

1 The Floor Leader offers the following floor substitute to File No.  
2 2005-944:

3  
4 **ORDINANCE 2005-944-E**

5 AN ORDINANCE AMENDING CHAPTER 126 (PROCUREMENT  
6 CODE), ORDINANCE CODE; AMENDING SECTION  
7 126.104 (INTEGRITY OF PUBLIC CONTRACTING AND  
8 PURCHASING PROCESS), ORDINANCE CODE, AND  
9 CHAPTER 126 (PROCUREMENT CODE), PART 3  
10 (PROFESSIONAL SERVICES CONTRACTS) AND PART 7  
11 (DESIGN-BUILD CONTRACTS), ORDINANCE CODE, TO  
12 INCORPORATE RECENT AMENDMENTS TO §287.055,  
13 FLORIDA STATUTES, COMMONLY REFERRED TO AS THE  
14 CONSULTANTS' COMPETITIVE NEGOTIATION ACT OR  
15 CCNA; CORRECTING SCRIVENER'S ERRORS; AMENDING  
16 CHAPTER 126 (PROCUREMENT CODE) PART 2  
17 (SUPPLIES, CONTRACTUAL SERVICES AND CAPITAL  
18 IMPROVEMENTS), ORDINANCE CODE TO CLARIFY FINAL  
19 APPROVAL, AWARD AUTHORITY AND SOLICITATION  
20 PROCEDURE, SOLE SOURCE AND RESOLVE CERTAIN  
21 PERCEIVED AMBIGUITIES; AMENDING SECTION  
22 126.201 (GENERAL), ORDINANCE CODE, TO REFLECT  
23 HIGHER PERMISSIBLE DISCRETIONARY AMOUNT AS  
24 ALLOWED BY FLORIDA STATUTE; AMENDING SECTION  
25 126.302 (PROFESSIONAL SERVICES EVALUATION  
26 COMMITTEE PROCEDURES ("PSEC")), ORDINANCE  
27 CODE, TO ALLOW FOR ADMINISTRATIVE APPROVAL;  
28 AMENDING CHAPTER 126 (PROCUREMENT CODE) PART  
29 6B (JACKSONVILLE SMALL EMERGING BUSINESS  
30 PROGRAM), ORDINANCE CODE, TO INCORPORATE THE  
31 RESULTS OF THE DIRECTOR OF THE DEPARTMENT OF

1           PROCUREMENT'S ANNUAL PROCEDURAL REVIEW OF THE  
2           ANNUAL GROSS RECEIPTS THRESHOLD FOR  
3           JACKSONVILLE SMALL AND EMERGING BUSINESSES  
4           CERTIFICATION; PROVIDING A SEVERABILITY  
5           PROVISION; PROVIDING AN EFFECTIVE DATE.  
6

7           **WHEREAS**, the City, after having determined a need to modernize  
8           its purchasing code and to address the concerns associated with  
9           equal access to minority and small businesses to City contracts,  
10          enacted Ordinance 2004-602-E;

11          **WHEREAS**, § 287.055, Florida Statutes, commonly referred to as  
12          the Consultants' Competitive Negotiation Act or CCNA, has been  
13          revised by the State of Florida, which impacts the way the City  
14          procures professional design services under Parts 3 and 7 of  
15          Ordinance 2004-602-E, requiring amendments to the same; and

16          **WHEREAS**, after one year of implementing the requirements and  
17          procedures of Ordinance 2004-602-E, it has been discovered that  
18          certain provisions of the same require minor revisions to correct  
19          scrivener's errors, to clarify final approval, awarding authority  
20          and certain solicitation procedures to resolve certain perceived  
21          ambiguities and to incorporate the results of certain annual  
22          procedural reviews by the Director of the Department of  
23          Procurement, as contemplated by Ordinance 2004-602-E, regarding the  
24          annual gross receipts threshold for certification under the  
25          Jacksonville Small and Emerging Businesses program; now therefore

26          **BE IT ORDAINED** by the Council of the City of Jacksonville:

27          **Section 1.       Amendment of Purchasing Code.** Chapter 126  
28          (Purchasing Code), Ordinance Code, is hereby amended to read as  
29          follows:

30                   **CHAPTER 126.    PROCUREMENT CODE.**

31                   **PART 1.     GENERAL REGULATIONS.**

\* \* \*

**Sec. 126.104. Integrity of public contracting and purchasing process.**

(a) In recognition that the preservation of the integrity of the public contracting and purchasing process of the City is vital and is a matter of great public interest, the Council determines and declares that:

\* \* \*

(4) It is the intent of the Council to provide sufficient authority to the City, its departments and independent agencies, to ensure the integrity of public contracting and purchasing. To the extent any provision contained herein is in direct conflict with Chapter 255, Chapter 287, or other provisions of the statutes of the State of Florida, Florida Statutes shall control and govern.

\* \* \*

**Part 2. SUPPLIES, CONTRACTUAL SERVICES AND CAPITAL IMPROVEMENTS**

**Sec. 126.201. General.**

**(a) Nondisclosure of bids.**

(1) By virtue of submitting a bid, each bidder shall be deemed to guarantee that he has not been a party with other bidder(s) to an express or implied agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bid of the offending bidder(s) and, subject to applicable requirements and/or discretion described herein, may result in forfeiture of the offender's bid bond and other disciplinary measures contained herein and/or under Florida law.

