

## TITLE V- ADMINISTRATION AND PERSONNEL

### CHAPTER 126 PROCUREMENT CODE

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#### FOOTNOTES:

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**Editor's note**— Ord. 2004-602-E, § 4, amended the Code by repealing former ch. 126, §§ 126.101—126.110, 126.112, 126.201—126.217, 126.301—126.316; 126.401—126.405, 126.501—126.506, 126.601—126.623, 126.700—126.705, 126.801, 126.802, 126.901—126.911, and adding a new ch. 126 to read as herein set out. Former ch. 126 pertained to the Code of 1965, §§ 2-15, 2-16; and the following ordinances: 68-81-64; 68-84-89; 69-139-400; 69-630-653; 69-970-645; 70-164-57; 70-170-92; 70-409-203; 70-650-526; 70-819-387; 70-820-502; 71-1163-493; 71-1165-495; 71-397-181; 71-404-186; 71-831-370; 72-1180-626; 72-1274-618; 73-252-84; 73-253-85; 73-633-288; 73-805-362; 73-1060-516; 73-1106-558; 73-1354-770; 73-1465-819; 74-299-122; 74-955-431; 74-1398-645; 75-18-118; 75-704-354; 75-869-439; 75-870-440; 75-1078-521; 76-539-260; 76-730-345; 76-966-560; 77-277-76; 77-314-120; 78-242-124; 78-786-651; 79-730-381; 79-1086-552; 80-485-233; 80-743-707; 80-860-441; 81-367-274; 81-527-278; 82-59-32; 82-611-327; 82-751-361; 82-953-444; 82-1009-477; 83-173-89; 83-591-400; 83-1374-709; 84-143-53; 84-1021-514; 84-1217-648; 85-1230-732; 85-1327-691; 86-1136-491; 86-1414-877; 86-1467-822; 87-303-134; 87-1312-703; 88-38-111; 88-1369-678; 89-172-72; 89-1003-495; 89-1087-682; 89-1119-536; 89-1184-603; 90-264-121; 91-123-65; 92-962-1098; 92-1001-667; 93-175-70; 93-647-317; 95-392-199; 96-285-298; 96-502-687; 96-1105-677; 98-426-E; 98-584-E; 98-837-E; 98-1054-E; 2000-135-E; 2000-965-E; 2001-444-E; 2002-396-E; 2002-737-E; 2002-951-E; and 2003-629-E.

**Cross reference**— Procurement Division, § 23.301 et seq.

**State Law reference**— Code of ethics for public officers and employees, F.S. § 112.311 et seq.; Consultants' Competitive Negotiation Act, F.S. § 287.055.

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#### **PART 1. - GENERAL REGULATIONS**

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#### **Sec. 126.101. - Short title.**

This Chapter shall be known and may be cited as the Jacksonville Procurement Code.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.102. - Definitions.**

As used in this Chapter:

- (a) *Capital improvement* means a public improvement undertaking by a using agency, including the construction or reconstruction in whole or in part, of a building, road, bridge, street or water, sewer or storm water facility or a similar physical structure or facility necessary to the performance of the activities of the using agency.
- (b) *Contractual services* means the rental, repair and maintenance of equipment and personal property required by using agencies but not furnished by their own employees, and utilities and

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other services of all types, including types not enumerated herein. This term shall not include professional services, professional design services, or capital improvements as defined herein.

- (c) *Department* means the Department of Finance and Administration.
- (d) *Director* means the Director of the Department of Finance and Administration.
- (e) *Division* means the Division of Procurement.
- (f) *Emergency* means an immediate danger to the public health, safety, or welfare, an immediate danger of loss of public or private property, a reasonably unforeseen breakdown in machinery, a reasonably unforeseen threatened curtailment, diminution, or termination of an essential governmental service, the reasonably unforeseen development of a dangerous condition or the development of a reasonably unforeseen circumstance that threatens the curtailment or diminution of an essential governmental service or of deposits and investments of City capital or other threatened losses to the City that, in the opinion of the Chief, require emergency action.
- (g) *Formal purchase* means a purchase of: (i) Supplies, professional services, or contractual services, as defined herein, where the estimated costs or fees thereof exceed the threshold amount provided in F.S. § 287.017, for Category Three, as may be revised from time to time; (ii) Professional design services, as defined herein, where the estimated cost for the basic construction of a project exceeds the threshold amount provided in F.S. § 287.017, for Category Five, as may be revised from time to time, or where the estimated fees for a planning or study activity exceed the threshold amount provided in F.S. § 287.017, for Category Two, as may be revised from time to time; or (iii) Capital improvements where the estimated cost thereof exceeds the threshold amount provided in F.S. § 255.0525(2), as may be revised from time to time (on a case-by-case basis, the Chief shall have the discretion to reduce the threshold amount for capital improvements consistent with the competitive encouragement threshold amount of F.S. § 255.101(2), as may be revised from time to time). Formal purchases shall be publicly noticed or advertised and competitively procured as provided herein. No formal purchase order, contract, or agreement shall be subdivided to avoid this requirement.
- (h) *Local bidder* means a bidder who maintains a permanent place of business in the City and is a separate and distinct term from that used in 6A and 6B, herein, which contains differing requirements. If, with respect to a purchase or contract, there shall be no local bidder within the City, the term local bidder shall include a bidder whose principal office is located in and whose principal business is conducted in the State of Florida.
- (i) *May* denotes the permissive.
- (j) *Must* denotes the imperative.
- (k) *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including the description of requirements, selection and solicitation of sources, preparation and award of contract and contract administration.
- (l) *Professional design services* means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
- (m) *Professional services* means services other than those defined herein as "professional design services," the value of which is substantially measured by the professional competence of the person or entity performing them and which are not susceptible to realistic competition by cost of services alone. Professional services will generally include, without limitation, services customarily rendered by medical practitioners or professionals, certified public accountants, audit services, attorneys, financial, political, personnel, technological, systems, planning and management consultants, and insurance brokers for purposes of consulting, structuring coverage and procuring insurance.

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- (n) *Public Notice or Advertisement* means the distribution or dissemination of information using methods that are reasonably available and accessible, including, without limitation, publication in newspapers of general circulation, electronic or paper mailing lists, or website(s) designated and maintained by the Division. Unless otherwise required by law or provided herein, the Division shall, at a minimum, publish the solicitation of formal purchases in a newspaper of general circulation in the City at least 21 calendar days prior to the public opening date set forth in the solicitation and at least five calendar days prior to any scheduled pre-bid or pre-proposal conference.
- (o) *Responsive bidder or proposer* means a bidder or proposer who has submitted a bid or proposal that conforms, in all material respects, to an invitation for bids or request for proposals.
- (p) *Shall* denotes the imperative.
- (q) *Supplies* means commodities, materials, equipment and other tangible articles or things which shall be furnished to or used by a using agency, including commercial printing, binding or publication of stationery, forms, journals and reports.
- (r) *Using agency* means a department, division, office, board, agency, commission or other unit of the City and an independent agency required by law or voluntarily requesting to utilize the services of the Division.
- (s) The Jacksonville Transportation Authority ("JTA"), as an independent agency of the City, is required to procure certain supplies, services, or capital improvements pursuant to the procedures and/or requirements of this Chapter 126. JTA, upon establishing its own procurement code, may continue to procure, but shall no longer be required to procure any supplies, services, or capital improvements pursuant to Chapter 126.
- (t) The Jacksonville Police and Fire Pension Fund Board of Trustees, as an independent agency of the City, has voluntarily utilized the Procurement Division to procure certain supplies, services, or capital improvements pursuant to the procedures and/or requirement of this Chapter 126. The Jacksonville Police and Fire Pension Fund Board of Trustees, upon establishing its own procurement code, may continue to procure, but shall no longer be required to procure, any supplies, services, or capital improvements pursuant to Chapter 126.
- (u)

(Ord. 2004-602-E, § 4; Ord. 2004-999-E, § 1; Ord. 2011-732-E; Ord. [2016-140-E](#), § 16; Ord. [2018-270-E](#), § 1)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### **Sec. 126.103. - Execution and preservation of contracts.**

Contracts to which the City is a party and:

- (a) Which are not the subject of another provision of law shall be in writing and shall be executed or signed by the Mayor and the Corporation Secretary, the City's copies thereof shall be maintained by the Corporation Secretary.
- (b) Which are entered into on behalf of the internal operations of the office of the legislative branch shall be executed and signed by the City Council President or, if authorized by the City Council President, the Vice President and the City Council Secretary, the City's copies thereof shall be maintained by the City Council Secretary.

(Ord. 2004-602-E, § 4; Ord. [2017-288-E](#), § 7)

**Note**— At the City's direction, "President pro tempore" was changed to "Vice President."

#### **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 City Council determines and declares that:
  - (1) The procedures of the City for determining with whom the City transacts business exist to secure for the public the benefits of free, fair, and open competition among those persons whose conduct reflects good citizenship for the public.
  - (2) The opportunity to bid on public entity contracts or to supply goods and services to the City or to otherwise transact business with the City is a privilege, not a right.
  - (3) In order to preserve the integrity of the public contracting and purchasing process, the privilege of transacting business with the City should be denied to persons involved in certain crimes other than in exceptional circumstances and only after review by the City Council.
  - (4) It is the intent of the City 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.
  - (5) It is the intent of the City Council that any contract entered into in violation of this Section shall not be void, but that the contract be voidable at the option of the City Council. Nothing herein modifies the City's right to terminate a contract in accordance with its terms.
- (b) Unless the application of this Section shall be waived by the City Council, the City shall not enter into a contract:
  - (1) With an individual who has been convicted of a public entity crime within the past three years in a local, state or federal court;
  - (2) With a corporation, partnership or other business entity whose affairs and policies are legally or factually controlled by an individual (either directly or through intermediaries)

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convicted of a public entity crime within the past three years in a local, state or federal court; or

- (3) With a corporation, partnership or other business entity which is owned by a corporation, partnership or other business entity (either directly or indirectly through intermediaries) convicted of a public entity crime within the past three years.
- (4) With any company, individual or entity who employs individuals who are not legally authorized to be in the United States of America. Any company, individual or entity entering into a contract with the City of Jacksonville shall verify all workers are properly authorized and legally permitted to perform work in the United States by E-verify or other similar verification methods.

Any contract entered into in violation of this subsection is voidable at the option of the City Council.

(c) As used in this Section:

- (1) *City* means the City and all its departments, agencies, independent agencies and anyone required to use the Department.
- (2) *Convicted* or *conviction* means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal, state or local court of record relating to charges brought by indictment or information as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
- (3) *Owned* means a 20 percent or more ownership.
- (4) *Public entity crime* means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, perjury, or material misrepresentation.

(d) The City Council may, by ordinance, waive the provisions of this ordinance, or ratify any contract issued in violation of this Section after considering the following factors:

- (1) The nature and details of the public entity crime.
- (2) Whether the public entity crime was committed by the individual, corporation, partnership or other public entity seeking the contract or by an individual in factual control or by a direct or an indirect owner.
- (3) The degree of capability, if any, of the individual, corporation, partnership or other business entity seeking the contract.
- (4) The promptness of the payment of any damages or penalty agreed upon or assessed in connection with the conviction.
- (5) The level of cooperation with state or federal investigation or prosecution of the public entity crime at issue; provided that a good faith exercise of any constitutional, statutory, or other right during any portion of the investigation or prosecution of any public entity crime shall not be considered a lack of cooperation.
- (6) The disassociation from any individual convicted of the public crime.
- (7) The commitment, if any, to self-policing to prevent public entity crimes.
- (8) The reinstatement or grant of clemency by any jurisdiction in relation to the public entity crime at issue in the proceeding.
- (9) The need for completion in the procurement of goods and services.
- (10) The demonstration of good citizenship by the individual, corporation, partnership or other business entity seeking the contract.

