Training: Annual training will be provided at least once per year. Cardholders and Approving Officials will be made aware of any changes to policy and procedures as these changes are made and approved. Card holders and Approving Official are responsible for familiarizing themselves with all information transmitted to them.

PURCHASE CARD PROGRAM INTERNAL CONTROLS:

1. The Finance Director will establish automated card restrictions as allowed by the issuing bank's software. The Finance Director or designee will establish a City account allowing access to the issuing Bank's database. This will allow the Card Administrator to view cardholder information and statements online.
2. The Finance Department will review each transaction and supporting documentation. The Finance Department will contact cardholders directly and attempt to resolve any statement discrepancy found. If unable to resolve the issue with the cardholder directly, the Finance Department will elevate the problem to the Department Head for resolution.
3. Any incident of improper unauthorized use of the card or non-compliance to City policy shall be immediately reported to the Personnel Director and employee Department Director.

PURCHASE TRANSACTION DOCUMENTATION:

All purchase transactions fall into one of two categories; face to face (i.e., over the counter) or remote (i.e., telephone, internet or fax).

1. FACE-TO-FACE: The cardholder should get a receipt for any face-to-face transaction. The receipt serves to document both the order and receipt of goods/supplies.
2. REMOTE: The cardholder must document the order when it is placed. Items purchased by telephone should be documented by keeping a log of orders (a phone log). A log entry is not required if the order is documented some other way, such as a fax back confirmation or a web page printout. When the goods are received, the packing slip must be matched to the log (or confirmation) showing the order.

PREPARING TRANSACTIONS FOR PAYMENT:

Transactions must be reviewed, substantiated, and approved with the attached receipt in the Online System within five days of posting transaction date.

1. REVIEW: The cardholder shall review the transaction for correctness. Ensure all charges are legitimate and no sales tax was charged.
2. SUBSTANTIATE: Each transaction should be documented with a receipt. Provide account numbers for each transaction in the City's system.
3. APPROVE: The approving Director or designee (usually the cardholder's immediate supervisor) or designee shall review each transaction and check all documentation. Any errors, sales tax issues or questionable purchases must be resolved before submitting to Finance. The Approving Official's review of transaction certifies all transactions as

legitimate expenditures of City funds.

4. **MISSING DOCUMENTATION:** The cardholder is responsible for providing required documentation. If a receipt is lost, attempt to obtain a duplicate. If a duplicate cannot be obtained, prepare a statement that includes all the information normally found on the receipt and a brief explanation for the lost documentation. Continual abuse may result in loss of the card and disciplinary action.
5. **DISPUTED CHARGES:** If the cardholder questions a charge on the statement, the cardholder shall contact the vendor directly and attempt to reach resolution. If the cardholder reaches an agreement with the vendor, there is no dispute. If the vendor refuses to acknowledge the error or will not issue a credit, the cardholder must fill out the issuing bank's "Purchase Card Disputed Charge Form" and send it to the Finance Department. The bank will then adjudicate the disputed charge.

"DO NOT BUY LIST"

The following items may not be bought using the purchasing card. A requisition and purchase order must be used.

- Telephone calls
- Cash advances
- Personal items (i.e., items for your own use)

*IT will purchase any computer related equipment or equipment that interfaces with City computers. Exception to using the Purchasing Card for computer related equipment or software purchases are made by MIS to support operational requirements.

SECTION XVII VENDOR COMPLAINTS AND DISPUTES (PROTESTS)

PURPOSE: The City of Edgewater encourages prompt and fair handling of all complaints and disputes with the business community. In an effort to resolve disputed matters in an equitable manner, without fear of retribution on the part of the vendor, the following procedures are adopted:

DEFINITION: A formal objection or disapproval issued by a vendor.

PROCEDURE: The Finance Director or his/her representative shall post a tabulation of competitive sealed bids/quotes along with the intended award recommendations on the City's bidding services website.

All awards under \$10,000 will not be subject to protest. For awards of \$10,000 or greater, only rejected bidders or quoters who were the apparent lowest bidder/quoter and the second apparent lowest bidder or quoter shall have standing to protest a rejection of the bid, quote or contract award, respectively. *All* proposers responding to a RFP may protest the proposal selection.

Pursuant to Florida Administrative Code, Chapter 120, any person allegedly adversely affected by the decision or intended decision of award must file a written notice of protest with the Finance Department within 72 hours after posting of the bid tabulation or after receipt of notice by the City of intended award.

The nature of protest must be followed within 10 days of filing, by a formal written notice fully detailing all elements, which promulgated the protest. This notice must be delivered to the Finance Director or his/her representative and must contain the bid/quote/proposal number and the nature of the complaint.

After notice is provided, the Finance Director will gather evidence and discern facts and make a recommendation to the City Manager. The City Manager will present his recommendations to the governing body that will make the final decision on the matter. All decisions of the governing body are final.

Failure to observe any or all of the above procedures shall constitute a waiver of the right to protest a contract award. In the event of a timely protest, the procurement shall be halted unless the City determines award of a contract without delay is necessary to protect the interests of the City. In the event an award is needed without delay, the City Manager's findings shall constitute final administrative action.

SECTION XVIII SUSPENSION AND DISBARMENT

- A. *Authority to Debar or Suspend.* In accordance with the provisions of this Section, the Finance Director, after consultation with the City Attorney, shall have the authority to debar an actual or prospective contractor for cause from consideration for award of contracts. The debarment shall be for a period of not more than five (5) years from the date of the final determination of debarment. Upon initiation of debarment proceedings, the Finance Director, after consultation with the City Attorney, shall also have the authority to suspend an actual or prospective contractor from consideration for award of contracts pending the final debarment determination. The suspension shall be for a period of one (1) year or until a final determination with respect to debarment is made, whichever is earlier.
- B. *Causes for Debarment.* The causes for debarment shall include, but are not limited to, the following:
1. Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or incident to the performance of such contract or subcontract.
 2. Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects its responsibility as a contractor.
 3. Conviction or civil judgment finding under state or federal antitrust statutes arising out of the submission of bids or proposals.
 4. A determination by a court, hearing officer, administrative official, or any local, state, or federal governmental entity or agency that the contractor has violated the provisions of any local, state, or federal laws or regulations.
 5. Commission of any fraud or misrepresentation in connection with a bid, quotation, proposal, solicitation, or contract with the City or other public entity, whether or not leading to a conviction.
 6. Violation of a material solicitation/contract provision with the City or any other person or public entity, including, but not limited to the following:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a bid/contract;
 - b. Abandonment of a contract;
 - c. Failure to pay a contractor, sub-contractor, or material provider as required by Florida Statutes;

- d. Repudiation of a bid/contract by failure to provide bonds, insurance, or other required certificates within a reasonable time period or otherwise repudiating a bid/contract;
 - e. Refusal to accept an addendum, agreement or contract, or to perform thereon provided such addendum, agreement or contract was issued timely and in conformance with the bid or solicitation received; or
 - f. Overall performance of a contract which has been evaluated as "poor" or "unsatisfactory".
7. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more bids/contracts with the City or any other person or public entity; 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.
 8. Presence of principals or corporate officers in the business or concern, who were principals or corporate officers within another business at the time when the other business was suspended or debarred within the last five (5) years under the provisions of this section or by another public entity.
 9. Violation of an ethical standard of the Code of Ethics of the National Institute for Governmental Purchasing.
 10. Any other cause or material factor which adversely affects the responsibility of a person or entity as a City contractor, including but not limited to suspension or debarment by another governmental entity for any of the causes listed in this section.
- C. *Notice of Intent to Debar.* Upon a preliminary determination by the Finance Director that cause exists for debarment, a contractor or prospective contractor shall be sent a written notice of intent to debar. Such notice shall state:
1. The reasons for the proposed debarment;
 2. The proposed length of the debarment;
 3. That the preliminary finding of cause and proposed debarment action shall become final, if a request for review is not timely filed in accordance with the provisions of subsection D below;
 4. Whether the person has been suspended pending finality of the debarment determination; and
 5. That suspended and/or debarred persons may not be considered for award or receive new contracts during the period of suspension and/or debarment.
- D. *Request for Review.* A contractor or prospective contractor that has received a notice of intent to debar may request that the proposed debarment action be reviewed and reconsidered. Such request must be received by the Finance Director in writing within ten (10) calendar days of issuance of the notice of the intent to debar. Such request for review and reconsideration shall state the basis for review and reconsideration, and shall include such documents, evidence, and other information as the requesting party deems necessary to support its position. If no request for review and reconsideration is received within the time period allowed, the determination of the Finance Director that cause exists for debarment and the proposed length of the debarment shall become final and all rights to request review or appeal shall be deemed waived.
- E. *Review.* Upon timely filing of a written request for review, the Finance Director shall review and reconsider the preliminary determination of cause for debarment, with or without a meeting or hearing with the party requesting review, at the option of the Finance Director. The Finance Director may request information from, and speak individually or collectively to, any people or entities having information relevant to the debarment determination. The Finance Director shall render a written decision on the request for review and reconsideration, which shall include the Finance Director's final debarment decision and action taken, if any, within thirty (30) calendar days following receipt of the request.

