

*Ordinance - approval of expenditures in excess
of \$50K.*

ORDINANCE NO. 19-28

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES, ENTITLED "ADMINISTRATION" TO ADJUST THE PURCHASING PROCESS FOR SUPPLIES AND SERVICES OF MINIMUM DOLLAR VALUES NECESSARY FOR THE EFFECTIVE OPERATION OF CITY GOVERNMENT BY AMENDING ARTICLE V.-COMMITTEES, BOARDS AND COMMISSIONS, DIVISION 10 ENTITLED "KEY WEST BIGHT MANAGEMENT DISTRICT BOARD", SECTION 2-553 TO ADJUST THE PROPOSED TIMEFRAME FOR THE KEY WEST BIGHT MANAGEMENT DISTRICT TO ADOPT A PROPOSED BUDGET, AND AMENDING SECTION 2-554 TO ADJUST THE REQUIREMENT FOR CITY COMMISSION APPROVAL OF EXPENDITURES AND BUDGET TRANSFERS WITHIN KEY WEST BIGHT TO \$50,000.00; BY AMENDING ARTICLE VII.- FINANCIAL MATTERS, DIVISION 2 ENTITLED "BUDGET" BY AMENDING SECTIONS 2-736 THROUGH 2-739 TO ADJUST THE REQUIREMENT FOR CITY COMMISSION APPROVAL OF EXPENDITURES AND BUDGET TRANSFERS TO \$50,000.00; BY AMENDING ARTICLE VII "FINANCIAL MATTERS, DIVISION 3 ENTITLED "PERSONAL PROPERTY PURCHASING AND PROCUREMENT" SECTIONS 2-766 THROUGH 2-845 TO ADJUST THE REQUIREMENT FOR CITY COMMISSION APPROVAL OF EXPENDITURES TO \$50,000.00 AND BY ADDING SECTION 2-800 TO PROVIDE FOR QUARTERLY REPORTING OF PURCHASES FROM \$20,000.01 TO \$50,000.00; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Key West finds that it is necessary to amend its purchasing and procurement ordinances in order to reflect current market costs and conditions for supplies and services, and to facilitate purchasing required by various City departments in an efficient manner; and

WHEREAS, amendments to the purchasing ordinances will expedite purchasing without diminishing the authority of the City Commission to approve large dollar goods and services; and

WHEREAS, these amendments to the purchasing and procurement regulations in the Code of Ordinances will promote the health, safety and welfare of the citizens and visitors of the City of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 2 entitled "Administration", Article V, "Committees, Boards and Commissions", Division 10 entitled "Key West Bight Management District Board," Sections 2-553 through 2-554 of the Code of Ordinances are hereby amended as follows*:

Sec. 2-553. - Revenues and budgeting.

(a) Not less than ~~90~~60 days prior to the end of each fiscal year of the Key West Bight Management District, which shall be the same fiscal year as that of the city, the board shall adopt by resolution its proposed budget for the following fiscal year and submit the proposed budget to the city commission. Such proposed budget shall include all anticipated expenditures of the district for all of its projects during the ensuing fiscal year, including operating expenses, capital outlays, materials, labor, equipment, supplies, payments of principal and interest on all outstanding revenue bonds, and sinking fund and reserve requirements, and payment of excess funds into the city's

*(Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck through~~ at second reading.)

general revenue fund. Such proposed budget shall provide for expenditures only to the extent of funds legally available to the district for such purposes and reasonably anticipated revenues of the district for the ensuing fiscal year from established sources, based upon past experience and reasonable projections thereof, and from new projects or new sources of income of the district. The city commission shall conduct a public hearing with respect thereto and, in that event, the chairperson or his designee and manager of the district shall be present at such public hearing. Following the public hearing by the city commission, the board, at any regular or special meeting prior to the commencement of the next fiscal year, shall adopt by resolution its budget for the ensuing year subject to the same constraints as to the amount of expenditures as set forth in this subsection with respect to the proposed budget of the district. Once adopted, the budget shall not be amended except by request by the district to the city commission and except by giving ten days written notice of the proposed amendment to the city commission and giving public notice of the district's intention to consider amending its budget, which notice shall be by publication in a newspaper of general circulation in the county at least ten days prior to the meeting of the city

commission at which such proposed amendment is to be finally considered.

(b) Within 90 days following the close of each fiscal year, the board shall make a comprehensive report of its operations of each project under its control during the preceding fiscal year, including all matters relating to rates; charges; revenues; expenses of maintenance, repair and operation and of replacements and extensions; principal and interest retirement; and the status of all funds. Copies of such annual reports shall be filed with the city clerk.

**Sec. 2-554. - Powers and duties; responsibility
of city.**

(a) The board shall have the following duties:

(1) Oversee the operation and development of an expanded public marina on the Key West Bight property.

(2) Facilitate and approve applications for all required permits necessary for redevelopment and/or expansion of the uplands property and marina.

(3) Make application to the trustees of the internal improvement trust fund for renewal of all baybottom lease rights and apply for those deemed necessary to carry out marina expansion plans.

(4) Identify and recommend grant applications for approval by the city commission.

(5) Review and approve the annual budget and business plan prepared by the manager prior to submission for approval or disapproval by the city commission, without line item veto.

(6) Approve rental rates and lease terms negotiated by the manager for marina and upland tenants at Key West Bight; all leases shall be consistent with the Charter, this Code and marina bond covenants.

(7) Review all conflicts between the manager and tenants; all decisions of the board regarding the terms and management of rental property and administration of leases shall be final.

(8) Consider for review and comment only, all matters within the Key West Bight subject to review and/or approval by the community redevelopment agency.

(b) On the following matters the board shall submit ordinances and resolutions to the city commission, which shall retain final approval authority on those ordinances and resolutions coming before it:

(1) The Key West Bight Management District budget and annual business plan.

(2) Architectural concept, design or plans of redevelopment at Key West Bight.

(3) Acquisition and/or sale of real property at Key West Bight.

(4) The expenditure of funds in excess of ~~\$25,000.00~~ 50,000.00.

(5) Transfers of funds from one budget category to another in excess of ~~\$25,000.00~~ 50,000.00.

(c) The city commission shall request voter approval on matters of pledging commercial rents and marina revenues for the financing of improvements, expansion or property acquisition at or around the Key West Bight. The city commission shall have final review over any matter which may affect the tax-exempt status of the marina/conservation bond.

(d) The city by and through its city manager shall have day-to-day responsibility for the operation of the Key West Bight. The manager of the Key West Bight shall be a city employee, subject to hiring, supervision and termination by the city manager. Additionally, the city manager shall prescribe the duties of the manager upon the advice and consent of the board.

