AN ORDINANCE RELATING TO PROCUREMENT; AMENDING DIVISION 3, PROCUREMENT PROCEDURES, OF ARTICLE VI, FINANCE, OF CHAPTER 2, ADMINISTRATION, OF THE CODE OF ORDINANCES, CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPLES, FLORIDA:

Section 1. That Division 3, Procurement Procedures, of Article VI, Finance, of Chapter 2, Administration, of the Code of Ordinances of the City of Naples is amended by deleting the current Division 3 and replacing it with a new Division 3 to read as follows (with underlining indicating additions and strikeout indicating deletions):

ARTICLE 7. FINANCE

DIVISION 3.

PROCUREMENT PROCEDURE

Sec. 2-661. Accounting control of purchases.

All purchases made and contracts executed shall be by a written requisition from the head of the office, department or agency whose appropriation will be charged, and no contract or order shall be executed or issued unless and until the head of the finance department certifies that there is to the credit of such office, department or agency a sufficient unencumbered departmental appropriation balance to pay for the supplies, materials, equipment or contractual services for which the contract or order is to be issued. However, if the director of finance and the city manager determine that because of the lack of materials, supplies, equipment or services a condition exists which significantly or immediately impairs the departmental operation, the requirement for a written requisition and certification shall be waived.

Sec. 2-662. Competitive bidding policy.

Unless specifically provided otherwise in this division, the policy of the city shall be to seek competition where possible in the purchase of materials, equipment and services and thereby to make such purchases at the lowest available net cost to the city, provided that the purchase price is a fair and reasonable price, and to have such materials delivered when and where required. In determining the net cost, the following may be considered: net price, delivery time, availability of service, when significant, comparative cost of operation (i.e., EPA mileage ratings) and previous maintenance experience. Contract administration for such purchases shall be by the city manager or the city manager's written designee.

Sec. 2-663. Competitive bidding required for certain purchases; establishment of bidding procedures.

Competitive bids shall be required for each purchase in excess of $10,000.00, unless otherwise provided in this division. An annual adjustment to this amount shall be based on the rate of change of the Consumer Price Index—All Urban Consumers (CPI-U) as published by the U.S. Bureau of Labor Statistics. Bidding shall be conducted by the city manager or the city manager's authorized
Sec. 2-664. Competitive bidding process; competitive selection.

(a) Competitive bidding process. Competitive bidding shall occur utilizing the following procedure:

(1) Competitive bids shall be requested by publishing an invitation to bid 1 time in a newspaper of general circulation within the city at least 10 days prior to the date of receiving bids, by posting a notice in a conspicuous location in the city hall and by formal notice to those vendors currently on the bidder's mailing list.

(2) In all cases, the contract or purchase shall be awarded to the lowest, best and most responsible bidder meeting the purchasing policy of the city, subject to the right of the city to reject any and all bids. The city reserves the right to reject the bid of a bidder who has previously failed to perform properly or deliver on time work or products of a similar nature. The bid may be awarded in whole or in part.

(3) When invitations to bid result in only 1 bid being received, action on the bid shall not be taken until the city manager has reviewed the bid to determine and justify the basis for determining 1 or more of the following:

a. The award to the sole bidder is reasonable as a sole source purchase and it is not practical to rebid;

b. The bid should be awarded to the sole bidder because the bid price can be determined to be a competitive, fair and reasonable price; or

c. There is sufficient reason to believe that a rebid of the item will not generate additional competitive bids.

(4) Competitive bidding requirements, however, shall be met if goods and services are purchased pursuant to:

a. A validly executed interlocal agreement establishing cooperative purchasing with other local governmental entities;

b. A state contract or bid; and

c. Other contracts or bids received by associations or entities regularly receiving bids for county, state or city official use.

(b) Competitive selection.

(1) The city council may, by affirmative vote of a majority of council members present and voting, acquire goods, services and construct public projects through a competitive selection process rather than through the competitive bidding process provided in subsection (a) of this section, by utilizing the procedure set forth in this subsection (b).
(2) For those services governed by F.S. § 287.055, the Consultant
Competition Negotiation Act ("CCNA"), the procedures provided in the
CCNA shall be followed.