\* \* \*

(c) **Conflict of interest.** ~~Bids submitted under this Part~~ Any bid, proposal, or response to a solicitation made pursuant to Chapter 126 (Procurement Code), Ordinance Code, shall include a

1 statement under oath executed by the bidder, proposer, or provider  
2 of the response disclosing the names of all officers and employees  
3 of the City and of independent agencies to which F.S. Ch. 112, Pt.  
4 III, applies who may have a private financial interest, directly or  
5 indirectly, in the award and/or subject matter of the bid,  
6 proposal, or response.

7 (d) **General Governmental Awards Committee.**

8 (1) **Creation.** There is hereby created a General  
9 Governmental Awards Committee (the "GGAC"), which shall consist of  
10 the Director of Administration and Finance or his designee, who  
11 shall act as the GGAC Chairperson, the General Counsel or his  
12 designee, and Director of Public Works or his designee; provided,  
13 that, when the using agency is an independent agency required by  
14 law to utilize the services of the Department, the chief  
15 administrative officer or his designee of the using agency shall be  
16 a member of the GGAC in lieu of the Director of Administration and  
17 Finance; and further provided, that, when the Downtown Development  
18 Authority is the using agency, the executive director shall be a  
19 member in lieu of the chief administrative officer. Whenever one of  
20 the members is temporarily unable to serve on the GGAC, the member  
21 shall designate a designee serving under him to serve on the GGAC  
22 in his absence. A representative of a using agency shall be  
23 ~~entitled~~ required to attend meetings of the GGAC at which business  
24 affecting the using agency is to be conducted. The representative  
25 shall be entitled to be heard but shall have no vote at the  
26 meetings; provided, that the provisions of this sentence shall not  
27 apply to the executive director or the chief administrative  
28 officer, as the case may be, of an independent agency when he is  
29 serving as a member of the GGAC. An independent agency may  
30 promulgate its own rules or procedures to resolve bid or  
31 qualification disputes or employ those stated in this Part 2.

1           (2) **Formal Awards.** The GGAC shall act as provided in  
2 this Part 2; however, unless otherwise provided by executive order  
3 of the Mayor, relative to the designation or delegation of the  
4 Mayor's approval authority, ~~but~~ the awarding of formal bids and  
5 contracts shall become final only upon approval by: (i) The  
6 independent agency when it is the using agency; or (ii) the Mayor  
7 or his designee (collectively hereafter referred to as the "Mayor")  
8 in all other areas.

9                               \* \* \*

10           (e) **Bidder's responsibility.** After considering  
11 recommendations made by the Director or his designee and the GGAC,  
12 the Mayor, in accordance with Section 126.201(d)(2), hereof, may  
13 approve or authorize the GGAC to award formal bids and contracts to  
14 the lowest responsive, responsible bidder meeting or exceeding  
15 published specifications set forth in the invitation for bids.  
16 Prior to making ~~a recommendation to the Mayor~~ an award hereunder,  
17 the Director and the GGAC shall make a determination as to the  
18 responsibility of bidders, which determination shall consider the  
19 following factors:

20                               \* \* \*

21           (10) Whether the bidder has engaged in conduct prohibited  
22 by Section 126.201(~~k~~l)(1), hereof.

23                               \* \* \*

24           (g) **Formal contract.** The Mayor may require the successful  
25 bidder to promptly execute a formal contract approved as to its  
26 form, terms and conditions, and legal sufficiency by the Office of  
27 General Counsel and to execute and deliver to the Director a good  
28 and sufficient payment and/or performance bonds in a form approved  
29 by the Office of General Counsel, in an amount equal to one hundred  
30 percent of the contract price of a capital improvement project and  
31 in an amount established by the Director for all other projects,

1 subject to the discretion of the GGAC or as otherwise provided  
2 herein, and executed by a surety company authorized to do business  
3 in Florida; however, a successful bidder who is awarded a formal  
4 contract for less than the discretionary threshold amount indicated  
5 in § 255.05(1)(a), Florida Statutes, for a county, city, political  
6 subdivision, or public authority, or such higher amount as may be  
7 permitted by law (the "Discretionary Bond Threshold"), may, at the  
8 discretion of the GGAC, upon the request of the using agency and  
9 recommendation of the Director, be exempted from executing the  
10 otherwise required payment and performance bonds. Formal contracts  
11 shall not be executed and notices to proceed shall not be issued  
12 for projects, on which successful bidders are required to provide  
13 and/or have not been exempted from providing payment and  
14 performance bonds, until such time as the requisite payment and  
15 performance bonds have been furnished by the successful bidder.  
16 The successful bidder's failure to execute the formal contract and  
17 to secure the payment and performance bonds and return the same to  
18 the City within the time period set forth in the invitation for  
19 bids may result in the successful bidder's forfeiture of the award  
20 and forfeiture of the bid security to the City. The award may then  
21 be made to the next lowest responsive, responsible bidder or re-  
22 advertised as the Director may elect. For certified JSEBs, as  
23 defined in Chapter 126, Part 6, pPerformance bBonds, shall not be  
24 required on City projects with a value less than the Discretionary  
25 Bond Threshold \$200,000. Final determinations on the need for  
26 payment bonds for projects under the Discretionary Bond Threshold  
27 \$200,000 shall be made by the Director after determining if there  
28 is an alternate form of security or payment method, more readily  
29 available or appropriate.