(e) In addition to the requirement contained in subsection 2-~~544~~554(b)(4) above, personal property purchasing

and procurement pertaining to the Key West Bight shall be governed by the requirements contained in sections 2-766 through 2-845 of the Code of Ordinances

Section 2: That Chapter 2, Article VII entitled "Financial Matters", Division 2, titled "Budget," sections 2-736 through 2-739 of the Code of Ordinances are hereby amended as follows:

Sec. 2-736. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Account means a distinct unit used to measure financial activity; also referred to as a "line item."

Allocation means an amount of money contained in an account.

Balanced budget means the financial condition of the city when revenues equal expenses.

Carry forward means the process of moving an approved budgeted obligation (an encumbrance) from one fiscal year to the next to ensure operating continuity.

Category means a distinct series of accounts organized generically to facilitate analysis. Categories are also referred to as "object classifications" in the Uniform Accounting System Manual as published by the state.

Change means the process of increasing, decreasing or transferring an approved budget allocation.

Encumbrance means the commitment of budget allocations for authorized purposes.

Expenditure means an expense of the city as recorded by fund and account.

Fiscal year means the period beginning October 1 of a calendar year and ending September 30 of the following year.

Fund means that series of accounts distinctly organized and recorded, accounted to reflect the operations of an organizational entity.

Fund balance means the difference between assets and liabilities.

Line item means a distinct unit used to measure financial activity; also referred to as an "account."

Revenue means income to the city as recorded by fund and account.

Sec. 2-737. - Organization.

(a) The city shall manage its financial resources by means of a budget. The budget shall be organized to reflect the various activities of the municipal government and shall adhere to the Uniform Accounting System Manual of the state.

(b) Funds may be established or deleted from time to time by the city manager as he deems necessary and proper.

(c) Categories shall consist of the following: revenue, personnel, operating, capital outlay, debt service, grants, and other (the latter to include transfers and reserves.) The city manager, by resolution that is attached to Ordinance No. 98-3 may make changes to categories.

Sec. 2-738. - Process.

(a) City budgets shall be prepared, reviewed and approved in accordance with statutory requirements, including F.S. ch. 200 regarding millage determinations. The city manager shall prepare each budget on a fiscal-year basis. He shall prepare and present to the city commission a balanced budget.

(b) The city commission shall review a budget at public workshops and at regular meetings as provided by F.S. § 200.065. The city commission shall adopt the budget by

resolution. The ad valorem tax rate shall be adopted by ordinance. Approved budgetary allocations are valid for the fiscal year and will lapse at the conclusion of the fiscal year.

Sec. 2-739. - Management.

(a) The city manager shall cause the budget to be published.

(b) The city manager may effect transfers within a category or within a fund without limit, provided that the fund remains in balance. The city manager may effect transfers among categories not to exceed ~~\$20,000.00~~ \$50,000.00, provided that the fund remains in balance. Transfers among categories in excess of ~~\$\$20,000.00~~ \$50,000.00 must be approved by the city commission. The city manager may effect increases to a fund in an amount not to exceed ~~\$20,000.00~~ \$50,000.00. Increases in excess of ~~\$20,000.00~~ \$50,000.00 must be approved by the city commission.

(c) The city manager shall review actual performance as against the budget on a monthly basis and provide the city commission with a report on budgetary performance after six months of the fiscal year.

(d) At the close of the fiscal year, the city manager shall provide a report on budgetary performance to the city commission. ~~He~~The city manager shall also review encumbrances and carry forwards and effect the necessary budgetary changes to the next fiscal year.

Section 3: That Chapter 2, Article VII, Division 3, titled "Personal Property Purchasing and Procurement" Sections 2-766 through 2-845 of the Code of Ordinances are hereby amended as follows:

Subdivision I. In General

Sec. 2-766. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Addenda means written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or the contract documents.

Brand name or equal specifications means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance or other salient characteristics needed to meet

the city's requirements and which provides for the submission of equivalent products.

Brand name specification means a specification limited to one or more items by manufacturers' names or catalogs.

Commodities means all personal property, including but not limited to commodities, goods, equipment, material and printing, purchased, leased or otherwise contracted for by the city.

Competitive bids and *competitive offers* mean the solicitation of bids or offers submitted by responsive and qualified bidders or offerors.

Construction means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

Contractor means any person or business having a contract with the city.

Contractual services means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities, materials, goods, equipment and other personal

property. The term applies only to those services rendered by individuals and firms who are independent contractors.

Invitation to bid means a written solicitation for competitive sealed bids.

Local preference means a preference given to responsive and responsible bidders meeting the definition of local business pursuant to section 2-798 which permits the award of a bid to a qualified local bidder if within five percent (5%) of the lowest bid submitted the opportunity to match the non-local bid.

Obsolete property means any personal property belonging to the city which may no longer be used for its intended purpose, which has completed its useful life cycle, or whose use has become economically impracticable.

Purchasing agent means the principal, public purchasing official for the city who is responsible for the procurement of commodities and contractual services as well as the management and disposal of said commodities.

Request for proposals means a written solicitation for sealed proposals with the title, date and hour of the public opening designated.

Request for qualification means a written solicitation for sealed statements of qualification to be used when the

city is seeking professional services to be provided on an ongoing basis.

Responsible bidder and *responsible offeror* mean the person who has the capability in all respects to perform fully the contract requirements and the tenacity, perseverance, integrity, experience, ability, reliability, capacity, facilities, equipment, financial resources and credit which will give a reasonable expectation of good faith performance.

Responsive bidder and *responsive offeror* mean a person who has submitted a bid which conforms in all material respects to the invitation to bid or request for proposals.

Sole source means the only known vendor or the only responsible vendor capable of providing commodities or contractual services to the city.

Surplus property means any personal property belonging to the city which is capable of being used but is in excess of the normal operating requirements of the city.

Sec. 2-767. - Purpose.

The purpose of this division, to be known as the purchasing and procurement ordinance, is to:

(1) Provide for the fair and equitable treatment of all persons involved in purchasing by the city;

(2) Maximize the purchasing value of public funds in procurement; and

(3) Provide safeguards for maintaining the integrity of the a procurement system of quality and integrity.

Sec. 2-768. - Request for qualification.

For the purposes of this division, a statement of qualification shall be used to evaluate the educational training and experience of respondents to the request. In all other respects, a request for qualification shall be treated in the same manner as a request for proposals.

Sec. 2-769. - Request for proposals.

For the purposes of this division, a request for proposals may be used when the city is incapable of specifically defining the scope of work for which the commodities or contractual service are required and when the city is requesting that a qualified offeror propose commodities or contractual services to meet the specifications of the solicitation document. A request for proposals shall include but is not limited to general information, functional or general specifications, statement of work, proposal instruction and evaluation criteria. All requests for proposals shall state the relative importance of

price and any other evaluation criteria. The city may engage in competitive negotiations with responsible offerors determined to be reasonably susceptible of being selected for awards for the purpose of clarification to ensure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offer.