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(11) The cost to the City in voiding a contract or of refusing to waive the provisions.

A waiver or ratification under this Section shall only cure a contract voidable under this Section to the extent of the disclosure made in the sworn statement provided to the Chief of Procurement, hereinafter for this Chapter "Chief", includes, without limitation: (i) the name of the vendor; (ii) the business address of the vendor; and (iii) a statement that the vendor is not prohibited from contracting with the City under this Section; or if the vendor is prohibited from contracting with the City under this Section, the name and location of the local, state or federal court, the style of the case (including the case number) and a brief description of each count under which the vendor, the corporation, partnership or other business entity which owns the vendor, or the individual in control of the vendor was convicted.

(e) No party shall have standing to enforce this Section in a court of competent jurisdiction except the City.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1; Ord. 2010-712-E, § 1; Ord. [2017-288-E](#), § 7)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.105. - Planning and Development Department review of capital improvement projects.**

- (a) No department, board or independent agency of the City shall provide for a capital improvement or project, as defined in subsection (b) of this Section, unless prior thereto the projects and improvements have been submitted to the Planning and Development Department in sufficient time to permit the Planning and Development Department to advise the Mayor, the City Council and the proposing department or agency of the findings and recommendations of the Planning and Development Department concerning the proposed project or improvement.
- (b) For the purposes of this Section 126.105, a capital improvement or project is defined as acquisition, lease, construction or disposition of a street; park; public way; bridge; ground; open space; a public building, including a hospital, educational or other structures; public- or privately-owned utility lines or terminals; and public developments or redevelopments or renewal projects; which either have a useful life of more than five years or require an appropriation that exceeds the threshold amount provided in F.S. § 287.017, for Category Two, as may be revised from time to time, in any one fiscal year or as may be reasonably foreseen for the period of its duration, excluding:
  - (i) Routine widening or surfacing of streets and highways where additional rights-of-way are not acquired; and
  - (ii) The repair or acquisition of new or used machinery.

(Ord. 2004-602-E, § 4; Ord. [2017-288-E](#), § 7)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### **Sec. 126.106. - Regulations and procedures.**

The Chief shall prepare and maintain a current Procurement manual containing detailed regulations and procedures relative to the implementation of this Chapter. The manual shall:

- (a) Prescribe the operation of the City's Procurement system to be followed by using agencies.
- (b) Prescribe internal operations to be followed by the Division.
- (c) Prescribe the City's procurement regulations and policies to be followed in its relations with the business community.
- (d) Prescribe specifications for standardized items purchased by the City and using agencies. The Chief shall issue the manual and shall secure compliance therewith by the using agencies. The regulations and procedures shall represent a complete plan of operation for the City's purchasing system.
- (e) The Chief shall prepare and publish rules and regulations governing bid protests.
- (f) Nothing in this Section shall be construed as limiting or superseding the provisions of Section 126.201.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.107. - Exemptions.**

Unless ordered by the Mayor or City Council or otherwise required by the Jacksonville Ordinance Code, the following supplies, contractual services, professional design services, professional services, capital improvements and/or sales transactions are exempt from competitive solicitation:

- (a) Artistic services or performances;
- (b) Lectures by individuals;
- (c) Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration;
- (d) Services provided to persons with mental or physical disabilities by not-for-profit corporations which have obtained exemptions under the provisions of § 501(c)(3) of the United States Internal Revenue Code (in acquiring such services, the ability of the vendor, past performance, willingness to meet time requirements and price shall be considered in an effort to obtain the highest quality services at the greatest economic value to the City).
- (e) Prevention services related to mental health, including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways, operated by not-for-profit corporations (in acquiring such services, the ability of the vendor, past performance, willingness to meet time requirements and price shall be considered in an effort to obtain the highest quality services at the greatest economic value to the City).
- (f) Supplies or services or commodities provided by governmental entity or agencies.



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- (g) Supplies or services to be provided by those specifically prescribed within authorizing legislation that appropriates the same.
- (h) Supplies or services procured utilizing General Services Administration, State of Florida and other contracts and agreements that have been competitively procured, awarded and contracted by a federal, state, municipal, County, or local governmental entity, body politic, or using agency, provided that said procurement is not otherwise prohibited by law.

(Ord. 2004-602-E, § 4; Ord. [2017-288-E](#), § 7)

#### **Sec. 126.108. - Access to and examination of records of certain vendors.**

- (a) A person or entity providing capital improvements, contractual services, supplies, professional design services, or professional services purchased by the City pursuant to a method of purchase, unless otherwise provided herein, shall agree and be deemed to have agreed by virtue of doing business under contract with the City to allow access and examination at all reasonable times by the City Council Auditor or any duly authorized representative of the City Council Auditor to business records directly pertinent to the transaction until the expiration of three years after final payment pursuant to the transaction. No examination shall be conducted until the City Council Auditor has made a recommendation to the City Council President that the examination should or, in the alternative, should not be conducted and until the City Council President has approved the conducting of the examination.
- (b) Specific language that vendors shall comply with all applicable federal, state and local laws, rules and regulations as the same exist or as may be amended from time to time, including, but not limited to the Public Records Law, F.S. Ch. 119, shall be included in all contracts which fall within the criterion established by subsection (a) of this Section.

(Ord. 2004-602-E, § 4; Ord. [2017-288-E](#), § 7)

#### **Sec. 126.109. - Unauthorized purchases and contracts.**

- (a) It shall be unlawful for an officer or employee of the City or of an independent agency required to use the services of the Division willfully or negligently to order any purchase or to make a contract in a manner contrary to the provisions of this Procurement Code. A purchase ordered or contract or sales transaction made contrary to the provisions hereof shall be null and void unless and until accepted and ratified by the appropriate awarding authority, which awarding authority shall then advise the Chief and the City Council Auditor as to its disposition. Unless authorized or permitted to do so by executive order of the Mayor, no one other than those described in Section 126.103 hereof shall have the authority, whether actual or apparent, to execute or order any purchase, make any contract or contract modification, or make any sales transaction on behalf of the City.
- (b) The Chief shall refer all purchases, contracts, or sales transactions made contrary to the provisions of this Procurement Code to the appropriate awarding authority and a copy to the Mayor and City Council Auditor, designating the purchase, contract, or sales transaction as unauthorized with a recommendation as to its disposition. Relevant facts or information in the possession of the Chief believed to aid the awarding authority in its determination shall be included.

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- (c) It shall be unlawful for an officer or employee of the City, or of an independent agency required to use the services of the Division, to expend funds for any artwork or improvement which includes thereon a likeness of any living person. The prohibition contained herein shall not apply to the expenditure of funds for a photograph or portrait of a public employee or official kept in the normal course of business, in the offices where the public employee or official conducts business, nor for random decorative art work which is not intended as recognition for the living persons depicted.

(Ord. 2004-602-E, § 4; Ord. 2006-863-E, § 11; Ord. [2017-288-E](#), § 7)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.110. - Public official bid and contract disclosure and prohibition.**

- (a) A public official who knows that he or she has a financial interest in a bid or contract shall make disclosure in writing to the Division or using agency, whichever is receiving or has received the bid or contract, (i) at the time that the bid or contract is submitted or subsequently no later than the close of the second full, regular work day after the bid or contract is submitted (not including the day that the bid is submitted or any Saturday, Sunday or City holiday), or (ii) prior to or at the time that the public official acquires a financial interest in the bid or contract and such disclosure shall include but not be limited to the following: the bid number, the name of the public official and his or her public office or position, the name and address of the business entity in which the public official has a financial interest, and the position or relationship of the public official with that business entity.
- (b) It shall be unlawful and a class D offense for a public official to fail or refuse to make the disclosure required in subsection (a) of this Section.
- (c) For purposes of this Section, *bid* means any telephone or written bid, written proposal, written quote or written offering of any kind or description whatsoever submitted for the purpose of being awarded or entering into a contract, purchase agreement, sales transaction, or other contractual agreement with the City under the provisions of this Procurement Code.
- (d) For purposes of this Section, *Contract* means any contract, agreement, purchase order or other document used to evidence the existence of a purchase or sales transaction under the provisions of this Procurement Code, or any subsequent change order or amendment to any such contract document.
- (e) For purposes of this Section, *public official* means any one or more individuals who have been elected to any state or local office and which office has a geographical jurisdiction or description covering all of, more than but including all or a portion of, or less than but including a portion of, Duval County, Florida, any one or more individuals who have been appointed to the governing body of any independent agency of the City, or an appointed employee of the City.
- (f) For purposes of this Section, *financial interest* means any ownership interest of a public official in any proposer, bidder, contractor, or first tier subcontractor (that is, a person or business entity under contract to provide or providing capital improvement services, professional design services, professional services, labor, materials, supplies or equipment directly to the proposer, bidder, or contractor) whereby the public official knows that he or she has received or will receive any financial gain resulting from or in connection with the soliciting, procuring, awarding, or making of a bid or contract; provided, however, financial interest shall not include any interest in any increase in value of, or dividends paid on, any stock which is publicly traded on any public stockexchange.
- (g) Notwithstanding other penalties described herein, those who violate this Part 6 shall be subject to withholding of payments under the contract, termination of the contract for breach, contract penalties, decertification and/or being debarred from or deemed nonresponsive in future City solicitations and contracts for up to three years (for less egregious violations, as determined by the Chief, a period of

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probation may be proposed, any violations during which period will result in debarment of no less than three years).

- (h) The City or using agency, as the case may be, acting by and through its awarding authority may: (i) nullify and terminate the purchase and sales transaction and any contract arising from or in connection with any bid or contract involving failure or refusal to disclose a financial interest of a public official as described in this Section; and (ii) declare the same null and void.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.111. - Payment of city contracts.**

- (a) *Timing.* The City shall endeavor to pay contractors monthly, upon proper payment application to the applicable City Department. City Departments are to perform all necessary inspections and otherwise endeavor to ensure that prompt review and as applicable approval that certified work is completed. The City shall pay all approved invoices promptly.
- (b) *Certification of payment by contractor.* As a condition precedent to the City's obligation to make a progress or final payment on a capital improvement project, a prime contractor shall give to the city a payment affidavit stating, if that be the fact, that any and all subcontractors, suppliers, laborers and others furnishing labor, services, or materials on the capital improvement project under contract with or at the direction of the prime contractor have been paid in full or, if the fact be otherwise, showing the names and contact information for all subcontractors, suppliers, laborers and others who have not been paid in full and the amount due or to become due each of them for labor, services, or materials furnished. The affidavit should be in a form approved by the Director of Finance and Administration.
- (c) *Joint Payment.*
  - (1) All contracts in amounts up to \$500,000, where payment or performance bonds have been waived in accordance with Section 18.11 of the Charter, shall provide for the joint payment of contractors and subcontractors for services rendered.
  - (2) As to all other contracts not included in subsection (1) above, where payment or performance bonds are not required as a matter of law, the City may, at the City's option, pay the Contractor and any sub-contractors jointly.

