

West's Florida Statutes Annotated

Title XVIII. Public Lands and Property (Chapters 253-278)

Chapter 255. Public Property and Publicly Owned Buildings (Refs & Annos)

West's F.S.A. § 255.065

255.065. Public-private partnerships

Effective: July 1, 2024

[Currentness](#)

(1) Definitions.--As used in this section, the term:

(a) "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located.

(b) "Develop" means to plan, design, finance, lease, acquire, install, construct, or expand.

(c) "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

(d) "Lease payment" means any form of payment, including a land lease, by a public entity to the private entity of a qualifying project for the use of the project.

(e) "Material default" means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project.

(f) "Operate" means to finance, maintain, improve, equip, modify, or repair.

(g) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity.

(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

(i) "Qualifying project" means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will

be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;

2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;

3. A water, wastewater, or surface water management facility or other related infrastructure; or

4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects pursuant to this section.

(j) “Responsible public entity” means a county, municipality, school district, special district, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

(k) “Revenues” means the income, earnings, user fees, lease payments, or other service payments relating to the development or operation of a qualifying project, including, but not limited to, money received as grants or otherwise from the Federal Government, a public entity, or an agency or instrumentality thereof in aid of the qualifying project.

(l) “Service contract” means a contract between a responsible public entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) Legislative findings and intent.--The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the construction or upgrade of such facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities within the state which serve a public need and purpose, and that such public need may not be wholly satisfied by existing procurement methods.

2. There are inadequate resources to develop new educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities for the benefit of residents of this state, and that a public-private partnership has demonstrated that it can meet the needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public.

3. There may be state and federal tax incentives that promote partnerships between public and private entities to develop and operate qualifying projects.

4. A procurement under this section serves the public purpose of this section if such procurement facilitates the timely development or operation of a qualifying project.

(b) It is the intent of the Legislature to encourage investment in the state by private entities; to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need; and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

(3) Procurement procedures.--A responsible public entity may receive unsolicited proposals or may solicit proposals for a qualifying project and may thereafter enter into a comprehensive agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities.

(a) 1. The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal under this section.

2. A private entity that submits an unsolicited proposal to a responsible public entity must concurrently pay an initial application fee, as determined by the responsible public entity. Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal checks may not be accepted.

3. If the initial application fee does not cover the responsible public entity's costs to evaluate the unsolicited proposal, the responsible public entity must request in writing the additional amounts required. The private entity must pay the requested additional amounts within 30 days after receipt of the notice. The responsible public entity may stop its review of the unsolicited proposal if the private entity fails to pay the additional amounts.

4. If the responsible public entity does not evaluate the unsolicited proposal, the responsible public entity must return the application fee.

5. If the responsible public entity chooses to evaluate an unsolicited proposal involving architecture, engineering, or landscape architecture, it must ensure a professional review and evaluation of the design and construction proposed by the initial or subsequent proposers to assure material quality standards, interior space utilization, budget estimates, design and construction schedules, and sustainable design and construction standards consistent with public projects. Such review shall be performed by an architect, a landscape architect, or an engineer licensed in this state qualified to perform the review, and such professional shall advise the responsible public entity through completion of the design and construction of the project.

(b) 1. The responsible public entity may request a proposal from private entities for a qualifying project or, if the responsible public entity receives an unsolicited proposal for a qualifying project and the responsible public entity intends to enter into a comprehensive agreement for the project described in the unsolicited proposal, the responsible public entity may publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the responsible public entity has received a proposal and will accept other proposals for the same project.

2. The timeframe within which the responsible public entity may accept other proposals shall be determined by the responsible public entity on a project-by-project basis based upon the complexity of the qualifying project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication. If approved by a majority vote of the responsible public entity's governing body, the responsible public entity may alter the timeframe for accepting proposals to more adequately suit the needs of the qualifying project. A copy of the notice must be mailed to each local government in the affected area.

(c) The responsible public entity may proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process if the responsible public entity holds a duly noticed public meeting at which the proposal is presented and affected public entities and members of the public are able to provide comment and, at a second duly noticed public meeting, determines that the proposal is in the public's interest. In making the public interest determination, the responsible public entity must consider all of the following factors:

1. The benefits to the public.
2. The financial structure of and the economic efficiencies achieved by the proposal.
3. The qualifications and experience of the private entity that submitted the proposal and such entity's ability to perform the project.
4. The project's compatibility with regional infrastructure plans.
5. Public comments submitted at the meeting. The responsible public entity must provide a statement that explains why the proposal should proceed and addresses such comments.

(d) If the responsible public entity decides to proceed with an unsolicited proposal without engaging in a public bidding process, the responsible public entity must publish in the Florida Administrative Register for at least 7 days a report that includes all of the following:

1. The public interest determination required under paragraph (c).
2. The factors considered in making such public interest determination.
3. The responsible public entity's findings based on each considered factor.

(e) If the solicited qualifying project provided in paragraph (b) includes design work, the solicitation must include a design criteria package prepared by an architect, a landscape architect, or an engineer licensed in this state which is sufficient to allow private entities to prepare a bid or a response. The design criteria package must specify reasonably specific criteria for the qualifying project such as the legal description of the site, with survey information; interior space requirements; material

quality standards; schematic layouts and conceptual design criteria for the qualifying project; cost or budget estimates; design and construction schedules; and site development and utility requirements. The licensed design professional who prepares the design criteria package shall be retained to serve the responsible public entity through completion of the design and construction of the project.

(f) Before approving a comprehensive agreement, the responsible public entity must determine that the proposed project:

1. Is in the public's best interest, if the proposal was solicited. If the proposal was unsolicited, the responsible public entity must determine that the proposed project has been determined to be in the public's interest in accordance with paragraph (c).

2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity. For a proposed project that was unsolicited, if ownership will not be conveyed to the responsible public entity within 10 years after initial public operation begins, the public benefits apart from ownership must be identified and stated by the responsible public entity in the public interest determination required under paragraph (c).

3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the responsible public entity.

4. Has adequate safeguards in place to ensure that the responsible public entity or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.

5. If the proposal was solicited, will be owned by the responsible public entity upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.

(g) Before signing a comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (9); the qualifying project cost; revenues by source; available financing; major assumptions; internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project; and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the comprehensive agreement.

(h) In considering an unsolicited proposal, the responsible public entity may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

(4) Project approval requirements.--An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

(a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.

(b) A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.

(c) A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

(d) The name and address of a person who may be contacted for additional information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.

(f) Additional material or information that the responsible public entity reasonably requests.

Any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.

(5) Project qualification and process.--

(a) The private entity, or the applicable party or parties of the private entity's team, must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.

(b) The responsible public entity must:

1. Ensure that provision is made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of [s. 255.05](#).

2. Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.

3. Ensure that the comprehensive agreement addresses termination upon a material default of the comprehensive agreement.

(c) After the public notification period has expired in the case of an unsolicited proposal that is submitted and noticed for public bidding, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The responsible public entity may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the responsible public entity is not satisfied with the results of the

negotiations, the responsible public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

(e) The responsible public entity may approve the development or operation of an educational facility, a transportation facility, a water or wastewater management facility or related infrastructure, a technology infrastructure or other public infrastructure, or a government facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:

1. There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.
2. The estimated cost of the qualifying project is reasonable in relation to similar facilities.
3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

(f) The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.

(g) Upon approval of a qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend the commencement date.

(h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.

(6) Interim agreement.--Before or in connection with the negotiation of a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:

(a) Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.

(b) Establish the process and timing of the negotiation of the comprehensive agreement.

(c) Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

(7) Comprehensive agreement.--

(a) Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:

1. Delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with [s. 255.05](#).

2. Review of the design for the qualifying project by the responsible public entity and, if the design conforms to standards acceptable to the responsible public entity, the approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.

3. Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the responsible public entity in accordance with the comprehensive agreement.

4. Maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

5. Monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.

6. Periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.

7. Procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. Fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive

agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.

9. Duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of this section.

(b) The comprehensive agreement may include:

1. An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or an agency or instrumentality thereof.

2. A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.

3. A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to the affected local jurisdiction for public use.

(8) Fees.--A comprehensive agreement entered into pursuant to this section may authorize the private entity to impose fees to members of the public for the use of the facility. The following provisions apply to the comprehensive agreement:

(a) The responsible public entity may develop new facilities or increase capacity in existing facilities through a comprehensive agreement with a private entity.

(b) The comprehensive agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement.

(c) The responsible public entity may lease existing fee-for-use facilities through a comprehensive agreement.

(d) Any revenues must be authorized by and applied in the manner set forth in the comprehensive agreement.

(e) A negotiated portion of revenues from fee-generating uses may be returned to the responsible public entity over the life of the comprehensive agreement.

(9) Financing.--

(a) A private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.

(b) The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this section.

(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided in s. 489.145(6) for its financing of a facility owned by a responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity's facility to liens in violation of s. 11.066(5), or secure financing of the responsible public entity by a mortgage on, or security interest in, the real or tangible personal property of the responsible public entity in a manner that could result in the loss of the fee ownership of the property by the responsible public entity, and any such provision is void.

(10) Powers and duties of the private entity.--

(a) The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement.
2. Maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement.
3. Cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity in accordance with the provisions of the comprehensive agreement.
4. Comply with the comprehensive agreement and any lease or service contract.

(b) Each private facility that is constructed pursuant to this section must comply with the requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the responsible public entity's rules, procedures, and standards for facilities; and such other conditions that the responsible public entity determines to be in the public's best interest and that are included in the comprehensive agreement.

(c) The responsible public entity may provide services to the private entity. An agreement for maintenance and other services entered into pursuant to this section must provide for full reimbursement for services rendered for qualifying projects.

(d) A private entity of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.

(11) Expiration or termination of agreements.--Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

(12) Sovereign immunity.--This section does not waive the sovereign immunity of a responsible public entity, an affected local jurisdiction, or an officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(13) Department of Management Services.--

(a) A responsible public entity may provide a copy of its comprehensive agreement to the Department of Management Services. A responsible public entity must redact any confidential or exempt information from the copy of the comprehensive agreement before providing it to the Department of Management Services.

(b) The Department of Management Services may accept and maintain copies of comprehensive agreements received from responsible public entities for the purpose of sharing comprehensive agreements with other responsible public entities.

(c) This subsection does not require a responsible public entity to provide a copy of its comprehensive agreement to the Department of Management Services.

(14) Construction.--

(a) This section shall be liberally construed to effectuate the purposes of this section.

(b) This section shall be construed as cumulative and supplemental to any other authority or power vested in or exercised by the governing body of a county, municipality, special district, or municipal hospital or health care system including those contained in acts of the Legislature.

(c) This section does not affect any agreement or existing relationship with a supporting organization involving such governing body or system in effect as of January 1, 2013.

(d) This section provides an alternative method and does not limit a county, municipality, special district, or other political subdivision of the state in the procurement or operation of a qualifying project pursuant to other statutory or constitutional authority.

(e) Except as otherwise provided in this section, this section does not amend existing laws by granting additional powers to, or further restricting, a local governmental entity from regulating and entering into cooperative arrangements with the private sector for the planning, construction, or operation of a facility.

(f) This section does not waive any requirement of [s. 287.055](#).

Credits

Added by [Laws 2013, c. 2013-223, § 2, eff. July 1, 2013](#). Renumbered from 287.05712 and amended by [Laws 2016, c. 2016-153, § 1, eff. July 1, 2016](#). Amended by [Laws 2016, c. 2016-154, § 1, eff. July 1, 2016](#); [Laws 2022, c. 2022-5, § 7, eff. May 13, 2022](#); [Laws 2024, c. 2024-96, § 1, eff. July 1, 2024](#).

West's F. S. A. § 255.065, FL ST § 255.065

Current with laws, joint and concurrent resolutions and memorials in effect from the 2025 Special Session C and through July 1, 2025, of the 2025 first regular session.



Standard Operating Guideline Public/Private Partnerships, Solicited and Unsolicited Proposals and Evaluation Process

The purpose of this Standard Operating Guideline (SOG) is to provide guidance for the review of proposals for Public/Private Partnerships.

Authority:

Purchasing Policies and Procedures Manual (PPPM), *Unsolicited Proposals*.

I. INTRODUCTION, POLICY, AND INTENT

The City of Delray Beach (City) encourages redevelopment of underdeveloped and underutilized properties through public/private partnerships (hereinafter "P3") where appropriate. The City recognizes properly structured P3s share risk and expense amongst public and private partners; encourage efficiencies and innovation in design, construction, operations, and maintenance; and maximize funding and cash flow initiatives.

A public-private partnership is a contractual agreement between a public agency (federal, state, or local) and a private sector person or entity for the purpose of timely delivering services or facilities in a cost-effective manner that might not otherwise be possible using traditional sources of public procurement. Through this contractual agreement, the assets and professional skills of each sector (public and private) are shared and leveraged to deliver a service or facility to be used by the general public. Each sector shares in the potential risks of the timely and efficient delivery and operations of the service or facility. To be considered under the City's Public/Private Partnership Program, all parties must comply with the following Guidelines for P3 Applications and Evaluation Process (hereinafter "Guidelines").

The City reserves the right at all times to reject any or all bids/proposals at any time before signing a Comprehensive Agreement for any reason and may decline to pursue the Proposed Project. In the latter event, the City may accept new proposals for the Proposed Project should the City choose to restart the process at a later date. Discussions between the City and Private Entities about needed infrastructure, improvements, or services shall not limit the ability of the City to later decide to use standard procurement procedures to meet its infrastructure needs, whether the project will be a public/private partnership or not.

II. DEFINITIONS

Unless otherwise specified, whenever the following terms are used in these Guidelines, they have the meanings set forth below:

"Affiliate" is as provided in Section 337.165(1)(a), Florida Statutes and means a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

"Bid" means a response to a solicitation for proposals, for qualifications, for bids, or a response

to a Notice of Receipt by the City of Delray Beach of an unsolicited proposal, and for the purposes of these guidelines is also synonymous with the word "proposal".

"Bidder" means the person who responds to a Notice of Receipt of an unsolicited proposal.

"Certify" means to attest, under penalty of perjury, that the information being certified is true and correct.

"City" means the City of Delray Beach, Florida, which may act through its City Commission or City Manager, as the context and applicable law permits.

"Comprehensive Agreement" means the agreement between the Contracting Person and the City that is required before the development or operation of a Proposed Project.

"Commission" shall mean the City of Delray Beach City Commission.

"Cone of Silence" means Section 2-355 of the Palm Beach County Code of Ordinances.

"Contracting Person" means an individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity that enters into a Comprehensive or Interim Agreement with the City.

"Detailed Proposal" means a proposal for a Proposed Project after the Initial Stage review, that defines and establishes more specific proposed terms related to costs, payment schedules, financing, deliverables, design, plans for operations and maintenance, and project schedule, among other factors.

"Detailed Stage" means the phase of Proposed Project evaluation where the City has completed the Initial Stage but has requested additional and/or more detailed information regarding proposals for a Proposed Projects.

"Develop" or **"Development"** means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, and/or expand a facility for public use or benefit.

"Fee" means a rate, fee, or other charge associated with the use of a Proposed Project, as defined by a Comprehensive Agreement.

"Financial Closing Date" means when construction of a project has been completed and accepted by the City and City has issued a Notice of Completion or implemented a Management or other such agreement for continued operation of a project.

"Initial Proposal" means an unsolicited proposal for a Proposed Project accepted for consideration and evaluation by the City.

"Initial Stage" means the initial phase of Proposed Project evaluation when the City assesses whether a Proposed Project serves a public purpose and appears to meet the minimum criteria for a Proposed Project or certain goals of the City and the City reviews and evaluates proposals received from the private sector for pursuing a Proposed Project as a P3.

"Interim Agreement" means an agreement, before or in connection with the negotiation of a

Comprehensive Agreement, between the City and a Contracting Person whereby the Contracting Person may be authorized by the City to conduct due diligence or further studies or investigations related to the Proposed Project which may include, but not be limited to, project planning and development, design, engineering, environmental analysis and mitigation, surveying, financial and revenue analysis, ascertaining the availability of financing, or any other aspect of the Proposed Project. The rights of the Contracting Person and the City will be governed by the terms of the Interim Agreement, which must be in writing. No purported Interim Agreement or terms relating thereto shall be effective, binding, or valid until approved by the City and signed in writing.

"Lease Payment" means any form of payment, including a land lease, by a governmental or private entity to the Contracting Person and/or the City for the use of a Proposed Project.

"Lifecycle Cost Analysis" means an analysis calculating the cost of an asset over its entire life span, including the cost of planning, constructing, operating, maintaining, and replacing the asset, estimates of sufficient capital improvement reserves, and, when applicable, salvaging the asset. The analysis must compare the proposed life cycle cost of the Proposed Project to what the project would likely cost the City if a standard, non-P3 delivery method was used. The Comprehensive Agreement must identify if there is no cost to the City of an asset projected for the City.

"Notice of Receipt" shall mean, at a minimum, the notice that the City shall publish to advise the general public that the City has received an unsolicited proposal and to solicit Bids for the same type of project or concept that is reflected in the unsolicited proposal.

"Operate" means to operate a Proposed Project.

"P3" means a Public-Private Partnership.

"P3 Project" means a Public-Private Partnership project.

"Public-Private Partnership Program" or "P3 Program" means the City of Delray Beach's public-private partnership program implemented in accordance with these Guidelines.

"Private Entity" means any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, a public benefit corporation, nonprofit entity, or other business entity. A private entity includes a "Proposer" that submits an unsolicited proposal or a "Respondent" that submits a proposal in response to a Solicitation. "Private Entity" also means each individual entity participating in or comprising a Proposer's or Respondent's team.

"Proposer" means a Private Entity that submits or is considering submitting an unsolicited proposal. "Proposer" is the Private Entity with whom the City is expected to contract for a Proposed Project. If the Private Entity has not yet been formed, then "Proposer" shall mean all entities collectively who are known and intend at that time to participate on the Proposer's team.