30 \* \* \*

31 Sec. 126.202. Competitive sealed bid.

1 Unless otherwise recommended by the Director and approved by  
2 the GGAC, the formal procurement of supplies, contractual services  
3 and capital improvements shall be purchased by formal written  
4 contract and/or agreement based upon an award via competitive  
5 sealed bid to the lowest, responsive, responsible bidder meeting or  
6 exceeding advertised specifications, as recommended by the Director  
7 and determined by the GGAC, after public notice or advertisement of  
8 an invitation for bids. No formal purchase order, contract, or  
9 agreement shall be subdivided to avoid the requirements of this  
10 Section. The following procedures shall be observed in the award of  
11 all formal contract purchases via the Competitive Sealed Bid method  
12 of procurement:

13 (a) **Solicitation and public notice or advertisement.** The  
14 Director shall solicit bids from responsible bidders, and may do so  
15 by issuing public notice or advertisement as will acquaint bidders  
16 with the proposed solicitation. The Director shall cause public  
17 notice or advertisement of the solicitation be given a reasonable  
18 period of time prior to the public opening or the place, date and  
19 time at which responses are due as set forth in the solicitation:

20 (i) by posting said public notice on a bulletin board located in  
21 the office of the Department; and (ii) in accordance with Section  
22 126.102(m), hereof. The solicitation shall contain a detailed  
23 description of the services sought, the time and date for the  
24 receipt of responses and of the public opening, and all contractual  
25 terms and conditions applicable to the procurement, including the  
26 criteria to be used in evaluating responsiveness and  
27 responsibility. The solicitation shall contain a description of  
28 any renewal(s) contemplated in the underlying contract, and shall  
29 require responses thereto to include a price for each renewal year  
30 for which the contract may be renewed. Evaluation of responses  
31 shall include, in addition to other criteria described in the

1 solicitation, consideration of the proposed total cost for each  
2 renewal year. Renewals shall be contingent upon satisfactory  
3 performance evaluations by the using agency in question, in concert  
4 with the Department and shall be subject to approval by the GGAC  
5 and to the availability of appropriated funds. Criteria that are  
6 not set forth in the solicitation may not be used in evaluating  
7 responses.

8 \* \* \*

9 (d) **Product acceptability and price.** For purposes of this  
10 Section 126.202, *objectively measurable evaluation criteria or*  
11 *factors* means the criteria only as set forth in the solicitation,  
12 used to evaluate responsiveness and responsibility, which may  
13 include, without limitation, criteria necessary to evaluate: (i)  
14 *product acceptability*, such as examinations, inspection, testing,  
15 quality, workmanship, delivery and other evaluation factors, which  
16 shall be used for the purpose of determining product suitability  
17 according to the requirements and/or criteria only as set forth in  
18 the solicitation, and shall not be used for the purpose of  
19 comparing the superiority of differing products proposed by bidders  
20 or proposers, unless otherwise provided herein (the solicitation  
21 may include a requirement that, at the time of public opening,  
22 bidders or proposers submit product literature, samples,  
23 certification and other documentation necessary for the purpose of  
24 evaluating product suitability); and (ii) *price*, such as discounts,  
25 transportation costs, total or life-cycle costs and other  
26 objectively measurable factors, which affect the proposed amount  
27 contained in solicitation responses, and which are set forth in the  
28 solicitation. Nothing in this Section shall be deemed to permit  
29 discussions or negotiations with bidders after bid opening, except  
30 as otherwise provided herein.

31 (e) **Award.** Consistent with the requirements of Section



126.201(d), awards shall be made with reasonable promptness by written notification to the lowest, responsive, responsible bidder, as recommended by the Director and the GGAC Awards Committee and approval by the Mayor, subject to Section 126.201(d)(2), hereof, in accordance with only those objectively measurable evaluation criteria or factors set forth in the solicitation. Written notification will also be given to each unsuccessful bidder. An award or decision, recommendation, or action of the Director or GGAC under this Section may be protested, in accordance with the Department's Protest Procedures, by those adversely affected thereby and who: (i) have standing to do so under Florida law; and (ii) have properly and timely complied with the requirements of the protest procedures established by the Director that are in existence at the time of bid opening.

\* \* \*

**Sec. 126.204. Competitive sealed proposal process.**

Upon the recommendation of the Director and approval by the GGAC and/or the Competitive Sealed Proposal Evaluation Committee as defined below, that the formal procurement of supplies, contractual services and capital improvements pursuant to Sections 126.202 or 126.203 is impracticable, the same may be procured by formal written contract and/or agreement based upon an award via Competitive Sealed Proposal, whereby a Request For Proposals ("RFP") shall be publicly noticed or advertised consistent with Section 126.202(a), hereof. Upon the recommendation of the Director and approval by the GGAC and/or the Competitive Sealed Proposal Evaluation Committee as defined below, a Request for Qualifications ("RFQ") may also be used as part of the procurement process described in this Section 126.204. The RFP solicitation documents hereunder shall define the public opening or the place, date and time at which responses are due ~~as set forth in the RFP~~,

1 and all contractual terms and conditions applicable to the  
2 solicitation, including the criteria, which shall include, but need  
3 not be limited to, price, to be used in determining acceptability  
4 and/or responsiveness of the proposal and in establishing the  
5 ultimate award. The relative importance of price and other  
6 evaluation criteria and the method or evaluation process shall be  
7 provided in the RFP solicitation documents, and proposals shall be  
8 evaluated and tabulated solely in accordance with the same by the  
9 Competitive Sealed Proposal Evaluation Committee (the "CSPEC"),  
10 which shall be composed of the GGAC, the Director or his designee  
11 and one representative from the agency or department for which the  
12 solicited services are required and/or will be performed.