(Ord. 2007-278-E, § 1; Ord. 2010-679-E, § 1; Ord. 2011-732-E; Ord. [2016-140-E](#), § 16)

#### **Sec. 126.112. - Ex-Offender Re-entry Requirements.**

- (a) *Statement of policy.* It is the policy of the City of Jacksonville that the rehabilitation of ex-offenders is an essential component in a community fight against criminal activity; the hiring of ex-offenders into fair paying jobs helps restore the economic stability of ex-offenders, perpetuates their rehabilitation, reduces recidivism and contributes to a community crime free environment; providing consideration and opportunities to ex-offenders with companies doing business with the City of Jacksonville can be accomplished without compromising the security of the businesses, or the City and its citizens, and without unnecessarily depriving others of opportunities; and that the City of Jacksonville should take a leading role in the rehabilitation of ex-offenders, and has done so through the City's third-party service provider ex-offender re-entry programs that provide job training and/or job placement services to Ex-Offenders.

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(b) *Definitions.*

- (1) *City Ex-Offender Program Providers* shall collectively mean the Jacksonville Sheriff's Office Jacksonville Re-Entry Center and any entity under contract with the City to provide job training and/or job placement services to Ex-Offenders.
- (2) *Contractor* for purposes of this Section only shall mean a person or entity awarded a City contract in the amount of \$200,000 or greater.
- (3) *Ex-Offender* means a person who has pled guilty, no contest or nolo contendere to a felony offense; or has been found guilty of a felony offense by a judge or jury; regardless of adjudication of guilt.
- (4) *Ex-Offender Program Provider* shall mean the Jacksonville Sheriff's Office Jacksonville Re-Entry Center, any entity under contract with the City to provide job training and/or job placement services to Ex-Offenders, or any other entity that specializes in job training and/or job placement services for Ex-Offenders.

(c) *Contracting requirements for businesses contracting with the City of Jacksonville.* No contract in an amount of \$200,000 or greater for construction, remediation, or capital improvements shall be awarded unless the Contractor agrees in writing on a bid form provided by the City (the "Form 4A") to do the following (collectively, the "Form 4A Requirements"):

- (1) Identify potential job opportunities under the project that may be available for Ex-Offenders after contract award;
- (2) Consider for job placement after contract award at least one otherwise qualified Ex-Offender, to the extent a job opportunity is available under the project and an otherwise qualified Ex-Offender has applied for such job;
- (3) Execute a notarized compliance tally report ("Compliance Report") at the time of submission of progress payment(s) on such Contractor's employment practices and experience during the project with respect to the hiring of Ex-Offenders that includes the following information: (i) the number of Ex-Offenders hired and currently working, or an explanation as to why no Ex-Offenders have been hired; (ii) the number of Ex-Offenders interviewed for employment under the project; (iii) an explanation as to why any Ex-Offender who applied for employment was refused employment; (iv) whether the Contractor maintains an employment policy that Ex-Offenders will be given full and fair consideration in employment; (v) whether the Contractor indicates on recruitment literature that Ex-Offenders will be given full and fair consideration in employment by the Contractor; (vi) whether a job opening under the project was available during the reporting period; and (vii) a statement from the Contractor that the Contractor has contacted an Ex-Offender Program Provider no later than 30 days after the issuance of a notice to proceed under the project to obtain information regarding available Ex-Offenders for employment; and
- (4) Assist the City in addressing the goal of securing employment for Ex-Offenders by complying with the City's Procurement Rules Regarding Ex-Offenders, as may be amended.

(d) *Compliance; Exemption.* To the extent permitted by applicable state or federal law, if a Contractor fails to comply with the Form 4A Requirements, the City may withhold payments due under the contract until such Contractor has complied with the same. Notwithstanding the foregoing, if a Contractor hires an Ex-Offender during the project and indicates the same on the Compliance Report, upon providing the City with satisfactory evidence of the hire, such Contractor shall be exempt from performing the Form 4A Requirements for the remainder of the project term. For purposes of this subsection, "satisfactory evidence" shall include, without limitation, the Contractor's payroll information and other information obtained from the Florida Department of Corrections website. The Contractor shall include such satisfactory evidence of the Ex-Offender hire with the Compliance Report.

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- (e) *Webpage Information.* The Chief of Procurement shall list the address and contact information of the City Ex-Offender Program Providers on the City's Procurement Division webpage. To the extent permitted, the City may request the City Ex-Offender Program Providers to compile a listing of available Ex-Offenders for employment by skillset and provide Contractors with such listing upon request. The Chief of Procurement shall also provide the City Ex-Offender Program Providers with the winning bidder's contact information for each approved construction, remediation or capital improvement project award letter in an amount of \$200,000 or greater.
- (f) *Reporting.* The Chief of Procurement shall provide an annual report to the Mayor and the City Council no later than December 31 of each fiscal year for the previous fiscal year on the information provided by Contractors on the Compliance Report pursuant to this Section. The first such report shall be due no later than December 31, 2018 for the fiscal year beginning October 1, 2017 and ending September 30, 2018. Such annual reports shall at a minimum include information and data regarding the number of:
- (1) Ex-offenders hired by Contractors pursuant to this Section;
  - (2) Ex-offenders interviewed by Contractors;
  - (3) Ex-offenders who applied for employment with a Contractor and were denied employment;
  - (4) Contractors that maintained an employment policy providing that Ex-Offenders will be given full and fair consideration in employment;
  - (5) Contractors that have indicated on recruitment literature that Ex-Offenders will be given full and fair consideration in employment by the Contractor;
  - (6) Contractors that reported no job opening and no hiring during the project;
  - (7) Contractors that contacted Ex-Offender Program Providers;
  - (8) Contracts awarded to Contractors for construction, remediation or capital improvement projects in an amount of \$200,000 or greater and the aggregate contract award amount; and
  - (9) Contractors that failed to comply with this Section.

(Ord. 2008-911-E, § 2; Ord. 2009-183-E, § 3; Ord. [2017-35-E](#), §§ 1, 2)

#### **Sec. 126.113. - Compliance with federal and state procurement requirements to receive and expend grant funding.**

To the extent that a conflict exists between the provisions of this Chapter and the provisions of federal and/or state procurement requirements necessary to receive and expend grant funding pursuant to Chapter 117, Ordinance Code, the Chief, in his or her discretion in consultation with the Office of General Counsel, is authorized to waive any such conflicting Code provision in this Chapter and comply with the federal and/or state procurement requirement. In the event that a Code provision is waived pursuant to this section, upon final approval of the contract award, the Chief shall notify the City Council Auditor and the City Council Secretary of the same.

(Ord. [2016-763-E](#), § 1; Ord. [2017-288-E](#), § 7)

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#### **Sec. 126.114. - Buy American preference in contracts for goods.**

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

*Bid* means a competitive bid procedure established through the issuance of an invitation for bid. The term "bid," as used herein, shall not include requests for proposals (unless specified in the RFP document), requests for qualifications, requests for quotes and requests for information.

*Buy American preference* means and shall apply to the following products that are:

1. *Manufactured.* The term "manufactured" is interpreted to mean to make or process a raw material into a finished product or to turn-out in a mechanical manner;
2. *Assembled.* The term "assembled" is interpreted to mean to fit or to join parts together into a finished product;
3. *Produced.* The term "produced" is interpreted to mean to create or make from raw materials.

To qualify for this preference, 51 percent of the components of the final product manufactured, assembled or produced to be sold to the City must be made in the United States. The Chief shall administratively resolve any issues relating to Buy American preferential status, and that decision on whether a vendor is eligible for a Buy American preference shall be final.

*Goods* includes, but is not limited to, supplies, equipment, materials, and printed matter.

(b) *Exemptions.* The provisions of this section do not apply to:

1. Purchases or contracts with an estimated cost below the formal thresholds described in Chapter 126.102(g), Ordinance Code. The Chief and procurement staff will attempt to select products manufactured, assembled or produced in the United States if the quality and price are comparable with other goods.
2. Professional services, which are defined, for purposes of this section, as any services where the City is obtaining advice, instruction, or specialized work from an individual, firm, or corporation specifically qualified in a particular area, and also those services procured pursuant to F.S. § 287.055, the Consultants' Competitive Negotiation Act.
3. Bids for the purchase of, or contract for, the construction/ renovation of public buildings, facilities, public works, or other public construction projects.
4. Goods provided under a cooperative purchasing agreement or utilization of other agency contracts (piggyback contracts).
5. under emergency or noncompetitive situations (single source, or a special procurements/bid waiver), or for legal services.
6. The business is determined to be unqualified to perform the work as determined by the City.
7. The business submits a bid that exceeds the projected budget.
8. Contracts awarded pursuant to Jacksonville Small Emerging Business Program, as provided in Part 6B, Chapter 126, Ordinance Code, including those contracts where a low bidder is a prime JSEB contractor on a non-set aside bid.

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- (c) *Preference in purchase of goods.* Except where federal, state or local laws, regulations or policies mandates to the contrary, in the purchase of goods by means of a competitive bid, a preference will be given to a responsive and responsible vendor offering American manufactured, assembled or produced goods, who is within five percent of the lowest responsive and responsible bidder, by way of an opportunity of providing said goods for the lowest responsive and responsible bid amount.
- (d) *Preference must be asserted.* Said five percent buy American preference must be asserted by the party seeking it at the time of the competitive bid with the submittal of documentation supporting the assertion that a product is American manufactured, assembled or produced, and shall be calculated by the procurement division in rating competitive bids.
- (e) *Comparison of qualifications.* The preferences established herein in no way prohibit the right of the Chief to compare quality of goods proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids. Further, the preferences established herein in no way prohibit the right of the Chief from determining based on criteria and standards developed administratively to allow for selection by preference permitted in another section of this Chapter.
- (f) *Waiver.* The application of the buy American preference to a particular purchase, contract, or category of contracts for goods may be waived upon written recommendation of the Chief and approval of the Chief Financial Officer of the City.
- (g) *Administrative Policy for Implementation.* The Chief shall be charged with the responsibility to promulgate an administrative policy or regulations consistent with this Section which establishes criteria and procedures for the implementation of this policy including matters involving the consideration of exemptions, comparison of qualifications, and waiver of the policy as provided herein.
- (h) *Declaration of municipal purpose.* The Council finds that the economic welfare and security of its residents is of utmost concern to a local government. Local and regional preferences can stimulate and sustain the local economy and thereby provide a public benefit. Likewise, a domestic preference policy which encourages the selection and utilization of American-made goods and products can similarly be a stimulus to the local and regional economy by encouraging the production, manufacture and assembly of products which would be suitable for use in American-made products. Therefore, it is hereby declared that the carrying out of the purposes of this section by the City is deemed to be furthering a proper municipal purpose.

(Ord. [2020-238-E](#), § 1)

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#### PART 2. - SUPPLIES, CONTRACTUAL SERVICES AND CAPITAL IMPROVEMENTS

Sec. 126.201. - General.

Sec. 126.202. - Competitive sealed bid.

Sec. 126.203. - Multi-step competitive sealed bidding process.