"Proposed Project(s)" means:

1. A facility or project fulfilling a public purpose or goal, including, but not limited to, any mass transit facility, vehicle parking facility, rail facility or project, fuel supply facility, medical or nursing care facility, recreational facility, sporting or cultural facility, public library, power generation facility, waste facility, educational facility, civic facility or other building or facility

that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;

2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
3. A water, wastewater, reclaimed water, or surface water management facility or other related infrastructure; or
4. Any other project the City designates as a Proposed Project.
5. Notwithstanding anything herein to the contrary, a Proposed Project may also include, in addition to the public facility or project, residential, retail, commercial, hospitality, or other private, revenue-generating facilities and uses as appropriate and necessary to achieve the public purposes intended for the Proposed Project on a cost model acceptable to the City.

"Respondent" means a Private Entity that submits a proposal in response to a Solicitation.

"Revenue" means all revenue, income, earnings, Fees, Lease Payments, and/or other payments supporting the development or operation of a Proposed Project, including money received as a grant or otherwise from the federal government, a governmental entity, or any agency or instrumentality of the federal government or governmental entity in aid of the Proposed Project.

"Solicitation" means a written request for services issued by the City soliciting responses for a P3 project, including, but not limited to, business plans, expressions of interest, ideas, offers, proposals, qualifications, or any combination thereof.

III. UNSOLICITED PROPOSALS

A. General

The City may publicize its needs and encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the P3 Program. If any proposals are received without the issuance of a Solicitation, the proposals may be treated as an unsolicited proposal and may be evaluated through the City's approved P3 Program. All unsolicited proposals shall only be sent to the attention of the Purchasing Director of the Purchasing Division and, upon the Purchasing Department's receipt of an unsolicited proposal, the Cone of Silence shall commence.

The P3 Program is intended to create a process to guide the City's evaluation of potentially competing proposals from the private sector that offer solutions, private financing, innovations, and efficiencies in support of the Proposed Project, allocate risk amongst the City and the Private Entity, and benefit the public.

B. Content of Unsolicited Proposals

1. General

A Proposer submitting an unsolicited proposal requesting approval of a Proposed Project as a P3 project shall specifically identify all facilities, buildings, infrastructure, and improvements included

in the proposal. Although the City may have identified Development Opportunities, they are not exclusive and Private Entities are encouraged to submit proposals they believe are consistent with the City's goals.

Private Entities are urged to include in their proposal innovative financing methods, including the imposition of Fees or other forms of payments in lieu of or in addition to payments from the City. The P3 Program is a flexible development tool allowing for the use of innovative financing techniques. Additionally, the Proposer can structure its role on the Proposed Project in a variety of ways, from designing the facility to undertaking its financing, construction, operation, maintenance, and management. Depending on the circumstances of the Proposed Project, the Proposer is encouraged to consider different types of public-private partnership structures to the extent appropriate for the project at issue and as allowed by law.

2. Summary of Content Requirements

Unsolicited proposals should be prepared simply and economically. They shall provide a concise description of the Proposer's qualifications and capabilities to complete the Proposed Project and the benefits to be derived by the City from the Proposed Project. As described in more detail below, proposals must include:

- a) a description of the Proposed Project,
- b) a description of the method by which the Proposer plans to secure any necessary property interests required for the Proposed Project,
- c) Provide a conceptual plan that details how the Respondent intends to ensure an adequate level of commitment from potential finance providers, where relevant, for a timely and successful financial closing. Include a list of anticipated timelines and milestones to obtain financial commitments and to close on the financing of the project;
 - If known, provide the names of the anticipated financiers (for example, banks, bonds, federal programs, life insurance companies, pension funds, private placements), their proposed involvement if available (in approximate percentage terms), how they were selected, and why they were preferred; Provide an explanation of the Respondent's contingency plans should there be a gap in the financing or should any potential finance provider not be in a position to provide its share of the financing;
 - Provide the names of the funding sources for previous projects of a similar size as applicable.
- d) the name and address of the Proposers and the name of the project leader who may be contacted for additional information concerning the proposal,
- e) the sources of proposed Fees, Lease Payments, or other payments, the Proposer is anticipating, and
- f) additional supplemental material or information that the City reasonably requests.

3. Format

A. General

Unsolicited proposals shall be submitted in the following format:

1. Pages shall be numbered and organized by paginated table of contents corresponding to the tabbed sections identified below.
2. The submittal shall be divided into tabbed sections as follows:

TAB 1: Executive Summary

TAB 2: All Private Entities associated with the Proposal

TAB 3: Qualifications, Experience, and Financial Capacity

TAB 4: Proposal

TAB 5: Project Analysis

TAB 6: Community Impact

TAB 7: Miscellaneous

TAB 8: Addenda

3. The contents shall be printed on 3-hole punched 8½" x 11" paper (except A/E drawings and renderings).
4. Drawings and renderings shall be printed no larger than 36" x 54".
5. Supplemental materials in alternate formats may be allowed to describe the proposal in more detail.
6. All submissions shall be addressed to:

**Purchasing Manager
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444**

in a sealed envelope marked as follows:

Property ID (common name, address, and folio numbers)
Proposer's Name
Mailing Address
Proposal Date

All submittals shall be in the format requested by this Section unless a waiver of any particular requirement or requirements is agreed to by the City.

B. TAB 1 - Executive Summary

- i. Provide a cover letter, signed by an authorized representative of the Proposer, including the information detailed below:
- ii. Identify the nature of the Proposed Project and the public benefit to be gained thereby.
- iii. Identify all Private Entities who will be directly involved in the Proposed Project by name, the scope of services they will be providing to the project, address, email address, and telephone number;
- iv. Identify the principal(s) of each Private Entity who will be directly involved in the Proposed Project, including their title, mailing address, phone number, and email address;
- v. Identify the person(s) in charge of negotiations with the City and decision making on behalf of the Proposer; and
- vi. Identify any persons comprising the Proposer who may be disqualified from participation in any transaction arising from or in connection to the Proposed Project and the reasons therefor.

C. TAB 2 - All Private Entities on the Proposer Team

Provide a list of all Private Entities the Proposer intends to use as consultants, including legal counsel, marketing and public relations firms, real estate brokers, property management firms, property utilization analysts, public finance analysts, and government relations consultants and, for each one, include their company name, name of primary contact, title, address, telephone, and email address.

D. TAB 3 - Qualifications, Experience, and Financial Capacity

The Proposer must provide, as to each Private Entity and consultant participating on the Proposer, a statement of qualifications; and experience in projects of similar complexity, scope, and scale to the Proposed Project. The unsolicited proposal must also describe, as to each Private Entity participating on the Proposer team, relevant experience with respect to other public-private partnership projects of any type.

E. TAB 4 - Proposal

The Proposer must provide:

- i. An overview of the Proposed Project.
- ii. Design concept renderings and a concept site plan and elevations that collectively illustrate the location, size, and context of the Proposed Project.
- iii. Summarize the preliminary programming of facilities, including, if any, the mix of uses, square footage(s), total parking spaces, parking allocations (specify if they are shared or exclusive), and types of parking (e.g. structured or surface).
- iv. Identify any known or suspected synergies and incompatibilities between the Proposed Project and any other existing, planned, or contemplated public facility within the City

or any neighboring city or affected jurisdiction and the manner in which the Proposer anticipates addressing same.

- v. Identify any additional terms or conditions to be included as part of the negotiation process.

F. TAB 5 - Project Analysis

This section of the unsolicited proposal should state the financial business aspects of the Proposed Project and should generally summarize why the unsolicited proposal offers the City value for money over the Proposed Project's life cycle as opposed to procuring the project using more traditional procurement methods, including the City funding the project itself.

G. TAB 6 - Community Impact

- i. Identify all anticipated community benefits.
- ii. Identify all known stakeholders for the Proposed Project.
- iii. Discuss the Proposed Project's compatibility with existing and planned facilities.

H. TAB 7 - Miscellaneous

Use this Section to present additional information supporting the proposal.

I. TAB 8 - Addenda

Use this Section to present details of any item cited or referenced in the proposal.

4. Flexibility in Structure

The City encourages creativity and flexibility in the structure of a Proposed Project where appropriate. By way of example, where appropriate and available, the City may contribute off-site parcels of real property to a Contracting Person in exchange for the Contracting Person to design, construct, finance, operate, and maintain a Proposed Project. In such an event, the value of the Contracting Person's services to the Proposed Project are expected to be equal to or greater than the fair market value of the real property interest they seek to obtain. The City will exercise full and proper due diligence in the evaluation and selection of Proposed Projects, including those utilizing creative or flexible structures.

5. Request for Clarifications

The City may request in writing, clarifications to any submission, including unsolicited proposals, which shall be promptly provided by the Proposer.

6. Application Fee

Contemporaneously with the submission of an unsolicited proposal, the Proposer shall pay an application fee to the City in the amount of Twenty Thousand Dollars (\$20,000.00) to cover the costs of processing, reviewing, and evaluating the proposal, including the fees and costs for

private consultants to assist in the evaluation. The application fee is non-refundable and shall be delivered to the attention of the Purchasing Manager in the Purchasing Division office. If extraordinary costs associated with the City's preliminary evaluation are encountered, the City may require additional fees from the Proposer. Within 30 days of receipt of any unsolicited proposal, the Purchasing Manager may elect to not evaluate the unsolicited proposal, in which case the City must return the application fee. The City reserves the right to be the sole determinant of whether to evaluate an unsolicited proposal.

7. Process for Submission and Evaluation

The City shall provide deadlines for submission of certain requested information related to proposal or project evaluation. Failure to meet such deadlines may result in the rejection of the proposal.

The City shall not be liable for any costs incurred by the Private Entities in preparing, submitting, or presenting an unsolicited proposal.

All unsolicited proposals must be organized in the manner outlined in these Guidelines and submitted with the applicable application fee defined herein. No page limitation is imposed, but brevity is appreciated. All proposals shall be submitted as one (1) original, thirteen (13) exact copies, and one electronic copy (searchable PDF format on CD, flash drive or other similar electronic media). The original copy containing original signatures shall be marked **ORIGINAL** on the cover letter.

Proposers may assert that some trade secrets, financial records, and proprietary or other confidential information in their unsolicited proposal are confidential information that they claim to be exempt from disclosure under applicable Florida public records laws. Such information may be included in the unsolicited proposal but submitted in a separate, sealed binder, designated on the cover as **CONFIDENTIAL MATERIALS**. A proposer submitting materials claimed to be confidential shall include a cover letter listing all material designated as confidential and clearly mark each page of any material believed to be a trade secret or other confidential information/document in all capital letters and bold font as **CONFIDENTIAL MATERIALS**. If a document is not totally confidential but contains non-confidential and confidential information, the proposer shall provide a redacted copy of the document and an unredacted copy. In addition, the proposer shall prepare a list of all the documents claimed to be confidential or containing confidential information, and on the next line under the description of each document the proposer shall cite the statutory provision that provides the basis for the proposer's claim that the document or a portion of the document is confidential and below the citation, the proposer shall copy and paste the applicable statutory provision (this listing requirement shall hereinafter be referred to as "properly list" or "properly listed" confidential document). The failure to properly list a confidential document or the failure to redact a confidential document that is only partially confidential shall result in the waiver of any claim that the document is confidential or that the unredacted document contains confidential information. If any person or entity requests that the City produce or disclose any of said purported confidential documents, the City will advise the Proposer and afford the Proposer an opportunity to protect its assertion that said confidential information is exempt from production. If Proposer fails to timely authorize the production of the information or document and/or fails to timely seek a protective order, and/or is unsuccessful in obtaining a protective order, the City will produce the requested information or document. The City shall not actively contest any request to disclose such alleged confidential information or document and the City cannot guarantee that the alleged confidential document or information may not be disclosed should it ultimately be determined not to be confidential under applicable Florida public records laws. The

Proposer shall indemnify the City for any damages and costs the City may incur due to the Proposer's claim that its document or information is confidential. The City can only agree to advise the Proposer of such request and give the Proposer an opportunity, at Proposer's sole and exclusive cost, to defend the request for disclosure of the confidential information or document in a Court of competent jurisdiction or other applicable forum.

Only unsolicited proposals apparently complying with these Guidelines and containing information sufficient for meaningful evaluation will be considered. Within thirty days of receiving an unsolicited proposal, the City will preliminarily review it to determine whether to accept and recommend it for Initial Stage evaluation. After the City's Initial Stage evaluation, if the City wishes to continue considering the unsolicited proposal, it may, at its sole and exclusive option, either advertise its receipt of the unsolicited proposal ("Notice of Receipt") and solicit other proposals or conduct further evaluation of the unsolicited proposal before advertising for alternative and perhaps competitive bids.

Under either scenario, once the City decides to advertise for alternative and perhaps competitive bids, the manner and timing for said advertisement and competitive bidding process shall be in accordance with section IV of these Guidelines. At the conclusion of the competitive bidding period, the City will commence Initial Stage evaluation of any competing proposals timely submitted. Upon completion of the Initial Stage evaluation of the proposal(s), the City may identify a shortlist of proposers/bidders with whom to continue the process. That process may require submission of a Detailed Proposal from the competitive proposers/bidders and, if not already required from the unsolicited Proposer, a Detailed Proposal may be required from them as well. At that point, the City may commence a Detailed Stage evaluation in accordance with Section V of these Guidelines.

IV. COMPETITIVE BIDDING

If the City determines they are interested in further considering any unsolicited proposal, they shall publish a public Notice of Receipt of same and invite competing bids during a competitive bidding period. Said period shall be not less than twenty-one days (21) and shall be of a duration the City shall specify in its sole and exclusive option, typically 120 days. The public Notice of Receipt shall minimally state the City has received an unsolicited proposal and will accept bids for the same type of project or concept. If more than one unsolicited proposal is received for the same or similar project or concept, only one public notice shall be required for the Proposed Project. At the City's sole and exclusive option, the public notice may provide more details to be required in responses thereto. The notice shall be posted on the City's website, published in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks, and advertised in any other manner considered appropriate by the City to encourage competition and provide notice to Private Entities interested in submitting alternative and perhaps competing proposals. A copy of the notice will also be mailed to each local government reasonably identified as one who may be impacted by the Proposed Project. The Cone of Silence applies to each solicitation of competing bids and all respondents to the solicitation shall comply with the Cone of Silence.

Bidders submitting competitive bids in response to the notice shall comply with any other requirements specified in the notice and pay a bid application fee of \$25,000. The initial Proposer(s) shall also submit a bid in response to the notice providing such further details about the unsolicited proposal as may be required by the notice. The initial proposer shall receive a credit for its initial unsolicited proposal application fee and shall thus only be required to pay an additional \$5,000 to submit its bid.

The City may require additional fees from the Proposer(s) or Bidder(s), due to extraordinary costs associated with the City's evaluation. After the public notification and bidding period has expired, the City may determine:

1. To proceed further with any proposal/bids;
2. To proceed to the Detailed Stage of review with one of the original unsolicited proposals only and reject any other unsolicited proposals and competitive bids received by the City;
3. To proceed to the Detailed Stage with a competing bid only and reject the unsolicited proposal(s) and other competitive bids; or
4. To proceed to the Detailed Stage with any or all of the initial unsolicited proposal(s) and any or all of the competitive bids. In this event, the City shall rank the proposals and bids received in order of preference. In ranking the proposals/bids, the City may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, finance plans, and any other factor determined by the City. Part of the ranking process, at the City's discretion, may require submission of a Detailed Proposal for evaluation by the City from every proposer and bidder whose proposals/bids the City may consider. The Detailed Proposals shall supplement the Initial Proposal and initial bid. Detailed Proposals shall comply with the requirements of Section V of these Guidelines.

V. DETAILED STAGE EVALUATION AND INTERVIEWS WITH BIDDERS

Some Proposed Projects may require more details from prospective bidders or Proposers and more evaluation by the City. On those projects, the City may request a Detailed Stage Evaluation before awarding a contract. On projects for which the City has enough information from bidders/proposers in the Initial Proposal/Bid, the City may waive, or modify the Detailed Stage evaluation.

Each bidder and/or initial Proposer, invited to submit a Detailed Proposal or modified Detailed Proposal and participate in the Detailed Stage, shall pay a Detailed Proposal application fee of up to \$20,000, as determined by the City. The City may require additional fees from the Proposer or Bidder if a supplemental payment is required due to extraordinary costs associated with the City's evaluation.

If the City requests a Detailed Stage evaluation, then the City may require the Proposer or bidder to provide any or all of the following information as part of a Detailed Proposal depending upon the Proposed Project's requirements or the information received thus far by the City in Initial Proposals or responses to Solicitations or Bids or other information as requested by the City:

1. A Lifecycle Cost Analysis specifying methodology and assumptions supporting same and the proposed start date of construction; anticipated roles of all parties; the source and amount of all equity, debt, and other financing mechanisms funding the design, construction, operations, and maintenance of the Proposed Project; and a schedule of anticipated revenues and costs during project operations and the manner in which said costs would be funded and revenues distributed. The Lifecycle Cost Analysis shall include a detailed analysis of the projected rate and amount of return, expected useful life of the facility, and estimated annual operating and maintenance expenses.