13 (a) **Approval and distribution of required services.**

14 (1) The using agency shall submit to the Director  
15 written service requirements indicating the nature and scope of the  
16 services needed by the using agency and a certification letter of  
17 information required by the CSPEC, including the following:

18 (i) The general purpose of the required services  
19 that includes a statement as to why procurement of said services  
20 pursuant to Sections 126.202 or 126.203 is impracticable.

21 (ii) The objectives of the services.

22 (iii) The estimated period of time needed for the  
23 services.

24 (iv) The estimated cost of the services and funding  
25 for the same.

26 (v) Whether the proposed service would or would  
27 not duplicate existing services.

28 (vi) List of current contracts or prior services  
29 which are related to the proposed services.

30 \* \* \*

31 (3) The CSPEC shall have the prepared written evaluation

1 criteria and service requirements indicating the nature and scope  
2 of the services needed by a using agency incorporated into an RFP  
3 and/or RFQ, which shall be publicly noticed or advertised  
4 consistent with Section 126.202(a), hereof, and distributed by the  
5 Department. Notwithstanding other requirements contained in this  
6 Chapter, the Department shall publish solicitations under this  
7 Section 126.204 in a newspaper of general circulation in the city  
8 at least ten business days prior to the public opening date set  
9 forth in the RFP.

10 \* \* \*

11 (c) **Award.** Subject to Section 126.201(d)(2), hereof ~~to the~~  
12 ~~approval of the Mayor~~, awards under this Section shall be made to  
13 the responsible and responsive proposer whose proposal is  
14 determined in writing by the CSPEC to be the most advantageous to  
15 the City, based solely upon the relative importance assigned to  
16 price and each of the criteria and the method or evaluation process  
17 set forth in the RFP solicitation, which evaluation process may  
18 include interviews at the sole discretion of the CSPEC. The  
19 contract file shall contain documentation supporting the basis on  
20 which the award is made.

21 \* \* \*

22 **Sec. 126.206. Sole-source, noncompetitive purchases.**

23 ~~(a) Upon a recommendation by the Director that a purchase can~~  
24 ~~be made only from a proprietary source or one justifiable source,~~  
25 ~~such as patented and manufactured products and services offered for~~  
26 ~~sale in a noncompetitive market or solely by a manufacturer's~~  
27 ~~authorized dealer, and without publishing in a newspaper an~~  
28 ~~advertised call for bids, the GCAC, for purchases by the City, or~~  
29 ~~the awarding authority, for purchases by an independent agency may,~~  
30 ~~if it specifically finds from all of the relevant facts that a~~  
31 ~~proprietary or sole source purchase is proper under this Section,~~

~~approve the purchase in accordance with regulations established by the Director and approved by the Mayor. There shall be submitted to the CCAC or the awarding authority, as the case may be, by either the Director or the using agency and acknowledged by the Director, a written justification for each sole source, noncompetitive purchase under this Section, including when applicable a sufficient explanation, as determined by the Director, as to why only the proposed make or kind of goods or services will satisfactorily fulfill the needs of the using agency. A requirement for a particular proprietary good or service will not justify a sole source award in circumstances where there is more than one potential contractor, vendor, or offeror for the same.~~

(a) Upon a recommendation by the Director and proper notice and approval under this Procurement Code, an exceptional purchase or purchase made without competition or advertisement can be made from: (i) a "proprietary source," which, under this Procurement Code, shall apply to follow-up goods and services, such as replacement parts or warranty-related or required maintenance services for products and equipment previously purchased by the City, that may only be efficiently and effectively provided from one justifiable source; or (ii) a "sole source," which, under this Procurement Code, shall apply when there is only one justifiable source, such as patented and manufactured products and services offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer. Without competition or advertisement, but only after posting prior notice on Procurement's website for no less than seven calendar days, a proprietary or sole-source purchase, if found from the relevant facts presented by the using agency to be sufficiently and properly justified, may be awarded hereunder. As a condition precedent to consideration and an award hereunder, using agencies must submit to the Director a

1 written justification for each proprietary or sole-source,  
2 noncompetitive purchase, including without limitation a sufficient  
3 explanation, as determined by the Director, as to why only the  
4 proposed make or kind of goods or services will satisfactorily  
5 fulfill the needs of the using agency. A requirement for a  
6 particular proprietary good or service will not justify an award in  
7 circumstances where there is more than one potential source that  
8 can efficiently and effectively provide the same. Proposed awards  
9 made hereunder may be timely protested pursuant to the Department's  
10 protest procedures.