- F. *Appeal of the Finance Director's Decision.* The final debarment decision of the Finance Director may be appealed by the person proposed for debarment to the City Manager within ten (10) days. The City Manager will present his recommendations regarding the disposition of the appeal to the City Council and the City Council will make the final decision on the disposition of the appeal. All decisions of the City Council are final.
- G. *Debarred and Suspended Persons List.* The Finance Director shall maintain a list of suspended and debarred persons. Persons which have been suspended or debarred shall be precluded from responding to solicitations or receiving awards of contracts from the City during the period of their suspension or debarment. Any bid or other response received from such a party during the period of their suspension or debarment shall be disregarded and not evaluated for potential award.
- H. *Other Remedies.* Nothing in this section shall limit the City from pursuing other legal or contractual rights or remedies against a suspended or debarred person, including but not limited to during the pendency of any proceedings related to suspension or debarment.

SECTION XIX CAPITAL ASSET TRACKING

PURPOSE: Capital asset control entails tracking, compiling and maintaining an inventory of capital assets to control losses due to negligence or theft, to provide a basis for insurance claims and identify surpluses. Capital asset records are set up to comply with Florida Statute 274.

DEFINITION: Capital assets are tangible items (e.g. land, buildings, building improvements, vehicles, machinery, equipment and infrastructure) or intangible items (e.g. easements, water rights) with original cost or value of \$5,000 or more, with an estimated useful life of at least one (1) year following the date of acquisition. Capitalization thresholds are to be applied to individual items rather than groups of similar items (e.g. desks and tables), unless the effect of doing so would be to eliminate a significant portion of total capital assets.

PROCEDURES: The Finance Department will coordinate the maintenance of the City's Capital Assets Database. Purchasing will provide copies of each purchase order that contains a purchase of a Capital Asset to the appropriate Accounting personnel. The ordering (receiving) Department must notify the Finance Department when an item is received so proper identification may be affixed, and records can be updated. All Capital Asset equipment is assigned a permanent City of Edgewater identification number, and is physically tagged or otherwise marked by the Finance Department. Records are entered and maintained for each item, and include the following information:

- Capital Asset Item Number
- Item Description
- Serial Number
- Make and Model
- Account Number
- Location and Custodian
- Payment Information: Vendor name, P.O. Number and Date of purchase
- Purchase Price
- Date of Last Inventory

The copy of the purchase order provides much of the above information. Additional information is obtained upon physical tagging of the equipment and through communication with the vendor and the Department. Finance is responsible for taking a biennial Inventory of property in their custody. The Capital Asset Property Coordinator(s) will distribute an inventory list to each Department biennially. This biennial inventory will validate all items and any item unaccounted for will require a Missing, Lost or Stolen Form to remove the item from inventory. The biennial inventory shall be compared with the property record, and all discrepancies shall be traced and reconciled. The results of the biennial inventory will be provided to the Finance Director in an executive summary format.

SURPLUSING OF CAPITAL ASSETS: All capital assets that are obsolete, excess, or no longer needed by the owning Department/ are to be reported to the Finance Department for disposition. All items must be listed on a Request to Transfer/Declare Surplus form and submitted to the Finance Department. The Finance Department is responsible for approving the disposition of the capital assets. If the item is a transfer between Departments, the Request to Transfer/Declare Surplus Form requires both the transferring and receiving Department Director's signatures. The Capital Asset Coordinator will verify ownership, description, and identification number of the equipment on the form and approve the transfer or surplus of the item. Upon approval, a copy of the form will be provided to Finance to update the computerized inventory. The Management Information Services Division must approve the transfer of information technology equipment.

DISPOSITION OF PROPERTY: Non-capital items such as broken chairs, tables, calculators, desk accessories, books, tools, which are considered as "junk", may be disposed of via the landfill or trash by the individual department(s). Capital Assets that have identification numbers can be disposed of as follows:

1. Assets with no salvage value: Transfer/Declare Surplus form addressed to the Finance Department, signed by the Department Director and containing the identification number, description, condition and recommended disposal method (i.e. landfill disposal) of each piece of equipment. Once approved, the requesting Department must dispose of property locally.
2. Property with salvage value: Disposal must be in accordance with Florida Statute 274, after the Department has screened to see if another Department can use the Property.
3. The Finance Department will prepare the list of disposal equipment, which will be part of the City Council Consent Agenda to ensure that the list is recorded in the minutes of the City.

SECTION XX RECEIPT OF GOODS AND MATERIALS

PURPOSE: Receiving of goods and materials confirms that the products received meet the purpose of procurement as intended.

DEFINITION: The business function that is responsible for verifying that the goods received are the goods that the organization ordered. This involves inspecting and accepting incoming shipments.

USER (ORDERING) DEPARTMENT: The department is charged with the responsibility of inspecting all supplies to determine quality, quantity and conformance with specifications and the purchase order.

The Finance Department shall have the authority to question, examine, or test the quality of materials requested or received by the department.

PROCEDURE IN DEPARTMENTS

Upon receipt of materials and after inspecting and/or testing, the department shall receive the item in the on-line system receipt-processing module. Any variation in quantity shall be noted on the system. If the quantity does not agree with the supplier's delivery ticket, the department shall notify the vendor of the discrepancy. If the materials delivered are not in conformance with specifications and are not acceptable by the department, they shall notify the vendor and file a complaint with the Finance Department by using the evaluation form and citing the reasons for withholding acceptance.

The Finance Department will take immediate action to require replacement by the supplier or otherwise take action to supply the department with the needed materials.

SECTION XXI INVOICES

PURPOSE: An invoice provides evidence of the purchase of goods and services and should include adequate detail to meet audit objectives.

DEFINITION: An invoice is a document that itemizes charges for the purchase of supplies, materials, equipment or services that have been furnished. It is how the supplier informs the City of its obligations and should contain the same basic information as the purchase order.

WHAT AN INVOICE SHOULD CONTAIN

- Purchase order number
- Date of order (if possible)
- Date of delivery
- Terms of payment (2% - 10 days, Net 30 days, etc.)
- Itemized list of materials or services rendered
- Delivery destination
- Quantities, prices, (both unit and total), terms and any other charges contained in the purchase order
- Delivery, freight charges, cartage and demurrage charges should be listed separately from the materials and supplies.
- Invoices should be submitted to the Finance Department.

WHO RECEIVES INVOICES

The purchase order details the remittance address for submittal of invoices.

- The Finance Department shall match the invoice with the on-line receipt.
- The Finance Department, after checking and reviewing the invoice, will prepare a voucher for payment.

All invoices are to be charged to the City of Edgewater and shall be forwarded to the Finance Department. If received by the department, the **original invoice** must be forwarded to the Finance

Department after proper receiving has been accomplished on the on-line system. The Department Director or designee shall approve each invoice that is sent to the Finance Department. Each Department shall have on file with Finance completed authorized signer signature cards for the Director and each of their designees. The Finance Director or designee may grant certain exceptions as to the requirement for payment without an original invoice. The City does not accept two party invoices.

Unless previously agreed upon by both the City and vendor, ALL INVOICING AND payments will be as outlined in the (Local Government Prompt Payment ACT (FS 218. Part VII).