2. Detailed analysis of the financial feasibility of the Proposed Project, including its impact on similar facilities operated or planned by the City or neighboring jurisdictions and include a detailed description of any financing plan for the project, comparing that plan with financing alternatives available to the City, and all underlying data and assumptions supporting any conclusions reached in the analysis of the financing plan proposed for the Proposed Project. The analysis shall also include any feasibility studies that support assumptions about project usage, revenue, and costs.
3. For each Private Entity participating on the Proposer team, provide a statement listing all prior projects and clients' names and contact information for the past five years. If any Private Entity has worked on more than ten projects during this period, it may limit its prior project list to ten most relevant projects, but shall include first all projects similar in scope and size to the Proposed Project; second, all other public/private partnerships and, finally, as many of its other most recent projects as possible. For each project identified, provide at least the following information:
 - a) Client and Project Identification:
 - i. Client's name, project name, and project location;
 - ii. Primary contact name, address, telephone and fax numbers, and e-mail address of the client;
 - iii. The role of the Private Entity in the project; and
 - iv. Project description, including year completed, type, size, unit mix, and major tenants and their percentage of space plan allocation.
 - b) Identify the cumulative dollar amount of the Private Entity's involvement and type of involvement, including changes, and a brief explanation of the financial structure used to finance the project; and
 - c) Describe the extent of public involvement in each of the public-private partnership projects.

The Detailed Proposal shall also identify the Bidder/Proposer's financial capacity to develop and operate the Proposed Project as proposed, by specifying the source and amount of equity and debt capital the Proposer intends to access to deliver the Proposed Project in a compliant and timely manner. Each Bid/proposal must state the name of each identified investor and lender on the Proposed Project.

The Bidder/Proposer must identify its bonding capacity, insurance limits, and any factor impacting the ability to complete the Proposed Project in a timely and professional manner;

1. Describe the plan for the design, construction, financing, operation, and maintenance of the Proposed Project, including the anticipated schedule of funds to be paid to the Proposer during the project's life cycle and any anticipated performance-based conditions on said payments and the manner of measuring same.
2. Describe the type and amount of Fees, Lease Payments, and other payments anticipated over the term of any applicable Interim or Comprehensive Agreement and the methodology

and circumstances for changes to same over time.

3. Identify all necessary permits and approvals to be obtained for the Proposed Project and how long the Proposer anticipates it taking to secure same.
4. Identify the anticipated duration of design and construction, listing major milestones for each phase and giving corresponding anticipated dates for same. Also, identify the anticipated duration during which the Bidder/Proposer will operate and maintain the facility and the nature of project ownership at all stages of the project from inception to expiration of the Comprehensive Agreement.
5. To the greatest extent possible, the Bidder/Proposer must describe the operational and management plan for the Proposed Project; other circumstances that will increase the viability of the Proposed Project; adjacent uses and emerging projects that could impact the value or influence the use of the Proposed Project; connections to public transportation; availability and existing capacity of public infrastructure and required extensions or improvements; any assumptions the Bidder/Proposer is making to support any of the representations contained in the proposal and the source of information giving rise to each assumption; the means for adding capacity to the Proposed Project; and the means for ensuring additional costs or service disruptions will not be imposed on the public in the event of material default or cancellation of any Comprehensive Agreement.
6. Identify the sources and amount of debt and equity to be used to capitalize the Proposed Project and the relationships of the funding sources to the project (e.g., outside lender, parent company, institutional lender, private placement funding, etc.).
7. Identify the sources and anticipated amounts of working capital to cover design, construction, and operating costs and to adequately maintain the facility or services from the start-up through completion of the project as defined by the Proposal.
8. Identify any parcels of land that must be acquired for the Proposed Project, the anticipated means for acquiring same, and all projected costs, both hard and soft, necessary to acquire same. Also, specify the anticipated timing for acquisition.
9. Identify all assumptions underlying the proposal.
10. Indicate opportunities that exist for increasing cost savings beyond the initial proposed financial plan.
11. Outline the financial penalties, if any, that would result should the Bidder/Proposer fail to meet certain identified performance standards and milestones.
12. Identify any work required from or otherwise to be performed by the City.
13. Identify any restrictions on the City's use of the Proposed Project.
14. Identify any federal, state, or local resources or commitment the Bidder/Proposer contemplates requesting for the Proposed Project.
15. Identify any special use of technology or innovations and efficiencies in project design, construction, operations, and/or maintenance.

16. Identify all impacts on the City's debt burden. State the estimated project cost to the City over the Proposed Project's life cycle.
17. Identify the ratio of debt to equity in the Proposer's financing plan and discuss the stability and terms of loans and investments.
18. Project the number and value of subcontracts generated for area subcontractors and/or small or minority business enterprises.
19. Identify any anticipated adverse social, economic, environmental, and transportation impacts of the Proposed Project measured against the City's comprehensive plan and any applicable ordinances. Specify the strategies or actions to mitigate known adverse impacts of the Proposed Project. Indicate if necessary environmental assessments have been completed.
20. Any information identified in the Initial Proposal that was deferred to the Detailed Proposal or which the City has identified as needing further development or assessment.
21. Design criteria anticipated for the Proposed Project as may be requested by the City, including, but not limited to, finishes for the structure and materials and details of LEED compliance.
22. Additional material and information as the City deems appropriate.

VI. RESPONSES TO CITY SOLICITATIONS

Responses to Solicitations shall comply with all requirements of the soliciting document (Notice of Receipt) and any applicable laws, statutes, rules, regulations, guidelines, and ordinances pertaining thereto.

VII. INTERIM AND COMPREHENSIVE AGREEMENTS

A. General

Before entering into the negotiation of an Interim or Comprehensive Agreement, the City will designate specific City staff and consultants to review and negotiate appropriate terms. The terms to be negotiated shall include, but not be limited to, the scope, design, amenities, total cost, and duration of the Proposed Project. Terms will also include the City's review, approval, and control of project design and performance standards for construction, operations, and maintenance, for which compensation to the Proposer may be adjusted should the performance standards not be met. Terms will also include the City's right to inspect construction, operations, and maintenance as well as the records relating to the cost of such operations; periodic financial reporting by the Contracting Person of project financial performance; events of default and the parties' rights and responsibilities in the event of same; fees, Lease Payments or service payments to be paid under the agreement; and any other terms the City deems appropriate for the Proposed Project. Timelines for the negotiation with the Proposer or bidder will be developed consistent with the scope and timing of the Proposed Project.

Any Interim or Comprehensive Agreement shall define the rights and obligations of the City and the Contracting Person with regard to the Proposed Project. Prior to entering into a Comprehensive Agreement, an Interim Agreement may be entered into that permits a

Bidder/Proposer or other Private Entity to perform activities, which may be compensable, related to the Proposed Project, usually in the nature of continued due diligence activities to inform the ultimate decision-maker about the project's feasibility. The Interim Agreement is a discretionary step, not necessary in all cases, but available should the City determine more investigation or due diligence is necessary about the Proposed Project before entering into a Comprehensive Agreement. The City shall not be bound to enter into a Comprehensive Agreement merely because it entered into an Interim Agreement. However, prior to developing or operating the Proposed Project, the Bidder/Proposer shall enter into a Comprehensive Agreement with the City.

Any changes in the terms of an Interim or Comprehensive Agreement, as may be agreed upon in writing by the parties from time to time, and in order to be enforceable shall be added to the Interim or Comprehensive Agreement only by written amendment. Verbal changes shall not be enforceable against the City. No act or omission or verbal representation or statement shall be treated as an expressed or implied waiver of this requirement and all waivers shall be in writing signed by the party who is alleged to have waived any of the terms and/or conditions of the Agreement. The requirements of this paragraph, in particular, shall not be modified, amended, or waived except in writing signed by both parties. A Comprehensive Agreement may provide for the development or operation of separate phases or segments of a Proposed Project. Parties submitting bids/proposals understand that representations, information, and data supplied in support of, or in connection with, bids/proposals play a critical role in the competitive evaluation process and the ultimate selection of a bid/proposal by the City. Accordingly, as part of the Comprehensive Agreement, the Bidder/Proposer and its team members shall certify that all material representations, information, and data provided in support of or in connection with a proposal are true and correct. Such certifications shall be made by the Bidder/Proposer's authorized representative who shall be an individual who has knowledge of the information provided in the proposal. If material changes occur with respect to any representations, information and data provided for the proposal, the Bidder/Proposer shall immediately notify the City of same in writing. Notwithstanding any language contained within the Interim or Comprehensive Agreement, any violation of this Section shall give the City the right to terminate the Agreement, withhold payment, if any is due, and seek any other remedy available under the law.

Before awarding a Comprehensive Agreement, the City shall hold a public hearing on the proposal to be awarded. The City may also make available to the public any proposed Comprehensive Agreement before accepting same by posting the Agreement on the City's website or by any other manner considered appropriate by the City to provide notice to the public.

The City reserves the right at all times to reject any or all bids/proposals at any time before signing a Comprehensive Agreement for any reason and may decline to pursue the Proposed Project. In the latter event, the City may accept new proposals for the Proposed Project should the City choose to restart the process at a later date. Discussions between the City and Private Entities about needed infrastructure, improvements, or services shall not limit the ability of the City to later decide to use standard procurement procedures to meet its infrastructure needs, whether the project will be a public/private partnership or not.

B. Interim Agreements

The scope of an Interim Agreement may include, but not be limited to:

1. Project planning and development;

2. Design and engineering;
3. Environmental analysis and mitigation;
4. Surveying;
5. Ascertaining the availability of financing for the Proposed Project;
6. Geotechnical investigation of subsurface conditions at the Proposed Project site; setting the timing of the negotiation of the Comprehensive Agreement; and
7. Any other provisions related to any aspect of the development or operation of a Proposed Project that the parties deem appropriate prior to executing a Comprehensive Agreement.

The terms of compensation to the Bidder/Proposer, if any, under an Interim Agreement shall be negotiated and specifically referenced in the Interim Agreement.

C. Comprehensive Agreements

The Commission must approve any Comprehensive Agreement entered into pursuant to the P3 Program between the City and a Contracting Person before said agreement becomes enforceable. The City shall accept no liability for development or operation of a Proposed Project before entering into a Comprehensive Agreement. Each Comprehensive Agreement shall define the rights and obligations of the City and the Contracting Person regarding the Proposed Project. The terms of the Comprehensive Agreement shall be tailored to address the specific Proposed Project and may include, but not be limited to:

1. The delivery of security, including performance and payment bonds, letters of credit, and other security in connection with, but not limited to, any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the Proposed Project;
2. The City's review and approval of the design of the Proposed Project;
3. The rights of the City to inspect the construction, operation, and maintenance of the Proposed Project to ensure compliance with specified performance standards and adjustments in the compensation to be paid to the Contracting Person and/or liquidated damages due from the Contracting Person should they fail to meet specified performance standards and/or deadlines;
4. The maintenance of insurance policies reasonably sufficient to ensure coverage of all aspects of the Proposed Project, including design, construction, and operations;
5. The services to be provided by the City and the terms of compensation due to the City for same;
6. The policy and procedures that will govern the rights and responsibilities of the parties if the Comprehensive Agreement is terminated or there is a material default by the Contracting Person, including the conditions governing assumption of the duties and responsibilities of the Contracting Person by the City and the transfer or purchase of property or other interests of the Contracting Person by the City;

7. The terms under which the Proposer will file, with the City, financial statements pertaining to the Qualified Project prepared in accordance with generally accepted accounting principles on a periodic basis but not less than annually;
8. A schedule of Fees or Lease Payments and circumstances for, and method of calculating, anticipated adjustments to same over the project life cycle;
9. The mechanism by which Fees, Lease Payments, or payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for all persons using the facility under like conditions and that will not materially discourage use of the Proposed Project;
10. Service or concession contracts;
11. Classifications according to reasonable categories for assessment of Fees;
12. The terms and conditions under which the City will contribute financial resources if required for the Proposed Project;
13. The terms and conditions under which existing site conditions will be assessed and deficiencies therein addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
14. The terms and conditions under which capacity for the Proposed Project may be increased or enlarged;
15. A periodic reporting procedure incorporating a description of the impact of the Proposed Project, financially and socially, on the City; and
16. Other requirements of the P3 Program or applicable law or that the City deems appropriate.

With respect to the construction component of the Proposed Project, the City generally anticipates addressing the following in the Comprehensive Agreement:

1. The Contracting Person will be expected to assume single-point responsibility and liability for all planning, designing, financing, constructing, operating, and maintaining the Proposed Project.
2. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation, as well as all other unforeseen site conditions, will be allocated to the Contracting Person in the Comprehensive Agreement.
3. The City encourages the Contracting Person to propose a formula for the mutual sharing of cost savings realized during construction by virtue of value engineering initiatives and efficiencies. Mutually agreed-upon terms for the sharing of such savings will be incorporated in the Comprehensive Agreement.
4. The City may require that one or more of the Private Entities and/or their principal members provide performance guaranties of all obligations undertaken in the Comprehensive Agreement. This requirement is in addition to the statutory requirement for a performance and

payment bonds and any other performance security required by the Comprehensive Agreement. Private Entities interested in entering into a public-private partnership with the City under the P3 Program must be willing to provide this security.

VIII. SOLICITED PROPOSALS

As provided in the City of Delray Beach's Purchasing Policy and Procedures Manual, the City may advertise for competitive proposals for a P3 Project. The terms, evaluation criteria and selection process shall be outlined in the solicitation which may be made by a request for proposals, invitation to negotiate, or other method, as deemed appropriate by the City Manager and hereinafter referred to as a "Solicitation".

Responses to a Solicitation shall comply with all requirements of the soliciting document(s) and shall comply with any applicable laws, statutes, rules, regulations, adopted Guidelines, and ordinances pertaining thereto.

All Responses to a Solicitation for a P3 Project shall be evaluated by the City as set forth in its Guidelines. Final award decisions for P3 Projects initiated by a Solicitation shall be made by the City Commission, and as determined to be in the best interests of the City.

IX. CONFLICTS OF INTEREST

It is the intent of the City to maximize competition on P3 Projects while ensuring that the procurement of each project is open and fair. In addition, the City believes that professional consultants representing the City must be free of conflicting professional or personal interests. Such competing interests have the potential to make it difficult for consultants to discharge their contractual obligations impartially, and otherwise create an appearance of impropriety, even if none exists, that can undermine confidence in the City's procurement process. To this end, the following is intended to provide guidance to firms and individuals directly or indirectly performing services for the City in connection with P3 Projects, either solicited or unsolicited. All firms and individuals performing work or contemplating the performance of work for the City on P3 Projects are also expected to understand and comply with existing City conflicts of interest policies and Florida law, including laws related to conflicts of interest.

It is the responsibility of each firm and individual to understand and comply with this guidance. As a tool to assist in such compliance, the City will include in the solicitation for each P3 Project a list of firms and individuals that the City believes, at the time of issuance of the solicitation, to have a conflict of interest for that P3 Project pursuant to this guidance (the "List"). The List will be as inclusive as possible based on the information reasonably available to the City at the time the List is published. However, it remains the responsibility of each firm and individual to be both knowledgeable of this policy and to comply with the guidance regardless of whether listed on the List. If a firm otherwise subject to this guidance is not on the List, such non-inclusion shall not excuse a failure to comply with this policy.

The City will reasonably consider requests for exceptions to this policy on a case-by-case basis upon a showing of good cause for the exception. Please see Paragraph 5 below for further details.

A. Owner's Representatives

1. Firms

A firm serving as one of the City's consultants or as a subconsultant in the development of procurement documents, evaluation criteria, or technical criteria for a City P3 Project (collectively, "Owner's Representative") is prohibited from participating in any capacity on a proposer team for that P3 Project or any other P3 Project under procurement by the City. This prohibition extends to the Owner's Representative's affiliates and shall remain in place for a period up to and including, and in limited instances beyond, the date said project is closed and final payment has been rendered or until the City determines that any such conflicts no longer exist.

A firm continuing to serve as one of the City's Owner's Representatives for a P3 Project after the project has been closed is prohibited from participating on a proposer's team for that P3 Project or any other P3 Project unless and until the City grants an exception.

It is the intent of the City to separately procure an Owner's Representative for each P3 Project. Generally, any Design or other Consulting Firm meeting a project's requirements for an Owner's Representative is eligible to participate in such procurement, but the City will not allocate an Owner's Representative's scope of work to any Consulting Firm unless the Firm consents to serve as an Owner's Representative and agrees to be bound by these guidelines.

2. Individuals

Any individual who works for or has worked for an Owner's Representative and was involved in the development of procurement documents, evaluation criteria, or technical criteria for the P3 Project is prohibited from participating in any capacity on a proposer team for that P3 Project under procurement by the City. This prohibition shall remain in place until the date said project is closed and final payment has been rendered for the P3 Project that the individual was involved in, and in limited instances beyond, or until the City determines that any such conflict no longer exists or until or unless the City grants an exception.

Any individual who was an employee of the City within the past 2 years or whom had any involvement or oversight of the formulation, or analysis of any P3 Project or development of procurement documents, evaluation criteria, or technical criteria for the P3 Project, is prohibited from participating in any capacity on a proposer team for that P3 Project or any other P3 Project under procurement by the City. This prohibition shall remain in place until the Project Closeout Date for the P3 Project that the individual was involved in, and in limited instances beyond, or until the City determines that any such conflict no longer exists or until or unless the City grants an exception.

B. City Consultants and Subconsultants for Non-P3 Projects Converted to P3 Projects

1. Firms

A firm serving or who has served as one of the City's consultants or as a subconsultant for one or more projects within the City that is/are converted to a P3 Project may participate on a proposer team with the approval of the City Manager. A firm may seek approval by submitting a written request to the Purchasing Manager. The request

shall describe the facts and circumstances of the requestor's involvement on the project including level of design (percent complete, the number of component design plans by other firms, etc.), the last date of any involvement by the firm, and the nature of its proposed participation for a proposer team on the P3 Project under procurement by the City.

A firm serving or who has served as one of City's consultants or subconsultants for a project is prohibited from participating on a proposal team submitting an unsolicited proposal for that project. A firm serving or who has served as one of the City's primary consultants for a project is prohibited from participating on a proposal team should the City elect to advertise the project as a P3 Project as a result of an unsolicited proposal.

2. Individuals

An individual who works or has worked for a City consultant or subconsultant that was involved in a City project that is converted to a P3 Project may not directly or indirectly serve in any capacity for a proposer team on that P3 Project until the date said project is closed and final payment has been rendered or until the City determines that any such conflict no longer exists through the granting of an exception prior to the submission of the solicitation.