11 \* \* \*

### 12 PART 3. PROFESSIONAL SERVICES CONTRACTS

#### 13 Sec. 126.301. Award of professional services contracts.

14 Consistent with Section 126.104(a)(4), hereof, contracts for  
15 the performance of professional design services or professional  
16 services, as defined herein, (collectively "professional  
17 services"), for the City and for the independent agencies,  
18 authorize by law to utilize the services of the Department, shall  
19 be awarded in accordance with the provisions of this Part 3, except  
20 for contracts for the performance of legal services and for the  
21 performance of the annual independent audit under Section 5.11 of  
22 the Charter. Unless otherwise recommended by the Director and  
23 approved by the Professional Services Evaluation Committee ("PSEC")  
24 defined herein, the formal procurement of professional services  
25 shall be purchased by formal written purchase order, contract  
26 and/or agreement based upon an award after public notice or  
27 advertisement of a Request For Proposals ("RFP"), evaluation of  
28 proposals and recommendation by the PSEC and approval by the Mayor  
29 or his designee (collectively hereafter referred to as "the  
30 Mayor"), subject to Section 126.201(d)(2), hereof. Upon the  
31 recommendation of the Director and approval by the PSEC, a Request

1 for Qualifications ("RFQ") may also be used as part of the  
2 procurement process described in this Part 3. No formal purchase  
3 order, contract, or agreement shall be subdivided to avoid the  
4 requirements of this Section.

5 **Sec. 126.302. Professional Services Evaluation Committee**  
6 **Procedures ("PSEC").**

7 (a) **Membership.** Prior to the award of a contract for the  
8 performance of professional services, the Mayor shall appoint a  
9 PSEC, which shall be under the organizational control of the  
10 Department. Subject to the Mayor's approval as to the designation  
11 or selection of the departmental or using agency representative,  
12 PSEC shall consist of the Director or his designee, who will serve  
13 as the chair, one representative from the Administration and  
14 Finance Department, one representative from the Office of the  
15 General Counsel and two representatives from the using agency for  
16 which the professional services will be performed, who will also  
17 serve as the PSEC subcommittee.

18 (b) **Approval and distribution of project requirements.**

19 \* \* \*

20 (3) PSEC shall have the prepared written evaluation  
21 criteria and service requirements indicating the nature and scope  
22 of the professional services needed by a using agency incorporated  
23 into an RFP, which shall be publicly noticed or advertised  
24 consistent with Section 126.202(a), hereof, and distributed by the  
25 Department. Notwithstanding other requirements contained in this  
26 Chapter, the Department shall publish formal solicitations under  
27 ~~this Section 126.204~~ Part 3 in a newspaper of general circulation  
28 in the City at least ten business days prior to the public opening  
29 date set forth in the RFP.

30 \* \* \*

31 (e) **Total compensation negotiation and unit price quotation.**

1 ~~While~~ PSEC may request, accept and consider proposals for the total  
 2 compensation to be paid under a professional design services  
 3 contract only during contract negotiations,; however, consistent  
 4 with § 287.055, Florida Statutes, PSEC ~~it~~ may require all  
 5 interested proposers responding to an RFP pursuant to this Part 3  
 6 to include statements and references demonstrating that the  
 7 proposer met both time and budget requirements on projects of  
 8 similar size and scope that were completed by the proposer within  
 9 the past five years and that the proposer is meeting both time and  
 10 budget requirements on projects of similar size and scope that are  
 11 currently being performed by the proposer ("Reference Projects").  
 12 More specifically, an RFP hereunder may require that a proposer:  
 13 (i) submit an expressed statement of its overall willingness to  
 14 meet both time and budget requirements for the project in question;  
 15 and (ii) submit, without limitation, project narratives, schedules,  
 16 cost and fee summaries and owner references for any Reference  
 17 Projects in order to demonstrate that the proposer has met and is  
 18 meeting both time and budget requirements for said projects ~~submit~~  
 19 ~~a quotation of their proposed unit prices, including, without~~  
 20 ~~limitation, hourly rates, fees, or other charges that will~~  
 21 ~~ultimately be used during contract negotiations to calculate or~~  
 22 ~~determine total compensation.~~ For the purposes of this Section,  
 23 total compensation shall mean the total amount, as well as any  
 24 hourly rates, fees and other charges used to determine the same,  
 25 that will be paid by the City or using agency in exchange for the  
 26 performance of the desired professional services. The total  
 27 compensation restriction of this Section shall be applicable only  
 28 to professional design services specifically within the scope of  
 29 the practice of architecture, professional engineering, landscape  
 3 architecture, or registered surveying and mapping, as defined by  
 31 the laws of the State of Florida, or those performed by any

1 architect, professional engineer, landscape architect, or  
 2 registered surveyor and mapper in connection with his or her  
 3 professional employment or practice. For all other professional  
 4 services, PSEC may require interested persons responding to an RFP  
 5 pursuant to this Part 3 to submit their proposed total compensation  
 6 at the time of public opening as set forth in the RFP.

7 \* \* \*

8 (h) Selection of qualified, interested and available  
 9 proposers.