SECTION XXII VENDOR EVALUATION

PURPOSE: Vendor performance measurement is crucial to keeping good suppliers and terminating business relations with poor suppliers.

DEFINITION: The Vendor Evaluation Form should be utilized to inform the Finance Department of excellent service provision, including services performed beyond the requirements or to report any difficulties due to poor service, poor performance, poor quality, or materials not meeting specification requirements. This shall not be utilized as an expediting tool.

HOW TO PREPARE

A properly prepared Vendor Compliment and Complaint Form must contain the following information:

- Date
- Vendor name, address, and phone number
- Department and contact person
- Purchase order number
- Department Director signature
- Brief statement of **exactly** what level of service provided the vendor's performance of the services, or what the problem is, and why the product or service is unacceptable.
- All available documentation shall be attached

DISTRIBUTION

The Vendor Evaluation Form shall be forwarded to the Finance Department. Finance Department will send a copy to the vendor for their response.

GENERAL INFORMATION

The department shall be notified as to the vendor's response and any action to be taken by the Finance Department.

NOTE: Project Managers are required to submit a Vendor Evaluation at the close of all Capital Projects and are strongly encouraged to submit whenever favorable or unfavorable actions on the part of a vendor occur.

SECTION XXIII CONFLICTS OF INTEREST

PURPOSE: The City wishes to minimize conflicts of interests. Therefore, the following will be adhered to:

No official or employee of the City, or member of the City Council shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- Any member of his or her immediate family,
- His or her business or personal partner, or
- An organization, which employs, or is about to employ, any of the above has a financial or other interest in the firm selected or considered for award. No official or employee of the City, or member of the City Council shall either solicit or accept gratuities, favors, or anything of monetary value exceeding \$25 from contractors, potential contractors, or parties to sub-agreements.

Violations of these standards of conduct may result in disciplinary action as set forth in Chapter 113, Part III, Florida Administrative Code provided that such disciplinary action does not conflict with the jurisdiction of the State of Florida Commission on Ethics.

SECTION XXIV PROCEDURES FOR FEDERALLY FUNDED PROJECTS

1. All federally funded projects will be advertised a minimum of three weeks.
2. When establishing a contract time for all federally funded projects, the guidelines established in Exhibit "B" shall be followed. Contract time extensions shall be subject to the concurrence of the FDOT Division Administrator and will be considered in determining the amount of Federal participation. Contract time extensions submitted for approval to the FDOT Division Administrator shall be fully justified and adequately documented.
3. Two engineering estimates (at 60% and 100% submittals) will be completed for each project. Unit price cost for each item will be utilized (when possible) and will utilize local contractor pricing. The 100% submittal will be certified by the responsible Professional Engineer.
4. The City of Edgewater will comply with 23 CFR 635.413 as shown in Exhibit "C" on all federally funded projects. The warranty will begin the day after substantial completion is awarded.
5. Federal guidelines will be followed for the fair, open and competitive selection of qualified consultants (Professional Services) in accordance the Brooks Act, Section 40 USC 1101-1104 as shown in Exhibit "D".
6. LAP Simplified Acquisition and Small Purchase Process shall be in accordance with the LAP manual which outlines the current limits which indicate this process may be used if the construction project is less than \$325,000 and the total contract amount for the professional service(s) is less than \$150,000.
7. For federal-aid contracts, a small locality presence criterion of no more than 10 percent may be used. This criterion cannot be based on political boundaries and should be used on a project-by-project basis for projects where a need has been established. If a firm currently outside the locality criteria indicates as part of its proposal that it will satisfy the criteria in some manner, such as establishing a local project office, it should be

considered to have met the locality criteria. The LAP Manual can be viewed by logging on to:

<https://www.fdot.gov/programmanagement/LAP/LAP-TOC.shtm>

8. There is no DBE/MBE preference for federally funded projects. While the use of DBE/MBE consultants is encouraged, there should be not be any DBE/MBE preference selection criteria in the selection process.
9. The City has issued a policy statement which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the City's organization and to the general public. Such information shall be published where appropriate in languages other than English
10. The LAP Manual specifically addresses that no fewer than three firms are to be shortlisted to submit proposals.
11. In the event a bid is not read out loud, the name of the bidder and reason will publically announced at the letting.

SECTION XXV PURCHASING POLICY ADOPTION

The Purchasing Policy shall be adopted by City resolution. The Finance Director and Department Directors shall review the Policy annually and submit recommendations to the City Manager for review and approval. If a change in the Policy is recommended for approval by the City Manager, the Finance Director will prepare the necessary report to Council.

Approved by the City Council of the City of Edgewater at a meeting held on the ___ day of _____, 2023 under Agenda Item _____. Resolution No. 2023-R-05

EXHIBIT "A"
NIGP Global Best Practices for Ethical Procurement



STANDARD

It is essential that public procurement professionals and stakeholders¹ adhere to a well-defined and established code of ethics. The public procurement organization should have an adopted code of ethics and require its employees to uphold the code and seek commitment to it by all those with whom they engage.

Definition

Ethical procurement prohibits breach of the public's trust by discouraging a public employee from attempting to realize personal gain² through conduct inconsistent with the proper discharge of the employee's duties.³

Element 1.1: Conflict of Interest

Public procurement professionals must:

- Avoid any private or professional activity that would create a conflict of interest or the appearance of impropriety
- Avoid engaging in personal business with any supplier representative or similar person
- Avoid lending money to or borrowing money from any supplier⁴
- Avoid any and all potential for nepotism⁵
- Avoid any overlap of duties in the procurement process⁶
- Safeguard the procurement process from political or outside influence

Element 1.2: Conduct with Suppliers

Business dealings with suppliers must be fair and transparent. Procurement must:

- Refrain from showing favoritism or being influenced by suppliers through the acceptance of gifts, gratuities, loans or favors⁷
- Safeguard supplier confidentiality
- Refrain from requiring suppliers to pay to be included on an approved or preferred supplier list
- Refrain from requesting donations of goods or services to the public entity
- Select suppliers on the basis of meeting appropriate and fair criteria
- Discourage the arbitrary or unfair use of purchasing leverage or influence when dealing with suppliers
- Avoid the exertion of undue influence or abuses of power⁸
- Treat all suppliers fair and equal

Public Procurement Practice

ETHICAL PROCUREMENT *(Cont'd)*

Element 1.3: Corruption⁹

Public procurement professionals who become aware of any corrupt activity have a duty to the profession and to their employing organizations to alert their senior management and/or elected officials. Public procurement shall not tolerate bribery or corruption in any form. Forms include, but are not limited to:

- **Bribery** is the offering, promising, giving, authorizing or accepting of any undue financial or other advantage to, by or for any persons associated with the procurement process, or for anyone else in order to obtain or retain a business or other improper advantage. Bribery often includes (i) kicking back a portion of a contract payment to government or party officials or to employees of the other contracting party, their close relatives, friends or business partners or (ii) using intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to government or party officials, or to employees of the contracting parties, their relatives, friends or business partners.
- **Extortion or Solicitation** is the demanding of a bribe, whether or not coupled with a threat, if the demand is refused. Procurement professionals will oppose any attempt of extortion or solicitation and are encouraged to report such attempts through available formal or informal reporting mechanisms.
- **Trading in Influence** is the offering or solicitation of an undue advantage in order to exert an improper, real, or supposed influence.
- **Laundering the proceeds of the corrupt practices mentioned above** is the concealing or disguising the illegitimate origin, source, location, disposition, movement or ownership of property and/or money, knowing that such is the proceeds of crime.
- **Nepotism** is the use of authority or influence to show favoritism to relatives or friends without merit.