Sec. 126.204. - Competitive sealed proposal process.

Sec. 126.205. - Informal purchases and sales transactions.

Sec. 126.206. - Single-source, noncompetitive purchases.

Sec. 126.207. - Emergency purchases.

Sec. 126.208. - Prohibition of purchases from certain persons.

Sec. 126.209. - Purchase of art reproductions.

Sec. 126.210. - Purchase of property from governmental bodies at auction.

Sec. 126.211. - Utilization of competitively procured governmental agreements.

Sec. 126.212. - Specifications.

Sec. 126.213. - Standardization of supplies and equipment.

Sec. 126.214. - Surplus supplies.

Sec. 126.215. - Purchase of passenger motor vehicles.



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#### 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.
- (2) A disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of any of the terms or conditions of the bid submitted by another competitor may render those bidders' bids void and, subject to applicable requirements and/or discretion described herein, may result in forfeiture of the offender's bid bond, which shall also be considered in violation of subsection 126.201(e)(3) and (5).

(b) *Bid bond and/or security.* Except as otherwise provided herein, all bids under this Part 2 shall be submitted in sealed form to the Chief, who may require that each bid be accompanied by a bid security in the form of a certified or cashier's check or bid bond in the amount as shall be prescribed in the invitation for bid. The purpose of bid security is to discourage the withdrawal of bids, to encourage that bidders comply with the instructions and/or requirements of the invitation for bids, and that the apparent low bidder will enter into a binding contract to perform the work in accordance with the bid documents and the apparent low bidder's bid proposal. Bid securities ensure that a certain amount of money will be paid in the event that an apparent low bidder fails to abide by the instructions and/or requirements of the invitation for bids or fails to enter into a formal contract pursuant to the same. As such, unless otherwise permitted by the Chief, bid securities shall not be discharged until a contract has been executed and a performance bond accepted in lieu of the bid securities. In lieu of the furnishing of surety with each individual transaction, bidders who regularly do business with the City shall be permitted to file with the Chief an annual or continuing bid bond in an amount established by the Chief. For projects with a value under \$500,000: (i) bid bonds shall not be required for certified JSEBs and MBEs (which, by definition in 6B, includes minority and women-owned businesses), as defined in Chapter 126 Part 6; and (ii) the Chief shall have the discretion to waive the requirement for bid bonds where there is a written determination that the imposition of a bid bond may detract from competition without adding a material benefit to the City.

(c) *Conflict of interest.* Any bid, proposal, or response to a solicitation made pursuant to Chapter 126 (Procurement Code), Ordinance Code, shall include a statement under oath executed by the bidder, proposer, or provider of the response disclosing the names of all officers and employees of the City and of independent agencies to which F.S. Ch. 112, Pt. III, applies who may have a private financial interest, directly or indirectly, in the award and/or subject matter of the bid, proposal, or response.

(d) *General Governmental Awards Committee.*

- (1) *Creation.* There is hereby created a General Governmental Awards Committee (the "GGAC"), which shall consist of the Director of Finance and Administration or his designee, who shall act as the GGAC Chairperson, the General Counsel or his designee, and Director of Public Works or his designee; provided, that, when the using agency is an independent agency required by law to utilize the services of the Division, the Chief Administrative Officer or his designee of the using agency shall be a member of the GGAC in lieu of the Director of Finance and Administration; and further provided, that, when the Downtown Development Authority is the using agency, the executive director shall be a member in lieu of the Chief Administrative Officer. Whenever one of the members is temporarily unable to serve on the GGAC, the member shall designate a designee serving under him to serve on the GGAC in his absence. A representative of a using agency shall be required to attend meetings of the GGAC at which business affecting the using agency is to be conducted. The representative shall be entitled to

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be heard but shall have no vote at the meetings; provided, that the provisions of this sentence shall not apply to the executive director or the Chief Administrative Officer, as the case may be, of an independent agency when he is serving as a member of the GGAC. An independent agency may promulgate its own rules or procedures to resolve bid or qualification disputes or employ those stated in this Part 2.

- (2) *Formal Awards.* The GGAC shall act as provided in this Part 2; however, unless otherwise provided by executive order of the Mayor, relative to the designation or delegation of the Mayor's approval authority, the awarding of formal bids and contracts shall become final only upon approval by: (i) The independent agency when it is the using agency; or (ii) the Mayor or his designee (collectively hereafter referred to as the "Mayor") in all other areas.
- (3) *Duties.* Except in cases where independent agencies are directed by law to award their respective formal bids and contracts, the GGAC shall meet as required for the purpose of: (i) reviewing the recommendations of the Chief or his designee; (ii) awarding formal bids and contracts solicited in accordance with this Part 2; (iii) canceling any solicitation made in accordance with this Part 2 or rejecting any and all bids, in whole or in part, or bids for one or more supplies, contractual services or capital improvements included in the proposed bid when the public or City's interest will best be served thereby; and (iv) waiving minor irregularities as the best interest of the City so dictates. If there exists a tie between the lowest responsive, responsible bids meeting or exceeding published specifications in regard to the same total amount or unit price, including base bids and alternates, if any, and quality and service are also equal, and if the delay caused by re-advertising for bids will be substantially detrimental to the public interest, the GGAC shall give preference to the local bidder. Subject to this consideration, the Mayor may authorize the GGAC: (i) if there is no local tie bidder, to award the contract to one of the tie bidders by drawing lots in public; or (ii) if there is more than one local tie bidder, to award the contract to one of the local tie bidders by drawing lots in public.
- (4) *Negotiations.* In the event the base bids received from all responsive, responsible bidders exceed available and/or allocated funds, and the lowest, responsive, responsible bidder's bid does not exceed said funds by more than ten percent, or a higher percentage if so warranted by circumstances that necessitate an emergency award, and if the delay caused by re-advertising for bids will be substantially detrimental to the public interest, the GGAC may authorize the using agency to enter into negotiations with the lowest responsive responsible bidder for an adjustment of the bid base price, including, without limitation, changes to the criteria and/or scope of work set forth in the invitation for bids, in an effort to bring the bid within available and/or allocated funds. Upon the conclusion of the negotiations, the using agency shall provide the Chief with detailed written notification of the results of negotiations for submission to and final consideration and recommendation by the GGAC and approval in accordance with Section 126.201(d)(2), hereof.
- (5) *Minutes.* The GGAC shall keep official minutes of its meetings, which shall be maintained on file in the Division as a permanent electronic or physical public record. The minutes may take the form of verbatim tape recording or other verbatim electronic recordings of the GGAC proceedings.
- (6) *Public notice of meetings.* The GGAC shall cause a written notice of the time, place and purpose of each of its meetings to be filed as a public record with the Corporation Secretary and with the City Council Secretary at least 24 hours in advance of said meetings.
- (7) *Change Order.*
  - a. Change orders resulting from unforeseen conditions, as determined by the Director of Public Works or his or her designee, in an amount greater than ten percent of the award amount in the aggregate must be approved by the applicable awards committee. Change orders regarding unforeseen conditions up to and including ten percent of the award

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amount shall be approved by the Director of Public Works or his designee and the Director for the requesting department.

- b. Change orders resulting from reconciliation of quantities, as determined by the Director of Public Works or his or her designee, in an amount greater than ten percent of the award amount in the aggregate must be approved by the applicable awards committee. Change orders regarding reconciliation of quantities up to and including ten percent of the award amount shall be approved by the Director of Public Works or his designee, and the Director for the requesting department.
  - c. Change orders resulting from errors and omissions, as determined by the Director of Public Works or his or her designee, in an amount greater than 10 percent of the award amount in the aggregate must be approved by the applicable awards committee. Change orders regarding errors and omissions up to and including ten percent of the award amount shall be approved by the Director of Public Works or his designee, and the Director for the requesting department.
  - d. Except as stated in (7)a., b. and c. above, all change orders related to procurements subject to GGAC approval must be approved by the GGAC.
- (e) *Bidder's responsibility.* After considering recommendations made by the Chief or his designee and the GGAC, the Mayor, in accordance with Section 126.201(d)(2), hereof, may approve or authorize the GGAC to award formal bids and contracts to the lowest responsive, responsible bidder meeting or exceeding published specifications set forth in the invitation for bids. Prior to making an award hereunder, the Chief and the GGAC shall make a determination as to the responsibility of bidders, which determination shall consider the following factors:
- (1) The ability, capacity, skill and applicable licensing and insurance of the bidder to perform the contract or provide the service required.
  - (2) The capability of the bidder to perform the contract or provide the service promptly or within the time specified without delay or interference.
  - (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
  - (4) The quality of performance of previous contracts or services.
  - (5) The previous and existing compliance by the bidder with laws relating to the contract or services.
  - (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
  - (7) The quality, availability and adaptability of the supplies, contractual services or capital improvements to the particular use required.
  - (8) The ability of the bidder to provide further maintenance and service for the use of the subject of the contract.
  - (9) The number and scope of the conditions attached to the bid.
  - (10) Whether the bidder has engaged in conduct prohibited by Section 126.201(l)(1), hereof.
  - (11) Where applicable, whether the bidder is prequalified pursuant to the City's requirements.
  - (12) Other information as may be secured by the Chief having a bearing on the decision to award the contract.

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- (f) *Notice of noncompliance.* Prior to the award in question and upon a determination of a bidder's irresponsibility, the Chief shall provide said bidder with a written notice of non-compliance via certified mail, return receipt requested, and via U.S. Mail or facsimile, stating the basis for the determination of irresponsibility and, if applicable, the rejection of the bidder's bid or proposal, and whether said irresponsibility will result in the bidder's removal from the bidders' list or exclusion from consideration on a particular procurement solicitation and/or award. As part of the notice of non-compliance, the Chief shall advise the bidder: (i) of the date and time that the GGAC will hear the recommendation of award in question, if any; and (ii) that, if it fails to properly and timely provide the Chief with a written Notice of Protest in accordance with the Division's Protest Procedures, stating, in detail, the grounds on which the protest is based, then the action contained in the notice of non-compliance shall become final without further notice, and shall represent final administrative action. If, in response to a notice of non-compliance, the bidder properly and timely provides a written Notice of Protest in accordance with the Division's Protest Procedures, the bidder shall be entitled to a hearing before the GGAC within a reasonable time thereafter, which hearing must occur prior to GGAC's decision regarding the award in question, if any. Within a reasonable time after hearing the protest and considering the evidence and/or statements presented, the GGAC shall issue its recommendation regarding the award in question and the action proposed by the Chief in the notice of non-compliance. A determination inconsistent with the notice of non-compliance shall not preclude the factual particulars on which said notice was based from being considered in conjunction with additional information in subsequent evaluations of responsibility, disqualification, or debarment.
- (g) *Formal contract.* The Mayor may require the successful bidder to promptly execute a formal contract approved as to its form, terms and conditions, and legal sufficiency by the Office of General Counsel and to execute and deliver to the Chief a good and sufficient payment and/or performance bonds in a form approved by the Office of General Counsel, in an amount equal to 100 percent of the contract price of a capital improvement project and in an amount established by the Chief for all other projects, subject to the discretion of the GGAC or as otherwise provided herein, and executed by a surety company authorized to do business in Florida; however, a successful bidder who is awarded a formal contract for less than the discretionary threshold amount indicated in F.S. § 255.05(1)(a), for a county, city, political subdivision, or public authority, or such higher amount as may be permitted by law (the "Discretionary Bond Threshold"), may, at the discretion of the GGAC, upon the request of the using agency and recommendation of the Chief, be exempted from executing the otherwise required payment and performance bonds. Formal contracts shall not be executed and notices to proceed shall not be issued for projects, on which successful bidders are required to provide and/or have not been exempted from providing payment and performance bonds, until such time as the requisite payment and performance bonds have been furnished by the successful bidder. The successful bidder's failure to execute the formal contract and to secure the payment and performance bonds and return the same to the City within the time period set forth in the invitation for bids may result in the successful bidder's forfeiture of the award and forfeiture of the bid security to the City. The award may then be made to the next lowest responsive, responsible bidder or re-advertised as the Chief may elect. For certified JSEBs, as defined in Chapter 126, Part 6, performance bonds shall not be required on City projects with a value less than the Discretionary Bond Threshold. Final determinations on the need for payment bonds for projects under the Discretionary Bond Threshold shall be made by the Chief after determining if there is an alternate form of security or payment method more readily available or appropriate.