(3) For all other purchases utilizing the competitive selection process,
including, but not limited to, the selection of consultants,
contractors, and construction managers, the following procedures
shall apply:

a. A request for proposals ("RFP") will be prepared and
distributed in a manner consistent with subsection (a)(1) of
this section;

b. Each RFP shall identify the appropriate evaluation procedures
and criteria to be applied to the selection of the best
proposal among respondents. The city manager shall establish
the evaluation criteria;

c. A selection committee shall be appointed by the city manager
to evaluate the proposals received. The selection committee
shall rank the top 3 proposals prior to commencement of
negotiations. The city manager may commence negotiations with
the top ranked firm to negotiate a tentative agreement,
subject to award by the city council; and

d. Final selection of the awards will be made by the city
council.

(4) For purposes of this subsection, a "construction manager" is: (i) an
individual, firm or legal entity retained to represent the city on
construction projects by coordinating with the city's design
professional during the design of the project, and then observing
and monitoring the construction of the construction project
constructed by a general contractor, or (ii) an individual, firm or
legal entity selected by the city to coordinate with the city's
design professional during the design of the project and then submit
to the city a guaranteed maximum price to construct the improvement
with the construction manager being responsible for the actual
construction of the project. Also, for the purposes of this
subsection, a "consultant" is defined as a person or firm hired to
provide services of an advisory nature relating to administrative,
technical, or managerial functions of the government. A "contractor"
is defined as a person or firm hired to construct a physical
facilities such as a building, plant, park, roadway, drainage system,
or other similar physical facilities.

Sec. 2-665. Waiver of competitive bidding.

The sections set forth in this division for competitive bidding shall not
apply in the following cases:

(1) If an emergency exists which makes it necessary to make purchases or
obtain services immediately and a delay is against the public
interest, as determined by the city manager, and the emergency
expenditure is approved by the mayor or, in the mayor's absence, the
vice mayor, the city manager shall issue a purchase order or
contract for such purchases or services and shall report the city
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manager's actions to the city council no later than the next regular city council meeting.

(2) When the nature of the supplies, materials, equipment or improvements makes it impracticable to request bids on purchases greater than the bid threshold established in section 2-354, as determined by the city manager, or in excess of $50,000.00, as determined by a majority vote of the city council. The city manager shall keep and provide to the city council on a regular basis a report of administrative bid waivers for bids exceeding a threshold of $10,000.00.

(3) If a vendor extends the prices, terms and conditions of a bid previously awarded by the city council and if the offer is accepted within 1 year from the date of the original acceptance and if the quantities to be purchased do not exceed the original quantity awarded.

(4) When the nature of the purchase is considered to be in the best interest of the city as determined by a majority vote of the city council.

Sec. 2-666. Award of bid or contract.

(a) Unless specifically provided otherwise in this division, the city council shall award bids and provide for the execution of purchase orders and contracts for purchases of $50,000.00 or more. However:

(1) The city council shall approve all professional service contracts or expenditures for consultant study services of an advisory nature relating to administration or management normally provided by persons and/or organizations considered to have the requisite knowledge or special abilities not generally available, exceeding $25,000.00.

(2) Contracting in excess of $25,000.00 with instructors who conduct city-operated, fee-based activities (example: adult education classes) or individuals who participate in city-operated theatrical productions or the purchase of items intended solely for resale at city-operated facilities in a total amount not to exceed 15 percent over the approved annual budget for such items shall not require approval from city council.

(b) The city manager is authorized to enter into and to execute or provide for the execution of purchase orders and contracts below the thresholds stated in subsection (a) of this section.

Sec. 2-667. Extended period contracts.

If the city has awarded a contract and an option exists or is offered to the city to extend the period of the contract, the city manager shall determine if such extension is in the best interests of the city and may exercise this option on behalf of the city for periods not exceeding 2 years.

Sec. 2-668. Cash discounts; joint procurement.

(a) Cash discounts. Cash discounts are an element of competitive pricing.
Accordingly, all quotations may include cash discount terms and this shall be so requested in all bid documents.

(b) Joint procurement. Where practicable and advantageous, the city shall participate with other governmental bodies in the purchase of common commodities, services, etc., by competitive bidding. Such participation shall contemplate joining with other governmental groups, such as but not limited to the county and the school board.