Element 1.4: Business gifts and hospitality

The offer and receipt of business gifts and entertainment are sensitive areas for public procurement professionals, despite being recognized as standard private sector business practice. Public procurement organizations should develop a clear policy on accepting business gifts and procurement professionals and suppliers must comply with any such policy as well as prevailing laws. Minimal guidelines include:

- Not soliciting or accepting money, loans, and credits or prejudicial discounts, gifts, entertainment, favors or services from present or potential suppliers which might influence or appear to influence a procurement decision/ process
- Avoiding meals or other hospitality¹⁰ with suppliers¹¹

Element 1.5 Other Policies and Considerations

Ethical practices should be defined and embedded in other policies, procedures and practices which overlap public procurement. Other policies in the procurement space which will need to be considered may include the subjects of:

- Competition and anti-competitive practices
- Supplier diversity
- Supplier equality
- Corporate Social Responsibility (CSR)
- Sustainability¹²
- Anti-discrimination policy
- Transparency¹³



Element 1.6: Ensuring compliance

Ensuring compliance, focusing on high risk areas, understanding suppliers' operations and offering guidance and support when improvement is necessary or appropriate should ensure that the strategic and operational risks associated with unethical practices are minimized.

Public procurement professionals need to focus on ensuring compliance with their ethical code and the policies that it touches upon. To ensure this compliance, the focus:

- Should take place in parallel with the development of monitoring procedures
- May take time, or need to be introduced in phases
- May require prioritization of areas associated with ethical issues which might be of greater risk to the organization.

Background

Ethics are the principles which define behavior as right, good and appropriate. Employees in public service are bound to uphold certain values (See: Values and Guiding Principles). Any attempt to realize personal gain by conduct inconsistent with the proper discharge of the employee's duties is a breach of the public trust.

The value of the transactions in the procurement process along with pressures to lower costs could result in bribery, corruption and other practices which could be deemed unethical. In the public sector where goods and services are funded by public expenditure, it is imperative that procurement operates ethically, with impartiality, transparency, and professionalism.

Ethical procurement best practice starts with the employees in procurement following an ethical code which dictates their behavior and actions while conducting business. Ethical procurement practices should be extended to all stakeholders in the procurement cycle. Ethical procurement should also include an understanding of suppliers' operations and the procurement professional should offer guidance and support when improvement is necessary or appropriate.

- 1 Any organization, group, or individual that can place a claim on the organization's resources or services or is affected by what the organization does or the services it provides (NIGP. (2011). *Public procurement dictionary of terms*. Herndon, VA: NIGP.)
- 2 Gain may be monetary, and/or non-monetary in nature.
- 3 National Institute of Governmental Purchasing, Inc. (2011). *Public procurement dictionary of terms*. Herndon, VA: NIGP.
- 4 Adapted from NIGP. (2011). NIGP Code of ethics. Retrieved from <http://www.nigp.org/eweb/StartPage.aspx?Site=NIGP&webcode=abt-code-ofethics>
- 5 Form of favoritism based on acquaintances and familiar relationships whereby someone in an official position exploits his or her power and authority to provide a job or favor to a family member or friend, even though he or she may not be qualified or deserving " (Transparency International. (2009). *The anti-corruption plain language guide*. Retrieved from www.transparency.org).
- 6 For example: appropriate checks and balances should be in place so that the requisitioning, ordering and receiving functions do not report to the same supervisor.
- 7 Ibid.
- 8 It is important to ensure compliance with all applicable legislation, such as restraint of trade and anti-trust legislation, which address anticompetitive practices and abuse of dominant position.
- 9 Adapted from ICC. (2011). ICC rules on combating corruption. Retrieved from http://www.iccwbo.org/uploadedFiles/ICC/policy/business_in_society/Statements/ICC_Rules_on_Combating_Corruption_2011edition.pdf
- 10 If engaging in meals or hospitality the procurement professional should pay for meals as frequently as the supplier and be mindful of any policy/ law which limit dollar value of such meals and/ or hospitality.
- 11 Adapted from NIGP. (2011). NIGP Code of ethics. Retrieved from <http://www.nigp.org/eweb/StartPage.aspx?Site=NIGP&webcode=abt-codeofethics>
- 12 Inclusive of economic, social, and environmental considerations as they relate to the procurement process.
- 13 Including conflict of interest disclosures for procurement staff and stakeholders involved directly in the procurement process.

EXHIBIT "B"
FLORIDA DEPARTMENT OF TRANSPORTATION
GUIDELINE FOR ESTABLISHING CONSTRUCTION
CONTRACT DURATION
December 2021

FLORIDA DEPARTMENT OF TRANSPORTATION



***GUIDANCE FOR ESTABLISHING
CONSTRUCTION CONTRACT DURATION***

DECEMBER 2021

Purpose

To provide general guidance and outline key influencing factors to be considered for determining construction contract duration for Florida Department of Transportation (FDOT) construction projects.

Authority

Section 20.23(3)(a), 334.044(2), 334.048(3), and 337.18, Florida Statutes

Background

The FDOT outsources all its construction projects in the Work Program using contractors. This approach places FDOT in an oversight capacity, managing the construction operation through contract administration. A vital aspect of a successful contract administration program is the accountability provided by established and agreed-upon contract durations.

By advertising construction contract durations in advance, bidding contractors are made aware of the time element for a project and must prepare their bids accordingly. Since the risk associated with bidding on transportation projects is based on numerous factors outside the control of the FDOT (for example, site conditions, availability of materials, constrained work hours, limited equipment staging areas/work zones, etc.), the proper and fair establishment of appropriate contract duration is critical.

Contract duration is the maximum time allowed in a construction contract for completion of all work contained in the contract documents. Contract duration is established upon receipt of the contractors bid blank regardless of the original estimate of time by the Department. Contract duration is a frequently debated topic during active construction projects, most often arising when there is too much, or too little time given in the contract. Since multiple parties are involved in the execution of construction contracts, the possibility for disagreement can arise when one party or another feels constrained by the amount of time allotted.

If excessive contract duration is allowed, then the traveling public may become inconvenienced for a longer time than necessary and the contractor may not appear to be aggressively pursuing the work. There are many reasons for a project to appear dormant, such as weather limitations, holidays, material curing times, material availability, material arriving late, etc. However, in many cases, either allocation of excessive time by the scheduler or poor contractor scheduling of construction operations could be considered root causes of excessive time.

Conversely, if insufficient contract duration is allowed then contractors may need to bid a higher price to accommodate the risk in accelerated construction practices. For instance, a contractor may need to increase the number of active crews working simultaneously on a project, resulting in higher labor costs that are then passed to the FDOT through higher bid prices. Too little contract duration may also negatively impact the traveling public by not allowing a more sequential construction workflow and forcing contractors to substantially increase the work zone with simultaneous operations. This may also result in contractor claims for added cost and time.

The percentage of construction projects completed on time each fiscal year is a System Performance Measure for FDOT; the target being 80% or more of all projects completed within 20% of the original scheduled estimate. Since this measure is inclusive of all projects, regardless of size, a small project consisting of 100 contract days has the same performance impact as a much larger project consisting of 1600 contract days. In fact, smaller projects can have an outsized effect on FDOT's performance report, since small contract duration increases on shorter duration projects have a greater likelihood of negatively impacting the target System Performance Measure.

Considering these and other influencing factors, proper selection of contract duration on a project-by-project basis allows for optimization of construction engineering costs and resources which will result in accurate accountability reporting statewide.

In addressing the need for completing critical construction projects where it is important to minimize traffic inconvenience and delay, FDOT may apply alternative contracting methods such as Bonuses, Cost+Time bidding, and Incentive/Disincentive specifications for early completion. The contract duration estimation should consider how these alternative contracting strategies will impact the duration.

Primary Factors Impacting Contract Duration

Numerous factors continuously present greater complexity for FDOT construction projects. This complexity must be considered as contract duration is allocated per project. Some of the considerations for increased complexity are listed below.

- FDOT is committed to delivering projects with the least amount of disruption to travelers' accustomed routes. Accordingly, contractors must maintain traffic on as many existing facilities as safely possible, often working adjacent to operating lanes.
- To minimize impacts to urban businesses, residents, and travelers, FDOT has enacted the **Urban Reconstruction Policy** (Topic No.: 000-700-003) with the intent of using a "train" construction technique to limit the size of construction work zones.
- Traffic volumes on most state roads continue to increase, thereby creating a greater impact on the traveling public in both safety considerations and cost.
- External factors (utility agency/owners, environmental permitting constraints, increased public presence) place restrictions on construction workflows.
- Location of the project in proximity to external stakeholders, for example (but not limited to) Transit, Aviation, Freight/Logistics Facilities, School Zones, and Emergency Response facilities, could require additional coordination. This coordination should be accommodated for within the contract duration.