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- (h) *Legal approval.* Bond forms and contract forms shall be approved by the Office of General Counsel.
- (i) *Execution of purchase orders.* Purchase orders, except those for capital improvements, shall be executed by the Chief after approval by the Mayor and the Director of Finance and Administration as to the availability of funds.
- (j) *Prequalification.* Consistent with Section 126.203, hereof, bidders may be prequalified for any procurement that is in the City or its using agency's best interests. The Chief is authorized to promulgate guidelines and criteria for the pre-qualification of bidders. Provided, however, that for certified JSEBs, as defined in Chapter 126, Part 6, prequalification is not required for any capital project with a value less than \$500,000.
- (k) *Value engineering.* As permitted by state law, in addition to the purchasing provisions set forth in this Chapter, value engineering may be negotiated post-bid and pre-award, pursuant to the guidelines and criteria promulgated by the Chief, which guidelines and criteria require prior review and approval by City Council. Prior to negotiating value engineering, said guidelines and criteria shall be filed with the City Council Secretary and City Council Auditor. If value engineering is negotiated, post-bid or pre-award, there shall be submitted to City Council and City Council Auditor, within 30 days of contract award, a written report identifying the project and reason for negotiated value engineering.
- (l) *Contractor debarment.*
  - (1) *Chief's discretion and recommendation.* The Chief shall have the discretion to recommend the debarment or removal of a contractor and/or vendor from the bidders' list established herein, who: (i) is more than 60 calendar days in default or breach of a contract with the City; (ii) has failed to perform or has unsatisfactorily performed the terms and conditions of one or more contracts with the City, which failure to perform or unsatisfactory performance was the result of circumstances within the contractor or vendor's control; (iii) may be precluded from contracting with the City because of a public entity crime pursuant to Section 126.104, hereof; (iv) has failed to abide by the federal, state and local prompt payment requirements or contractual terms and conditions regarding the same; (v) has failed to abide by or honor commitments made pursuant to applicable participation goals associated with small or disadvantaged businesses; (vi) has violated § 101 of the Immigration Reform and Control Act of 1986, as may be amended from time to time; (vii) has engaged in conduct prohibited hereunder or that is a serious threat to the integrity of the public procurement and contracting process, as determined by the Chief; or (viii) has been debarred by another government entity within the past three years. No contractor or vendor shall be entitled to have its name restored to the bidders' list unless and until it shall have remedied any underlying default and/or breach to the satisfaction of the Chief. Repeated or recurring violations under this Section shall be sufficient reason for the Chief to remove the contractor's name permanently from the bidders' list, subject to review by the GGAC and approval by the Mayor.
  - (2) *Notice of debarment.* Upon reaching a decision to debar a contractor or vendor, the Chief shall provide said contractor or vendor with a written notice of debarment via certified mail, return receipt requested, and via U.S. Mail or facsimile, stating the reason for and the proposed period of debarment (for less egregious violations, as determined by the Chief, a period of probation may be proposed, any violations during which period will subject the contractor or vendor to debarment of no less than three years). As part of the notice of debarment, the Chief shall advise the contractor or vendor that, if, within ten calendar days after the date of the notice, it fails to provide the Chief with a written Notice of Protest that states, in detail, the grounds on which the protest is based, then the action contained in the notice of debarment shall become final without further notice, and shall represent final administrative action.
  - (3) *Protest.* If, in response to a Notice of Debarment, a contractor or vendor timely provides a written Notice of Protest, the Chief shall schedule a hearing before the GGAC within a reasonable period of time after receiving the Notice of Protest. Within a reasonable time after

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hearing the protest and considering the evidence and/or statements presented, the GGAC shall issue its findings and recommendation regarding the action proposed by the Chief. Upon approval by the Mayor, the GGAC's recommendation shall become final, and shall represent final administrative action.

- (4) *Determination.* The determination as to whether a contractor or vendor is in violation hereunder and whether the violation is within the contractor or vendor's control shall be made by the Chief. To aid in this duty, the Chief Administrative Officer of each independent or using agency must inform the Chief whenever a contractor or vendor is considered to be in violation hereunder, regardless of the reason therefor, and provide a statement of the circumstances surrounding the violation. Nothing herein removes the appeals process set forth in this Chapter.
- (m) *Compliance.* All contracts and purchase orders, whether formal or otherwise, entered into pursuant to this Chapter, shall contain specific language requiring the successful bidder or contractor to comply with all applicable federal, state and local laws, rules, regulations and ordinances, as the same exist and as may be amended from time to time, including, but not limited to the Public Records Law, F.S. Ch. 119.
- (n) *Direct negotiations.* Unless otherwise provided herein, direct negotiations with bidders to effect the best interests of the City shall be permitted under all parts and/or sections of this Chapter 126, pursuant to Florida law, for projects that do not exceed the threshold amount provided in F.S. § 287.017, for Category Five, as may be revised from time to time. Direct negotiations shall be conducted in accordance with the guidelines and criteria promulgated by the Chief, which guidelines and criteria require prior review and approval by City Council. Prior to using direct negotiations, said guidelines and criteria shall be filed with the City Council Secretary and City Council Auditor. If direct negotiations are used, there shall be submitted to City Council and City Council Auditor, within 30 days after contract award, a written report identifying the project and reason for direct negotiations.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1; Ord. 2011-535-E, § 1; Ord. [2016-140-E](#), § 16; Ord. [2017-288-E](#), § 7)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.202. - Competitive sealed bid.**

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

- (a) *Solicitation and public notice or advertisement.* The Chief shall solicit bids from responsible bidders, and may do so by issuing public notice or advertisement as will acquaint bidders with the proposed solicitation. The Chief shall cause public notice or advertisement of the solicitation be given a reasonable period of time prior to the public opening or the place, date and time at which responses are due as set forth in the solicitation: (i) by posting said public notice on a bulletin board located in the office of the Division; and (ii) in accordance with Section 126.102(m), hereof. The solicitation shall contain a detailed description of the services sought, the time and date for the receipt of responses and of the public opening, and all contractual terms and conditions applicable to the procurement, including the criteria to be used in evaluating responsiveness and responsibility. The solicitation shall contain a description of any

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renewal(s) contemplated in the underlying contract, and shall require responses thereto to include a price for each renewal year for which the contract may be renewed. Evaluation of responses shall include, in addition to other criteria described in the solicitation, consideration of the proposed total cost for each renewal year. Renewals shall be contingent upon satisfactory performance evaluations by the using agency in question, in concert with the Division and shall be subject to approval by the GGAC and to the availability of appropriated funds. Criteria that are not set forth in the solicitation may not be used in evaluating responses.

- (b) *Public opening and tabulation.* Solicitation responses shall be opened publicly by the Division in the presence of one or more witnesses at the time and place set forth in the solicitation (any response received in advance of the date and time of the public opening shall not be opened until the time set forth in the solicitation). Unless otherwise designated by the Chief, the time of the public opening shall be established by the official bid clock located in the office of the Division, with which potential bidders and proposers are encouraged to familiarize themselves. Subject to the Chief and the GGAC's discretion to waive minor irregularities that will not result in an unfair economic or competitive advantage or disadvantage to any bidder or proposer, any response not received prior to the time specified, as determined by the official bid clock, will not be considered and will be returned as non-responsive. For each timely submitted response, the Division shall immediately record the bidder or proposer's name and information necessary to evaluate the criteria set forth in the solicitation, including, without limitation, the proposed amount, alternates, unit prices, fees, contract renewal amount(s), if any, and such other relevant information as deemed appropriate by the Chief. Responses and tabulations received and/or generated by the Division pursuant to solicitations hereunder are exempt from public inspection or disclosure until such time as the Division provides notice of a decision and/or award regarding the same or within ten calendar days after public opening, whichever is earlier.
- (c) *Response acceptance, evaluation, correction and withdrawal.* Except as otherwise provided herein, timely submitted bids shall be accepted as submitted without alteration, modification, or correction, and shall be evaluated pursuant to the objectively measurable evaluation criteria or factors set forth in the solicitation. After public opening, bidders or proposers shall not be permitted to alter, modify, correct, or unilaterally withdraw their responses and other requirements to the extent the same would negatively impact the integrity of the competitive procurement process or would result in an unfair economic or competitive advantage or disadvantage to any bidder or proposer (any request for alteration, modification, correction, or withdrawal, whether before or after public opening, must be submitted in writing to the Chief). Bidders or proposers shall not be permitted to withdraw their responses unless approved by the Chief upon a showing of the following equitable factors: (i) the bidder or proposer acted in good faith in submitting its response; (ii) in preparing the response there was an error of such magnitude that enforcement of the response would work severe hardship upon the bidder or proposer; (iii) the error was not a result of gross negligence or willful inattention; (iv) the error was discovered and communicated to the Chief, along with a written request for permission to withdraw the response, which request must be submitted before acceptance of the response; and (v) bidder or proposer has no history of submitting erroneous bids or proposals that result in requests to withdraw or alter the same
- (d) *Product acceptability and price.* For purposes of this Section 126.202, *objectively measurable evaluation criteria or factors* means the criteria only as set forth in the solicitation, used to evaluate responsiveness and responsibility, which may include, without limitation, criteria necessary to evaluate: (i) *product acceptability*, such as examinations, inspection, testing, quality, workmanship, delivery and other evaluation factors, which shall be used for the purpose of determining product suitability according to the requirements and/or criteria only as set forth in the solicitation, and shall not be used for the purpose of comparing the superiority of differing products proposed by bidders or proposers, unless otherwise provided herein (the solicitation may include a requirement that, at the time of public opening, bidders or proposers submit product literature, samples, certification and other documentation necessary for the purpose of evaluating product suitability); and (ii) *price*, such as discounts, transportation costs, total or life-

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cycle costs and other objectively measurable factors, which affect the proposed amount contained in solicitation responses, and which are set forth in the solicitation. Nothing in this Section shall be deemed to permit discussions or negotiations with bidders after bid opening, except as otherwise provided herein.