Sec. 2-770. - Invitation to bid.

(a) For the purposes of this division, an invitation to bid shall be a written solicitation for competitive sealed bids with the title, date and hour of the public bid opening designated therein and specifically defining the commodities or contractual services for which bids are sought.

(b) The invitation to bid shall be used when the city is capable of specifically defining the scope of work for which a contractual service is required or when the city is capable of establishing precise specifications defining the actual commodities required.

(c) The invitation to bid shall include an instruction to bidders; plans, drawings and specifications, if any; bid form; and other required forms and documents to be submitted with the bid.

Sec. 2-771. - Authority of purchasing agent.

Under this division, the purchasing agent shall have the authority to:

(1) Draft and promulgate purchasing procedures subject to the approval of the city manager.

(2) Issue written quotations, ~~both verbal and written,~~ and solicit invitations to bid and requests for proposals after receipt of evidence of city commission general or specific appropriation of funds to make such expenditure.

(3) Purchase commodities and contractual services and award contracts and execute agreements for small purchases without prior approval of the city commission as follows:

a. Small purchases. Any commodities purchase or contract not exceeding ~~\$20,000.00~~ \$50,000.00 may be made in accordance with the small purchase procedures authorized in this section; provided that a purchase order has been obtained. Contracts for construction of municipal public works shall be made in accordance with

applicable state laws including F.S. §180.24, as amended from time to time. Contracts or other purchases shall not be artificially divided ~~so as~~ in order to constitute a small purchase under this section.

1. Small purchases of commodities and contractual services when the estimated value is ~~\$500.00~~ \$1,000.00 or less may be made upon receipt of one documented written ~~telephone~~ quote and approval of the department director and purchasing agent. ~~Two documented phone quotes shall be required for certain commodities when the purchasing agent has agreed with local vendor requests for competitive pricing. The purchasing agent shall maintain a list of such commodities.~~

2. ~~Small p~~urchases of commodities and contractual services when the estimated value is between ~~\$500.01~~ \$1,000.01 and ~~\$1,000.00~~ \$5,000.00 may be made upon receipt of not less than two written documented quotes, and the approval of the department director, purchasing agent and the Director of Finance ~~solicited either by telephone, facsimile, or direct mail~~. In order to determine a fair and reasonable price, additional quotes may be

solicited. The purchasing agent shall adopt, implement and enforce operational procedures for making such small purchases. Such operational procedures shall provide for the goods, commodities, equipment, materials and services being purchased. Further, such operational procedures shall require the preparation and maintenance of written records adequate to document the competition obtained, properly account for the funds expended and facilitate an audit of the small purchase made. Such records shall include the name of the business, contact person, dates of inquiry, nature and description of service for which inquiry is being made and amounts quoted with exactly what will be provided for such amount. When fewer than two quotes are available, the department head requesting the purchase must provide written approval to be reviewed and authorized by the purchasing agent and the director of finance.

3. Small purchases of commodities and contractual services when the estimated value is between ~~\$1,000.01~~ \$5,000.01 and ~~\$10,000.00~~ \$50,000.00 may be made upon receipt of not less

than three written documented quotes, and approval of the department director, purchasing agent and the director of finance ~~solicited either by facsimile or direct mail~~. In order to determine a fair and reasonable price, additional quotes may be solicited. The purchasing agent shall adopt, implement and enforce operational procedures for making such small purchases. Such operational procedures shall provide for the goods, commodities, equipment, materials and services being purchased. Further, such operational procedures shall require the preparation and maintenance of written records adequate to document the competition obtained, properly account for the funds expended and facilitate an audit of the small purchase made. Such records shall include the name of the business, contact person, dates of inquiry, nature and description of service for which inquiry is being made and amounts quoted with exactly what will be provided for such amount. When fewer than three quotes are available, the department ~~head~~ director requesting the purchase must provide

written approval to be reviewed and authorized by the city manager.

~~4. Small purchases of commodities and contractual services when the estimated value is in excess of \$10,000.00 but not more than \$20,000.00 may be made after a minimum of three different sources of supply have been solicited by a formal written request for quotations. The purchasing agent shall solicit quotes via telephone, followed by direct mail or facsimile, or through a direct mail request to prospective vendors. The names of the businesses submitting quotes and the date and amount of each quote shall be recorded and maintained as public record. The city manager shall approve all purchases made under this subsection and may authorize any deviation from the requirements of this subsection if three quotes are not reasonably available.~~

b. All purchases and awards of contracts in excess of ~~\$20,000.00~~ \$50,000.00 must be competitively bid per sections 2-796 and 2-826 through 2-844.

c. The city manager shall have the authority to sell, trade or otherwise dispose of surplus and obsolete

personal property belonging to the city either by sale, barter or exchange or by sealed bid, public auction, cannibalization, trade-in or any other means of disposal as may be appropriate and in the best interests of the city. Disposal of surplus or obsolete personal property with acquisition prices in excess of ~~\$20,000.00~~ \$50,000.00 per item shall be made only after approval by the city commission. In addition, the city manager is directed to promulgate procedures for disposal of items with acquisition prices of ~~less than \$20,000.00~~ \$50,000.00 or less.

Sec. 2-772. - Authority of city manager.

Authority to purchase commodities and contractual services and to award and execute contracts as is deemed to be in the public interest is delegated to the city manager under the conditions set forth in this division. The city manager, in accordance with established purchasing guidelines and governed by the requirements of this division, shall have the authority to purchase commodities and contractual services, to award contracts and to execute agreements for the purchases of commodities and contractual services when

the estimated total cost thereof does not exceed ~~\$20,000.00~~ \$50,000.00 without prior approval of the city commission. The city manager's authority under this section shall extend to purchases and awards for the city's redevelopment areas.

Sec. 2-773. - Cone of silence.

(a) *Definitions.* For purposes of this section, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

(1) *Competitive solicitation* means a formal process by the City of Key West relating to the acquisition of goods or services, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. Competitive solicitation shall include request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), invitation to bid ("ITB") or any other advertised solicitation.

(2) *Cone of silence* means a period of time during which there is a prohibition on communication regarding a particular competitive solicitation.

(3) *Evaluation or selection committee* means a group of persons appointed or designated by the city to evaluate, rank, select, or make a recommendation regarding a vendor or the vendor's response to the competitive solicitation. A member of such a committee shall be deemed a city official for the purposes of subsection (c) below.

(4) *Vendor* means a person or entity that has entered into or that desires to enter into a contract with the City of Key West or that seeks an award from the city to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a competitive solicitation for compensation or other consideration.