Considering these sources of complexity, the following are primary factors that have a direct impact on production rates and should be considered during contract duration estimating:

I. Construction Type

New Construction: Projects that are typically considered New Construction consist of adding capacity or replacement of existing features. For example, the scheduler should consider whether the facility to be worked on will require a full closure/detour or excavation, and how that may impact construction access. Conversely, consideration should also be given to potential time savings if the contractor is not working adjacent to live traffic.

Since these types of projects are frequently the most complex that FDOT produces, there can be numerous construction operations. It is incumbent on the scheduler to determine which elements are compatible and can be overlapped vs. which must occur sequentially. For example, excavation must occur before storm sewer installation, however, a project's length may be long enough to allow for multiple work zones with phasing that allows for excavation and placement of storm sewer simultaneously. This has the benefit of creating accelerated production duration for both excavation and pipe placement.

Reconstruction: Reconstruction projects will fully replace existing roadway features generally "in kind". These types of projects will not use new alignments. However, since the existing roadway may be fully obliterated, there may be a strong likelihood of detours, lane shifts, or diversions. The need to minimize disruption to the traffic flow may be more challenging than for New Construction.

Widening: Widening projects add new lanes adjacent to existing lanes. Widening projects are subject to the disruption of working adjacent to live traffic but present the benefit of not needing to actively maintain an alternate route/detour.

Resurfacing, Restoration, and Rehabilitation (RRR) / Minor Projects: Resurfacing projects may have faster production rates than Reconstruction projects under certain conditions, however, consideration must be given to elements in the scope that could result in slower production. For instance, a RRR project may have drainage improvements or signal replacements in the scope of work with contract duration that may mirror that of a New Construction project.

Minor projects (sidewalk additions, drainage improvements, turn lane additions, etc.) often have much simpler construction workflows. However, these projects may expose FDOT to a greater likelihood of time overruns if not accounted for in the contract duration computation. Additionally, smaller projects may suffer from a reduced economy of scale from lower quantities. As a result, it may be advantageous to assume slower production rates to dispel the increased risk.

II. Utility Presence

- A. Underground facilities: The presence of underground utilities creates a potential for conflict with any below-grade construction work. The scheduler must account for:
- The type of work being done (excavation, drainage placement, drilled shaft foundations, etc.).
 - The Utility Agency/Owner (UAO) itself and any governing criteria for coordination (such as gas mains or buried power lines with protection zones, sanitary force main vs. gravity line, fiber optics, etc.). There may be regulatory or legally binding minimum separation limits between a specific roadway operation and the UAO's facility that would impact construction efficiency.
 - Any specific requirements outlined in the Utility Work Schedules (UWS) for each project.
 - The type of material underground utilities is cased in and their age, or condition. (HDPE, PVC, galvanized steel, copper, etc.)
- B. Overhead Surface facilities: Overhead facilities (including power transmission or distribution lines) require individual handling as well, due to regulatory constraints under OSHA or NESC. These regulations will limit the type of equipment to be used and the proximity to be maintained between the construction operation and any live lines. A UAO may agree to de-energize their lines for a specified timeframe, but that may require accelerated construction practices that will be reflected in rapid production rates and increased costs.
- C. Utility Work by Highway Contractor Agreement (UWHCA): If the project contains a UWHCA, it is incumbent on the scheduler to accommodate that phase of construction and ensure that the roadway project construction phasing is compatible with that of the UAO.

III. Temporary Traffic Control Complexity

- A. Urban Reconstruction Policy: FDOT's need to minimize disruptions for urban locations during construction and remaining sensitive to the needs of UAO's and adjacent businesses, and residential property occupants requires slower production rates to accommodate a reduced work zone along with more Temporary Traffic Control (TTC) phases. Contract duration will need to be extended to reflect this minimization of disruption and the likelihood of numerous smaller work zones.
- B. Lane Closure Restrictions: The scheduler must confirm whether any lane closure restrictions are applicable and adjust production rates accordingly. This involves both a review of Lane Closure Analyses during design, and any local agency or community-specific restrictions which will reduce the available work hours (for example, school zone

pickup and drop-off times, large employment centers with peak hour arrival/departure, retail establishments receiving truck deliveries, etc.)

- C. Number of Phases:** Many factors influence whether there may be numerous construction phases. Consideration should be taken by the scheduler for the effect multiple phases can have, including the potential for reduced production rates due to phasing and potential schedule lag due to mobilization between phases.

IV. Import of Material/Offsite Hauling

The need to import materials (such as borrow fill) will add time as compared to projects with locally available material. The scheduler will likely add time on a project with net imported fill as opposed to a project which seeks to balance cut and fill. Additionally, the removal of unsuitable or stockpiled material will require added time.

V. Seasonal Factors

Schedulers must gauge whether a project may be impacted by seasonal factors including, but not limited to:

- Summer rainy season/hurricane season.
- Tourist destinations during peak travel times.
- Potential cold weather impacts during winter that may not allow asphalt or pavement marking placement until surface temperature is acceptable.
- Protected species nesting seasons or other environmental season-based factors.
- Special events and holidays will vary by location and must be accounted for.

VI. Geotechnical Considerations

In addition to potentially unsuitable materials, geotechnical factors that may cause an impact include, but are not limited to:

- A high-water table may require more time-intensive subsurface processes such as the installation of wellpoints to temporarily lower the water table during excavation (dewatering). This typically effects production rates of any subsurface work activities.
- Hard pan layers or the presence of cap rock may require more labor-intensive excavation and pile driving processes.
- A location with a high level of clay will likely reduce production rates due to soil characteristics as opposed to a location with higher sand presence.

VII. Functional Classification

The impact of the roadway context plays a significant role in contract duration.

- Urban Construction is anticipated to require longer durations. The potential of night work could be beneficial to avoid disruption of daytime businesses but may require additional time. Conversely, night work may be overly disruptive in residential areas, and might not be allowed.
- Limited Access Construction are potentially faster overall, given the reduced number of access points. However, Limited Access facilities could possibly have more complex geometrical considerations. There might be additional restrictions for lane closures and allowable work hours due to high-speed vehicle travel and freight considerations.
- Rural Construction may allow for faster production due to less impact on residents and businesses. Utility involvement is likely to be less impactful as well. However, rural conditions could also present additional time constraints for environmentally sensitive areas.

VIII. Environmental Factors

Environmental permit conditions provided by regulatory agencies are contractual obligations and must be honored by the scheduler. This may apply to areas such as wetlands that require more diligent sediment and erosion control measures and are subject to periodic inspection and acceptance by regulators. This effort may limit production rates.

Protected Species and associated habitats often have specific requirements. The scheduler must consider if an identified nest requires observation/protection during a nesting season and whether the project must have a delayed start or if multiple segmented work zones may be needed to avoid full work stoppage. Special attention should also be given for projects containing environmental commitments made during the planning and design phases. Commitments related to protected species or critical habitat areas often involve the use of construction special provisions that may limit the timing and/or frequency certain work activities can occur. This should be considered in the overall duration estimate of the effected work activities.

Other Factors Impacting Contract Duration

The proper allocation of contract duration is further influenced by factors that are inherent in most construction contracting.

- Establishing Controlling Items of Work (which set the Critical Path).
- Acquisition of Materials, particularly long lead items that require shop drawings or must be fabricated specifically for the project.
- Curing Times or Waiting Periods as defined in the Specifications.

- Coordination with adjacent or nearby projects.
- Innovative Practices/Techniques, particularly if FDOT approval is required.
- Time associated with evaluating Cost Savings Initiatives.
- Review Times, Approvals, or Oversight.

The application of written procedures for determining contract duration is important so production rates and other considerations are applied uniformly throughout the State. This document should be used in conjunction with the procedures in the **Construction Project Administration Manual (CPAM), Section 1.2** that addresses how to classify projects based upon appropriate factors such as high traffic volumes, projects with incentive/disincentive clauses, etc.

For most projects, the essential elements in determining contract duration include: (1) establishing production rates for each controlling item; (2) adopting production rates to a particular project; (3) understanding influencing factors described in this document; and (4) computation of contract duration with a progress schedule.