- (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 Chief 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 Chief or GGAC under this Section may be protested, in accordance with the Division'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 Chief that are in existence at the time of bid opening.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.203. - Multi-step competitive sealed bidding process.**

Upon the recommendation of the Chief and approval by the GGAC, the formal procurement of supplies, contractual services and capital improvements may be purchased by formal written contract and/or agreement based upon an award via Competitive Multi-Step Sealed Bidding, whereby, in addition to the requirements set forth in Section 126.202, hereof, for Competitive Sealed Bidding, an invitation for multi-step sealed bids shall require bidders to submit: (i) an unpriced technical offering; and (ii) a priced bid (bidders may request confidential designation for those portions of the unpriced technical offering that contain information only to be viewed by the Division, such as trade secrets, proprietary data, or other confidential information).

- (a) *Invitation for multi-step competitive sealed bids.* The invitation for bids and public notices under this Section shall be governed by the requirements of Section 126.202(a), hereof, and shall establish the place, date(s) and time(s) at which both the technical offering and the priced bid must be submitted (the technical offering and the priced bid shall be submitted in separate sealed envelopes). The invitation for bid may require the priced bid be submitted either simultaneously with or subsequent to the technical offering; however, whether submitted simultaneously with or subsequent to the technical offering, the priced bid shall not be considered unless the technical offering is found to be acceptable and/or responsive, in that the technical offering meets or exceeds the objectively measurable evaluation criteria or factors only as set forth in the solicitation. If, prior to the submission of the priced bid, a particular bidder's technical offering is found to be unacceptable, said bidder shall be provided prompt written notice of the same, and its priced bid shall not be considered. Technical offerings, priced bids and tabulations received and/or generated by the Division pursuant to this Section are exempt from public inspection or disclosure until such time as the Division provides notice of a decision and/or award regarding the same or within ten calendar days after bid opening, whichever is earlier (for public inspection or disclosure exemption purposes, technical offerings and the evaluation thereof shall be considered separately from priced bids and tabulations).
- (b) *Acceptance, evaluation, corrections, withdrawal and award.* Issues regarding the acceptance, evaluation, correction and withdrawal of unpriced technical offerings and priced bids under this Section shall be governed by the requirements of Sections 126.202(b) and (c), hereof. Awards under this Section shall be governed by Section 126.202(e), hereof.

(Ord. 2004-602-E, § 4)



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**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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

Upon the recommendation of the Chief 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 Chief 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 solicitation documents hereunder shall define the public opening or the place, date and time at which responses are due, and all contractual terms and conditions applicable to the solicitation, including the criteria, which shall include, but need not be limited to, price, to be used in determining acceptability and/or responsiveness of the proposal and in establishing the ultimate award. The relative importance of price and other evaluation criteria and the method or evaluation process shall be provided in the solicitation documents, and proposals shall be evaluated and tabulated solely in accordance with the same by the Competitive Sealed Proposal Evaluation Committee (the "CSPEC"), which shall be composed of the GGAC, the Chief or his designee and one representative from the agency or department for which the solicited services are required and/or will be performed.

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

- (1) The using agency shall submit to the Chief written service requirements indicating the nature and scope of the services needed by the using agency and a certification letter of information required by the CSPEC, including the following:
  - (i) The general purpose of the required services that includes a statement as to why procurement of said services pursuant to Section 126.202 or 126.203 is impracticable.
  - (ii) The objectives of the services.
  - (iii) The estimated period of time needed for the services.
  - (iv) The estimated cost of the services and funding for the same.
  - (v) Whether the proposed service would or would not duplicate existing services.
  - (vi) List of current contracts or prior services which are related to the proposed services.
- (2) Upon receipt of the scope and the certification letter, the Chief shall immediately send copies to the City Council Auditor and to the CSPEC. The Chief shall then review the scope and certification and make recommendations in writing to the remaining members of the CSPEC, a copy of which shall be furnished simultaneously to the City Council Auditor. The CSPEC shall then review the scope, the certification letter and the recommendations of the Chief and approve or disapprove the scope of services.
- (3) The CSPEC shall have the prepared written evaluation criteria and service requirements indicating the nature and scope of the services needed by a using agency incorporated into an RFP and/or RFQ, which shall be publicly noticed or advertised consistent with Section 126.202(a), hereof, and distributed by the Division. Notwithstanding other requirements contained in this Chapter, the Division shall publish solicitations under this Section 126.204 in a newspaper of general circulation in the city at least ten business days prior to the public opening date set forth in the RFP.
- (4) If the CSPEC determines that it is unable to define with reasonable precision the nature and scope of the services needed by the using agency, it shall also solicit interested persons to assist in the preparation of a detailed description of the work to be performed in

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order to meet the general service requirements, which interested person, once selected and/or contracted for the purpose of defining with reasonable precision the nature and scope of services needed by the using agency, shall be disqualified from the award of a contract to perform the services that the interested person was contracted to define.

- (b) *Acceptance, corrections and withdrawal.* Issues regarding the acceptance, correction and withdrawal of proposals under this Section shall be governed by the requirements of Sections 126.202(b) and (c), hereof. Proposals and tabulations received and/or generated pursuant to solicitations under this Section are exempt from public inspection or disclosure until such time as the Division provides notice of a decision and/or award regarding the same or within ten calendar days after public opening, whichever is earlier.
- (c) *Award.* Subject to Section 126.201(d)(2), hereof, awards under this Section shall be made to the responsible and responsive proposer whose proposal is determined in writing by the CSPEC to be the most advantageous to the City, based solely upon the relative importance assigned to price and each of the criteria and the method or evaluation process set forth in the solicitation, which evaluation process may include interviews at the sole discretion of the CSPEC. The contract file shall contain documentation supporting the basis on which the award is made.
- (d) *Minutes.* The CSPEC shall keep official minutes of its meetings, which shall be maintained on file in the Department as a permanent electronic or physical public record. The minutes may take the form of verbatim tape recording or other verbatim electronic recordings of the CSPEC proceedings.
- (e) *Public notice of meetings.* The CSPEC shall cause a written notice of the time, place and purpose of each of its meetings to be filed as a public record with the Corporation Secretary and with the City Council Secretary at least 24 hours in advance of the meeting.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1; Ord. [2017-288-E](#), § 7)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.205. - Informal purchases and sales transactions.**

Purchases and sales other than those defined in Section 126.102(f), hereof, shall be made in accordance with regulations established by the Chief and approved by the Mayor.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.206. - Single-source, noncompetitive purchases.**

- (a) Upon a recommendation by the Chief and proper notice and approval under this Procurement Code, an exceptional purchase or purchase made without competition or advertisement can be made from a "single source". For purposes of this section, a "single source" shall mean a person or entity who
  - (i) provides necessary follow-up goods and services to the City such as replacement parts or warranty-related or required maintenance services for products and equipment previously purchased by the City that may only efficiently and effectively be provided by such person or entity; or
  - (ii) is the only one justifiable source available to provide necessary goods and services to the City such as patented and manufactured products and services offered for sale in a noncompetitive market or

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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 single-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 Chief a written justification for each single-source, noncompetitive purchase, including without limitation a sufficient explanation, as determined by the Chief, 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 good or service will not justify an award in circumstances where there is more than one potential source that can efficiently and effectively provide the same. Proposed awards made hereunder may be timely protested pursuant to the Division's protest procedures.

- (b) The authority granted in subsection (a) of this Section to awarding agencies in the case of independent agencies shall only be available to those independent agencies that adopt an internal procedural rule providing that a two-thirds vote of the independent agency is necessary for approval of a single-source purchase. Furthermore, the secretary of the independent agency shall certify to the Chief and the City Council Auditor that the rule was in effect and followed on each single-source purchase awarded by the independent agency under the authority granted by subsection (a) of this Section.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1; Ord. [2017-34-E](#), § 1; Ord. [2017-288-E](#), § 7)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.207. - Emergency purchases.**

- (a) If an emergency occurs during regular City business hours, the using agency shall immediately notify the Chief, who shall either purchase the required supplies or contractual services or authorize the using agency to do so.
- (b) If an emergency occurs at a time other than during regular City business hours, the using agency shall attempt to contact the Chief by phone or e-mail, and may purchase directly the required supplies or contractual services. Not later than the next regular City business day thereafter the using agency shall submit to the Chief a requisition, a tabulation of bids received, if any, a copy of the delivery record and a brief written explanation of the circumstances of the emergency.
- (c) Prior to making an emergency purchase, the Chief or the using agency, whichever makes the purchase, shall, whenever practicable, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder.
- (d) A complete record shall be maintained by the Chief explaining or otherwise supporting the reason for each emergency purchase. The records shall be available for public inspection during regular City business hours in the Chief's main offices.
- (e) The Chief shall submit monthly to the Mayor a report covering all emergency purchases, with an explanation of the circumstances of emergency purchases in excess of the threshold amount provided in § 287.017, Florida Statutes, for Category One, as may be revised from time to time.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization

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#### **Sec. 126.208. - Prohibition of purchases from certain persons.**

- (a) No purchase of supplies, contractual services or capital improvements shall be made from a person who is an officer or employee subject to F.S. Ch. 112, Pt. III or in which any officer or employee has a private financial interest, direct or indirect, within the meaning of F.S. Ch. 112, Pt. III. However, in cases where the Chief shall have obtained more than one written sealed bid, whether or not required by law to advertise for bids, this prohibition shall not apply.
- (b) No purchase of supplies, contractual services or capital improvements shall be made from a person or entity who pleads nolo contendere or guilty or who is convicted in a court of competent jurisdiction for violating Section 101 of the Immigration Reform and Control Act of 1986 (unlawful employment of an alien) for a period of two years beginning from the date of such plea of nolo contendere, guilty plea or conviction by a court of competent jurisdiction.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.209. - Purchase of art reproductions.**

- (a) During the month of October of each year, the Chief shall ascertain with due diligence the names and addresses of businesses engaged in the sale of art reproductions in the City and shall cause to be prepared a list of the local vendors. Thereafter, each local vendor and any other local vendor of art reproductions who tenders a request to the Chief, at a time during the ensuing 12-month period, shall be mailed a letter requesting a statement of his interest in selling art reproductions to the City and other reasonable information as may be required by the Chief in regard to the nature or sale of art reproductions by the vendor, including the following subjects:
  - (1) Quantity;
  - (2) Quality, brands or names of manufacturer;
  - (3) Variety;
  - (4) Price or discount; and
  - (5) Past performance to the City.

Thereafter, the Director of Libraries shall make purchases of art reproductions in the City only from those local vendors submitting in writing to the Chief the statement of interest and other reasonable information; provided, that the selection of a vendor, whether located in the City or otherwise, from whom purchases may be made shall be based upon the above considerations and other necessary considerations relating to the needs and best interests of the collection of art reproductions of the public libraries, as determined by the Director of Libraries.

- (b) Persons purchasing art reproductions in an amount exceeding the certified available balance or in another manner violating this Section shall be personally liable to the City for the excess amount, if any, and shall be guilty of a class D offense.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### **Sec. 126.210. - Purchase of property from governmental bodies at auction.**

- (a) The purchase of property by the City and its independent agencies may be made for cash using oral or sealed bid at an auction conducted by a governmental body for the purpose of disposing of surplus property of a governmental body; provided, that the purchasing agency is not otherwise prohibited by law from making these purchases. Section 126.105 shall apply to purchases for capital improvement projects made pursuant to this Section.
- (b) The Chief shall establish regulations controlling purchases made under subsection (a) of this Section. The regulations shall require:
  - (1) Prior approval of the Chief for purchases made hereunder.
  - (2) If the purchaser is the City, prior written certification of availability of funds for the purchase by the Director of Finance and Administration, and
  - (3) If the purchaser is:
    - (i) The City, prior approval of the GGAC for formal purchases.
    - (ii) An independent agency, prior authorization of the governing body of the independent agency seeking to make purchases hereunder.
- (c) A person purchasing property under this Section in an amount exceeding the certified available balance or violating this Section in another manner shall be personally liable to the City for the excess amount, if any, and shall be guilty of a class D offense.