Any individual who was an employee of the City within the past 2 years or whom had any involvement or oversight of the formulation, or analysis of any City Project converted to a P3 Project or development of procurement documents, evaluation criteria, or technical criteria for a City Project converted to a P3 Project, is prohibited from participating in any capacity on a proposer team for that P3 Project or any other P3 Project under procurement by the City. This prohibition shall remain in place until the date said project which the individual was involved is closed, the City determines that any such conflict no longer exists, or until or unless the City grants an exception.

C. Requests for Exceptions

A firm or individual may seek an exception to the above guidelines by submitting a written request for exception to the City's Purchasing Manager. The decision to approve or deny a request shall be made by the City Manager or his designee within a reasonable time after submission of a complete request.

The request shall describe the facts and circumstances of the requestor's involvement on the P3 Project and the nature of its proposed participation for a proposer team on another P3 Project under procurement by the City. The request shall specifically disclose whether the requestor at any time (a) was involved in the preparation of procurement documents, technical criteria, or evaluation criteria for the P3 Project or any other P3 Project; (b) participated in P3 Project-related meetings or conference calls with an Owner's Representative or with City's legal advisors or financial advisors; or (c) works or has worked for one of the City's Owner's Representatives or for the City on a P3 Project after the project is closed and final payment has been rendered for such P3 Project. The City retains the right to accept or deny any request for exception to this policy in its sole and absolute discretion and any delays or costs resulting from the failure to request an exception in a timely manner shall be the responsibility of the firm or individual.

X. GOVERNING PROVISIONS

In the event of any conflict between these Guidelines and the City Charter, or any federal, state, county, or City law or administrative authority, the terms of the respective Charter, laws, or administrative rules and regulations shall control.

The provisions and requirements of these Guidelines shall apply to solicitations for P3 Projects by the City unless otherwise provided in the solicitation. Bids or proposals in response to City-initiated solicitations shall be evaluated pursuant to the provisions of these guidelines for Bids or proposals received subsequent to the advertisement of a Notice of Receipt of an unsolicited proposal. The manner and timing for said advertisement and competitive bidding process shall be in accordance with Section IV of these Guidelines.

Approvals:



Hugh B. Dunkley, CPA, CGFO, Finance Director

Date: 5/3/2022



Terrence R. Moore, ICMA-CM, City Manager

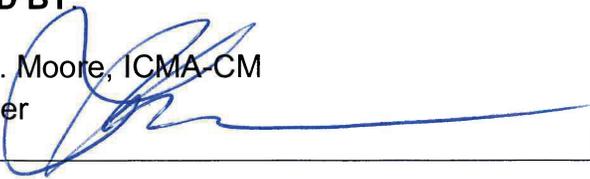
Date: 5/3/2022



CITY OF DELRAY BEACH
100 NW 1st Avenue
Delray Beach, Florida 33444
FINANCE DEPARTMENT

PURCHASING AND CONTRACT ADMINISTRATION DIVISION

PURCHASING POLICIES AND PROCEDURES MANUAL

City of Delray Beach 	ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL		SUBJECT: Purchasing Policies and Procedures Manual	
	NUMBER PUR- 15	REVISIONS 7	EFFECTIVE DATE: 1/26/2026	PAGE 1 OF 41
	SUPERSEDES PUR-15, revision 6	APPROVED BY: Terrence R. Moore, ICMA-CM City Manager 		

Rev. November 2025

FINANCE DEPARTMENT
PURCHASING AND CONTRACT ADMINISTRATION DIVISION

VISION STATEMENT

To contribute ethically, quantitatively, and qualitatively to the strategic goals of the City by employing technology and best practices to achieve efficiency, transparency, cost savings, and fairness in the City's procurement efforts.

MISSION STATEMENT

The Purchasing and Contract Administration Division is committed to the fair, equitable, and timely acquisition of goods and services for the City of Delray Beach. Using technology, competition, and best practices, we strive to bring the greatest value to the City and its residents in an efficient and cost-effective manner.

VALUES STATEMENT

The primary objectives of a first-class procurement organization extend beyond the traditional belief that procurement's primary role is to obtain goods and services in response to internal needs. These primary objectives include:

- *Support operational requirements*
- *Manage the purchasing and contracting process equitably, efficiently, and effectively*
- *Develop strong relationships with other functional groups and stakeholders*
- *Support organizational goals and objectives*

The Purchasing and Contract Administration Division is committed to the fair, equitable, and timely acquisition of goods and services for the City of Delray Beach, and to cultivating an ethical and professional environment. Using technology, competition, and best practices, we strive to bring the greatest value to the City and its residents in an efficient and cost-effective manner. The Department embraces the Values and Guiding Principles of Public Procurement, which are:

- *Accountability*
- *Ethics*
- *Impartiality*
- *Professionalism*
- *Services*
- *Transparency*

I N D E X

SECTION	PAGE
• <i>Introduction</i>	5
• <i>Vendor Enrollment and Registration</i>	5
• <i>Purchasing Organization and Authority</i>	6
• <i>Exceptions</i>	7
• <i>Responsiveness and Responsibility Determinations</i>	9
• <i>Advance Acquisition Planning</i>	11
• <i>Cone of Silence</i>	12
• <i>Non-Collusion Affidavit</i>	12
• <i>Dispute Resolution</i>	13
• <i>Requisitions</i>	13
• <i>Technical Specifications, Scope of Services and Statements of Work</i>	14
• <i>Purchasing Authorization Levels</i>	15
• <i>Revenue Generating Contracts</i>	16
• <i>Solicitation Preparation</i>	16
• <i>Solicitation Advertisement</i>	16
• <i>Pre-Bid and Pre-Proposal Conferences</i>	17
• <i>Addenda to Solicitation Documents</i>	17
• <i>Opening of Bids and Closing of Proposals</i>	17
• <i>Late Bids or Proposals</i>	17
• <i>Offer (Bid or Proposal) Requirements</i>	17
• <i>Tied Bids</i>	17
• <i>Recommendation for Award</i>	17
• <i>Authority to Award to Second Low Bidder after Cancellation of Contract</i>	18
• <i>Appeal and Protest Procedures</i>	18
• <i>Formal Solicitation Process</i>	20

- *Authority to Exercise Options to Renew (OTR)*.....20
- *Request for Information (RFI)*.....20
- *Request for Qualifications (RFQ) / Request for Proposals (RFP)*.....20
- *Formation and Performance of Evaluation/Selection Committee*.....21
- *Negotiations*.....23
- *Rejection of Bids/Proposals*.....24
- *Vendor Pool Contracts*.....25
- *Accessing Contracts from other Government Agencies & Not for Profit Organizations*.....25
- *Accessing an Existing City Contract*.....26
- *Limited or no Competition Acquisitions*.....26
- *Emergency Purchases*.....30
- *Request to Modify a Purchase Order or Contract*.....31
- *Monitoring and Reporting Vendor Performance*.....32
- *Suspension and Debarment*.....33
- *Offer Guarantee, Performance and Payment Bonds, and Insurance*.....34
- *Market Research*.....35
- *Blanket Purchase Orders*.....37
- *Cooperative Purchasing*.....37
- *Purchase of Used Equipment*.....37
- *Change Orders and Amendments*.....38
- *Sales Tax Exemption*.....39
- *References and Endorsements*.....39
- *Vendor File Maintenance*.....39
- *Excellence in Public Procurement – Code of Ethics*.....40
- *How to Do Business with the City of Delray Beach*.....41

1. INTRODUCTION

This policy and procedural manual (PPM) is intended to provide basic orientation information for the operational activities of the Purchasing and Contract Administration Division of the City of Delray Beach, Florida. It is not intended to be a detailed guide describing each aspect of the Purchasing and Contract Administration Division's internal specific procedures. However, this manual is intended to provide sufficient procedural detail to enable City departments, other governmental entities, and the vendor community to:

- a. be fully aware of, and comply with, City purchasing policies, and
- b. effectively participate in the City's purchasing program.

In the event there is any contradiction between these guidelines and City, County, State or Federal legislation, the legislation shall prevail. The funding source(s) of procurement action may determine which legislation shall be adhered to, as applicable.

The basic purchasing policies of the City of Delray Beach are conducted on the basis of full and open competition to the greatest extent possible, with award being made to:

- i. the lowest responsive and responsible bidder under Invitations to Bid;
- ii. the best value proposer under qualitative solicitations that involve pricing as a competitive selection factor;
- iii. the highest ranked technical proposer(s) with which a fair and reasonable price may subsequently be negotiated under solicitations that do not involve pricing as an initial competitive selection factor;
- iv. that all specifications or statements of work included in City purchasing actions accurately describe the essential needs of the City, and contain no artificial or arbitrary requirements that limit competition or increase cost;
- v. that each purchasing action is conducted in accordance with the best interests of the City, and with the highest level of integrity and fairness to all involved parties throughout the acquisition cycle;
- vi. that all City purchasing operations be conducted in compliance with federal, state, and local laws as applicable and ensure the highest degree of ethical standards;
- vii. and that transparency and community inclusion be sustained throughout the purchasing process.

2. VENDOR ENROLLMENT AND REGISTRATION

The City of Delray Beach does not require vendors or any firm, individual or organization to register with the City in order to respond to City solicitations or quote requests. However, vendors are encouraged to visit the Purchasing and Contract Administration Division's webpage at <https://www.delraybeachfl.gov/government/city-departments/purchasing> and enroll online by joining the Vendors List to receive notifications when solicitations are advertised by the City. The Purchasing and

Contract Administration Division requires that vendors complete a Vendor Registration Form to the Purchasing and Contract Administration Division at (<https://www.delraybeachfl.gov/government/city-departments/purchasing/supplier-registration>) to receive a Vendor ID to allow for the processing of Purchase Orders and invoice payments. The City also uses the vendor database maintained by Bidnet Direct, and vendors are encouraged to visit the Bidnet Direct website at www.bidnetdirect.com to register to receive notices of City solicitations.

3. PURCHASING ORGANIZATION AND AUTHORITY

GENERAL INFORMATION AND POLICY

The Purchasing and Contract Administration Division, a division of the Finance Department, is the central purchasing agency of the City of Delray Beach government. It is the responsibility of the Purchasing and Contract Administration Division to issue and maintain purchasing policies, procedures and guidelines for the City's departments. It is also the responsibility of the Purchasing and Contract Administration Division to issue solicitations and prepare contracts at the authorization levels established within the PPM.

The Purchasing and Contract Administration Division's goal is to provide the City with the required goods and services in the most cost-effective manner and at the time and place necessary to help ensure that the City provides the public timely and quality service. The following policies and procedures, including stated approval authorization levels, apply equally to expenditure and revenue producing contracts.

Technical specification reviews, prior to solicitation advertisement, must be completed by the requesting departments and returned to the Purchasing and Contract Administration Division in a timely manner. Additionally, the review of bid or proposal responses during the evaluation phase shall also be completed and returned to the Purchasing and Contract Administration Division by the requesting department no later than ten (10) working days after receipt of responses. If additional time is required for either review, the request must be made in writing (email is acceptable) by the Department Head (or designee) of the requesting department to the Chief Financial Officer.

To obtain the best value for the taxpayer and to promote equitable economic participation by all segments of our community, the Purchasing and Contract Administration Division is mandated to utilize a competitive bidding process, with the award being made to the lowest, responsive and responsible bidder. Chapter 36 of the City's Code of Ordinances authorizes the establishment of purchasing procedures for the competitive bidding process and associated alternative processes. These procedures also allow for the use of other than full and open competition should it be determined to be in the best interest of the City.

All purchases shall be made in compliance with Florida Statutes, the City Code of Ordinances, these purchasing guidelines, and public procurement best practices. No person may make any purchase utilizing City funds unless specifically authorized to do so by the City Code of Ordinances, resolution, or designation by the City Commission or the City Manager. Payment for any unauthorized purchase may be the responsibility of the person placing the order (see "Unauthorized Purchases" section of these guidelines for further information).

The Chief Financial Officer is appointed by the City Manager. The City's Chief Procurement Officer (CPO) will be a direct report to the Chief Financial Officer. As such, the CPO is the Chief Financial Officer's designee for all procurement actions governed by this PPM. Authority to interpret areas of procedure not specifically covered within the PPM are also vested with the CPO.

The CPO is responsible for implementing programs and initiatives to improve competition. This includes, but is not limited to, assuring effective and efficient market research, ensuring contracting opportunities for small business entities, scrutinizing sole source and bid waiver requests, reviewing change orders, and challenging specifications and statements of work (SOWs) to ensure no artificial barriers limit or reduce competition.

4. EXCEPTIONS

A. Certain purchases made by the City are authorized for direct payments and as such, are exempt from the City's competitive solicitation procedures, including approval threshold requirements. The current list of purchases authorized for direct payment is shown below:

- i. Regulated services: Telephone, electricity, natural gas, water, or similar services where rates or prices are fixed by legislation or by federal, state, county or municipal regulations.
- ii. Casualty and Property Insurance
- iii. Life, Health and Dental Insurance
- iv. Employee Benefits/Contracts with Third Parties for Payroll Deduction
- v. Services Procured with Non-City Funds that are a "pass-through" (developer deposits, etc.)
- vi. Debt Service Payments
- vii. Pension Payments
- viii. Unemployment Compensation
- viii. Tax Payments of any kind (including Tax Withholding Payments)
- x. Retirement Plan and Section 457 (Deferred Compensation) Contributions
- xi. Memberships, Dues, Subscriptions, Publications
- xii. Seminars and Travel Expenses
- xiii.. Investments
- xiv. Postage
- xv. Recording Fees

- xvi. Automobile License Plates
 - xvii. Advertisements
 - xviii. Payment for insurance claims (Risk Management) and legal settlements
- B. Certain purchases made by the City are specifically exempt from the competitive processes outlined in this Manual. The current list of purchases exempt from the competitive process is shown below:
- i. Legal Services and all services directly related to the provision of same
 - ii. Items Purchased for Re-Sale
 - iii. Recreational Programs provided by Independent Contractors
 - iv. Lobbying Services
 - v. Training (where a provider is contracted by the City to provide the training)
 - vi. Facilitation (where a provider is contracted by the City to facilitate a workshop, working group, program, or the like.)
 - vii. Art and talent/artistic services
 - viii. Medical services, including veterinarian services
 - ix. Special Events as defined in Section 101.32 of the Delray Beach Ordinances and the City's Special Events Policy; including contractually obligated purchases for Special Events
 - x. Consultant/Professional Services up to \$100,000 with approval of the City Manager
 - a. *Professional services are defined as those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice. See Florida Statute 287.055(2)(a), as may be amended from time to time.*
 - b. *Consultant services are defined as those services within the scope of practice of actuaries, attorney business consultants, computer programmers, copywriters,*

developers, efficiency expert, executive search firms, facilitators, public relations, recruiters, real estate brokers, translators; planners (Resolution No. 55-25 adopted on March 11, 2025) or any other professional service as determined by the City Commission from time to time and made a part of these policies.

- xi. On-going maintenance and support of existing software/hardware, equipment, whereby the initial purchase was made through a competitive method
- xii. Certification testing, servicing, and calibration of Fire Rescue Department and Police Department equipment where the initial purchase was made through a competitive method
- xiii. Services or commodities provided by governmental agencies, other public entities, universities and colleges or political subdivisions

Purchasing authorization and approval levels, as defined herein, apply to purchases set forth in Paragraph B. Payment of invoices for purchases set forth in paragraph B. above are also eligible for direct payment unless there is a city contract in place. When a City Contract is in place, a requisition, purchase order and invoice against the contract must be issued via the City's financial system (New World System). Exceptions to this process may only be authorized by the Chief Financial Officer or designee.

When appropriate, the City may encourage and actively promote local, minority and small business enterprises to bid on City purchases.

The purchasing guidelines may not govern every purchasing situation that may arise. In the event a specific purchase is not covered by these guidelines, the purchase shall be made based on these objectives following consultation with the Chief Financial Officer.

Goods and services to be procured, which are funded by a Federal Grant Program, must be procured in accordance with 2 CFR §200.318 through §200.326 (aka Federal Super Circular), current version as may be amended by the Federal government.

5. RESPONSIVENESS AND RESPONSIBILITY DETERMINATIONS¹

The City shall award its contracts to the responsive, responsible vendor offering the best value, and whose offer or proposal is technically compliant with the City's requirements. Best Value means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship. The following is intended to be used as general guidelines:

- i. Bidder responsiveness refers to a bidder's unequivocal promise, as shown on the face of its offer, to provide the items or services called for by the material terms of the solicitation. A responsive bid means one submitted at the correct time and place, in the correct format, containing all required information, signatures, and affidavits. A bid that deprives the government of the assurance that the contract will be entered into in accordance with its

¹ The use of the term bidder shall be understood to include any participant in the City's procurement process and the term bid shall be understood to include any offer in response to a solicitation.

terms is not responsive. Any omission is normally not curable, as a bidder submitting an incomplete or qualified bid could opt in or out of the process at its will, depriving the City of a valid offer and placing that bidder at a material advantage over other bidders who have made firm offers. The determination of responsiveness is based on the application of bid requirements and legal precedent to facts provided by City staff or developed in the course of a bid protest. In consultation with the City Attorney, the Chief Financial Officer has the authority to decide whether a bid is responsive or non-responsive.