I. Establishing Baseline Production Rates

A production rate is the quantity produced or constructed over a specified time. Estimating realistic production rates is important when determining appropriate contract completion time. Production rates may vary considerably depending on project size, geographic location, and rural or urban setting, even for the same item of work. Production rate ranges should be established in the State's written procedures based on project type (grading, structures, etc.), size, and location for controlling items of work.

In establishing production rates to be used for determining contract duration, an accurate database should be established by using normal historical rates of efficient contractors. One method of establishing production rates is to divide the total quantity of an item on previously completed projects by the number of days/hours the contractor used to complete the item. Production rates based upon eight-hour crew days or per piece of equipment are recommended. Production rates developed by reviewing total quantities and total time are not recommended as they may result in misleading rates which tend to be low since they may include startup, cleanup, interruptions, etc. Production rates should consider all of the work outlined in the Specifications for each item.

The most accurate data will be obtained from site visits or review of project records (i.e., field diaries, daily logs, site manager, and other construction documents) where the contractor's progress is clearly documented based on work effort, including work crew make up, during a particular time frame. A data file based on three to five years of historical data (time, weather, production rates, etc.) should be maintained.

The production rates used should be based on the desired level of resource commitment (labor, equipment, etc.) deemed practical given the physical limitations of the project. Representatives of the construction industry are also usually willing to assist in developing rates and time schedules. Rates should be updated regularly to assure they accurately represent the statistical average rate of production in the area.

Some jurisdictions apply production rate data taken from some of the published rate guides. This data may be useful as guidance; however, the relationship of these production rates to actual highway construction projects may be difficult to correlate.

Production rates should reflect per hour per day on a 5-working day basis. A conversion factor of 1.4 should be applied to the number of days for each activity to reflect a 7-day work week. Non-workdays, such as holidays or special events, should not be programmed into the scheduling software. Non-workdays will be granted per Specifications Section 8, unless the contract is modified to address differently.

II. Establishing Project-Specific Production Rates

Before time durations for individual work items can be computed, certain project specific information should be determined, and some management and engineering decisions made. The relative urgency for the completion of a proposed project should be determined. The traffic volumes affected as well as the effect of detours should be analyzed. The size and location of the project should be reviewed, in addition to the effects of staging, working double shifts, nighttime operations, and restrictions on closing lanes. The availability of material for controlling items of work should be investigated. For example, it might be appropriate to consider the need for multiple crews on a specific item to expedite the completion when there are exceptionally large quantities or when there is a large impact on traffic.

Procedures to accelerate project completion should be considered when construction will affect traffic substantially or when project completion is crucial. This is especially important in urban areas with high traffic volumes. When accelerating contract duration for time sensitive projects, production rates should be based on an efficient contractor working more than eight hours per day, more than five days per week and possibly with additional workers. The development and application of a separate set of production rates for critical or time-sensitive projects is recommended.

III. Computation of Contract Duration - Develop a Progress Schedule

The contract duration for most construction projects can be determined by developing a progress schedule. A progress schedule shows the production durations associated with the chosen production rates for the items of work. The time to complete each controlling item of work included in the progress schedule is computed based on the production rates applicable to that project. Items should be arranged by chronological sequence of construction operations. Minor items that may be performed concurrently should be shown as parallel activities.

When developing a project schedule, the start and end dates for each controlling item needs to be based on the earliest date for which work on that item will begin and how long it will take to complete. The earliest start date for each activity will be determined by the completion of preceding activities and should allow for the fact that some activities can begin before the preceding activity is entirely completed. Additional time should also be allowed in the contract for initial contractor mobilization.

Contract Duration Determination Techniques

Contract duration determination techniques generally employ bar charts or Critical Path Method (CPM) strategies. These techniques are briefly described below.

I. Bar Charts

Bar charts or Gantt charts are graphical representations of projects with specific completion dates and activities. Bars or lines are drawn proportional to the planned duration of each activity.

A brief description of the procedure used to develop a bar chart to determine contract duration is below.

- The first step in developing a bar chart is to break a project down into separate activities or operations necessary for project completion.
- Once all the activities necessary to complete a project have been listed, the duration and completion date of each activity needs to be determined based on production rates.
- With this data established, the bar chart can be prepared. A line or bar is drawn on the chart showing the time when work will be performed for each activity. The resulting diagram will represent a project, showing when each activity will be undertaken and completed.
- With bar charts, the progress of a project may be monitored for each activity by drawing a bar or line below the original scheduled performance to show the actual duration for each activity as it is completed.

Advantages of using Bar Charts include:

- Bar charts are simple to develop and easy to understand, and they offer a good method of determining contract duration.
- Bar charts are scalable. In fact, bar charts are used frequently to provide a visual representation of a CPM methodology (as discussed further below), although this is not a requirement.

Disadvantages of using Bar Charts include:

- They do not show the interrelationship and inter-dependency among the various phases of work. Bar charts are difficult to properly evaluate when construction changes occur. Also, controlling items are shown in the same manner as minor items, thus making it more difficult to determine which items control the overall time progress of the project. The use of bar charts is not recommended for contract administration and project management of large or complex construction projects. In this case, a network diagram is more advisable.

II. Critical Path Method (CPM)

CPM scheduling techniques focus on the relationship of the critical activities, specifically, those which must be completed prior to starting other activities. Working from the project's beginning and defining individual project tasks along with the number of days to perform each task, a logical diagrammatic representation of the project is developed.

A CPM schedule depicts which tasks of a project will change the completion date if they are not completed on time. The evaluation of critical tasks allows for the determination of the time to complete projects. Because of the size and complexity of most projects, this method is most often applied using a computer software program. Within the CPM software, the ability to use a Program Evaluation Review Technique (PERT – commonly displayed as a network diagram) provides a breakdown of each activity to boxes. This enables the user to view the connection of relationships to each activity. CPM software can also display the contract duration in a bar chart view as well.

The critical path is the longest sequence of tasks that must be completed to successfully conclude a project, from start to finish. In other words, while many activities may occur on a project, the critical path is the specific sequences of activities that will have the highest likelihood to directly impact the overall contract duration. The critical path should not include schedule float on its sequence of activities.

A brief description of the procedure and general considerations used to develop CPM scheduling for contract estimate is below.

- The first step in applying the CPM method is to break a project down into separate tasks or operations necessary for project completion. Each of these separate operations or processes is called an activity. The completion of an activity is called an event.
- Once all the activities necessary to complete a project have been listed, the relationship of these activities to one another needs to be determined. In some instances, several activities can be undertaken concurrently, and at other times, certain activities cannot be undertaken until others have been completed. Generally, when determining the sequence of operations, some questions need to be asked such as: "What needs to be done before proceeding with this activity" or "what can be done concurrently?" Every activity has a definite event to mark its relationship with others with respect to completing a task.

- In working with this procedure, a diagrammatic representation of the project is developed showing the correct sequence and relationship of activities and events. Each activity is shown as an arrow leading to a node, which indicates the completion of an event or the passage of time. The start of all activities leaving a node depends on the completion of all activities entering a node. Therefore, the event represented by any node is not achieved until all activities leading to the node have been completed. The resulting diagram will be a schematic representation of a project, showing all the relevant activities and events in correct sequence.
- An actual time can be set to each activity based on production rates and application of other appropriate influencing factors. The time to complete each activity is then shown on each arrow to indicate the duration. The "early start" for each activity is the earliest point in time that an activity can start, provided that all preceding activities have finished. This is not necessarily the point in time in which it will start; however, it is the *earliest* time that it can start. The "early finish" for an activity is merely the duration of the activity after its early start. As is the case with the "early start," this is not necessarily the point in time that the work represented by the activity will be over but is the earliest point in time that it can occur. A "finish" date in CPM is the first day after the physical completion of the activity. The completion time of a project is the sum of the longest time path leading to completion of the project.
- The optimum time and cost for performing the project can be evaluated by assigning resources (such as equipment, labor hours, and materials) to each activity. The diagrammatic representation of the project then provides a means to evaluate the costs incurred with respect to the completion of specified activities.