(Ord. 2004-602-E, § 4; Ord. 2006-185-E, § 3; Ord. [2016-140-E](#), § 16)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.211. - Utilization of competitively procured governmental agreements.**

- (a) The procurement of supplies, professional design services, professional services, contractual services and capital improvements by the City and its independent and/or using agencies may be made by utilizing General Services Administration, State of Florida and other contracts and agreements that have been competitively procured, awarded and contracted by a federal, state, municipal, County, or local governmental entity, body politic, or using agency, provided that said procurement is not otherwise prohibited by law. Purchases made pursuant to the provisions of this Section 126.211 shall not be required to be formally advertised. The use of this method of procurement does not negate the requirement to procure for the City the highest quality in supplies, contractual services, professional design services, professional services and capital improvements at the greatest economic value to the City. Section 126.105 hereof shall apply to purchases for capital improvement projects made pursuant to this Section.
- (b) The Chief shall establish regulations controlling purchases made under subsection (a) of this Section. The regulations shall require, at a minimum, prior approval of the Chief, for informal purchases, and of the Chief and the GGAC, for formal purchases.
- (c) Purchases under this Section 126.211, may include the use of a quote request to obtain written pricing or services information from a vendor for services that have been competitively procured, awarded and contracted by a federal, state, municipal, County, or local governmental entity, body politic, or using agency. The purpose of a quote request is to secure a more favorable price, term, or condition than that provided in the federal, state, municipal, County, or local governmental entity, body politic, or using agency contract being considered, the successful negotiation and use of said more favorable prices, terms, or conditions are permissible hereunder. Use of a quote request does not constitute a waiver of any kind or a decision or intended decision that is subject to protest.

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- (d) Any solicitation made pursuant to or contract resulting from this Chapter shall have a provision included therein that, during the period of time provided in said contract, the supplies, contract services, or capital improvements provided thereby shall be available to all using agencies and other political subdivisions, boards, agencies, or authorities existing in Duval County that may desire to purchase the same at the contract price during the period of time provided in said contract.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.212. - Specifications.**

- (a) Using agencies shall prepare and submit to the Chief written specifications applicable to purchases of supplies, contractual services and capital improvements, subject to the review and approval of the Chief or committee established by the Chief under this Chapter.
- (b) Technical or performance descriptions shall be specified whenever possible. Brand name or equal descriptions may be specified when technical or performance descriptions are not available. When brand name or equal descriptions are specified, prospective bidders shall be informed that the reference is intended to be descriptive and not restrictive and is for the sole purpose of indicating to prospective bidders a description of the article that will be satisfactory.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.213. - Standardization of supplies and equipment.**

- (a) The Chief, with the approval of the Mayor, is authorized to establish an Advisory Committee on Standardization (the "Advisory Committee") composed of the officials or employees of the City, as designate by the Chief. With the advice of the using agencies and subject to the approval of the Advisory Committee, the Division shall formulate and adopt standards for supplies and contractual services required by the using agencies. The using agencies and the Division shall cooperate fully to the end that the City may obtain the maximum advantages afforded by centralized purchasing.
- (b) The duties of the Advisory Committee shall be:
  - (1) To classify repetitively purchased supplies and equipment common to the needs of two or more using agencies.
  - (2) To adopt as standards the minimum number of qualities, sizes and varieties of supplies and equipment consistent with the successful operation of the City.
  - (3) To the maximum extent possible, to adopt standard specifications of other governmental jurisdictions and nationally organized standardizing bodies.
  - (4) To assist the Chief in preparing written specifications of standard supplies.
  - (5) To conduct studies of estimates of requirements for supplies and contractual services and recommend to the Chief and the Mayor the rules governing estimates of needs as will best serve the interests of efficient central purchasing without adding burdensome procedures to using agencies.

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- (6) To recommend to the Chief changes or improvements in the purchasing system.
- (7) At the request and discretion of the Chief, to review and recommend approval, modification to, or rejection of specifications, project requirements and various other bid or proposal documents submitted to the Division under this Chapter.
- (c) The Chief and the Advisory Committee are authorized to utilize the technical facilities of the City in the development of specifications and testing of supplies.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.214. - Surplus supplies.**

If surplus supplies meet the needs of a requisitioning agency, the Chief shall have the authority to transfer these supplies between agencies in lieu of filling requisitions for the purchase of new and additional stock of the same or similar articles. The Chief shall have the authority to exchange or trade in supplies in full or partial payment for new supplies.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.215. - Purchase of passenger motor vehicles.**

This Chapter shall be applicable to the purchase of motor vehicles. Notwithstanding other requirements contained herein, no using agency of the City shall purchase passenger motor vehicles without first having received written approval of the Chief of Fleet Management.

(Ord. 2004-602-E, § 4)

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#### **PART 3. - PROFESSIONAL SERVICES CONTRACTS**

Sec. 126.301. - Award of professional services contracts.

Sec. 126.302. - Professional Services Evaluation Committee Procedures ("PSEC").

Sec. 126.303. - Contract negotiation and award; independent agencies.

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

Sec. 126.305. - Truth-in-negotiation certificate requirement.

Sec. 126.306. - Contingent fees prohibited.

Sec. 126.307. - Exemptions.

Sec. 126.308. - Services related to legal work.

Sec. 126.309. - Utilization of competitively procured governmental agreements.

Sec. 126.310. - Bond Counsel.

Sec. 126.311. - Emergency purchases of specified professional services.

Sec. 126.312. - Single-source noncompetitive purchase of professional services.

Sec. 126.313. - Financial related services.

Sec. 126.314. - Consultants' Competitive Negotiation Act.

Sec. 126.315. - Additional supplementary outside services related to Building Inspection Division work.

Sec. 126.316. - Contracts to Manage and or Promote Sports and Entertainment Facilities.

Sec. 126.317. – Independent Audit

#### **Sec. 126.301. - Award of professional services contracts.**

Consistent with Section 126.104(a)(4), hereof, contracts for the performance of professional design services or professional services, as defined herein, (collectively "professional services"), for the City and for the independent agencies, authorize by law to utilize the services of the Division, shall be awarded in accordance with the provisions of this Part 3, except for contracts for the performance of legal services and for the performance of the annual independent audit under Section 5.11 of the Charter. Unless otherwise recommended by the Chief and approved by the Professional Services Evaluation Committee ("PSEC") defined herein, the formal procurement of professional services shall be purchased by formal



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written purchase order, contract and/or agreement based upon an award after public notice or advertisement of a Request For Proposals ("RFP"), evaluation of proposals and recommendation by the PSEC and approval by the Mayor or his designee (collectively hereafter referred to as "the Mayor"), subject to Section 126.201(d)(2), hereof. Upon the recommendation of the Chief and approval by the PSEC, a Request for Qualifications ("RFQ") may also be used as part of the procurement process described in this Part 3. No formal purchase order, contract, or agreement shall be subdivided to avoid the requirements of this Section.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.302. - Professional Services Evaluation Committee Procedures ("PSEC").**

- (a) *Membership.* Prior to the award of a contract for the performance of professional services, the Mayor shall appoint a PSEC, which shall be under the organizational control of the Division. Subject to the Mayor's approval as to the designation or selection of the departmental or using agency representative, PSEC shall consist of the Chief or his designee, who will serve as the chair, one representative from the Finance and Administration Department, one representative from the Office of the General Counsel and two representatives from the using agency for which the professional services will be performed, who will also serve as the PSEC subcommittee.
- (b) *Approval and distribution of project requirements.*
  - (1) The using agency shall submit to the Chief written service requirements indicating the nature and scope of the professional services needed by the using agency and shall also submit a certification letter of information required by the Committee, including the following:
    - (i) The general purpose of the service or study.
    - (ii) The objectives of the study or services.
    - (iii) The estimated period of time needed for the service or the study.
    - (iv) The estimated cost of the service or study.
    - (v) Whether the proposed study or service would or would not duplicate a prior or existing study or service.
    - (vi) List of current contracts or prior services or studies which are related to the proposed study or service.
  - (2) Upon receipt of the scope and the certification letter, the Chief shall immediately send copies to the City Council Auditor and to PSEC. The Chief shall then review the scope and certification letter and make recommendations in writing to PSEC, a copy of which shall be furnished simultaneously to the City Council Auditor. PSEC shall then review the scope, the certification letter and the recommendations of the Chief and approve or disapprove the scope of services.
  - (3) PSEC shall have the prepared written evaluation criteria and service requirements indicating the nature and scope of the professional services needed by a using agency incorporated into an RFP, which shall be publicly noticed or advertised consistent with Section 126.202(a), hereof, and distributed by the Division. Notwithstanding other requirements contained in this Chapter, the Division shall publish formal solicitations under this Part 3 in a newspaper of general circulation in the City at least ten business days prior to the public opening date set forth in the RFP.

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- (4) Any contract negotiated as a result of the procedures established by the provisions of this Chapter, and which is the product of a request for proposals (RFP) shall not substantially deviate from the proposal approved in response to the applicable RFP.
- (c) *Acceptance, corrections and withdrawal.* Issues regarding the acceptance, correction and withdrawal of proposals under this Section shall be governed by the requirements of Sections 126.202(b) and (c), hereof. Proposals and tabulations received and/or generated pursuant to solicitations under this Section are exempt from public inspection or disclosure until such time as the Division provides notice of a decision and/or award regarding the same or within ten calendar days after public opening, whichever is earlier.
- (d) *Work description.* If PSEC determines that it is unable to define with reasonable precision the nature and scope of the professional services needed by the using agency, it shall also solicit interested persons to assist in the preparation of a detailed description of the work to be performed in order to meet the professional service requirements, which interested person, once selected and/or contracted for the purpose of defining with reasonable precision the nature and scope of services needed by the using agency, shall be disqualified from the award of a contract to perform the services that the interested person was contracted to define.
- (e) *Total compensation negotiation and unit price quotation.* PSEC may request, accept and consider proposals for the total compensation to be paid under a professional design services contract only during contract negotiations; however, consistent with F.S. § 287.055, PSEC may require all interested proposers responding to an RFP pursuant to this Part 3 to include statements and references demonstrating that the proposer met both time and budget requirements on projects of similar size and scope that were completed by the proposer within the past five years and that the proposer is meeting both time and budget requirements on projects of similar size and scope that are currently being performed by the proposer ("Reference Projects"). More specifically, an RFP hereunder may require that a proposer: (i) submit an expressed statement of its overall willingness to meet both time and budget requirements for the project in question; and (ii) submit, without limitation, project narratives, schedules, cost and fee summaries and owner references for any Reference Projects in order to demonstrate that the proposer has met and is meeting both time and budget requirements for said projects. For the purposes of this Section, *total compensation* shall mean the total amount, as well as any hourly rates, fees and other charges used to determine the same, that will be paid by the City or using agency in exchange for the performance of the desired professional services. The total compensation restriction of this Section shall be applicable only to professional design services specifically within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice. For all other professional services, PSEC may require interested persons responding to an RFP pursuant to this Part 3 to submit their proposed total compensation at the time of public opening as set forth in the RFP.
- (f) *Resolicitation.* If, as a result of solicitations under this Part 3, PSEC receives responses from less than three proposers, it shall resolicit proposals from proposers previously solicited and from additional persons, unless it determines, in writing, that no advantage would be obtained by resoliciting. Notwithstanding the number of responses received, PSEC may proceed to consider those proposers responding to the resolicitation or to the initial solicitation if it determines, in writing, that no advantage would be obtained by resoliciting.