- ii. Bidder responsibility refers to whether the bidder can perform as provided in the bid. In general, solicitation requirements for information relating to a bidder's financial condition, capability, experience and past performance pertain to a bidder's responsibility. The term responsibility is not limited in its meaning to financial resources and ability. Under its definition, the City has discretionary power to make determinations upon the honesty and integrity of the bidder necessary to a good faith performance of a contract, upon a bidder's skill and business judgment, its experience and its facilities for carrying out the contract, the bidder's previous conduct under other contracts, and the quality of bidder's previous work. The type of information bearing on a bidder's ability to perform may be furnished at any time during the solicitation process, or during performance of a City contract.
- iii. In the event the City has knowledge of facts which may exist that would render a bidder non-responsive, the Purchasing and Contract Administration Division may conduct a responsibility review and inquiry as may be reasonably required to make the affirmative finding of responsibility as a condition of recommending the bidder for award. City departments shall advise the Purchasing and Contract Administration Division in a timely manner, of knowledge of any facts that may render a bidder non-responsive. Given the variety of goods and services purchased by the City, and the unique issues that may arise, the issues of responsibility may be addressed on a case-by-case basis. A determination of bidder responsibility shall be made on a contract-by-contract basis. A responsible bidder is a bidder, which the City affirmatively determines has the ability, capability and skill to perform under the terms of the contract; can provide the materials or service promptly within the time specified, without delay or interference; and has a satisfactory record of integrity and business ethics.
 - a. In making the determination of whether the bidder has the capability to perform the contract, the City may consider factors including, but not limited to, the following:
 - i. past performance of the bidder, its principals, affiliates, or supervisory personnel in the execution of prior City contracts;
 - ii. any information which the City may obtain relating to the performance of the bidder, its principals, affiliates, or supervisory personnel on contracts with third parties, including without limitation, contracts with other governmental entities;
 - iii. financial performance and capability, including without limitation, pending and unsatisfied claims;
 - iv. qualifications and past performance of the personnel who will have supervisory responsibility for the performance of the specific City contract;

- v. licensing, certifications and other permits; and
 - vi. any significant changes in the bidder's financial position or business organization.
- b. In making the determination whether the bidder has a satisfactory record of integrity and business ethics, the City may consider factors including, but not limited to, the following:
- i. pending criminal charges against the contractor, its principals, affiliates, or supervisory personnel;
 - ii. criminal conviction of bidder, its principals, affiliates, or supervisory personnel;
 - iii. debarment of the bidder, its principals, affiliates, or supervisory personnel in the City of Delray Beach or any other jurisdiction;
 - iv. pending disciplinary proceedings against the bidder, its principals, affiliates, or supervisory personnel;
 - v. pending enforcement cases, civil judgments, citations, or notices of violation of regulatory authorities with jurisdiction over the goods or services to be rendered, or any adverse determination resulting therefrom, including, but not limited to, those related to environmental protection, the health and safety of labor, and determinations by any government entity;
 - vi. pending investigation related to, or arising from allegations of dishonesty, illegal or fraudulent business practices;
 - vii. efforts by the bidder to redress any breach of prior contracts, and compliance with settlement agreements to redress any contract deficiency;
 - viii. inaccurate, incomplete, or fraudulent accounting practices;
 - ix. efforts by the bidder to remediate any of the adverse conditions mentioned herein, including compliance with the terms and conditions of any compliance agreement; and
 - x. the preponderance of the evidence, nature and credibility of any and all facts underlying any of the above-cited investigations, allegations, charges, accusations, proceedings or indictments.

In evaluating the factors above, the City shall give priority to acts or legal proceedings occurring within the five (5) years preceding the submission of an offer to the City, and any violation or deficiency that is continuous or uncured. Additionally, at any time, the City may require that the bidder submit documentary evidence and other proof necessary to evaluate the factors identified above.

The City shall be entitled to rely on information of the type reasonable persons rely on, in the conduct of business affairs. If the bidder is unable to furnish such documentary evidence or other

proof, or if the City is otherwise unable to make an affirmative determination that the bidder is responsible to perform the work as required, the bidder shall be determined non-responsible. Failure of the bidder to provide requested information to determine responsibility in response to a solicitation may cause such bid or proposal to be rejected.

Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. Determinations of prospective subcontractor responsibility may affect the City's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed interest to do so, and the City may directly determine a prospective subcontractor's responsibility. In this case, the same standards used to determine a prime contractor's responsibility shall be used.

In the event a bidder is determined to be non-responsible, the CPO shall place in the contract file a determination of non-responsibility, which shall state the basis for the determination. All documents, reports, or minutes of meetings supporting a determination of non-responsibility shall also be included in the contract file.

- iv. In addition to responsiveness and responsibility determinations, the Purchasing and Contract Administration Division, in collaboration with the requesting City Department, shall ensure that the goods or services to be procured are technically compliant with the specifications and requirements of the City's solicitation. The requesting department (or consultant, as may be the case) shall act as subject matter experts in determining whether the offered goods or services are technically compliant with the specifications of the solicitation.

6. ADVANCED ACQUISITION PLANNING

The Purchasing and Contract Administration Division, in collaboration with City departments, procures a wide range of supplies and services for the operations of the City. In the past, the Purchasing and Contract Administration Division function essentially commenced upon receipt of requisitions and relevant supporting documentation from the requesting departments. While this approach may be sufficient for some purchases, it may not be appropriate for most major acquisitions. Advance acquisition planning is especially necessary for major procurements, and should be conducted in accordance with sound business practices and in a timely manner. Advance acquisition planning involves the Purchasing and Contract Administration Division, in collaboration with the requesting departments, reviewing specifications and statements of work to determine that the purpose of the acquisition is clear, and that the minimum requirements are clearly defined and stated in terms of performance and/or functionality when possible. It should also include market research and analysis to determine sources of supply and available solutions in the marketplace. Advanced acquisition planning results in effective competitive solicitations, accurate budgetary projections, timely procurement of goods and services, consideration of multiple products or solutions, and enhanced competition.

It is often the case that procurement actions are delayed due to circumstances such as conflicting or unanticipated workloads, redundant requirements, repetitive after-the-fact revision of specifications or solicitation provisions, or initially unconsidered competition or business utilization issues. The best way to minimize the potential for such delays is to identify and resolve such concerns during the initial planning phases for a given purchase.

It is the Purchasing and Contract Administration Division's intent and goal to work with departments at the earliest point possible in the acquisition cycle. The acquisition cycle begins when a department perceives a need for a given product or service and decides to purchase that good or service. The Purchasing and Contract Administration Division can provide a significant value-added service by working collaboratively with requesting departments in the early phases of the acquisition cycle. Such early coordination will minimize or even eliminate procurement pitfalls such as those addressed above. It is the Purchasing and Contract Administration Division's mission to ensure that City purchases are completed in the most effective and timely manner possible. The Purchasing and Contract Administration Division considers Advance Acquisition Planning to be a major element towards achieving that goal. Actions and policies intended to affect such planning are in progress and will be expanded in coordination with all City departments.

7. CONE OF SILENCE

Pursuant to Section 2-355 of the Palm Beach County Ordinance No. 2011-039, and the purchasing policies of the City of Delray Beach, all solicitations, once advertised and until the appropriate authority has approved an award recommendation or until rejection of all bids/proposals occurs, are under the "Cone of Silence". This limits and requires documentation of all communications between potential bidders and/or bidders on City solicitations, the City's professional staff, and the members of the City Commission.

The Purchasing and Contract Administration Division may issue an addendum in response to any inquiry received, prior to the close of the solicitation period, which changes, adds, or clarifies the terms, provisions, or requirements of the solicitation. The vendor should not rely on any representation, statement, or explanation whether written or verbal, other than those made in the solicitation document or in the addenda issued. Where there appears to be a conflict between the solicitation and any addenda, the last addendum issued shall prevail. It is the vendor's responsibility to ensure receipt of all addenda, and any accompanying documentation. The vendor is required to submit with its bid or proposal a signed "Acknowledgment of Addenda" form, when any addenda have been issued.

8. NON-COLLUSION AFFIDAVIT

Any vendor responding to a City solicitation shall submit an affidavit under the penalty of perjury, on a form provided by the City, stating either that the contractor is not related to any other parties bidding in the competitive solicitation or identifying all related parties with which it has colluded in offering a bid in the solicitation; or attesting that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. In the event a recommended contractor identifies related parties in the competitive solicitation, its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted to the satisfaction of the City.

Any person or entity that fails to submit the required affidavit shall be ineligible for contract award. The Non-Collusion Affidavit will be included in all solicitations, and bidders or proposers may submit the executed document with their bid proposals, or during the bid evaluation period.

9. DISPUTE RESOLUTION

Any dispute arising out of or relating to City contracts shall be resolved by following the procedure below:

- i. The department and/or vendor shall bring details of dispute to the attention of the CPO or designee;
- ii. The CPO shall obtain details of the dispute from both parties and develop a reasonable and fair solution acceptable to both parties, which shall be incorporated into an agreement;
- iii. The agreement shall contain details as to the responsibilities of each party to include:
 - a. Actions to be taken;
 - b. Follow-up schedule;
 - c. Assessment of damages, penalties, or fees;
 - d. Periodic monitoring must be done by City staff to ensure that disputes are dealt with in a timely manner and closed out;
- iv. If the dispute cannot be resolved through the previous steps, the City Attorney will be consulted for appropriate legal action (litigation, arbitration, mediation).

10. REQUISITIONS

When there is a need for goods or services which are not available from an existing City contract, and which exceed the dollar limits of a small purchase order (\$15,000), an electronically generated requisition must be submitted to the Purchasing and Contract Administration Division. Requesting department staff should evaluate the need for goods and services, determine expected usage, and plan their purchases to effectively meet program and operational demands.

Before submitting a requisition, the requesting departments must ensure that:

- a. Valid requirements have been established;
- b. Funds are available to cover the purchase;
- c. Sufficient data is available to determine the best method to secure the purchase;
- d. Quotations or contract information are attached;
- e. Specifications are available; and
- f. Estimated total dollar value of procurement should be identified.

The Purchasing and Contract Administration Division will review the requisition for accuracy and compliance with purchasing guidelines and procedures.

11. TECHNICAL SPECIFICATIONS, SCOPE OF SERVICES, AND STATEMENTS OF WORK

Technical Specifications, Scope of Services, or Statements of Work should be stated in terms of function, performance or design. The type of specifications selected is to be based on the requesting department's minimum requirements and the market available to satisfy those requirements. Design specifications are the least desirable type of specifications. Functional or performance types of specifications are preferred to increase the potential for full and open competition.

Requesting departments should consider the following factors in developing specifications:

- a. Does it describe the needs in terms of function or performance required?

- b. Does it clearly state the minimum requirements acceptable to the City?
- c. Does it indicate the end usage or expected results?
- d. Is it clear, concise, and understandable?
- e. Does it encourage competition by considering more than one source of supply?
- f. Are standard specifications available?
- g. Are the specifications tailored to more than one vendor?
- h. If a specific brand and model are referenced, have you included the term "or approved equal"? If not, have you included a reason why an equal is not acceptable?
- i. Is there anything additional to be considered?

12. PURCHASING AUTHORIZATION LEVELS²

The Purchasing and Contract administration Division must be consulted at the outset of any purchase that will result in an agreement, contract, or service authorization requiring legal review to ensure compliance will all purchasing policies and procedures.

Written agreements of all dollar values shall be reviewed by the CPO, the City Attorney, and executed by the City Manager, his or her designee or Mayor, including quotes submitted by vendors that contain terms and conditions.

When a City contract is in place, a requisition, purchase order and invoice against the contract must be issued via the City's financial system. Exceptions to this process may only be authorized by the Chief Financial Officer or designee.

VENDOR SPENDING WITHOUT A CITY CONTRACT

When no contract exists for a specific vendor, the requesting department is responsible for monitoring and determining the cumulative spending with that vendor to ensure the \$100,000 threshold is not exceeded. If cumulative spending will exceed the \$100,000 threshold, the requesting department must (1) seek guidance from the Purchasing and Contract Administration Division and the City Attorney and (2) prepare an agenda item for consideration by the City Commission at its next meeting to authorize the spending and the procurement method utilized to substantiate same.

PURCHASES UP TO \$15,000.00

These acquisitions may be made by those city employees, with Department Head approval, who have been delegated such authority in writing by the respective department heads. Single or multiple purchases of goods, commodities and services that are equal to or less than \$15,000.00 without a contract may be made using the City of Delray Beach purchasing card, ~~or~~ check request or purchasing requisition. These purchases are to be made from vendors who supply the item at best value and with an appropriate quality level, using sound purchasing practices and common sense. Best Value means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship. These purchasing practices may include, but are not limited to, verbal quotations or written records of telephone/e-mail quotations.

PURCHASES ABOVE \$15,000 UP TO \$100,000

² The general limit for bypassing competitive solicitation is \$15,000 in a 12-month period, inclusive of all costs. The twelve month period is determined using a fiscal calendar.

City Manager approval is required. Single or multiple purchases of goods, commodities and services that are above \$15,000 and up to \$100,000 without a contract require a Purchase Requisition with documentation of best attempts to obtain at least three (3) written quotations as provided below.

Documentation of the quotations requested and received must be attached to the Purchase Requisition.

If at least three (3) or more quotes cannot be obtained, or if other than the lowest quote is being recommended for purchase, the reasons shall be documented when entering the Purchase Requisition by clicking on the note section icon.

The completed Purchase Requisition shall be submitted to the Purchasing and Contract Administration Division or designee for approval and issuance of a Purchase Order prior to making the purchase.

Purchases ordered per an existing piggybacked contract must include the vendor name, contract number, and contracting entity on the Purchase Requisition (i.e., State of Florida, Other Governmental Entity, National Co-Operative, Southeast Florida Co-Operative, etc.)

The person responsible for receiving purchases must check vendor invoices to ensure that quantities match the purchase order prior to approving the invoice for processing.

PURCHASES GREATER THAN \$100,000

All purchases of \$100,000 must be approved by the City Commission³. Purchases pursuant to formal bids, proposals, or quotations shall be procured in accordance with the "Formal Solicitation Process" set forth within this Manual, unless otherwise exempt.

A market research summary may be conducted by the Purchasing and Contract Administration Division for all purchases that fall within this authorization level. Requesting departments should also conduct their own market research to supplement the market intelligence that influences the purchasing decision.

Responses shall be solicited by publishing the notice of request for bids on a public website and if required to satisfy the requirements of a grant of other funding agency, in a newspaper of general circulation throughout the City.

Public notice of the solicitation shall be published on the City's website for a reasonable period prior to bid opening.

13. REVENUE GENERATING CONTRACTS

Contracts with any vendor where the City estimates the City will receive revenue in the amount of \$100,000 or greater over the term of the contract (including revenue during renewal periods) shall require approval by the City Commission and shall be subject to a Sealed Competitive Method, unless the City utilizes one of the limited competition or direct acquisition methods as set forth herein below. This Section shall not apply to the sale or lease of the City's real or non-real property.

³ Pursuant to Resolution No. 127-24 approved on June 18, 2024, the City Manager is authorized to execute grant award agreements pursuant to the City's Local Housing Assistance Plan in an amount not to exceed \$85,000 for ownership housing rehabilitation assistance agreements and \$75,000 for purchase assistance agreements.

14. SOLICITATION PREPARATION

Requesting departments shall be involved in the preparation of solicitations to ensure that project or product specific requirements are adequately addressed in the solicitation document. Requesting departments may also be involved after solicitation issuance in the conducting of pre-bid (or pre-proposal) conferences, and the preparation of any requisite solicitation addenda. All solicitations shall be reviewed and approved by the City Attorney, or designee, prior to advertisement.

15. SOLICITATION ADVERTISEMENT

The CPO shall publish announcements and advertisements for solicitations falling within the Formal Solicitation purchasing authorization levels in accordance with City policies and procedures, and all related directives and ordinances.

16. PRE-BID AND PRE-PROPOSAL CONFERENCES

A pre-bid or pre-proposal conference may be scheduled for solicitations where it is deemed advisable to allow potential proposers to consult with City staff to ensure clarity of the required goods or services and, if applicable, to view the site where work is to be performed.

Attendance at pre-bid and pre-proposal conferences by vendors is generally optional. However, vendor attendance at such conferences may be made mandatory depending upon the specific requirements of the project. The "Cone of Silence" is not applicable during pre-bid and pre-proposal conferences and/or site visits.

17. ADDENDA TO SOLICITATION DOCUMENTS

There may be occasions when it will be necessary to change the specifications, terms, or conditions of a given solicitation during the course of the bid (or proposal) period. Such changes may be required in response to requesting department requests or clarifications, contractor questions (submitted in writing per the "Cone of Silence"), or other reasons. Such changes shall be formalized by the issuance of solicitation addenda by the Purchasing and Contract Administration Division. The addenda become part of, and supersedes, the solicitation document.

18. OPENING OF BIDS AND CLOSING OF PROPOSALS

Responses to solicitations shall be opened by the Purchasing and Contract Administration Division at the place, date, and time specified in the solicitation or any subsequent addendum. No further responses from a given vendor will be accepted after the first response from that vendor is opened.

19. LATE BIDS OR PROPOSALS

The City will not accept late bids or proposals. All late bids or proposals will be rejected.

20. OFFER (BID OR PROPOSAL) REQUIREMENTS

Each offer shall meet all the requirements of the specific solicitation, unless waived as an irregularity or informality by the Chief Financial Officer or designee. Affidavits mandated by City Ordinance(s) or Resolutions(s) can be waived only by provisions contained within the Ordinance(s) or Resolution(s) of the City Commission.

21. TIED BIDS

Tied bids are offers where one or more responsive and responsible bidders offer the same low price for an item or group of items, depending on the method of award. In such instances, the Purchasing and Contract Administration Division will request best and final offers (BAFOs) from the bidders that offered the same price. The BAFOs must be requested at the same time or soon after the preliminary bid tabulation is provided to all responding bidders. This allows all bidders to see the prices that were bid, and the bidders that offered the same pricing.

Request for best and final offers must include a due date (close of business is acceptable) and may be emailed directly to the Purchasing and Contract Administration Division staff. In the event responses to best and final offers result in another tied bid, the tie shall be broken by the City Manager or designee flipping a coin in the presence of the Chief Financial Officer and/or the City Clerk.