(5) *Vendor's representative* means an owner, individual, employee, partner, officer, or member of the board of directors of a vendor, or a consultant, lobbyist, or actual or potential subcontractor or sub-consultant who acts at the behest of a vendor in communicating regarding a competitive solicitation.

(b) *Prohibited communications.* A cone of silence shall be in effect during the course of a competitive solicitation and prohibit:

(1) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the city's administrative staff including, but not limited to, the city manager and his or her staff;

(2) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the mayor, city commissioners, or their respective staff;

(3) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and any member of a city evaluation and/or selection committee therefore; and

(4) Any communication regarding a particular competitive solicitation between the mayor, city commissioners, or their respective staff, and a member of a city evaluation and/or selection committee therefore.

(c) *Permitted communications.* Notwithstanding the foregoing, nothing contained herein shall prohibit:

(1) Communication between members of the public who are not vendors or a vendor's representative and any city employee, official or member of the city commission;

(2) Communications in writing at any time with any city employee, official or member of the city commission, unless specifically prohibited by the applicable competitive solicitation.

(A) However, any written communication must be filed with the city clerk. Any city employee, official or member of the city commission receiving or making any written communication must immediately file it with the city clerk.

(B) The city clerk shall include all written communication as part of the agenda item when publishing information related to a particular competitive solicitation;

(3) Oral communications at duly noticed pre-bid conferences;

(4) Oral presentations before publically noticed evaluation and/or selection committees;

(5) Contract discussions during any duly noticed public meeting;

(6) Public presentations made to the city commission or advisory body thereof during any duly noticed public meeting;

(7) Contract negotiations with city staff following the award of a competitive solicitation by the city commission; or

(8) Purchases exempt from the competitive process pursuant to section 2-797 of these Code of Ordinances;

(d) *Procedure.*

(1) The cone of silence shall be imposed upon each competitive solicitation at the time of public notice of such solicitation as provided by section 2-826 of this Code. Public notice of the cone of silence shall be included in the notice of the competitive solicitation. The city manager shall issue a written notice of the release of each competitive solicitation to the affected departments, with a copy thereof to each commission member, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.

(2) The cone of silence shall terminate:

(A) At the time the city commission or other authorized body makes final award or gives final

approval of a contract, rejects all bids or responses to the competitive solicitation, or takes other action which ends the competitive solicitation.

(B) At the deadline for submission of responses to the solicitation if only one vendor has responded.

(3) Any city employee, official or member of the city commission that is approached concerning a competitive solicitation while the cone of silence is in effect shall notify such individual of the prohibitions contained in this section. While the cone of silence is in effect, any city employee, official or member of the city commission who is the recipient of any oral communication by a potential vendor or vendor's representative in violation of this section shall create a written record of the event. The record shall indicate the date of such communication, the persons with whom such communication occurred, and a general summation of the communication.

(e) Violations/penalties and procedures.

(1) A sworn complaint alleging a violation of this ordinance may be filed with the city attorney's office.

In each such instance, an initial investigation shall be performed to determine the existence of a violation. If a violation is found to exist, the penalties and process shall be as provided in section 1-15 of this Code.

(2) In addition to the penalties described herein and otherwise provided by law, a violation of this ordinance shall render the competitive solicitation void at the discretion of the city commission.

(3) Any person who violates a provision of this section shall be prohibited from serving on a City of Key West advisory board, evaluation and/or selection committee.

(4) In addition to any other penalty provided by law, violation of any provision of this ordinance by a City of Key West employee shall subject said employee to disciplinary action up to and including dismissal.

(5) If a vendor is determined to have violated the provisions of this section on two more occasions it shall constitute evidence under City Code section 2-834 that the vendor is not properly qualified to carry out the obligations or to complete the work contemplated by any new competitive solicitation. The city's purchasing agent shall also commence any available debarment from

city work proceeding that may be available upon a finding of two or more violations by a vendor of this section.

Subdivision II - Competitive Bidding.

Sec. 2-796. - Required.

All purchases of commodities and contractual services when the estimated total cost thereof shall exceed ~~\$20,000.00~~ \$50,000.00 shall be awarded by the city commission through the process of competitive, sealed bidding or competitive request for proposals except as otherwise provided in this division.

Sec. 2-797. - Exemptions.

The following are exempt from the requirements of formal competitive procurement:

(1) *Sole source procurement.* Sole source procurement in accordance with the following:

a. All specifications shall be drafted so as to promote overall economy for the purposes intended, to encourage competition in satisfying the city's need, and shall not be unduly restrictive. Brand name specifications are restrictive of competition and shall be used only as specifically provided in section 2-844.

b. A contract may be awarded without competition when the department head makes a written determination and the purchasing agent verifies that, after conducting a good faith review of available sources, there is only one source for the required commodity or contractual service. The city manager shall conduct negotiations as appropriate as to price, delivery and terms. A record of sole source procurement shall be maintained as a public record and shall list each contractor's name, amount and type of each contract; a list of the commodity or contractual service procured under each contract; and the identification number of each contract file.

c. All sole source procurement where the cost of the commodities or contractual services exceeds ~~\$20,000.00~~ \$50,000.00 shall be authorized by the city commission.

(2) *Emergency procurement.* The city manager may make emergency procurement of commodities or contractual services where the cost exceeds ~~\$20,000.00~~ \$50,000.00 when there exists a clear and present threat to public health, property, welfare, safety or other substantial loss to the city, including cases where a natural disaster has occurred, is occurring, or is imminently threatening. However, such

emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor or commodity shall be included in the contract file. As soon as practicable, a record of the emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the commodity or contractual service procured under the contract, and the number of the purchase order, if any. ~~All~~ An emergency procurement in excess of ~~\$20,000.00~~ \$50,000.00 shall be ratified by the city commission at the next scheduled city commission meeting.

(3) *Purchases and acquisitions under contracts of federal government, and the state or its political subdivisions, and governmental purchasing cooperative programs. All purchases of commodities or contractual services under the provisions of local, state, ~~and~~ federal or governmental purchasing cooperative purchasing contracts shall be exempt from the competitive procurement requirements, provided that the following criteria are all satisfied:*

- a. The terms and conditions of the original contract by the federal, state or local government,

other than the city, are satisfactory to the city and such terms and conditions are expressly extended to other municipalities pursuant to the bid documents or by the original successful bidder.

b. The purchasing agent has performed an informal solicitation to determine if the prices of the original contract are fair and reasonable and to ensure local vendors have an opportunity to compete.

c. The city commission authorizes such procurement when the cost of the commodities or contractual services exceeds ~~\$20,000.00~~ \$50,000.00.