Sec. 2-669. Ethics.

Employees and elected or appointed officials involved in establishing specifications, executing requisitions and purchase orders or approving or authorizing purchases are precluded from:

1. Accepting for themselves or their families from any person, group or entity with whom the city does business any discounts, club memberships, loans, rewards or promises of future employment, favors or services or gifts of a personal nature, except those gifts classified as advertising novelties of nominal value. Such gratuities, entertainment, favors or gifts are to be refused with a tactful explanation of this policy.

2. Having a personal interest, either direct or indirect, which conflicts in any way with their obligation to adhere strictly to the purchasing objective.

Sec. 2-661. Procurement Policy.

1. The City of Naples is authorized, pursuant to Article VIII, Section 2(b) of the Florida Constitution, and Chapter 166 of the Florida Statutes, to prescribe the manner by which it will procure goods and services.

2. Procurements of goods and services shall be based on fair and open competition, thereby reducing the appearance and opportunity for favoritism, and inspiring public confidence that contracts are awarded equitably and economically. Further, it is essential to the efficient operation of city government that procurements be made without undue delay.

3. The city shall seek competition where feasible in the purchase of materials, equipment and services and thereby to make such purchases at the lowest available net cost to the City, provided that the purchase price is a fair and reasonable price, and to have such materials delivered when and where required. In determining the net cost, price; delivery time; and availability of service may be considered.

4. This Code shall apply to every purchase or procurement of supplies, services and public works by the city, including the city manager, the city clerk, the city attorney and all city departments, regardless of the source of funds, including state, federal, county assistance monies, except as otherwise specified by law.
The city manager shall have the purchasing authority, including authority to establish procurement policies and procedures, specifications, award, administer, and terminate contracts necessary to procure goods or services for the city unless otherwise provided in this division. The city manager is provided the latitude to exercise sound business judgment and procurement principles while adhering to the requirements of this division.

Sec. 2-662. Competitive Bidding Required for Certain Procurements; Establishment of Bidding Procedures.

(1) Where required by general law, the City shall competitively award contracts in accordance with the provisions of that general law.

(2) Otherwise, competitive bids or proposals shall be required for each procurement of $25,000 or more.

(3) The city manager shall develop procedures for all procurements, including procedures for competitive bids, proposals, and negotiations, consistent with the provisions of this division.

(4) Revenue generating or concession contracts shall be awarded in accordance with the provisions of this section, except that price shall be evaluated on the basis of the bid or offer that is in the best interest of the City.

Sec. 2-663. Competitive Bidding and Award of Contract.

(1) The competitive bidding process shall occur utilizing the following procedure:

(a) Competitive bids or proposals shall be requested following due public notice. Due public notice shall encourage the submittal of competitive bids or proposals and shall, as a minimum, include a notice in a newspaper of general circulation within the City.

(b) Unless otherwise provided in this division, the contract or purchase order shall be awarded to the lowest, best and most responsible bidder meeting the needs and requirements of the city, subject to the right of the city to reject any and all bids or proposals. A contract may be awarded in whole or in part, or in portions to more than one bidder.

(c) When invitations to bid result in only one bid or proposal received, action on the bid or proposal shall not be taken until the city manager has reviewed the bid or proposal to determine and justify the basis for determining one or more of the following:

1. The award to the sole bidder or proposal is reasonable.

2. The contract should be awarded to the sole bidder or
proposer because the bid price can be determined to be a competitive, fair and reasonable price.

3. There is sufficient reason to believe that a rebid of the item will not generate additional competitive bids.

(d) Competitive bidding requirements shall be met if goods and services are purchased pursuant to:

1. A validly executed interlocal agreement establishing cooperative purchasing with other Florida governmental entities; or

2. A contract awarded by the Federal Government or by the State of Florida or its governmental entities.

3. Other contracts or bids received by associations or entities regularly receiving bids for county, state or city official use.

Sec. 2-664. Competitive Selection and Negotiations.

(1) The city may acquire goods, services and construct public projects through a competitive selection process rather than through the competitive bidding process provided in section 3 of this section, by utilizing the procedure set forth in this section 4.