22. RECOMMENDATION FOR AWARD

Recommendation for award(s) within the purchase authorization levels shall be made to the responsive and responsible vendor(s) offering the lowest price, whenever possible (note: qualitative solicitations are based on a "best value" evaluation). The City Manager or designee, subject to further delegation of authority, shall have the authority to recommend or award such contracts pursuant to purchasing authorization levels established herein. All such awards shall be completed in accordance with the City's established internal purchasing policies and procedures.

23. AUTHORITY TO AWARD TO SECOND LOW BIDDER AFTER CANCELLATION OF CONTRACT

If within one hundred twenty (120) days after bids are opened, or any period bids are required to remain firm as prescribed in the Invitation for Bid, the Contract of the lowest responsible vendor is canceled, the City may elect to award the contract to the next lowest responsible bidder. After the one hundred twenty (120) day period or alternate period prescribed in the Invitation to Bid, the City may award to the next lowest responsible bidder provided:

- a. A determination is made that it is in the best interest of the City to award based on the present bids rather than rebid, and
- b. The next lowest responsible bidder agrees, in writing, to the extension of the bid price for the additional period of time.

24. APPEAL AND PROTEST PROCEDURES

BID/PROPOSAL PROTEST PROCEDURE

A bidder or proposer that has submitted a response to a Formal Solicitation and is adversely affected by the decision of award may file a formal written protest within three business days from the time of initial posting of the intended award. Notice of Intent to Award shall be posted in Bidnet Direct.

Note: Suspended or debarred vendors are ineligible to submit a bid protest.

Formal written protests shall not exceed fifteen (15) type-written pages (including exhibits and attachments) and in all other respects shall comply with the formatting requirements for an appellate

brief as set forth in the Florida Rules of Appellate Procedure. A written protest is considered received by the City when it is delivered to and received by the City Clerk or designee. The City Clerk shall time/date stamp all written protests immediately upon receipt. Delivery to and receipt by any other City employee or staff member shall not constitute receipt by the City of Delray Beach. Protests submitted via email do not meet the requirements of this Section. Protestors shall file their written protests with the City between the hours of 8:00 a.m. and 5:00 p.m.

Service of a protest by mail or courier shall not expand the time period allowed for delivery of a protest. In computing any time period prescribed or allowed by this protest policy, the day of the act or event from which the designated time period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, federal holiday, or holiday observed by the City, in which event the period shall run until the end of the next business day which is neither a Saturday, Sunday, federal holiday, nor a holiday observed by the City.

A written protest shall not challenge the specifications, scope of work, relative weight of evaluation criteria, or a formula for assigning points.

FEE REQUIRED

The letter of protest shall be accompanied by a non-refundable protest application fee in an amount equal to one percent (1%) of the protestor's bid or five thousand dollars (\$5,000.00), whichever is less. The protest application fee must be a cashier's check, a certified check, or an attorney's trust account check made payable to the City of Delray Beach. Failure to provide the required protest application fee shall deem the protest as incomplete and invalid.

AUTHORITY TO RESOLVE PROTESTS

The City's consideration of a timely written protest shall not necessarily stay the award process, as may be in the best interest of the City. The CPO may recommend to the City Manager to render moot any written protest that is overtaken by events, in which case the City Manager may abate or dismiss such protest. Within ten (10) business days (excluding Saturdays, Sundays, legal holidays, and City-observed holidays) of receipt of the formal written protest, the Chief Financial Officer and the City Attorney shall attempt to settle or resolve the dispute, at the City Attorney's sole discretion. A decision will be rendered in writing and shall: (1) state the reasons for the action taken; and (2) inform the protestor of its right to appeal as provided herein. A copy of the decision of the Chief Financial Officer and the City Attorney shall be mailed or otherwise furnished immediately to the protestor.

The protesting party may appeal the decision of the Chief Financial Officer and the City Attorney, by submitting the appeal to the City Manager within seven (7) days (excluding Saturdays, Sundays, legal holidays and City-observed holidays) from the date of the written decision. The appeal shall be in writing and shall state with specificity the grounds therefore and also the action requested of the City Manager. The City Manager shall attempt to settle or resolve the matter at his/her sole option. The City Manager shall render a decision, in writing, within 10 days (excluding Saturdays, Sundays, legal holidays and City-observed holidays) following receipt of the appeal.

The decision of the City Manager under this Section shall be final and conclusive on the protestor.

Timely submittal of a protest or appeal required. Failure of a party to submit timely a written protest to the Chief Financial Officer within the time provided in this Section shall constitute a waiver of such party's right to protest pursuant to this Section.

Costs. Any and all costs incurred by a protesting party in connection with a protest pursuant to this Section shall be the sole responsibility of the protesting party.

Failure to follow the protest procedures or failure to meet any deadline set forth herein shall automatically nullify any protest or claim brought by an aggrieved bidder, offeror, or contractor. The City is not subject to or bound by the requirements and/or procedures set forth in Chapter 120, *Florida Statutes*.

25. FORMAL SOLICITATION PROCESS

All purchases to be made through a formal solicitation process shall be conducted at the discretion of the CPO. All specifications must be reviewed and approved by the CPO.

Piggybacking on State, County, other municipality and other government entity bids is permitted within the approval thresholds of the City Manager or City Commission, as applicable in accordance with the purchasing criteria set forth herein. The department must specifically identify the contract being piggybacked and include that information in the documents to be sent to the Purchasing and Contract Administration Division.

26. AUTHORITY TO EXERCISE OPTIONS TO RENEW (OTR)

An Option to Renew (OTR) contract contains a provision providing for the option to renew at the expiration of the initial term of the contract. The City Commission must authorize the award of any contract where the cumulative value of the initial term of the contract and any option to renew terms will exceed One Hundred Thousand Dollars (\$100,000). Authorization for the City Manager or Designee to exercise future OTRs of contracts must be included in the language of the agenda cover memorandum and resolution approving the contract, if applicable, or the contract itself.

27. REQUEST FOR INFORMATION (RFI)

A Request for Information (RFI) is a written solicitation prepared and issued for the purpose of seeking information, comments, or reactions from the industry by a certain date and time. A RFI may be used during the market research phase of an acquisition to assist the City in identifying potential proposers, approaches, prices, or other relevant information. The RFI precedes the issuance of a Request for Proposals or Request for Qualifications. Contract awards cannot be made on responses to an RFI.

28. REQUEST FOR QUALIFICATIONS (RFQ)

A Request for Qualifications (RFQ) is a qualitative solicitation used to obtain statements of qualifications from proposers when the scope of services cannot, or has not, been completely established by the City. That situation requires the identification of specific qualifications in order to evaluate responding proposers. A Request for Qualifications includes, but is not limited to, a brief explanation of the purpose of the Request for Qualifications, a description of the service to be purchased, required qualifications, instructions for response, and evaluation and selection criteria. These types of contract awards are generally not based solely upon price. Instead, there is an extensive evaluation, which may include such

criteria as qualifications and experience of principals and staff, technical superiority, financial stability, experience and history of the firm, and references.

29. REQUEST FOR PROPOSALS (RFP)

A Request for Proposal (RFP) is a qualitative solicitation whose associated award evaluation and vendor selection process is predicated on a best value evaluation, rather than strictly upon award to the lowest priced responsive and responsible vendor. This type of evaluation is a sensitive and demanding process, and detailed guidelines have been developed to ensure such evaluations are conducted in an appropriate and accurate manner. The following section provides an overview of those procedures to enable departments to prepare for, and participate in, negotiated acquisitions in conjunction with the Purchasing and Contract Administration Division.

30. PUBLIC PRIVATE PARTNERSHIPS (P3)

Redevelopment of underdeveloped and underutilized properties throughout the City is encouraged where appropriate. All proposals for public private partnerships, whether through solicitation or through an unsolicited proposal, shall be submitted, reviewed, and evaluated in accordance with the City's Standard Operating Guideline on Public/Private Partnerships, Solicited and Unsolicited Proposals and Evaluations Process dated January 14, 2022, as may be amended from time to time.

31. UNSOLICITED PROPOSALS

All unsolicited proposals or offers shall be brought to the attention of the Chief Financial Officer for review and must accompany a fee of \$25,000. Unsolicited proposals that are public private partnerships shall be subject to the provisions and procedures established in Florida Statutes and City policy.

32. FORMATION AND PERFORMANCE OF EVALUATION/SELECTION COMMITTEES

The CPO is responsible for the review of all proposals for responsiveness before distributing them to the Selection Committee. However, responsiveness determinations may be made at any time prior to contract award. A proposer is considered responsive if the proposal conforms in all material respects to the terms and conditions in the solicitation.

SELECTION COMMITTEE TEAM MEMBERS

The City Manager or designee shall determine the number and makeup of the Selection Committee.

- a. Each member must have no personal or financial interest in any vendor or firm which has submitted a proposal to the City.
- b. Each member must have a professional interest that the recommendations of the Selection Committee can be supported and defended legally and ethically.
- c. Each member must have a professional interest that the recommendations of the Selection Committee will lead to the selection of a vendor which will provide goods or services that is the best value for the City.

The CPO, or designee, shall serve as the Selection Committee Chairperson, and may not award points for proposals.

INITIAL MEETING OF THE SELECTION COMMITTEE

The CPO, or designee, may conduct an initial meeting (Kick-Off Meeting) with the Selection Committee to ensure that each member has a clear understanding of their duties and responsibilities in the selection process. A copy of these guidelines, the solicitation and any addenda, each proposer's submittal, and a copy of the evaluation criteria will be distributed to Committee members.

CONFLICT OF INTEREST

Once proposals have been received, each member of the Selection Committee will be informed. Each member will be asked if the member has a personal or financial interest in any proposer, and if the member understands and can perform impartially within the Selection Committee guidelines. If a conflict of interest exists or appears to exist, that member shall be disqualified from the Committee. A Selection Committee Agreement, indicating that the member does not have any known conflicts, must be signed by each Selection Committee member prior to the commencement of the evaluation of the proposals.

COMMITTEE RULES AND PROCEDURES

All evaluators on the Selection Committee are required to apply sound and unbiased judgment in awarding points to the proposals for the purpose of scoring proposals. It is very important that Selection Committee members read the solicitation thoroughly and have a clear understanding of the requirements and evaluation criteria before attempting to evaluate the proposals. All questions should be directed to the CPO, or designee.

- a. The Selection Committee meetings must follow the requirements of Florida Statute 286.011 for public meetings. Selection Committee meeting must be noticed in advance and the City shall endeavor to provide no less than 24 hours' notice of such meetings. These meetings are open to the general public, which may include proposers which have submitted responses to the City's solicitations. Meetings will be recorded and all recordings are available for the general public to listen to upon scheduling an appointment with the City Clerk's office.
- b. Selection Committee members are prohibited from communicating with other committee members, either verbally or in writing, regarding the proposals, outside of the scheduled and publicly noticed Selection Committee meetings. Violations of FS 286.011 are very serious and have significant legal and ethical ramifications. If a vendor or proposer contacts a Selection Committee member, the member must refer the vendor or proposer to the Purchasing and Contract Administration Division. Selection Committee members are prohibited from participating in individual meetings, informal consultations, lunches, entertainment or any other direct or indirect contact with vendors or proposers.
- c. After receipt of proposals, each Selection Committee member must review and evaluate each proposal independently, without discussing their evaluation with other Selection Committee members.
- d. Evaluations must be based on the criteria established in the solicitation. All criteria shall be scored. If a member elects to score only some of the proposals or criteria, the evaluations completed by that member will be thrown out in order to prevent skewing of the final scores.
- e. Evaluations must be both qualitative and quantitative based on the evaluation criteria outlined in the solicitation. If a member scores a zero (0) in any category, that member must identify the

deficiency and provide a written explanation for the zero (0) score. All scores and comments become part of the solicitation and contract file and are subject to disclosure under the Florida Public Records Law. Selection Committee members should have a reasonable, rational, and consistent basis for their scores, and be prepared to explain their scores in the event of a protest or inquiry.

- f. Prior to the Selection Committee meeting in a public forum, any questions, clarifications, or additional information requested from a proposer by a member may be submitted in writing through the Purchasing and Contract Administration Division. The Purchasing and Contract Administration Division is responsible for obtaining a written response from the proposer and sharing the response with all Selection Committee members.
- g. Score sheets must be completed prior to the Selection Committee meeting where rankings will be determined. After the Selection Committee members have independently completed the initial review and scoring of all proposals, the Selection Committee will convene at a publicly posted meeting to openly discuss the proposals. Members may adjust their initial scoring based on their interpretation of any additional information gained from the Selection Committee's discussions. After all discussions have been completed, each Selection Committee member shall finalize their scores. Each member is required to sign the score sheet and any note pages and submit them to the Chairperson as part of the public record.
- h. Score sheets will be tabulated and ranked from the highest to the lowest by the Chairperson.
- i. Depending on the outcome of the scoring, the Selection Committee will recommend one of the following:
 - 1. Award the contract to the highest ranked proposer; or
 - 2. Short-list the top ranked proposers and request scheduling of oral presentations
- j. If the Selection Committee recommends awarding the contract to the highest ranked proposal, no further action is required by the Selection Committee.
- k. If oral presentations are requested, the Selection Committee shall identify which proposers will be asked to provide oral presentations. The Selection Committee may request oral presentations from as many proposers as necessary; however, it is recommended that the Selection Committee come to a consensus and request presentations only from the top-ranked proposers.
- l. When oral presentations are requested by the Selection Committee, the members shall submit a written request to the Chairperson for specific areas needing additional explanation and/or clarification or any other information the Selection Committee would like the proposers to provide during the oral presentations.
- m. All proposers selected for oral presentations shall be notified in writing of the publicly posted meeting by the Selection Committee Chairperson or designee, identifying the date, time, location, and any specific questions or information requested by the Selection Committee to be addressed at the presentation.
- n. Prior to the oral presentations, the Chairperson will provide the evaluation criteria and score sheets to the Selection Committee.

- o. During the oral presentations, Selection Committee members shall be able to ask questions of the proposers for a clear understanding of each proposer's position.
- p. After oral presentations are completed, the Selection Committee shall have the opportunity to continue discussions among themselves. After discussions are completed, each member shall finalize their scores. Each member is required to sign the score sheet and any note pages, and submit them to the Chairperson as part of the public record.
- q. Score sheets will be tabulated and ranked from the highest to the lowest by the Chairperson. The award recommendation will be for the proposer with the highest ranked score.
- r. The Selection Committee Chairperson shall work with the City department on a recommendation to award for processing through the City Manager and/or the City Commission, as appropriate.
- s. Florida Statutes require that all internal workings of the Selection Committee be kept confidential until the Committee has completed its work and all proposers have been officially notified of the selection.

33. NEGOTIATIONS

The CPO, or designee, shall manage the negotiation process for purchases valued at or greater than \$100,000, as applicable. However, this shall not preclude the use of consultants or legal assistance in developing negotiation strategy and conducting negotiations and discussions with vendors. In general, negotiations shall be conducted under the principle of "win-win", where the City and vendor share benefits from the process and subsequent contracts.

All negotiations shall follow the requirements of Florida Statutes, and must be conducted with the highest ethical standards, fairness and equity; and with the understanding that the City shall not be placed in an unfair or unreasonable position to the vendors. All negotiation meetings with vendors must be recorded and conform to the public records requirements of applicable laws.

The CPO, in consultation with the City Manager or designee, has the option to appoint a Negotiation Team (Team) to assist with various aspects of developing negotiation strategy and conducting negotiations with the vendor(s). The Team shall comprise of stakeholders and individuals who are familiar with the project, and have the ability to describe fully the scope of the project and articulate clearly the City's position. All negotiating team meetings at which negotiation strategies are developed or discussed shall be recorded in accordance with Section 286.0113 Florida Statutes.

In general, the ability to negotiate, and the process to be followed are restricted as follows:

- a. **INVITATIONS TO BID; INVITATIONS TO QUOTE; INFORMAL QUOTATIONS**

Negotiations on price only with the responsive and responsible bidder offering the lowest price. Authority to Reduce Scope of Construction Projects and Negotiate. In the event all bids for a construction project exceed available funds, as determined by the Chief Financial Officer, in consultation with the CPO, and the low responsible bid does not exceed such funds by more than 5%, the CPO is authorized, where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate, or to designate a person to negotiate for the City, an adjustment of the

bid price, including changes in the bid requirements of the low, responsive and responsible bidder, in order to bring the bid within the amount of available funds.

b. REQUESTS FOR PROPOSALS

Negotiations on price, scope, and terms, based on the conditions for negotiations established in the Solicitation.

c. REQUESTS FOR QUALIFICATIONS

Negotiations on price only, based on the procedures established in the Solicitation.

34. REJECTION OF BIDS OR PROPOSALS

The City Manager or designee, may reject any and all bids or proposals or parts of all bids or proposals when such rejection is in the best interest of the City. A bid or proposal may be rejected if any of the following conditions exist:

- a. The bid or proposal does not conform to the technical specifications and/or solicitation documents;
- b. Insufficient financial resources and/or lack of technical ability, physical capacity and/or skill of the vendor to perform the contract or the service required;
- c. Inability of the vendor to perform the contract or provide the service within the time specified without delays or interference;
- d. Previous and existing non-compliance by the vendor with laws and ordinances relating to the contract or services;
- e. Inadequate quality or performance on previous contracts for goods and/or services;
- f. Vendor has been declared to be in default on any City or public entity contract, or debarred or suspended by any public entity;
- g. Taking exceptions to the terms, conditions and specifications of the bid or proposal;
- h. Non-conformance with minority business and/or disadvantaged business enterprise provisions and requirements, where applicable;
- i. When the City determines that the price quoted is not fair and reasonable;
- j. Insufficient competition;
- k. Any other cause in the best interest of the City.