(4) *Exempt contractual services and commodities*. Exempt contractual services and commodities not subject to the competitive procurement requirement are as follows:

a. Legal services including paralegal, expert witnesses, appraisal services and court reporters. Prior to engaging legal services estimated to have a cost in excess of ~~\$20,000.00~~ \$50,000.00, the city attorney shall notify the city manager and the city commission.

b. If in the opinion of the city manager exceptional circumstances exist to exempt a purchase from the competitive bid requirements of this subdivision for the best interests of the city, ~~he~~ the city manager shall

place a resolution before the city commission for approval of such exemption.

Sec. 2-798. - Local business enterprise preference.

(a) *Definition.* A business shall be considered a local business enterprise if it meets all of the following requirements: a business with its ~~principle~~ principal address as registered with the Florida Department of State located within 30 miles of the boundaries of the city, listed with the chief licensing official as having a business tax receipt with its ~~principle~~ principal address within 30 miles of the boundaries of the city for at least one year immediately prior to the issuance of the solicitation; maintains a workforce of at least 50 percent of its employees from the city or within 30 miles of its boundaries, and having paid all current license taxes, and any other fees due the city at least 24 hours prior to the publication (construed as 7:00 a.m. of the date of publication in the relevant newspaper) of the call for bids or request for proposals. Post office box numbers may not be used to establish status as a local business enterprise. If a business is a joint venture, it is sufficient for qualification as a local business enterprise if at least one of the joint venturers ~~is~~ partners meets the test set forth

in this subsection, and the combined local workforce of the joint venture is maintained at a level of at least 50 percent of the total number of employees engaged in the venture. At least one member, director or ~~principle~~ principal of the entity desiring to qualify as a local business enterprise shall reside within 30 miles of the boundaries of the City of Key West as indicated by a Florida driver's license or Florida identification card. In the event a business meets all the requirements enumerated above with the exception of having its ~~principle~~ principal address as registered with the Florida Department of State located within 30 miles of the boundaries of the city, it shall be sufficient to qualify as a local business enterprise if it has maintained an office within 30 miles of the boundaries of the City of Key West for the past five years, during which period of time it has regularly and continuously conducted business from such location.

(b) *Preference.* In the purchase of or the contract for goods, services, or construction of capital improvements, the city commission or, in the case of purchases and contracts which are not required to be approved by the city commission, the city finance department may give a preference to a responsive and responsible local business enterprise as

specified herein. Any required notice of bid or request for proposals for matters subject to the local preference provided for in this section shall contain a provision notifying prospective bidders or responders of the applicability of the local preference.

Except where otherwise provided by this Code, federal or state law or other funding source restrictions, purchases of goods, general services, or professional services by the city may give preference to local businesses in the following manner:

(1) Under a competitive bid solicitation, when a responsive, responsible nonlocal business submits the lowest price bid, and the bid submitted by one or more responsive, responsible local businesses is within five percent (5%) of the price submitted by the nonlocal business, then the local business with the apparent lowest bid offer (i.e., lowest local bidder) may have the opportunity to submit an offer to match the price(s) offered by the lowest, qualified and responsive nonlocal bidder within three (3) working days of a notice of intent to award. If the lowest local bidder submits a bid that fully matches the lowest bid from the lowest nonlocal bidder tendered previously, then the award

shall be made to such local bidder. If the lowest local bidder declines or is unable to match the lowest nonlocal bid price(s), then the award shall be made to the nonlocal business.

(2) For requests for proposals in which objective factors are used to evaluate the responses from vendors and are assigned point totals, if, upon the completion of final rankings (technical and price combined, if applicable) by a selection committee or the city commission, a qualified and responsive nonlocal business is the highest ranked proposer and the ranking of a qualified and responsive local business is within five percent (5%) of the ranking obtained by the qualified and responsive nonlocal business, the highest ranked qualified and responsive local business shall have the opportunity to submit an offer to match the price offered by the highest ranked qualified and responsive nonlocal business within three (3) working days of a notice of intent to award. If such highest ranked local business submits a price that fully matches the price of such highest ranked qualified and responsive nonlocal business, or the original price of the highest ranked local business is equal to or less than that of such

highest ranked nonlocal business, then such local business shall proceed to negotiations with the city. If the highest ranked qualified and responsive local business declines or is unable to match the price of the highest ranked qualified and responsive nonlocal business, then the city shall proceed to negotiate with such highest ranked nonlocal business.

(c) *Exceptions.* The local business enterprise preference provided for by this section shall not be applied where the application of the preference would conflict with a statute, administrative rule, or the terms of any grant funding the purchase or contract; or in the procurement of services described in section 2-797(4).

(d) *Certification of eligibility.* Under any such applicable solicitation, bidders/proposers desiring to receive local preference will be invited and required to affirmatively state and provide documentation as set forth in the solicitation in support of their status as a local business. Any bidder who fails to submit sufficient documentation with their bid or proposal, or who is not prequalified as a local business enterprise pursuant to procedures to be implemented by the city manager, shall not

be granted local preference consideration for the purposes of that specific award.

(e) *Waiver of the application of local preference.* The application of local preference to a particular purchase, contract, or category of contracts for which the city commission is the awarding authority may be waived upon written recommendation of the city manager and approval of the city commission.

(f) *Comparison of qualifications.* The preferences established herein in no way prohibit the right of the city to compare quality of materials proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals. Further, the preferences established herein in no way prohibit the right of the city from giving any further preference permitted by law instead of or in addition to the preferences granted herein.

(g) *Change orders.* Notwithstanding the provisions of section 2-845, in the event a local bidder is awarded a contract pursuant to this section, all requests for change orders increasing the cost of the project must be approved by the city commission.

Sec. 2-799. - Requirements for city contractors to provide equal benefits for domestic partners.

(a) *Definitions.* For purposes of this section only, the following definitions shall apply:

(1) *Benefits* means the following plan, program or policy provided or offered by a contractor to its employees as part of the employer's total compensation package: sick leave, bereavement leave, family medical leave, and health benefits.

(2) *Bid* shall mean a competitive bid procedure established by the city through the issuance of an invitation to bid, request for proposals, request for qualifications, or request for letters of interest.

(3) *Cash equivalent* means the amount of money paid to an employee with a domestic partner in lieu of providing benefits to the employee's domestic partner. The cash equivalent is equal to the employer's direct expense of providing benefits to an employee for his or her spouse.

The cash equivalent of the following benefits ~~apply~~
applies:

a. For bereavement leave, cash payment for the number of days that would be allowed as paid time

off for the death of a spouse. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.

b. For health benefits, the cost to the contractor of the contractor's share of the single monthly premiums that are being paid for the domestic partner employee, to be paid on a regular basis while the domestic partner employee maintains such insurance in force for himself or herself.

c. For family medical leave, cash payment for the number of days that would be allowed as time off for an employee to care for a spouse who has a serious health condition. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.