Advantages of using CPM include:

- It is an accurate technique for determining contract duration and verifying that the project can be constructed as designed with identified construction sequences.
- It is a useful tool for project managers in monitoring a project, especially when dealing with relationships of work items with respect to time.
- Activities responsible for delays can be identified and corrective measures to keep a project on schedule can be determined.

Disadvantages of using CPM include:

- The CPM requires experienced and knowledgeable staff to be used effectively.
- It requires regular updates to assure that the contractor's operation is accurately represented.

Other Project Considerations

Construction duration on certain projects such as lighting or signalization may be governed by the long lead-time necessary to obtain materials. To minimize traffic disruption, the contract may specify a start date several months after the notice-to-proceed, but the contractor should be limited to a relatively short on-site time. This may be accomplished by including in the contract a "conditional notice-to-proceed" clause which would allow a specified amount of time to purchase and assemble materials followed by issuance of a full work order which would be issued upon expiration of the assembly period or sooner, upon the contractor's request.

Delayed or flexible notice-to-proceed dates may be appropriate for certain projects where the ultimate completion date is less critical than other factors. The contracting agency may wish to provide a notice-to-proceed window to increase the probability of a competitive bid where only a limited number of contractors are available to perform the work. Such projects may include:

- Projects that consist of specialized work (seal coats, highway planting, pavement grooving or bridge painting) where many of these projects are being advertised within a short timeframe.
- Projects with a very limited number of working days.
- Building projects.

This allows the contractor to schedule this contract with consideration of other work schedule within the same general timeline. Net benefits include lower project inspection cost and a minimal disruption to traffic. An option that may be applicable to some projects is dividing a project into phases with each phase having its own completion date. This may be applicable when coordinating with other projects or activities in the area to meet tight deadlines.

Basis of Production Rates

FDOT publishes a compilation of statewide production rates for schedulers guidance and use. Although this list is extensive, it may not include every production rate relevant to a particular project. Other sources may need to be perused to achieve the required rates for a particular scope of work within that contract.

The production rates are divided into 3 categories: low, average, and high. The numerous considerations and influencing factors outlined in this guidance document should be used to assess which range of rates should be used for a specific project. The individual scheduler's knowledge and experience on similar projects, local site conditions, and known construction constraints should also be used to the greatest extent possible. Under special or unique project circumstances, the range of production rates can be exceeded.

General examples of influencing factors used to determine the use of low, average, and high production rates are briefly discussed below. Typically, these considerations will only affect those rates associated with the specific work activity that could be impacted by the specific factor(s).

I. Low Production Rates

- Urban project location.
- Large numbers of intersections and driveways.
- High traffic volumes, complex temporary traffic control.
- Constrained working space/work zones.
- High utility presence, large number of known utility conflicts.
- Known natural environment constraints such as high groundwater or challenging topography.
- Other known environmental constraints such as time-affecting PD&E commitments, need for routine on-site inspections/consultations, etc.

II. Average Production Rates

- Suburban/rural project location.
- Fewer intersections and driveways.
- Low to moderate traffic volumes, less complex temporary traffic control.
- Less constrained working space/work zones.
- Low to moderate utility presence, few known utility conflicts.
- Low to moderate natural environment constraints.

III. High Production Rates

- Rural or limited access facility.
- Very few intersections and driveways.
- Low traffic volumes, basic temporary traffic control.
- Few to no constraints on working space/work zones.
- Low utility presence, few to no known utility conflicts.
- Few to no natural environment constraints.

Additional Reference Material

The website linked below provides the following scheduling information available for download and use:

- CPAM Chapters 1.2 & 2.1
- FDOT Utility Relocate Schedule Manual
- Guidance for Establishing Construction Contract Duration
- Production Rates – Statewide
- Production Rates Estimator Tool
- Techniques for Manually Estimating Road User Costs

<https://www.fdot.gov/construction/schedulingeng/schedulingmain.shtm>

Scope of Work Definitions

I. Right of Way Preparation:

Clearing and grubbing (Acres): The removal of topsoil, trees, minor physical objects, and other vegetation from the construction site using mechanical equipment.

Excavation (C.Y.): The removal and transporting of in situ soils on the construction site using mechanical equipment.

Embankment (C.Y.): The placing and compaction of soil on the construction site using mechanical equipment.

Seeding (S.Y.): The seeding of grasses, application of fertilizer and mulch, and cutting into soil.

II. Drainage Structures/Storm Sewers:

Storm Sewers (L.F.): The excavation, installation, and backfilling of drainage or sewer pipes including structures. The restoration of the stabilized roadbed and base material is included when the stabilized roadbed and base material is disturbed only for the placement of the storm sewer.

Box Culverts (C.Y.): The excavation, forming, reinforcing, pouring, finishing, stripping, and backfilling of cast in place concrete box culverts on the construction site. If using pre-cast units, then the units should be changed to L.F. and appropriate production rates substituted.

Inlets & manholes (Each): The installation of pre-manufactured inlets manholes for drainage or sewer systems. Time is included in Storm Sewers (L.F.).

III. Bridge Structures:

(Note: The production rates on several items appear low since they must include time for the total scope of activities necessary to complete an item.)

Cofferdams (S.Y.): The installation, dewatering and minor excavation associated with building a cofferdam system for a bridge construction site.

Sheet Piling (S.F.): The installation of sheeting for retaining walls and deep excavations. Do not add to cofferdams.

Piling (L.F.): The installation of piling for bridge foundations.

Footings (C.Y.): The layout, forming, reinforcing, placing, curing, and removing forms for reinforced concrete bridge footings.

Columns, Caps & Bents (C.Y.): The layout, forming, reinforcing, placing, curing, and removing forms for reinforced concrete bridge columns, caps, and bents.

Wingwalls (S.Y.): The layout, forming, reinforcing, placing, curing, and removing forms for reinforced concrete wingwalls for bridges.

Bridge deck (total depth) (C.Y.): The layout, forming, reinforcing, placing, curing, and removing forms for reinforced concrete bridge decks. The production rates have been set to include time for all components of the deck, including precast plank under slab, thus the full depth of the deck is used to calculate quantity.

Bridge curbs/walks (L.F.): The layout, forming, reinforcing, placing, curing, and removing forms for reinforced concrete bridge curbs and walkways.

Bridge handrails (L.F.): The layout, forming, reinforcing, placing, curing, and removing forms for cast in place reinforced concrete bridge handrails.

Retaining walls (S.F.): The layout, excavation, forming, reinforcing, placing, curing, and removing forms for cast in place reinforced concrete retaining walls. The time for precast proprietary wall systems is included in embankment.

IV. Base Preparations:

Stabilized Roadbed (S.Y.): The placement, mixing and compaction operations involved in the stabilization of subgrade soils.

Base material (S.Y.): The placement, mixing and compaction of flexible base material.

Hot mix asphalt base (Ton): The laydown and compaction of hot mix asphalt concrete base course material. The production rates are taken from the graph for plant mix.

Curb and gutter (L.F.): The layout and construction of new roadway curb and gutter using automated equipment or forms and hand finish.

Concrete pavement repair (S.Y.): The removal and replacement of sections of unsatisfactory or failed Portland cement concrete pavement.

Milling/planning (S.Y.): The removal of the surface level of existing pavements using automated milling or planning equipment.

Plant mixed surfaces (Ton): The laydown and compaction of hot mix asphalt concrete surface course material. The production rate is taken from the graph for Plant Mix.

Asphalt Friction Course (1 course) (Ton): The laydown and compaction of asphalt concrete friction course material.

Cement Concrete paving (Rebar + curing) (S.Y.): The layout, reinforcing, placing, curing, and jointing of Portland cement concrete pavement.

Precast traffic barriers (L.F.): The layout and installation of precast concrete traffic barriers. If barriers are to be cast in place, then the units should be changed to C.Y. and the production rates adjusted accordingly.

V. Permanent Signing and Traffic Signals:

Small Signs (Each): The installation of small highway information and warning signs mounted on metal posts driven into soil along a highway.

Overhead signs (Each): The installation of large highway information and directional signs mounted on metal frames over a highway. It is assumed that the footings and poles that support the frames are already in place.