(2) For those services governed by F.S. §287.055, the Consultants' Competitive Negotiation Act ("CCNA"), the procedures provided in the CCNA shall be followed.

(3) For the construction or improvements to a public building, structure, or other public construction works governed by F.S. §255.20, or other general law, the procedures provided in that section or other applicable general law shall be followed.

(4) For all other procurements utilizing the competitive selection process, including, but not limited to, the selection of advisors, consultants, contractors, or other specialties when either price is not the sole basis of selection or the goods or services cannot be clearly defined, the following procedures shall apply:

(a) A request for proposals (RFP) or request for qualifications (RFQ) will be prepared and distributed in a manner consistent with subsection (3)(1)(a);

(b) Each RFP or RFQ shall identify the appropriate evaluation procedures and criteria to be applied to the selection of the best proposal among respondents. The city manager shall establish the evaluation criteria;

(c) As provided in the RFP or RFQ, discussions may be conducted
with the best qualified, responsible firms who submit proposals to assure full understanding of, and conformance to, the solicitation requirements. Qualified firms shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted through negotiations after submissions and prior to award for the purpose of obtaining best and final offers, subject to award by the awarding authority.

(d) The city shall award a contract to the most qualified person or firm, meeting the specifications set forth in the RFP or RFQ, subject to the right of the City to reject all proposals. A contract may be awarded in whole or in part, or in portions to more than one qualified proposing person or firm.

1. The city may award a contract for the design and building of a project utilizing the procedures set forth in F.S. §287.055(9).

2. The city may award contracts for construction management utilizing the procedures set forth in F.S. §255.103 and §287.055.

Sec. 2-665. Design-Build and Construction Management.

The city may authorize a design-build contract for the design and construction of public projects. For contracts utilizing the competitive proposal selection process, the provisions of F.S. §287.055 shall govern. For contracts utilizing a qualifications based selection process and meeting the dollar threshold requirements of F.S. §287.055, then the provisions of F.S. §287.055 shall govern.

Sec. 2-666. Exemptions.

Requirements for competitive bids or proposals may be exempt from the provisions of section 3 and 4 for the following:

(1) An emergency procurement or service to replace, reconstruct or repair damaged facilities or equipment when such damage or destruction constitutes an emergency because it creates:

(a) An immediate danger to the public health or safety.

(b) A need to protect against further loss or damage to property.

(c) An interruption of an essential governmental service.

(2) Procurements greater than $50,000 made pursuant to Section 6(1) above shall have written approval by the mayor, or in the absence

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of the mayor, the vice mayor, and the city manager, with copies of the written approval provided to the city council at the next available council meeting.

(3) Where the vendor will extend the prices and terms of a previously awarded contract awarded in accordance with requirements of this division for a period no greater than one year.

(4) Utility services, such as, but not limited to, water, sewer, electrical, and cable television.

(5) Public Art or other products or services of an artistic nature.

(6) For repair, maintenance, remodeling, renovation, construction or demolition of a single project not involving an increase in the size and type of an existing facility.

(7) For telecommunications systems and information technology, including data processing equipment, systems software, and reproduction equipment.

(8) Contracts with instructors who conduct city-operated, fee-based activities (example: adult education classes) or individuals or organizations who participate in or provide, theatrical productions or other special events.

(9) For sole source procurements when:

(a) The parts or accessories are an integral repair or accessory compatible with existing equipment and are the only parts or accessories that can be used.

(b) The procurement is identical to the existing product or service to ensure consistency in results where either: inventory of parts are not cost, space, or time effective; the product or service is standardized; and the acquisition of an alternate product or service would require considerable time and expense to evaluate.

(c) The goods or service is proprietary or prototype.

(10) When the nature of the purchase or service is considered to be in the best interest of the city as determined by the awarding authority as provided in this division.

(11) Procurement of real property.

(a) The city manager may negotiate acquisition of real property. For acquisitions of real property in which exemption from the provisions of F.S. Section 119.07(1) [Public Records] is utilized, then the provisions governed by F.S. §166.045, as amended, shall apply.
(b) The acquisition of real property shall require the approval of City Council.

Sec. 2-667. Award of Contract and Change Orders.