10 \* \* \*

11 (3) The PSEC shall determine qualifications, interest  
 12 and availability by reviewing the written responses received, and,  
 13 when deemed necessary, by conducting formal interviews of selected  
 14 proposers that are determined to be best qualified based upon the  
 15 evaluation of written responses. The determinations shall be based  
 16 upon the following evaluation criteria, the relative importance of  
 17 which shall be indicated in the RFP:

18 \* \* \*

19 (v) Past and present record of professional  
 20 accomplishments on projects for independent and using agencies of  
 21 the City and on projects for others ~~which includes the use of~~  
 22 ~~JSEBs.~~

23 \* \* \*

24 (ix) ~~An overall~~ demonstrated willingness to meet  
 25 both time and budget requirements for the project, ~~and,~~ subject to  
 26 Section 126.302(e), ~~hereof~~ Jacksonville Ordinance Code, ~~proposed~~  
 27 ~~total compensation or unit price quotations, including, without~~  
 28 ~~limitation, hourly rates, fees, or other charges that will~~  
 29 ~~ultimately be used during contract negotiations to calculate or~~  
 30 ~~determine total compensation.~~

1 \* \* \*



**Sec. 126.304. Contract negotiation and award; other cases.**

In all cases to which Section 126.303 does not apply, PSEC, subject to Sections 126.201(d)(2) and 126.302(f) hereof, shall forward to the Mayor the alphabetical list consisting of no fewer than three best qualified, interested and available proposers, in order of first, second and third best qualified. The Mayor shall approve or disapprove the recommendation of PSEC. Upon approval, PSEC shall negotiate with the first most qualified proposer and recommend to the Mayor, for approval, mutually satisfactory terms of employment, including the professional fee to be charged. If negotiations with the first most qualified proposer reach an impasse, PSEC shall recommend to the Mayor that said negotiations be terminated, and, upon the Mayor's approval, PSEC shall terminate said negotiations by written notice, and shall commence the negotiation process with the second most qualified proposer. Upon reaching an impasse and terminating negotiation with the second most qualified proposer, PSEC shall commence the negotiation process with the third most qualified proposer. This selection and negotiation procedure may be continued with additional selected proposers in order of best qualified until a mutual agreement is approved by the Mayor or until the list of selected best-qualified proposers is exhausted. If the negotiation process results in the Mayor's approval of a mutual agreement, the Mayor shall then order the award of a contract for the performance of the required professional services to the proposer with whom a mutual agreement is reached. If the negotiation process fails to result in a mutual agreement for the performance of the required professional services, then the selection process shall terminate and all proposals shall be deemed rejected, and the using agency in question, with the assistance of the Department, may modify the specifications or scope of services and resolicit proposals, which

1 modifications shall be documented in writing and maintained in the  
2 resulting contract file. If delays resulting from resolicitation  
3 efforts will be substantially detrimental to the City's best  
4 interest, PSEC, upon the approval of the Mayor, may reinitiate the  
5 negotiation process described herein, beginning with the first most  
6 qualified proposer, which reinitiated negotiations may include,  
7 without limitation, modifications to the specifications or scope of  
8 services set forth in the initial solicitation, which modifications  
9 shall be documented in writing and maintained in the resulting  
10 contract file. If the reinitiated negotiation process results in  
11 the Mayor's approval of a mutual agreement, the Mayor shall then  
12 order the award of a contract for the performance of the required  
13 professional services to the proposer with whom a mutual agreement  
14 is reached. To the extent a contract awarded hereunder is  
15 terminated, PSEC, upon the Mayor's approval, shall have the  
16 discretion to: (i) commence negotiations as described in this  
17 Section 126.304, beginning with the next most qualified proposer,  
18 for the professional services remaining and/or necessary for the  
19 completion of said contract; or (ii) to procure said professional  
20 services pursuant to Part 3, hereof.

21 \* \* \*

22 Sec. 126.312. Sole-source noncompetitive purchases of  
23 professional services.

24 ~~(a) Upon certification by the PSEC that a purchase of~~  
25 ~~professional services can reasonably be made only from a sole~~  
26 ~~source or proprietary procurement method, such as follow up or~~  
27 ~~related studies by the professional originally performing the~~  
28 ~~service, and without publishing in a newspaper an advertised~~  
29 ~~call for bids, the PSEC, for purchases by the City, or the~~  
30 ~~awarding Authority for purchases by an independent agency, may,~~  
31 ~~if it specifically finds from all of the relevant facts that a~~

~~sole source or proprietary purchase of professional services is proper under this Section, approve the purchase in accordance with regulations established by the Director and approved by the Mayor. There shall be submitted to the PSEC or the awarding authority, as the case may be, by either the Director or the using agency, a written justification for each sole source or proprietary, noncompetitive purchase of professional services under this Section, including when applicable an explanation as to why only the proposed professional will satisfactorily fulfill the needs of the City's agency.~~

(a) Consistent with § 126.206 hereof, upon a recommendation by the Director and proper notice and approval under this Procurement Code, an exceptional purchase or purchase made without competition or advertisement can be made from: (i) a "proprietary source," which, under this Procurement Code, shall apply to services, such as follow-up or related studies by the professional originally performing the service, that may only be efficiently and effectively provided from one justifiable source; or (ii) a "sole source," which, under this Procurement Code, shall apply when there is only one justifiable source. Without competition or advertisement, but only after posting prior notice on Procurement's website for no less than seven calendar days, a proprietary or sole-source purchase, if found from the relevant facts presented by the using agency to be sufficiently and properly justified, may be awarded hereunder. As a condition precedent to consideration and an award hereunder, using agencies must submit to the Director a written justification for each proprietary or sole-source, noncompetitive purchase, including without limitation a sufficient explanation, as determined by the Director, as to why only the proposed services will satisfactorily fulfill the needs of the using agency. A requirement for a particular proprietary service

1 will not justify an award in circumstances where there is more than  
2 one potential source that can efficiently and effectively provide  
3 the same. Proposed awards made hereunder may be timely protested  
4 pursuant to the Department's protest procedures.