(4) *Contract* means any written agreement, purchase order, standing order or similar instrument entered into pursuant to the award of a bid whereby the city is committed to expend or does expend funds in return for work, labor, professional services, consulting services, supplies, equipment, materials, construction, construction-related services or any combination of the foregoing.

(5) *Contractor* means any person or persons, sole proprietorship, partnership, joint venture, corporation, or other form of doing business, that is awarded a bid and enters into a covered contract with the city, and which maintains five or more full-time employees.

(6) *Covered contract* means a contract between the city and a contractor awarded subsequent to the date when this section becomes effective valued at over ~~\$20,000.00~~ \$50,000.00.

(7) *Domestic partner* shall mean any two adults of the same or different sex, who have registered as domestic partners with a governmental body pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least one of the domestic partners. A contractor may institute an internal registry to allow for the provision of equal benefits to employees with domestic partners who do not register their partnerships pursuant to a governmental body authorizing such registration, or who are located in a jurisdiction where no such governmental domestic partnership registry exists. A contractor that institutes such registry shall not

impose criteria for registration that are more stringent than those required for domestic partnership registration by the City of Key West pursuant to chapter 38, article V, of the Key West Code of Ordinances.

(8) *Equal benefits* means the equality of benefits between employees with spouses and employees with domestic partners, and/or between spouses of employees and domestic partners of employees.

(b) *Equal benefits requirements.*

(1) Except where otherwise exempt or prohibited by law, a contractor awarded a covered contract pursuant to a bid process shall provide benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses.

(2) All bid requests for covered contracts which are issued on or after the effective date of this section shall include the requirement to provide equal benefits in the procurement specifications in accordance with this section.

(3) The city shall not enter into any covered contract unless the contractor certifies that such contractor does not discriminate in the provision of benefits between employees with domestic partners and

employees with spouses and/or between the domestic partners and spouses of such employees.

(4) Such certification shall be in writing and shall be signed by an authorized officer of the contractor and delivered, along with a description of the contractor's employee benefits plan, to the city's procurement director prior to entering into such covered contract.

(5) The city manager or his/her designee shall reject a contractor's certification of compliance if he/she determines that such contractor discriminates in the provision of benefits or if the city manager or designee determines that the certification was created, or is being used for the purpose of evading the requirements of this section.

(6) The contractor shall provide the city manager or his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this section, and upon request shall provide evidence that the contractor is in compliance with the provisions of this section upon each new bid, contract renewal, or when the city manager has received a complaint or has reason to believe the

contractor may not be in compliance with the provisions of this section. This shall include, but not be limited to, providing the city manager or his/her designee with certified copies of all of the contractor's records pertaining to its benefits policies and its employment policies and practices.

(7) The contractor may not set up or use its contracting entity for the purpose of evading the requirements imposed by this section.

(c) *Mandatory contract provisions pertaining to equal benefits.* Unless otherwise exempt, every covered contract shall contain language that obligates the contractor to comply with the applicable provisions of this section. The language shall include provisions for the following:

(1) During the performance of the covered contract, the contractor certifies and represents that it will comply with this section.

(2) The failure of the contractor to comply with this section will be deemed to be a material breach of the covered contract.

(3) If the contractor fails to comply with this section, the city may terminate the covered contract and all monies due or to become due under the covered

contract may be retained by the city. The city may also pursue any and all other remedies at law or in equity for any breach.

(4) If the city manager or his designee determines that a contractor has set up or used its contracting entity for the purpose of evading the requirements of this section, the city may terminate the covered contract.

(d) *Enforcement.* If the contractor fails to comply with the provisions of this section:

(1) The failure to comply may be deemed to be a material breach of the covered contract; or

(2) The city may terminate the covered contract; or

(3) Monies due or to become due under the covered contract may be retained by the city until compliance is achieved; or

(4) The city may also pursue any and all other remedies at law or in equity for any breach.

(5) Failure to comply with this section may also subject the contractor to the procedures set forth in division 5 [sic] of this article, entitled "Debarment of contractors from city work."

(e) *Exceptions and waivers.* The provisions of this section shall not apply where:

(1) The contractor does not provide benefits to employees' spouses.

(2) The contractor is a religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

(3) The contractor is a governmental entity.

(4) The sale or lease of city property.

(5) The provision of this section would violate grant requirement, the laws, rules or regulations of federal or state law (for example, the acquisition services procured pursuant to F.S. § 287.055 known as the "Consultants' Competitive Negotiation Act").

(6) Provided that the contractor does not discriminate in the provision of benefits, a contractor may also comply with this section by providing an employee with the cash equivalent of such benefits, if the city manager or his/her designee determines that either:

a. The contractor has made a reasonable yet unsuccessful effort to provide equal benefits. The contractor shall provide the city manager or his/her designee with sufficient proof of such inability to provide such benefit or benefits which shall include the measures taken to provide such benefit or benefits and the cash equivalent proposed, along with its certificate of compliance, as is required under this section.

(7) The city commission waives compliance of this section in the best interest of the city, including, but not limited to, the following circumstances:

a. The covered contract is necessary to respond to an emergency.

b. Where only one bid response is received.

c. Where more than one bid response is received, but the bids demonstrate that none of the bidders can comply with the requirements of this section.

(f) *City's authority to cancel contract.* Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-

responsibility finding, issue a non-responsiveness finding, deny a person or entity prequalification, or otherwise deny a person or entity city business.

(g) *Timing of application.* This section shall be applicable only to covered contracts awarded pursuant to bids which are after the date when this section becomes effective.

Sec. 2-800. - Quarterly Reporting

The purchasing agent for the city of Key West shall, on a quarterly basis, provide the City Commission a detailed list of all purchasing requisitions between \$20,000.01 and \$50,000.00. The list shall include the date of the purchasing requisition, department making the request, vendor of record, description of item(s) purchased and total amount of the purchase.

Subdivision III - Procedures.

Sec. 2-826. - Public notice.

Public notice of the invitation to bid, request for qualifications, or request for proposals pursuant to this division shall be given not less than ten calendar days prior to the date set forth in the notice for the opening of bids or proposals. Such notice shall be given by publication in

a newspaper of general circulation in the city. The notice shall state the place, date and time of the bid or proposal opening.

Sec. 2-827. - Submission of bids, requests for qualifications and proposals.

Bids, requests for qualifications, and requests for proposals pursuant to this division shall be submitted in a sealed envelope which shall be clearly identified as a bid or proposal on the exterior of the envelope and delivered to the office of the city clerk. All bids and proposals shall contain a ~~noncollusive~~ non-collusion affidavit and a public entity crimes form sworn to and executed by the bidder or offeror and acknowledged before a notary public with the notary seal affixed on the document.

Sec. 2-828. - Bid or proposal security.