(1) Except as otherwise provided in this division, contracts for the procurement of goods or services in excess of $50,000 on a single purchase or a per annum basis shall be awarded by the city council.

(2) Except as otherwise provided in this division, contracts for the procurement of goods or services that do not exceed $50,000 on a single purchase or per annum basis may be awarded by the city manager.

(3) Contracts exceeding a period of three (3) years shall be authorized by city council, regardless of value.

(4) The city council shall approve all professional legal services exceeding $25,000.

(5) Change orders and contract amendments are subject to the following:

(a) For contracts authorized by city council, the city manager may approve change orders or contract modifications provided that the cumulative contract does not exceed 25% of the original contract.

(b) The city manager may approve change orders or contract modifications for contracts of less than $50,000 provided that the cumulative contract and change orders do not exceed $50,000.

(c) The 25% threshold shall apply to both individual change orders or contract modifications and the net total of change orders and contract modifications issued on a particular contract.

(d) Prior to the issuance of a change order or contract modification, the city manager shall determine:

1. The circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed;

2. The change is germane to the original contract as signed; and,

3. The change order or contract modification is in the best interest of the city and authorized by law.

(e) If the city has awarded a contract and an option exists or is offered to the city to extend the period of the contract, the city manager shall determine if such extension is in the best
Sec. 2-668. Bid Protests and Bidder Sanctions.

(1) Bid Protests

The city manager shall establish a set of written procedures by which a bidder or interested bidder may protest either the results of or intended disposition of any bid and shall provide for an informal conference with the city manager, and for an informal meeting with the city council for those contracts awarded by the council. Unless waived by the city, the protest period shall end upon award of the contract.

(2) Bidder Sanctions

(a) Bidders, contractors, and other proposing parties may be debarred, suspended or otherwise sanctioned from doing business with the city for any of the following reasons:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

2. Conviction under State or Federal statutes of embezzlement, theft, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a city contractor.

3. Conviction under State or Federal anti-trust statutes arising out of the submission of bids or proposals.

4. Civil finding of guilt of activity contained in 1, 2, and 3 above.

5. Violation of contract provisions, as set forth below:

   a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract.

   b. Unauthorized withdrawal of a submitted bid or proposal after opening.

   c. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contract or other contract violation. Failure to perform or unsatisfactory performance caused by acts beyond the control of
the contractor shall not be considered to be a basis for debarment.

d. Any other cause that may affect responsibility as a city contractor, including, but not limited to, debarment by another governmental entity for any cause listed in this policy.

(b) After reasonable notice to the person or company involved and reasonable opportunity for that person or company to be heard, the city manager or designee is authorized to debar, suspend or otherwise sanction a person or company for cause from consideration for awards of contracts, for a period up to but not exceeding 3 years.

(c) Notice of Decision — A copy of the decision to debar or suspend a vendor shall be mailed or otherwise furnished immediately to the debarred or suspended vendor.

(d) Finality of Decision — A decision to debar or suspend a vendor shall be final and conclusive, unless the debarred or suspended vendor appeals the decision of the city manager to the city council via the office of the city attorney no greater than 10 days after receipt of the Notice to Debar or Suspend. Written appeal shall be submitted with a required $500 filing fee. Council will hear the appeal de novo and take final action.

Sec. 2-669. Disposal of Surplus.

The city manager shall be responsible for the sale or disposition of surplus by a method or methods deemed to be most advantageous, provided that no employee of the owning or disposing user department shall be entitled to purchase any such surplus. All surplus items with an estimated fair market value of $50,000 or more must be declared surplus by a resolution of the city council before disposal of said surplus item.

Secs. 2-670--2-690. Reserved.

Section 2. If any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

Section 3. That all sections or parts of sections of the Code of Ordinances, City of Naples, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 4. This ordinance shall take effect immediately upon adoption at second reading.
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APPROVED AT FIRST READING THIS 1ST DAY OF OCTOBER, 2008.


Attest: Tara A. Norman, City Clerk

Approved as to form and legality: Robert D. Pritt, City Attorney

Date filed with City Clerk: 11-6-08
I hereby certify that this page in the official records of the City of Naples was intentionally left blank.

[Signature]
Deputy City Clerk

[Stamp]