5 \* \* \*

6 **PART 6A. SMALL BUSINESS CAPITAL, BONDING, AND OUTREACH PROGRAM**

7 \* \* \*

8 **Sec. 126.605. Semi-monthly payments to certified JSEBs.**

9 The City shall pay certified JSEBs semi-monthly, upon proper  
10 payment application to the applicable City Department. City  
11 Departments are to perform all necessary inspections and otherwise  
12 endeavor to ensure that prompt review and as applicable approval of  
13 certified JSEB work is ~~paid~~ completed within four days of receipt  
14 of invoice. The City shall pay all approved invoices from  
15 certified JSEBs within three business days of receipt by the  
16 Administration and Finance Department. City Departments shall  
17 provide monthly statements to the Director identifying the timing  
18 of JSEB payments for contracts within their departments. These  
19 statements are to be organized and provided to the Mayor, with a  
20 copy to the City's Chief Operating Officer ("COO"), quarterly by  
21 the Director. Prime contractors shall be obligated to pay  
22 subcontractors within three days of receipt from the City of funds,  
23 and must confirm payment to the City. Subcontractors will be  
24 notified by the City when a payment application from a prime  
25 contractor has been submitted reflecting work performed by a  
26 subcontractor.

27 \* \* \*

28 **PART 6B. JACKSONVILLE SMALL EMERGING BUSINESS PROGRAM.**

29 \* \* \*

30 **Sec. 126.609. Jacksonville Small Emerging Businesses defined.**

31 (c) To be certified as a JSEB, an individual owner must meet

the following criteria:

\* \* \*

2) have a personal net worth less than \$605,000, excluding personal residence, including but not limited to business value and assets (measured as book value), ownership in other businesses and all other assets personally owned, held in trust for the individual owner's benefit, or held by a spouse; ~~— Provided,~~ however, that, notwithstanding personal net worth, certification hereunder shall require that the following caps apply: ~~1) for capital improvement pursuant to 126.102(a), \$3,000,000 in annual gross receipts, on averaged, over the immediately preceding three year period, not exceed \$6,000,000.00; 2) for suppliers, \$2,000,000 in annual gross receipts on average, over the immediately preceding three year period; 3) for professional services, \$2,000,000 in annual gross receipts on average, over the immediately preceding three year period; and 4) for contractual services, \$1,000,000 in annual gross receipts on average, over the immediately preceding three year period. This annual gross receipts threshold~~ ese amounts shall be subject to annual analysis by the Director, who ~~, should~~ the annual gross receipts in any category change by 5%, will may recommend to the City Council Committee responsible for Audit review for consideration by the City Council an amounts that may be more appropriate;

\* \* \*

**Sec. 126.622. Counting subcontracting participation of JSEBs and MBEs.**

\* \* \*

(c) If a firm ceases to be a certified JSEBs and MBEs during a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall ~~not be~~ counted in the City's internal accounting. No contractor shall be

1 penalized in any way as a result of the failure of a project to  
2 achieve its Project Specific Goals because of the operation of this  
3 Section.

4 \* \* \*

5 **PART 7. DESIGN-BUILD CONTRACTS**

6 **Sec. 126.700. Intent.**

7 Consistent with Section 126.104(a)(4), hereof, it is the  
8 intent of this Section to establish a uniform procedure in  
9 compliance with state law to permit the use of a design-build  
10 approach for the construction of capital improvement projects. The  
11 City is authorized by § 287.055, Florida Statutes, to adopt an  
12 ordinance governing the award of design-build contracts.

13 **Sec. 126.701. Award of design-build contracts.**

14 (a) **Selection by competitive sealed proposal.** Upon the  
15 determination and written recommendation of the Director and both  
16 ~~the CGAC and PSEC~~ CSPEC that it is more advantageous or both time  
17 and cost effective to award a single contract for the design and  
18 construction of a capital improvement project and that it is in the  
19 overall best interest of the City to employ the design-build  
20 approach instead of the traditional design-bid-build approach for  
21 the formal procurement of a capital improvement project, the same,  
22 upon the approval of the Mayor, may be procured by formal written  
23 contract and/or agreement based upon an award pursuant to the  
24 requirements and/or procedures of § 287.055, Florida Statutes, this  
25 Part 7 and the Competitive Sealed Proposal requirements and/or  
26 procedures of Section 126.204, hereof, whereby a Request For  
27 Proposals ("RFP") shall be publicly noticed or advertised  
28 consistent with Section 126.202(a), hereof. The RFP shall define  
29 the public opening or the place, date and time at which proposals  
30 are due, define or include the design requirements or design  
31 criteria package, solicit proposals and development documents,