35. VENDOR POOL CONTRACTS

Vendor Pool contracts are contracts that have been awarded to multiple vendors which have met the basic qualifying requirements established for the contract, but do not contain within the contract itself all of the data needed to establish firm pricing for a specific product or specific service to be provided under the contract. Examples of these contracts include, but are not limited to:

- a. Pre-qualification contracts awarded by the City. These contracts simply specify a pool of contractors who are authorized to provide the required product or service to the City;
- b. Contracts awarded by the City that include pricing information relating only to hourly rates, or discount rates from catalogs or otherwise established commercial pricing sources, may be determined to be Vendor Pool contracts. Contracts structured in this manner often do not include all the information necessary to determine the firm price for a given product or service from the information contained in the contract. Contracts that do not contain sufficient information in that regard are considered to be Vendor Pool contracts;
- c. Contracts awarded by other Government Agencies and not-for-profit organizations that include pricing information relating only to hourly rates, or discount rates from catalogs or otherwise established commercial pricing sources, may be determined to be Vendor Pool contracts.

Vendor Pool contracts require additional competitive action prior to award of a specific purchase to a specific vendor listed on the contract. Specific quoting and award procedures (i.e.; a "road map") for use of each Vendor Pool contract will be developed on a case-by-case basis by the Department in coordination with the requesting departments. These procedures shall be structured to provide the competitive structure and documentation necessary to clearly support the award of a specific purchase to a specific vendor.

ADDITION OF VENDORS TO POOL CONTRACTS

A pre-qualification contract that establishes a pool of vendors based on minimum requirements may allow for additional vendors to be added to the pool at any time during the contract term. If this is allowed, it must be specifically stated in the contract terms and conditions. Additional qualified vendors must meet the minimum qualifications established in the original solicitation to be added to the pre-qualified vendor pool.

36. ACCESSING CONTRACTS FROM OTHER GOVERNMENT AGENCIES AND NOT-FOR-PROFIT ORGANIZATIONS

The City may award a contract by accessing the goods or services from any State of Florida contract, contracts from any subdivisions, other County and municipal contracts, or from any other governmental entity (other than the Federal government, with the exception of GSA Schedule 70 for Technology, Schedule 84 for Security and Law Enforcement Equipment (alarm/signaling systems firefighting and rescue equipment, law enforcement and security equipment) and GSA Schedule 1122 Equipment for Homeland Security), and from Not-For-Profit Organizations; provided the item or service is not available through an existing City contract, and was competitively solicited.

Before any purchase controlled by this Section can be made, vendors shall comply with all City requirements, (including but not limited to City affidavits), prior to recommendation of approval by the Chief Financial Officer, the City Manager, or the City Commission. A copy of the contract or award documents shall be obtained from the government agency. If these documents are not available, copies of specific pages with information on the contract number and its expiration date, terms and conditions, the item(s) description and price, warranty period, payment terms, FOB terms, and other pertinent information shall be obtained. Contracts awarded by other government agencies and not-for-profit organizations, can be used on a direct award basis when those contracts were awarded based on full and open price competition. Use of pool-type contracts awarded by other governmental agencies (or not-for-

profit organizations) is also authorized, but such contracts are subject to further competitive action by the Purchasing and Contract Administration Division on a case-by-case basis.

When accessing another entity's contract, staff is to carefully review the terms and conditions of that contract, noting that vendors can provide services only in those categories in which they were awarded on the competitively solicited proposal or bid.

37. ACCESSING AN EXISTING CITY CONTRACT (REFERENCE PO)

When a user department has no allocated funds, blanket purchase order (BPO), or authorization against an existing City contract, individual purchase orders may be used for purchase of goods and/or services (not to exceed the aggregate amount of \$15,000 in a fiscal year) against an existing City contract from a vendor awarded the specific item sought.

Note:

1. the terms, conditions and prices stated on the contract shall not be changed or modified by the user department, and
2. when applicable, the contract item number shall be listed together with the description of the item, and
3. the contract number shall be identified on the purchase order

For anticipated purchases over \$15,000, user departments must request authorization for an allocation of funds against an existing City contract through the Purchasing and Contract Administration Division.

38. LIMITED OR NO COMPETITION ACQUISITIONS

It is the policy of the City of Delray Beach to purchase its goods and services through a full open and competitive process. However, when competition is not available or when it is determined in the best interest of the City to utilize other than full and open competition, City legislation authorizes the execution of purchases by other methods, such as a Bid Waiver, Sole Source or Emergency basis (specific guidance on emergency actions is contained in a separate section of this guide - this section pertains only to bid waiver and sole source acquisitions).

One of the Purchasing and Contract Administration Division's primary goals is to foster full and open competition in the acquisition of goods and services for the City departments. The Chief Financial Officer or designee will review all Sole Source, Bid Waiver, and City Standard purchase requests to determine the appropriate acquisition approach. The Requesting Department will also perform industry and product market research to determine if alternative sources of supply are available. The Purchasing and Contract Administration Division will work closely with requesting departments to ensure that contract scope and work requirements are expressed in terms of performance or functionality whenever practical.

When the requesting department has decided internally that full and open competition is not in the City's best interests, the appropriate justification for that decision must be submitted to the Purchasing and Contract Administration Division for approval to waive the competitive process. The requesting department must indicate the purpose of the acquisition, the uniqueness of the item or service, why waiving the competitive process is in the City's best interests, that market research has been performed

by the requesting department to support its decision, and what proposed actions will enhance competition in future acquisitions.

DEFINITIONS

Sole Source Purchases. The acquisition of a good or service for which there is only one source that can provide the good or service, and an equal product or service is not available from any other source.

Bid Waiver Purchases. Is a purchase of a good or service without formal competitive bidding, when it is determined to be in the best interest of the City. In a non-competitive bid waiver only one quote is sought. In a competitive bid waiver (limited informal competition) more than one quote is sought.

City Standard Purchases. The acquisition of a good when the City has determined that a particular style, brand, make or model is the only type that meets the City's requirements for performance, consistency, compatibility, or other salient characteristics, and such determination has resulted in there being only one manufacturer/producer of the particular product(s).

PROCESS

The City may negotiate with the vendor(s) to obtain the best possible contractual arrangements for the City.

The Purchasing and Contract Administration Division will review all justifications to determine the appropriate acquisition approach. This will include evaluating specifications and statements of work to ensure that no artificial barriers or unnecessary restrictions prohibit or reduce competition. The Purchasing and Contract Administration Division will work closely with requesting departments to ensure that minimum requirements are expressed in terms of performance or functionality. The Department shall perform product and industry market research in order to determine if alternative sources of supply may be available to meet the requirements.

To make the administration of non-competitive acquisition effective and efficient, and to avoid redundant efforts, requesting departments must submit a completed sole source, bid waiver, or city standard justification form to the Purchasing and Contract Administration Division for review and approval prior to entering into any type of negotiations with a proposed supplier. Both advance acquisition planning, and early involvement of the Purchasing and Contract Administration Division in the planning process, are key to a successful procurement, competitive or otherwise.

It is the responsibility of the requesting department to justify in writing to the Purchasing and Contract Administration Division why it is in the City's best interest to waive the competitive process. For all sole source, bid waiver, or city standard requests, the requesting department must submit a fully completed justification form to the Purchasing and Contract Administration Division supported by:

- a. Specifications or statement of work that clearly establishes the minimum performance or functional requirements of the product(s) or service(s);
- b. Description of the requesting department's unique need that precludes full and open competition;

- c. For sole source requests, evidence that the supplier is the exclusive distributor or authorized repair or service center or has exclusive territorial rights (if applicable);
- d. Evidence of proprietary rights (if applicable);
- e. Vendor proposal and quote (if any); and
- f. Any other supporting documentation.

SOLE SOURCES

Upon receipt of a signed Sole Source Approval Request Form, the Purchasing and Contract Administration Division shall make a determination, through a review of the material and appropriate market research. If it is determined that more than one source is present in the market, the Purchasing and Contract Administration Division will provide the requesting department with a recommendation on the appropriate procurement process to follow. If the Purchasing and Contract Administration Division determines that there is only one source, and competition is not available, and the dollar value of the action is less than \$100,000, the Purchasing and Contract Administration Division, with the support of, and in collaboration with the requesting department, will negotiate a contract with the vendor that represents the best interest of the City, including terms and conditions, and price. The Purchasing and Contract Administration Division will then issue the appropriate contract award, subject to the applicable authorization levels.

BID WAIVERS

Upon receipt of a signed Bid Waiver Acquisition Approval Form, the Purchasing and Contract Administration Division shall make a determination, through a review of the material and appropriate market research. If it is determined that a bid waiver is appropriate, the Purchasing and Contract Administration Division with the support of and in collaboration with the requesting department, negotiates a contract with the vendor in the best interest of the City, including terms and conditions, and pricing. Upon completing negotiation, the Purchasing and Contract Administration Division will then issue the appropriate contract award, subject to the applicable authorization levels.

CITY STANDARD

Upon receipt of a signed City Standard Approval Form, the Purchasing and Contract Administration Division shall make a determination, through a review of the material and appropriate market research. If it is determined that a city standard purchase is appropriate, the Purchasing and Contract Administration Division with the support of and in collaboration with the requesting department, negotiates a contract with the vendor in the best interest of the City, including terms and conditions, and pricing. Upon completing negotiation, the Purchasing and Contract Administration Division will then issue the appropriate contract award, subject to the applicable authorization levels.

AWARD

When all requirements are met, and the Chief Financial Officer or designee is satisfied that there is only one source of supply or determines that a non-competitive situation exists for goods or services to be purchased, full and open competition may be waived by the Chief Financial Officer. When the expenditure exceeds \$100,000, the Chief Financial Officer shall forward an appropriate recommendation to the City Manager. If the City Manager is satisfied that a no competition or limited competition purchase request is in the best interests of the City, he/she shall forward the subject request to the City Commission for award. All vendors must comply with all City requirements prior to award. Additional funds and/or

extensions of time that may be requested during the resultant contract period are subject to the authority levels for all such contract modifications.

In addition to the above-described limited competition actions, there may be certain exceptional situations where full and open competition procedures cannot be used in association with a given administrative requirement. Such actions are hereby identified as "Administrative Purchases". The only administrative situations that justify processing "Administrative Purchases" on a limited competition basis are as follows:

- a. **Post-expiration fund disbursement:** This authorized Administrative Purchase is defined as an administrative function which allows for the disbursement of funds after the expiration date of a contract period or which allows additional funds to be allocated in order to effectuate previously executed lease agreements. This category of Administrative Purchase shall only be approved by the Chief Financial Officer in consultation with the City Attorney in accordance with the authority limits established herein and only then to satisfy a financial commitment made under a previously approved contract that has expired. Administrative Purchases are necessary primarily to facilitate lease agreements and other type arrangements that may outlive the original contract term.
- b. **Unauthorized/Confirmation purchases:** This administrative purchase is defined as a ratification of an unauthorized purchase executed by a requesting department that is not in compliance with the policies contained in the City's purchasing and contracting policies and guidelines.

An unauthorized purchase occurs when any employee of the city orders, contracts for or buys any services, materials, or supplies outside the purview of the City Charter and/or this Manual. Any individual making an unauthorized purchase may be subject to disciplinary actions as appropriate, up to and including termination and/or prosecution. The following are unauthorized purchasing practices:

- a. Artificially dividing purchases into multiple segments in an attempt to issue single orders below the dollar threshold requirements as established herein (also known as "stringing" or "splitting purchase orders" is prohibited.
- b. Purchasing any supplies or services above the thresholds delineated herein directly from a vendor, bypassing the Purchasing and Contract Administration Division.
- c. Committing to a purchase without issuance of an authorized purchase order, when one is required.
- d. Obtaining items available on an existing city term contract from a supplier that does not hold the contract.
- e. Providing false information such as false quotes (without actually contacting and obtaining a quotation, bid or proposal from a vendor).
- f. Adding unauthorized purchases to previously approved purchase orders without approval of the appropriate approval authority and subsequent modification of the purchase order.

A Confirmation Purchase requires retroactive approval (if appropriate) of an unauthorized purchase. A confirmation purchase requires retroactive approval by the City Manager for actions over \$15,000 up to \$100,000, and by the City Commission for commitments exceeding that amount. Payment for any unauthorized purchase may be the responsibility of the person placing the order. The department director having responsibility over the unauthorized purchase shall provide to the Purchasing and Contract Administration Division a complete written justification for the specific unauthorized purchase and the corrective action intended to prevent recurrence of the incident.

39. EMERGENCY PURCHASES

An emergency purchase shall be defined as an unforeseen or unanticipated urgent and immediate need for equipment, supplies, or services where the protection of life, health, safety or welfare of the community or the preservation of public properties would not be possible using normal purchasing procedures.

EMERGENCY PURCHASES

Before any purchase controlled by this section is made, the requesting department shall contact the Purchasing and Contract Administration Division for concurrence, explain the nature of the emergency, and provide a written certification of the emergency. Unless precluded by the nature of the emergency situation, vendors are to comply with all City purchasing requirements, including but not limited to City affidavits, prior to recommendation of approval by the Chief Financial Officer, City Manager or the City Commission.

If the item or service cannot be obtained from a vendor with an existing City contract, the requesting department should obtain four (4) quotations, whenever possible, from active City vendors. The requesting department shall be responsible for obtaining from the contracted vendor the necessary affidavits, insurance certificates, proof of proper licenses, trade certificates, permits, etc., as the emergency work may require.

As soon as possible, the requesting department shall submit to the Purchasing and Contract Administration Division the following documentation:

- a. Emergency input document with appropriate signatures;
- b. Vendor written quotation(s);
- c. Department's justification and/or explanation of circumstances for emergency purchase, to include a clear definition of the products and/or services sought and how and where it will be used; and
- d. Any other supporting documentation, as may be applicable.

AUTHORITY TO AWARD EMERGENCY PURCHASES

In the event a Department Director, or an authorized designee, determines that an emergency situation exists which requires an immediate response, a contract may be awarded regardless of the amount of expenditure upon receiving City Manager approval. A purchase order will be issued by the Purchasing and Contract Administration Division upon receipt of acceptable supporting documentation from the requesting department. If the expenditure is in excess of \$100,000, the City Manager shall present the circumstances to the City Commission for ratification.

MONITORING EMERGENCY PURCHASE REQUESTS

The Purchasing and Contract Administration Division shall report to the City Manager, through the Chief Financial Officer, any department requesting procurement practices that reflect poor operational planning or management and have the potential effect of defeating the purpose of the procurement process.

EMERGENCY DISASTER PURCHASES

Emergency disaster purchases are those purchases needed due to unforeseen acts of nature, civil unrest, riot, terrorism or force majeure, including but not limited to: hurricanes, tornados, floods, fire, etc.; and only when the Federal, State, County, or City governments declare or the City Manager declares that a state of emergency exists.

For acquisitions of this type, the following procedures apply:

- a. The Requesting Department Director or designee, after verbal consultations with the Chief Financial Officer and the City Manager, shall have the authority to enter into any contract when the Requesting Department Director determines, based on his/her expertise, that such work is necessary to preserve the life and safety of City residents and the wider community;
- b. The Requesting Department Director or designee shall first contract with vendors which are already on City contracts for the goods or services needed;
- c. All disaster purchases that are acquired without full and open competition or under an existing contract must be subsequently ratified by the City Manager or City Commission, as appropriate.

40. REQUEST TO MODIFY A CONTRACT OR PURCHASE ORDER

When a requesting department requires a change to a purchase order or to modify a contract, the request must be submitted to the Purchasing and Contract Administration Division for review and approval. Before submitting a request to modify a purchase order or contract, the requesting department should review the following conditions:

- a. Valid requirements have been established;
- b. Funds are available to cover the purchase; and
- c. Appropriate justification is included with the request package.

The requesting department shall submit its request, together with all supporting documentation, to the Purchasing and Contract Administration Division for review and determination as follows:

- a. Justification and/or explanation for request to modify the purchase order or contract. If goods and/or services are going to be used for the first time, state what the department was using before; and
- b. Any other supporting documentation as may be applicable.

Modifications and change orders to contracts and purchase orders require approval at the established authorization levels. Requesting departments may not proceed with any action on modified contracts or purchase orders until approval has been received from the Chief Financial Officer, the City Manager, or the City Commission, as appropriate.

41. MONITORING AND REPORTING VENDOR PERFORMANCE

Vendor performance is any action or inaction by a vendor under a contract, purchase order or other binding agreement with the City of Delray Beach. Any action or inaction by a vendor, which does not

comply with the contractual terms and conditions, will be considered nonperformance and is to be documented and reported to the Purchasing and Contract Administration Division. Nonperformance includes but is not limited to, late or non-deliveries, substandard or unacceptable goods and/or service levels, habitual under or over shipments, and unauthorized subcontracting or contract assignments.

The requesting department shall appoint contract managers, who are responsible for monitoring vendor performance as it relates to the terms and conditions of the contract(s) or purchase order(s) issued. Vendor nonperformance actions are to be documented and reported to the Purchasing and Contract Administration Division for appropriate action aimed at correcting vendor performance, placing the vendor on probation for a period of time, suspension from bidding on City contracts, vendor debarment, or contract termination.

ACTION BY REQUESTING DEPARTMENT

The non-performing vendor should first be contacted by telephone to discuss the problems being experienced. A mutual understanding should be reached, if possible, and a time frame for corrective action established.

The requesting department should convene a meeting with the vendor to help resolve problems, whenever possible. Should the vendor continue to not meet the requirements, the requesting department should submit a memo to the Chief Financial Officer, attach any available documentation to substantiate the problem, including a copy of any letters sent to the vendor or records of meetings (as applicable).

After receiving the vendor nonperformance, the Purchasing and Contract Administration Division will review the documentation to determine the appropriate course of action. This action may include: calling the vendor, sending vendor a "Notice to Cure", or scheduling a meeting with the vendor.