Bid or proposal security shall be required for all city construction projects when the total contract price is estimated by the purchasing agent to exceed ~~\$10,000.00~~ \$50,000.00. In all other cases, the city reserves the right to require bid or proposal security when deemed necessary by the purchasing agent. Bid or proposal security shall be by

cash, by certified or cashier's check, by a bid bond or an irrevocable letter of credit made payable to the city and provided by a surety company authorized to do business as a surety in the state in an amount not less than five percent (5%) of the amount of the bid or proposal. The bid or proposal security of unsuccessful bidders or offerors will be returned within a reasonable time after the bid or proposal opening. The bid or proposal security of the successful bidder or offeror will be retained until such bidder or offeror has executed the contract and furnished the required certificate of insurance and payment and performance bonds. If the successful bidder or offeror fails to furnish the required certificate of insurance and payment and performance bonds or fails to execute and deliver the contract to the office of the city clerk within the time specified in the instructions to bidders or offerors, the city may annul the notice of award and the entire sum of the bid or proposal security shall be forfeited.

Sec. 2-829. - Bid opening.

(a) Bids made pursuant to this division shall be opened publicly by the city clerk and shall be witnessed by bidders, designated staff, and all interested persons as space allows

at the time and place designated in the public notice of the invitation to bid.

(b) Bids shall be read aloud, and a tabulation of all bids received shall be made available for public inspection after the opening of the bid.

(c) No late bids shall be accepted or opened if received after the date and time specified in the public bid notice. All late bids shall be returned, unopened, to the bidder or offeror.

Sec. 2-830. - Proposal or qualification opening.

When the request for proposals or qualifications procedure is utilized as provided in this division, the proposals shall be opened by the city clerk at the time and place designated in the public notice of the request for proposals or qualifications. A register of proposals shall be prepared and maintained by the city clerk containing the name of each offeror.

Sec. 2-831. - Modification and withdrawal of bids.

Bids made pursuant to this division may be modified or withdrawn by an appropriate document duly executed and delivered to the office of the city clerk at any time prior to the deadline for submitting bids. A request for withdrawal and modification must be in writing and signed by a person

duly authorized to do so, and, where signed by a deputy or subordinate, the principal's proper written authority to such deputy or subordinate must accompany the request for withdrawal or modification. After expiration of the period for receipt of bids, no bid may be withdrawn or modified. If, within 24 hours after bids are opened, any bidder files a duly signed written notice with the city, through the office of the city clerk, and within five calendar days thereafter demonstrates to the satisfaction of the city, by clear and convincing evidence, that there was a material and substantial mistake in the preparation of the bid or that the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident, the bidder may withdraw its bid. Thereafter, the bidder will be disqualified from further bidding on the subject contract.

Sec. 2-832. - Modification to solicitation documents.

For the purposes of this division, any modification of the invitation to bid or the request for proposals made prior to the opening of the responses to those solicitation documents shall be by addenda provided in writing to the same businesses to which the original solicitation documents were mailed or otherwise provided.

Sec. 2-833. - Documents become city property.

All bid documents and all accompanying documentation received from offerors in response to the invitation to bid, request for proposal, or request for qualifications pursuant to this division shall become the property of the city and will not be returned to the bidders. If a contract is awarded, all documentation produced as part of the contract shall become the exclusive property of the city.

Sec. 2-834. - Rejection of bids, statement of qualifications or requests for proposals.

The city may reject any bid, request for proposal, or statement of qualifications made pursuant to this division for any of the following reasons:

(1) If the evidence submitted by the bidder or offeror or if the investigation of such bidder or offeror fails to satisfy the city that such bidder or offeror is properly qualified to carry out the obligations and to complete the work contemplated therein.

(2) If there is reason to believe collusion exists among bidders or offerors.

(3) If the bid or proposal is not responsive, not properly delivered, not properly signed or is unsigned, shows serious omissions, alterations in form, additions not called for, conditions or unauthorized alterations, or irregularities of any kind. The city reserves the right to waive such technical errors as may be deemed in the best interest of the city.

(4) If determined that acceptance of a bid is not in the best interest of the city, all bids may be rejected for convenience.

Sec. 2-835. - Award of contract.

(a) *Generally.* Pursuant to this division, the contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid except as otherwise provided in this division.

(b) *Award to other than low bidder.* When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere will be prepared by the purchasing agent and filed with the other documents related to the transaction.

(c) *Tie bids.* The procedure for tie bids shall be as follows:

(1) If two or more bidders are tied, the tie may be broken and the successful bidder selected by the following criteria presented in order of importance and consideration:

a. Quality of the items or services bid, if such quality is ascertainable.

b. Delivery time if provided in the bid by the bidders.

c. Certification of a drug-free workplace program which meets criteria established in F.S. § 287.087, as amended from time to time.

d. Location of the vendor with the following award preferences:

1. A city vendor.

2. A county vendor.

3. A state vendor.

(2) If the criteria in this subsection are impossible to determine with any reasonableness or do not resolve the issue, the award will be given to that bidder whose bid was received earliest in time by the

city as indicated by the time written upon the bid envelope of each bidder.

Sec. 2-836. - Request for proposals procedure.

Pursuant to this division, the award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city, taking into consideration price and the evaluation factors and criteria set forth in the request for proposals. The city's contract files shall contain the basis on which the award is made.

Sec. 2-837. - Request for qualifications procedure.

Pursuant to this division, the award shall be made to the responsible offeror whose statement of qualifications is determined in writing to be the most qualified, taking into consideration evaluation factors and criteria set forth in the request for qualifications. The city's records shall contain the basis on which the award is made.

Sec. 2-838. - Award determination or rejection.

The award determination or rejection made pursuant to this division shall be made by the city commission when formal competitive procurement is required.

Sec. 2-839. - Payment and performance bonds.

When a contract is awarded estimated to exceed \$100,000.00 for the construction of a public building, for

the prosecution and completion of a public work or for repairs upon a public building, or other public work as provided in F.S. § 255.05, as amended from time to time, or when the purchasing agent deems it to be reasonably necessary to protect the best interests of the city, the following bonds shall be executed and delivered to the city clerk and shall become binding on the parties upon the execution of the contract:

(1) *Performance bond.* A performance bond satisfactory to the city, executed by a corporate surety authorized to do business in the state as a surety, in an amount equal to 100 percent of the price specified in the contract and conditioned upon the contractor performing the contract in the time and manner prescribed in the contract; and

(2) *Payment bond.* A payment bond satisfactory to the city, executed by a corporate surety authorized to do business in the state as a surety, in an amount equal to 100 percent of the price specified in the contract and conditioned upon the contractor promptly making payments to all persons who supply labor, materials or commodities used directly or indirectly in the performance of the work provided for in the contract.

Sec. 2-840. - Insurance.