Major traffic signals (Each): The installation of automated traffic signals and their support systems at highway intersections.

Pavement markings (L.F.): The application of paint or thermoplastic pavement marking materials to a highway pavement.

Raised Pavement Markers (RPM) (Ea.): The application of adhesive and other raised pavement markers.

Final clean-up (Sta.): The removal of debris, dirt and other construction materials from a highway pavement and adjacent right of way at the end of a construction project. The time for this activity is included in "General Time".

Structure demolition (WKDAYS): The demolition and removal of the materials for large structures (multi-story buildings, retaining walls, towers underground tanks, etc.) from the right of way of new construction projects.

Remove old structures (small) (WKDAYS): The demolition and removal of the materials for small structures (Single-story wood buildings, storage sheds, fences, road signs, etc.) from the right of way of new construction projects. Time for this is included in Clearing and Grubbing. Additional time may be warranted for concrete structures that require asbestos abatement.

Bridge demolition (WKDAYS): The demolition and removal of all materials for an existing bridge structure and related appurtenances (approaches, gates, signals, etc.).

Erect temporary bridge (WKDAYS): The layout and construction of a temporary bridge structure and related appurtenances for a highway construction project.

Remove temporary bridges (WKDAYS): The demolition and removal of all materials for a temporary bridges structure and related appurtenances for a highway construction project.

EXHIBIT "C"
23 CFR 635.413

Code of Federal Regulations

This content is from the eCFR and is authoritative but unofficial.

Title 23 - Highways

Chapter I - Federal Highway Administration, Department of Transportation

Subchapter G - Engineering and Traffic Operations

Part 635 - Construction and Maintenance

Subpart D - General Material Requirements

Source: 41 FR 36204, Aug. 27, 1976, unless otherwise noted.

Authority: Sections 1525 and 1303 of Pub. L. 112-141, Sec. 1503 of Pub. L. 109-59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Pub. L. 102-240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

Editorial Note: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

§ 635.413 Guaranty and warranty clauses.

The State DOT may include warranty provisions in National Highway System (NHS) construction contracts in accordance with the following:

- (a) Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for Federal participation shall not be covered.
- (b) All warranty requirements and subsequent revisions shall be submitted to the Division Administrator for advance approval.
- (c) No warranty requirement shall be approved which, in the judgment of the Division Administrator, may place an undue obligation on the contractor for items over which the contractor has no control.
- (d) A State DOT may follow its own procedures regarding the inclusion of warranty provisions in non-NHS Federal-aid contracts.
- (e) In the case of a design-build project, the following requirements will apply instead of paragraphs (a) through (d) of this section.
 - (1) General project warranties may be used on NHS projects, provided:
 - (i) The term of the warranty is short (generally one to two years); however, projects developed under a public-private agreement may include warranties that are appropriate for the term of the contract or agreement.
 - (ii) The warranty is not the sole means of acceptance;
 - (iii) The warranty must not include items of routine maintenance which are not eligible for Federal participation; and,
 - (iv) The warranty may include the quality of workmanship, materials and other specific tasks identified in the contract.
 - (2) Performance warranties for specific products on NHS projects may be used at the State DOT's discretion. If performance warranties are used, detailed performance criteria must be provided in the Request for Proposal document.

- (3) The State DOT may follow its own procedures regarding the inclusion of warranty provisions on non-NHS Federal-aid design-build contracts.
- (4) For best value selections, the State DOT may allow proposers to submit alternate warranty proposals that improve upon the warranty terms in the RFP document. Such alternate warranty proposals must be in addition to the base proposal that responds to the RFP requirements.

[60 FR 44274, Aug. 25, 1995, as amended at 67 FR 75926, Dec. 10, 2002; 72 FR 45336, Aug. 14, 2007]

EXHIBIT "D"
BROOKS ACT

United States Code (U.S.C.) Title 40 - Public Buildings, Property and Works

Chapter 11, Section 1101 - 1104: Selection of Architects and Engineers

40 USC Ch. 11: SELECTION OF ARCHITECTS AND ENGINEERS
From Title 40—PUBLIC BUILDINGS, PROPERTY, AND WORKS
SUBTITLE I—FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES

CHAPTER 11—SELECTION OF ARCHITECTS AND ENGINEERS

Sec.	
1101.	Policy.
1102.	Definitions.
1103.	Selection procedure.
1104.	Negotiation of contract.

§1101. Policy

The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1129.)

HISTORICAL AND REVISION NOTES		
Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1101	40:542.	June 30, 1949, ch. 288, title IX, §902, as added Pub. L. 92–582, Oct. 27, 1972, 86 Stat. 1279.

The words "The Congress hereby declares" are omitted as unnecessary.

§1102. Definitions

In this chapter, the following definitions apply:

(1) **AGENCY HEAD**.—The term "agency head" means the head of a department, agency, or bureau of the Federal Government.

(2) **ARCHITECTURAL AND ENGINEERING SERVICES**.—The term "architectural and engineering services" means—

(A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;

(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(3) **FIRM**.—The term "firm" means an individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture or engineering.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1129.)

HISTORICAL AND REVISION NOTES		
Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1102	40:541.	June 30, 1949, ch. 288, title IX, §901, as added Pub. L. 92–582, Oct. 27, 1972, 86 Stat. 1278; Pub. L. 100–656, title VII, §742, Nov. 15, 1988, 102 Stat. 3897; Pub. L. 100–679, §8, Nov. 17, 1988, 102 Stat. 4068.

In clause (1), the words "Secretary, Administrator, or" are omitted as unnecessary.

§1103. Selection procedure

(a) **IN GENERAL**.—These procedures apply to the procurement of architectural and engineering services by an agency head.

(b) **ANNUAL STATEMENTS**.—The agency head shall encourage firms to submit annually a statement of qualifications and performance data.

(c) **EVALUATION**.—For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.

(d) **SELECTION**.—From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the agency head.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1130.)

HISTORICAL AND REVISION NOTES		
Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1103	40:543.	June 30, 1949, ch. 288, title IX, §903, as added Pub. L. 92–582, Oct. 27, 1972, 86 Stat. 1279.

In subsection (b), the words "engaged in the lawful practice of their profession" are omitted as unnecessary because of the definition of "firm" in section 1102 of the revised title.

In subsection (c), the words "compare alternative methods for furnishing services" are substituted for "the relative utility of alternative methods of approach for furnishing the required services" to eliminate unnecessary words.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ARCHITECTURAL AND ENGINEERING SERVICES

Pub. L. 108–136, div. A, title XIV, §1427(b), Nov. 24, 2003, 117 Stat. 1670, as amended by Pub. L. 117–81, div. A, title XVII, §1702(l)(8), Dec. 27, 2021, 135 Stat. 2161, provided that: "Architectural and engineering services (as defined in section 1102 of title 40, United States Code) shall not be offered under multiple-award schedule contracts entered into by the Administrator of General Services or under Governmentwide task and delivery order contracts entered into under sections 3403 and 3405 of title 10, United States Code, or sections 303H and 303I of the Federal Property and Administrative Services Act of 1949 (former 41 U.S.C. 253h and 253i) [now 41 U.S.C. 4103, 4105(a) to (c)(1), (d) to (i)] unless such services—

"(1) are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, territory (including the Commonwealth of Puerto Rico), possession, or Federal District in which the services are to be performed; and

"(2) are awarded in accordance with the selection procedures set forth in chapter 11 of title 40, United States Code."

§1104. Negotiation of contract

(a) **IN GENERAL**.—The agency head shall negotiate a contract for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, the agency head shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered.

(b) **ORDER OF NEGOTIATION**.—The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under section 1103 of this title. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1130.)

HISTORICAL AND REVISION NOTES		
Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1104	40:544.	June 30, 1949, ch. 288, title IX, §904, as added Pub. L. 92–582, Oct. 27, 1972, 86 Stat. 1279.

ATTACHMENTS – PURCHASING FORMS

**NOTE: PURCHASING FORMS ARE SUBJECT WITHOUT PRIOR APPROVAL TO CHANGE BASED
ON FINANCE/DEPARTMENTS NEEDS**

PLEASE CONTACT FINANCE TO OBTAIN THE MOST CURRENT FORMS