Where progressive steps aimed at correcting vendor performance have proven futile, the Purchasing and Contract Administration Division may hold a hearing to determine the next course of action. The vendor and the requesting department will be invited to this meeting, where the Chief Financial Officer or designee will act as a hearing officer. After listening to all parties, the hearing officer may:

- a. Establish a probation period for the vendor to correct all noncompliance problems;
- b. Terminate the contract for default;
- c. Terminate the contract for convenience;
- d. Suspend or Debar the vendor; or
- e. Find no action necessary.

A copy of all written actions or documents will be provided to the requesting department. The final decision and formal action will be filed in the contract e-folder for future use in determining vendor responsibility in future award recommendations. The Chief Financial Officer may terminate the vendor for convenience or default in accordance with the relevant provisions of the contract or Purchase Order.

For contracts up to \$100,000, the CPO may terminate the vendor for convenience or default in accordance with the relevant provisions of the contract. For contracts that exceed \$100,000, the City Manager will recommend to the City Commission the best course of action to safeguard the interests of the City.

42. SUSPENSION AND DEBARMENT

- a. *Authority.* The Chief Financial Officer may suspend or debar, the right of a vendor to be included on a vendor database, and prohibit such vendor to bid or propose on any city competitive solicitation or quote, and any bid or response from that vendor shall be rejected; provided however, the City Commission shall have the power to waive or lift such suspension or debarment.
- b. *Suspension.* A vendor may be suspended for a period not to exceed two (2) years as determined by the Chief Financial Officer and approved by the City Manager based upon the following:
 1. Vendor has terminated, defaulted, failed to perform, or failed to fully comply with the conditions, time frames, performance, specifications, drawings, or terms of a contract with the City; or
 2. Vendor commits any fraud or misrepresentation in connection with any competitive solicitation or contract with the City; or
 3. Vendor or its officer(s) is charged by a court of competent jurisdiction with a criminal offense in an incident related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; or
 4. Vendor is charged by a court of competent jurisdiction with any of the following: embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which is determined to currently, seriously, or directly affect responsibility as a city government contractor. If charges are dismissed or the vendor found not guilty, the suspension shall be lifted upon written notification and proof of final court disposition provided by the vendor to City; or
 5. Vendor becomes insolvent, has proceedings in bankruptcy instituted, or compounds its debts, or assigns over its estate or effects for payment thereof, or has a receiver or trustee appointed over its property; or
 6. Vendor has violated the ethical standards set forth in local, state, or federal law; or
 7. Any other cause the Chief Financial Officer determines to be so serious and compelling as to materially and adversely affect responsibility of a business as a city contractor, including but not limited to suspension.
- c. *Debarment.* A vendor may be permanently debarred for the following:
 1. Termination, default, failure to perform, or fully comply with the conditions, time frames, performance, specifications, drawings, or terms of a contract with the City two (2) times within any ten (10) year period; or
 2. Conviction by, or judgment obtained, in a court of competent jurisdiction for those offenses in connection with the vendor's commercial enterprise. If the conviction or judgment is reversed through the appellate process, the debarment shall be removed upon written notification and proof of final court disposition; or

3. Conviction of a public entity crime as defined by F.S. § 287.133, shall result in debarment to transact business with the City.
4. Debarment of any vendor shall require City Commission approval at a Public Hearing.

d. *Process.*

1. Suspension: After the Chief Financial Officer has determined that there is cause to suspend a vendor, and the City Manager has approved the recommended suspension, the Chief Financial Officer shall notify the vendor in writing of the period of suspension and the reasons for the action taken. The suspension shall be final and conclusive.
2. Debarment: Notice of the charge for which debarment is proposed shall be delivered to the vendor and thereafter, an opportunity to be heard and present evidence in opposition shall be afforded to the vendor before the City Manager. The debarment shall be final and conclusive.

43. OFFER GUARANTEE, PERFORMANCE AND PAYMENT BONDS, AND INSURANCE

BID OR OFFER GUARANTEE

A bid deposit to guarantee the vendor's intention to enter into a contract with the City, not to exceed ten percent (10%) of the estimated total bid price, may be required by the Purchasing and Contract Administration Division. If a bid or offer deposit or bid or offer bond is required, it shall be in the form and amount specified in the solicitation.

PERFORMANCE AND PAYMENT BONDS

The Purchasing and Contract Administration Division may require performance and payment bonds from the vendor selected for contract award in such amounts as may be deemed reasonably necessary to protect the best interests of the City. The bonds shall be in the form supplied by the City (no other form will be accepted) and in the amounts required by the solicitation.

INSURANCE

The Purchasing and Contract Administration Division may require insurance coverage from the vendor selected for award as may be deemed reasonably necessary to protect the best interest of the City. The insurance coverage shall be in the form and amount(s) as required by the solicitation.

Awards may be contingent upon submission of required insurance coverage and performance and payment bonds. If the vendor selected for award fails to fulfill these requirements the following default actions will be followed:

- a. For contracts up to \$100,000, the City Manager or designee, in consultation with the City Attorney, may declare the vendor in default, terminate the contract, re-award the contract to the next lowest responsive/responsible vendor, and subject the defaulted vendor to re-procurement charges or to forfeiture of the bid/offer bond, or any other provided security in an amount equal to the damages sustained by the City as a result of the default.
- b. For contracts greater than \$100,000, the City Manager or designee, in consultation with the City Attorney, may declare the vendor in default and terminate the contract. The City may re-award

to a new vendor who participated in the solicitation, but was not awarded any portion of the contract. City Commission approval is required to re-award the contract unless the contract provides for another method.

44. MARKET RESEARCH

Market research must be conducted in anticipation of City procurement in order to ensure that specifications are suitable for fair and open competition. Market research is the foundation for developing an effective solicitation and successful contract that includes terms and conditions consistent with sound business practices and procurement laws.

PURPOSE OF MARKET RESEARCH

The primary purpose of market research in public procurement is to determine the availability of sources of supply or alternative solutions that will meet minimum requirements. Market research should always begin with the intent to satisfy a legitimate City requirement or need. The need should be stated in terms of performance or functionality whenever practical. This means that the minimum requirements must be clearly understood and defined before market research can begin. Once the need has been established, market research must be conducted in order to determine the capability of the marketplace to meet the need of the City.

Market research includes identifying the attributes of existing products, processes or services that meet minimum requirements, or identifying the characteristics that a yet to be identified product, process or service must possess. Effective market research should provide adequate information regarding existing products or services, qualified sources, industry trends, pricing, and what other entities are doing to meet the same or similar requirements. Failure to conduct thorough market research may result in requests for sole source or bid waiver purchases that cannot be adequately justified.

It is extremely important that the integrity of the procurement process be sustained at the highest standards and that suppliers are given a fair opportunity to compete for City business. In anticipation of a City procurement, market research must be conducted to ensure that specifications are not exclusionary, restrictive or favor any one vendor or proposer.

WHEN TO CONDUCT MARKET RESEARCH

When planning for a purchase (prior to or during the development of specifications or statements of work) of any dollar amount, the requesting department should conduct market research. Contact, whenever possible, a minimum of three different sources to determine if existing products or services are available to meet requirements or if existing products or services can be modified to meet requirements.

MARKET RESEARCH TECHNIQUES

Research should include, whenever practical:

- a. The industry trends and customary terms and conditions regarding warranties, acceptance and inspection;
- b. Buyer financing – method and best practices;
- c. Standard maintenance support;
- d. Capable sources (including small businesses);
- e. General pricing information and availability of product(s);
- f. Competitive factors such as quality, product features, speed of technology and typical lead time;
- g. Commercial practices, the practices of other government entities; and industry support capabilities and practices; and

- h. Environmental issues – recovery and disposal of products and energy efficiency standards as might be appropriate.

EXTENT OF MARKET RESEARCH

As indicated before, a minimum of three potential sources must be sought prior to or during the planning of a pending acquisition. However, the extent of market research may vary depending on factors such as urgency, the estimated dollar value, complexity, past experience and the amount of information already available. In some circumstances, the Purchasing and Contract Administration Division may perform the market research. It is important to remember that market research is not a substitute for full and open competition. It is not to be used to determine which product or service, supplier or proposer is best. Market research is conducted to determine the availability of products or services that meet the City's minimum requirements and to ensure that specifications are not exclusionary or otherwise restrictive.

SOURCES OF RESEARCH DATA

There are a variety of sources for information. However, perhaps the first place to start is with the City's (or Bidnet Direct's) database of vendors. Using commodity codes, departments may find firms with the ability to meet their requirements. Departments may also contact one or more of the following:

- a. Subject matter experts within the City, other governments or private industry;
- b. Industry publications and trade journals;
- c. Marketing organization, professional associations and tradeshow;
- d. Colleagues from other jurisdictions;
- e. NIGP website: www.NIGP.org; or
- f. Web searches using Internet search engines like Yahoo, Google, etc.

45. BLANKET PURCHASE ORDERS

A blanket purchase order is utilized for the recurring acquisition of particular goods from a particular vendor for multiple small purchases (generally not exceeding \$5,000 each) and may be established within the guidelines below. This purchase method is typically utilized for the acquisition of goods or services on an "as needed" basis (a requirements contract) with vendors who do not accept P-cards.

- a. The blanket purchase order must indicate the maximum permitted expenditure for the particular budgeted line item, which may not exceed \$100,000 for the fiscal year. The blanket purchase order may not exceed the total amount budgeted for that line item account.
- b. Blanket purchase orders expire on September 30, at the end of the fiscal year.
- c. Blanket purchase orders are subject to the same review process outlined for all other purchase orders.

46. COOPERATIVE PURCHASING

The City Manager or designee shall have the authority to join with other units of government in cooperative purchasing plans when the best interests of the City would be served thereby, subject to the purchasing authorization levels defines herein.

47. PURCHASE OF USED EQUIPMENT

Used equipment may be purchased within the following guidelines.

- a. PURCHASE AT AUCTION. The appropriate Department Head shall submit a written request to the Chief Financial Officer and City Manager requesting authority to purchase an item at auction. The request shall include:
 - i. An estimated cost and a maximum bid amount;
 - ii. A justification for purchasing used, rather than new equipment;
 - iii. The result of an inspection by a mechanic or other qualified technician, indicating the condition of the equipment, estimated repair cost if not operational, annual maintenance costs, and expected life of equipment after acquired by the City.

If the maximum bid is expected to be more than \$100,000, the City Commission must approve a bid waiver prior to the auction. If the maximum bid amount is expected to be less than \$100,000, the Chief Financial Officer must approve the request in writing, and indicate the approved maximum bid amount prior to the auction. After approval, the Department Head may bid up to the maximum bid amount to purchase the equipment.

A purchase requisition must be prepared as part of this procedure.

- b. PURCHASE FROM OTHER AGENCIES/ENTITIES. The Department Head shall submit a written request to the Chief Financial Officer and City Manager or designee requesting authority to negotiate the purchase of an item from another agency or entity. The request shall include:
 - i. An estimated cost and a maximum offer amount;
 - ii. A justification for purchasing used, rather than new equipment; and
 - iii. The result of an inspection by a mechanic or other qualified technician, indicating the condition of the equipment, estimated repair cost of not operational, annual maintenance costs and expected life of equipment after acquired by the City.

If the maximum offer is more than \$10,000, the City Commission must approve a bid waiver. If the maximum offer is \$100,000 or less, the Chief Financial Officer must approve the request in writing and indicate the approved maximum offer amount prior to the commencement of negotiations. After approval, the Department Head shall negotiate a price with the agency or entity, not offering more than the maximum as approved above. The Department Head shall prepare a purchase requisition as part of this procedure.

Under no circumstances shall an unauthorized employee offer to purchase used equipment from an individual, including an employee of the City.

48. CHANGE ORDERS AND AMENDMENTS

The City Manager or Designee is authorized to issue change orders for contracts previously approved by the City Commission in an amount not to exceed 20% cumulatively of the original contract value. The City Manager or designee may also approve amendments that do not materially change the contract. In the event that the change order exceeds \$100,000, it shall be presented at the next soonest available City Commission meeting for ratification.

The City Manager or Designee may extend expiring contracts, with prorated dollar value, to ensure continuity of City services while a new contract is awarded, not to exceed a total of one hundred eighty (180) days.

49. SALES TAX EXEMPTION

The City of Delray Beach is exempt from paying Florida State Sales Tax. All employees who purchase goods or services on behalf of the City shall supply each vendor with a copy of the City's tax exemption certificate or number to avoid being assessed state sales taxes. Employees will not be reimbursed for the payment of state sales tax, except for travel outside the State of Florida.

The Sales Tax Exemption privilege is for the purchase of goods exclusively for use of the City of Delray Beach. City employees are expressly prohibited from purchasing goods or supplies for personal use using the City's tax exemption number/certificate.

50. REFERENCES AND ENDORSEMENTS

Only Department Heads or senior management staff may provide references for City vendors. These vendors must be very general in scope and information, and should provide information in a non-emotional and non-inflammatory manner. Department Heads and senior management staff may decline to provide a reference on any City vendor for any reason whatsoever.

City staff shall not give endorsements or make statements on behalf of the City to vendors for use in vendor advertising, sales brochures, website promotions, etc. Such requests must be referred to the Chief Financial Officer for review and discussion with the City Manager.

51. VENDOR FILE MAINTENANCE

All City of Delray Beach personnel initiating the purchase of goods or services shall ensure that vendors are active within the City's financial accounting software (Tyler New World). If the vendor is not in the system, the vendor must become active in the system before placing any order or initiating any work.

Requesting New Vendors. All City employees initiating the purchase of goods or services shall obtain a completed and signed vendor application package and W9 from the vendor. The Vendor application package and W-9 must be forwarded to the Purchasing and Contract Administration Division so that a vendor record can be added into the Tyler New World System (System).

Adding New Vendors. Vendors must submit the following documents to the Purchasing and Contract Administration Division before the vendor registration can be completed:

- a. Completed and signed Vendor Application
- b. W-9 or applicable IRS form

The Purchasing and Contract Administration Division shall verify the following:

- a. That the company is registered to do business in Florida on the Florida Department of State, Division of Corporations website (Sunbiz), if required. That the company is in an active status and has a valid Federal Employer Identification Number (FEIN)

- b. If the company is not listed on Sunbiz, the vendor should provide a Certificate of Incorporation in the state where the vendor is registered or incorporated
- c. Verify the registered business name and DBA name, if applicable, is the same as listed on the W-9 and vendor application.

If the business is inactive, the vendor information package will be returned to either the requesting department or the vendor, informing them that the City cannot do business with the vendor until such time as their business is active. The following should be uploaded to the vendor file in the System:

- a. Completed and signed W-9
- b. Completed and signed Vendor Application

Purchasing shall review the application and report to the Chief Financial Officer any instances where the vendor has disclosed a relationship with City Employees on the application. Should a disclosure be submitted on the vendor application, the Chief Financial Officer shall review the information and determine if the vendor may be entered into the System.

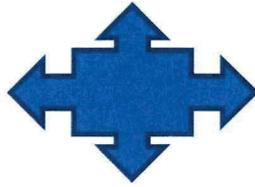
System for Award Management ("SAM") Exclusions. Prior to registering a vendor, Purchasing and Contract Administration staff shall check the System for Award Management's Website (<https://www.sam.gov>) to determine if an individual or entity (or any of its principals) is currently listed as an active exclusion. An exclusion is a suspension or debarment of an individual or entity that is prohibited, restricted, or otherwise excluded from doing business with the federal government. Those entities or individuals

Maintaining Vendor Records

- a. Any request for changes to the vendor record must be accompanied by a revised W-9 and revised Vendor Application.
- b. The updated documentation shall be uploaded to the vendor file in the System.

Vendor Responsibilities

- a. It is the vendor's responsibility to ensure the City has the most current information on file at all times.
- b. Any changes to the vendor's information (e.g., change of corporate status, name change, merger, FEIN Number, address, etc.) must be provided to the City as soon as possible.
- c. Any vendor information changes that have not been provided to the City and properly entered into the System may cause delays in placing orders or processing payments to the vendor.



EXCELLENCE IN PUBLIC PROCUREMENT – CODE OF ETHICS

The Purchasing and Contract Administration Division of the City of Delray Beach 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.



HOW TO DO BUSINESS WITH THE CITY OF DELRAY BEACH

Each year, the City of Delray Beach contracts with various vendors for more than \$20 million of different types of goods, services, and commodities for the benefit of the residents of Delray Beach. The Purchasing and Contract Administration Division is the City's central purchasing unit with the responsibility for managing the City's purchasing and contracting processes. The City welcomes and encourages qualified vendors and contractors, including local businesses, minority-owned firms, small business enterprises, veteran-owned companies, to respond to solicitations by submitting offers and proposals.

Delray Beach does not require vendors or any firm, individual or organization to register with the City in order to do business. However, vendors are encouraged to visit the City's website at www.mydelraybeach.com and join the Vendors List to receive email notifications when solicitations are advertised. City solicitations are advertised in the Palm Beach Post, and are also available on Bidnet Direct and Public Purchase. Vendors are encouraged to visit the Bidnet Direct and Public Purchase websites at www.bidnetdirect.com to register with those companies to receive notices of City solicitations. When a vendor is awarded a contract with the City, the Purchasing and Contract Administration Division contacts the vendor to obtain a copy of the vendor's W-9 and to register the vendor in the financial system for invoice processing and payment. Vendors may choose direct-deposit for payments, as this process results in quicker payment of invoices.

Delray Beach awards contracts and agreements to responsible and responsive bidders and proposers, and whose offers or proposals represent the lowest price or best value for the City. The City has a strict **No Gifts Policy** and observes a **Cone of Silence** on all advertised solicitations. The Purchasing and Contract Administration Division also reviews vendor performance on City contracts, and other public entity contracts, in arriving at a determination if a bidder or proposer meets the definition of a responsible vendor and may be recommended for award.

For more information on the City's purchasing policies and procedures, and to learn more about doing business with Delray Beach, please visit City's website at www.mydelraybeach.com or telephone (561) 243-7161 to speak directly with the Purchasing and Contract Administration Division.