1 define or include bonding, insurance and all other contractual  
2 terms and conditions applicable to the desired design-build  
3 services and include the evaluation criteria that shall be the sole  
4 basis for the CSPEC, as defined in Section 126.204, to evaluate and  
5 tabulate proposals received in response to the RFP. In addition to  
6 the requirements and/or procedures of Section 126.204, hereof, the  
7 procedures for the use of the competitive sealed proposal process  
8 shall include, as a minimum, the following:

9 \* \* \*

10 (2) The solicitation and evaluation of no fewer than  
11 three design-build firms (in evaluating the design-build firms  
12 under § 287.055, Florida Statutes, and this Part 7, the CSPEC shall  
13 conduct discussions with and require public presentations by each  
14 design-build firms regarding their qualifications, approach to and  
15 schedule for the project, project organization, development  
16 documents and ability to furnish the required design-build  
17 services). If, as a result of a solicitation for design-build  
18 services for a capital improvement project under this Part 7, the  
19 CSPEC receives proposals from less than three design-build firms,  
20 it shall publicly notice or advertise the resolicitation of said  
21 services from design-build firms previously solicited and from  
22 additional design-build firms, unless the CSPEC determines, in  
23 writing, that no advantage would be obtained by the resolicitation.  
24 Notwithstanding the number of proposals received, the CSPEC may  
25 proceed to consider those design-build firms responding to the  
26 resolicitation or responding to the initial solicitation if it  
27 determines, in writing, that no advantage would be obtained by  
28 resoliciting.

9 \* \* \*

30 (b) **Request for qualifications.** Upon the recommendation of  
31 the Director and approval of the CSPEC, solicitations under this

1 Part 7 may be accomplished pursuant to the procedures outlines in  
2 the Consultants' Competitive Negotiation Act, § 287.055(9), Florida  
3 Statutes, in particular, or include, as if part of the an RFP, by  
4 issuing a Request For Qualifications ("RFQ") for the purpose of  
5 prequalifying proposers in order to develop a short list of no  
6 fewer design-build firms than that required in Section  
7 126.701(a)(2), hereof. Simultaneously with the RFP, the RFQ shall  
8 be publicly noticed or advertised consistent with Section  
9 126.202(a), hereof, and shall define the public opening or the  
10 place, date and time at which qualification responses are due,  
11 which qualification responses shall be due no more than ten  
12 business days after the date on which the RFQ is publicly noticed  
13 or advertised. The RFQ shall include: (i) design requirements;  
14 (ii) qualifications-based evaluation criteria including, without  
15 limitation, experience and competence in the kind of design-build  
16 project to be undertaken, availability of adequate personnel,  
17 equipment and facilities, financial responsibility, past record of  
18 professional accomplishments, past record of performance for using  
19 agencies; and (iii) other requirements considered to be important  
20 in the process of prequalifying design-build firms, as determined  
21 and/or approved by the CSPEC (proposers may request confidential  
22 designation for those portions of their RFQ or RFP response that  
23 contain information only to be viewed by the Department, such as  
24 trade secrets, proprietary data, or other confidential  
25 information). Only those design-build firms short-listed pursuant  
26 to this Section shall be afforded an opportunity to submit a  
27 proposal in response to the RFP in question. Upon the CSPEC's  
28 recommendation and the Mayor's approval of the short-listed design-  
29 build firms, the Department shall provide written notice of the  
30 same to the short-listed design-build firms, indicating, at a  
31 minimum, the date, time, place and manner the submission of their



1 proposals in response to the RFP shall be due and/or publicly  
2 presented, which shall take place no less than 15 business days  
3 after the date of the written short list notification (the  
4 Department shall also provide written notice of the short-listed  
5 design-build firms to each unsuccessful design-build firm).

6       **Section 2. Severability.** In the event that a court of  
7 competent jurisdiction declares any portion of this ordinance  
8 unconstitutional, invalid, or otherwise unenforceable, then it is  
9 the intent of the City that all remaining provisions shall be  
10 severable, valid and enforceable regardless of the invalidity of  
11 any other provision.

12       **Section 3. Effective Date.** This ordinance shall become  
13 effective upon signature by the Mayor or upon becoming effective  
14 without the Mayor's signature.

15  
16 Form Approved:

17   
18 \_\_\_\_\_

19 Office of General Counsel

20 Legislation Prepared By: Devin J. Reed

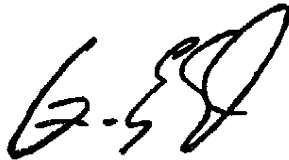
21 G:\shared\LEGIS.CC\2005\sub\2005-944 Floor Sub.doc

ORDINANCE 2005-944-E

CERTIFICATE OF AUTHENTICATION

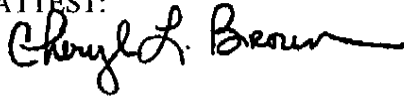
ENACTED BY THE COUNCIL

SEPTEMBER 13, 2005



KEVIN E. HYDE  
COUNCIL PRESIDENT

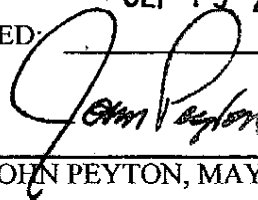
ATTEST:



CHERYL L. BROWN  
COUNCIL SECRETARY

SEP 19 2005

APPROVED:



JOHN PEYTON, MAYOR