The successful offeror under this division shall be required to obtain, at his own expense, all minimum insurance coverage required under the terms of the bid documents and contract and to submit at a minimum copies of all insurance certificates to the city clerk and to the city risk management coordinator. No work under the contract may be commenced until the required insurance has been obtained and proof of such insurance has been approved by the risk management coordinator.

Sec. 2-841. - Contracts for professional services.

All contracts for professional services, as that term is defined in the Consultants Competitive Negotiations Act, F.S. § 287.055, as amended from time to time, shall be awarded in accordance with the procedures set forth in that act and any city purchasing procedures adopted in furtherance of that act.

Sec. 2-842. - Supplier's list.

The purchasing agent will solicit sealed bids and proposals from all responsible prospective suppliers who have requested that their names be added to a supplier's list and who have indicated the types of commodities and contractual services they can provide. The purchasing agent will maintain

this listing, which will be organized by the trade or profession indicated by the supplier. When commodities or contractual services are needed, the city will send invitations to bid or request for proposals to those on the supplier's list who have made known to the city that they can supply those types of commodities and contractual services. Solicitation shall be made by sending the listed suppliers a copy of the appropriate newspaper notice or other such notice as will acquaint them with the proposed purchase.

Sec. 2-843. - Brand name or equal specifications.

(a) *Use.* Brand name or equal specifications may be used when the purchasing agent determines in writing that:

(1) No other design or performance specification or qualified products list is available;

(2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;

(3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement;

(4) Existing maintenance supply or repair parts inventory require a certain manufacturer or brand name;
or

(5) Use of a brand name or equal specification is in the city's best interests.

(b) *Designation of several brand names.* Brand name or equal specifications shall seek to designate at least three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(c) *Required characteristics.* Unless the purchasing agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(d) *Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

Sec. 2-844. - Brand name specifications.

(a) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing agent makes a written determination that only the identified brand name item will satisfy the city's needs.

(b) *Competition.* The purchasing agent shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under the sole source procurement provisions of section 2-797.

Sec. 2-845. - Change orders.

(a) Upon the award of any contract for the construction of any public service building or capital improvement project, the city manager shall have the authority to approve change orders without prior city commission action in an amount not to exceed five cumulative percent (5%) of the contract price or ~~\$25,000.00~~ \$50,000.00, whichever is less. A change order in excess of such limitations shall be approved by the city commission. The cumulative total of all change orders of a project shall be considered in determining

approval procedures. In an emergency in a construction contract where life, property or city funds are at risk, the city manager may approve a change order in excess of five cumulative percent of the contract price or ~~\$25,000.00~~ \$50,000.00. The city manager's approval shall be in writing. The finance department shall issue an amended purchase order. At its next scheduled meeting, the city commission shall ratify by resolution the emergency change order.

(b) Whenever the city commission shall consider the awarding of a bid for a construction project, the city manager shall provide to the city commission the change order history of the bidder with the city, and the city commission may take into consideration such history in determining whether to award or deny the bid.

Section 4: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 5: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 6: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a special meeting held this 3rd day of September, 2019.

Read and passed on final reading at a regular meeting held this 17th day of September, 2019.

Authenticated by the presiding officer and Clerk of the Commission on 17th day of September, 2019.

Filed with the Clerk September 18, 2019.

Mayor Teri Johnston	<u>Absent</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


SAM KAUFMAN, VICE MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK



EXECUTIVE SUMMARY

To: James Scholl, City Manager
From: David Sermak, Central Purchasing Specialist OS
Date: September 3, 2019
Re: Amending City of Key West Purchasing Approval Thresholds
Cc: Mark Finigan, Director, Finance

Action Statement:

Respectfully request that in an effort for City staff to more efficiently and expeditiously procure small dollar items, the City of Key West Finance Department propose amendments to Sec. 2-553, Sec. 2-736 through Sec. 2-739 and Sec. 2-766 through Sec. 2-845 of the City of Key West Purchasing and Procurement Ordinances to more suitably reflect current dollar values for supplies and services necessary for the effective operation of City government.

Background:

Since the inception of the current City purchasing and procurement code in 1986 and latest update of purchasing thresholds in 1989, inflation as reflected by the Consumer Price Index (CPI), for the costs of goods and services has nearly doubled. As written the current City of Key West purchasing and procurement code does not allow for an automatic adjustment to the purchasing thresholds. Over time, these thresholds are restricting the approval of purchases required by various City departments in an efficient manner.

Justification:

The current approval thresholds for purchasing and procurement have not been updated to reflect current pricing for goods and services in over two decades, thus creating impediments for departments trying to respond to the needs of its citizens on a timely basis. Amending the current pricing thresholds to better reflect current market conditions for supplies and services will expedite purchasing without diminishing the authority of the City Commission to approve large dollar goods and services.

In an addition to the ordinance, the purchasing agent will be required, on a quarterly basis, to submit a report to the City Commission of all purchases of goods or services between \$20,000.01 and \$50,000.00. This report allows the City Commission to be advised of those purchases and reduces the number of items placed on the Commission's agenda.

Recommendation:

It is my belief that by approving the changes to the purchasing and procurement ordinances the City Commission is not relinquishing any authority originally intended in the code. It is merely making changes to reflect the steady rise over three decades for those supplies and services customarily used in City government. The proposed updated thresholds will bring the City of Key West in line with other county and city municipalities of similar size within the State of Florida



Purchasing Thresholds

	Current City of Key West			Proposed City of Key West
\$500.00 or Less	One Written Quote Department Director Approval Purchasing Specialist Approval Finance Director Approval		\$1,000.00 or Less	One Written Quote Department Director Approval Purchasing Agent Approval
\$500.01-\$1,000.00	Two Written Quotes Department Director Approval Purchasing Specialist Approval Finance Director Approval		\$1,000.01-\$5,000.00	Two Written Quotes Department Director Approval Purchasing Agent Approval Finance Director Approval
\$1,000.01-\$10,000.00	Three written Quotes Department Director Approval Purchasing Specialist Approval Finance Director Approval		\$5,000.01-\$50,000.00	Three written Quotes Department Director Approval Purchasing Agent Approval Finance Director Approval
\$10,000.01-\$20,000.00	Formal Request for Quotes Three Formal Written Quotes/Responses Department Director Approval Purchasing Specialist Approval Finance Director Approval			
\$20,000.01 or Greater	Formal Bid Process per Sec 2-796 and 2-826 through 2-844 Department Director Approval Purchasing Specialist Approval Finance Director Approval City Commission Approval		\$50,000.01 or Greater	Formal Bid Process per Sec 2-796 and 2-826 through 2-844 Department Director Approval Purchasing Agent Approval Finance Director Approval City Commission Approval

*The Central Purchasing Specialist shall submit a quarterly report to the City Commission documenting purchases greater than \$20,000.00 but no more than \$50,000.00