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- (g) *Modifications prohibited.* Once responses to an RFP under this Section have been received by the Division, they shall not be modified or allowed to be modified subsequently in any manner whatsoever except for minor irregularities, which, in the opinion of the Chief, will not result in an unfair economic or competitive advantage or disadvantage to any proposer, and which modifications are made prior to PSEC beginning its evaluation process.
- (h) *Selection of qualified, interested and available proposers.*
- (1) From among those proposers evidencing an interest in performing the professional services solicited hereunder, PSEC shall:
    - (i) Prepare an alphabetical list of those proposers determined to be qualified, interested and available, and
    - (ii) Subject to Sections 126.302(f) and 126.314, hereof, designate no fewer than three proposers on the alphabetical list considered by the PSEC to be best qualified to perform the work required.
  - (2) The best-qualified selections shall be based upon PSEC's ability to differentiate qualifications applicable to the scope and nature of the services to be performed.
  - (3) The PSEC shall determine qualifications, interest and availability by reviewing the written responses received, and, when deemed necessary, by conducting formal interviews of selected proposers that are determined to be best qualified based upon the evaluation of written responses. The determinations shall be based upon the following evaluation criteria, the relative importance of which shall be indicated in the RFP:
    - (i) Competence, including technical education, licensure and training, experience in the kind of project to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons and, where applicable, the relationship of construction cost estimates by the person to actual costs on previous projects.
    - (ii) Recent, current and projected work load.
    - (iii) Financial responsibility.
    - (iv) Ability to observe and advise whether plans and specifications are being complied with, where applicable.
    - (v) Past and present record of professional accomplishments on projects for independent and using agencies of the City and on projects for others.
    - (vi) Proximity to the project involved.
    - (vii) Past and present demonstrated commitment to small and minority businesses and contributions toward a diverse market place.
    - (viii) Ability to design an approach and work plan to meet the project requirements, where applicable.
    - (ix) A demonstrated willingness to meet both time and budget requirements for the project, subject to Section 126.302(e), Jacksonville Ordinance Code.
    - (x) The volume of current and prior work performed for using agencies shall be considered a minus factor, with the objective of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

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- (4) The absence of professional experience in a specialized area shall not preclude proper consideration of otherwise qualified, competent persons.
  - (5) In determining the best-qualified proposers, PSEC shall give preference to persons having local places of business where no other differentiation in qualifications can be made.
  - (6) Subject to Section 126.314, hereof, an actuary selected to provide actuarial services to the Board of Pension Trustees shall be an enrolled pension actuary and possess expertise and experience in the pension actuary field.
- (k) *Minutes.* PSEC shall keep official minutes of its meetings, which shall be maintained on file in the Department as a permanent electronic or physical public record. The minutes may take the form of verbatim tape recording or other verbatim electronic recordings of PSEC proceedings.
- (l) *Public notice of meetings.* The PSEC shall cause a written notice of the time, place and purpose of each of its meetings to be filed as a public record with the Corporation Secretary and with the City Council Secretary at least 24 hours in advance of the meeting.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1; Ord. 2005-1295-E, § 1; Ord. [2016-140-E](#), § 16; Ord. [2017-288-E](#), § 7)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.303. - Contract negotiation and award; independent agencies.**

In cases where independent agencies are directed by law to award their respective contracts, PSEC shall forward to the independent agency the alphabetical list of persons qualified, interested and available and its recommendation regarding the three proposers considered best qualified. After receipt of the list and recommendation, the independent agency shall select three proposers in order of preference based on most qualified to perform the services and shall engage in negotiation according to this order, beginning with the first best-qualified person until successful negotiation is reached, or upon terminating unsuccessful negotiation with the first best qualified, proceeding to commence negotiation with the second best-qualified person or, failing accord with the second most qualified and terminating the negotiation, proceeding to undertake the negotiation with the third best-qualified person. Thereafter, the selection and negotiation procedure shall be continued with additional selected proposers in order of best qualified until a mutual agreement is reached or until the list of selected best-qualified proposers is exhausted. No independent agency which is required by law to utilize the services of the Division shall award a contract for professional services until after receipt of the recommendations of the PSEC.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### **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 Division, may modify the specifications or scope of services and resolicit proposals, which modifications shall be documented in writing and maintained in the resulting contract file. If delays resulting from resolicitation efforts will be substantially detrimental to the City's best interest, PSEC, upon the approval of the Mayor, may reinstate the negotiation process described herein, beginning with the first most qualified proposer, which reinstated negotiations may include, without limitation, modifications to the specifications or scope of services set forth in the initial solicitation, which modifications shall be documented in writing and maintained in the resulting contract file. If the reinstated 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. To the extent a contract awarded hereunder is terminated, PSEC, upon the Mayor's approval, shall have the discretion to: (i) commence negotiations as described in this Section 126.304, beginning with the next most qualified proposer, for the professional services remaining and/or necessary for the completion of said contract; or (ii) to procure said professional services pursuant to Part 3, hereof.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### **Sec. 126.305. - Truth-in-negotiation certificate requirement.**

For all lump-sum or cost-plus-a-fixed-fee professional service contracts over the threshold amount provided in § 287.017, Florida Statutes, for Category Three, as may be revised from time to time, the person receiving the award shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. A professional service contract under which a certificate is required shall contain a provision that the contract price shall be adjusted to exclude any significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. Contract adjustments shall be made within one year following the end of the contract.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.306. - Contingent fees prohibited.**

- (a) Each contract entered into for professional services shall contain a prohibition against contingent fees as follows:

The person or entity providing the professional services required hereunder (as applicable) warrants that it has not employed or retained a company or person, other than a bona fide employee working solely for the person or entity providing the professional services required hereunder, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the person providing the professional services required hereunder any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this agreement.

- (b) For the breach or violation of this provision, the City or independent agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover the full amount of the fee, commission, percentage, gift or consideration.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.307. - Exemptions.**

The provisions of this Part shall not apply to the awarding of a contract:

- (a) For the performance of professional services for a professional fee, exclusive of reimbursed expenses, of less than the applicable threshold amounts indicated in Section 126.102(f), hereof.
- (b) With another local, state or federal governmental agency for the performance of professional services.
- (c) For the performance of professional services by a nonprofit professional organization or the members thereof, if the membership includes substantially all of the persons engaged in the City in the practice of the particular profession.
- (d) For the performance of professional services under circumstances otherwise exempt under this Chapter.

(Ord. 2004-602-E, § 4)

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#### Sec. 126.308. - Services related to legal work.

- (a) This Section shall govern procurement of the following legal-related services used as a part of legal services performed under the supervision of the General Counsel, the State Attorney or the Public Defender, or their designees:
- (1) Appraisal, acquisition, disposition and/or relocation services in connection with property transactions.
  - (2) Title insurance and abstracts.
  - (3) Court reporters.
  - (4) Expert witnesses who will or may be called upon to testify in an administrative, quasi-judicial or judicial proceeding, or statutory or contractual dispute, or who are retained by the Office of General Counsel or other special counsel of the city to consult with the city or its counsel in support of, or in anticipation of an administrative, quasi-judicial or judicial proceeding, or statutory or contractual dispute on behalf of a using agency.
  - (5) Printing of legal briefs.
  - (6) Publication of legal advertisements and notices.
  - (7) Mediators, arbitrators, and hearing officers necessary to resolve claims or disputes by, against, or otherwise related to the City or its independent agencies, whether pre-litigation, litigation, or administrative.
- (b) Annually, during the month of October, the PSEC shall establish a list of qualified, interested and available sources of the legal-related services which the General Counsel, the State Attorney and the Public Defender each find are reasonably likely to be required by each of them, respectively, on a recurring basis during the ensuing year. PSEC shall establish the list using the procedures in Section 126.302. Upon recommendation of the Chief, the PSEC may add to or delete from the list at any time for good cause as determined by the PSEC.
- (c) Whenever the General Counsel, special counsel, the State Attorney or the Public Defender requires a legal-related service, he or she shall:
- (1) If a list of qualified, interested and available sources of that service has been established, procure the services from a source on the list.
  - (2) If no list has been established, procure the services from a qualified source, on the most reasonable economic terms to the City, supported by an appropriate engagement agreement. The public notice or advertisement shall be forwarded to the Chief prior to publication. Receipt of responses shall be forwarded to the Division within one business day. The Chief shall include such public notice, advertisement, and responses on the next PSEC agenda for informational purposes. Once awarded by the applicable agency, the agency shall notify the Chief within one business day, and the Chief shall include the awarding of the service on the next PSEC agenda for informational purposes. The notifications set forth in this subsection (b) shall not create the requirement for any notices or advertisements not otherwise required by this Chapter 126.

(Ord. 2004-602-E, § 4; Ord. 2004-990-E, § 5; Ord. 2006-827-E, § 2; Ord. [2018-270-E](#), § 2)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### **Sec. 126.309. - Utilization of competitively procured governmental agreements.**

- (a) Consistent with Section 126.211, hereof, the procurement of professional services by the City and its independent and/or using agencies may be made by utilizing General Services Administration, State of Florida and other contracts and agreements that have been competitively procured, awarded and contracted by a federal, state, municipal, County, or local governmental entity, body politic, or using agency, provided that said procurement is not otherwise prohibited by law.
- (b) The Chief shall establish regulations controlling purchases made under subsection (a) of this Section, which regulations shall, at a minimum, require prior approval of the Chief for informal purchases and of the Chief and PSEC for formal purchases.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.310. - Bond Counsel.**

Notwithstanding the limitations hereunder concerning awards of contracts for legal services, the provisions of this Part shall apply to the selection of, and negotiation with, bond counsel to represent the City and its independent agencies in financial matters, except that the selection of the best-qualified person, interested and available, shall be done by the General Counsel, subject to the approval of the City Council, with respect to services to be performed for the City, or by the governing body of an independent agency with respect to services to be performed for the independent agency. Upon selection of bond counsel, the selecting agency shall notify the Chief within one business day, and the Chief shall include the awarding of the service on the next PSEC agenda for informational purposes. The notifications set forth in this Section shall not create the requirement for any notices or advertisements not otherwise required by this Chapter 126.

(Ord. 2004-602-E, § 4; Ord. [2017-288-E](#), § 7; Ord. [2018-270-E](#), § 2)

#### **Sec. 126.311. - Emergency purchases of specified professional services.**

The emergency purchase of professional services may be accomplished utilizing the following procedures:

- (a) If an emergency occurs during regular City business hours, the using agency shall immediately notify the Chief who shall either purchase the required professional services or authorize the using agency to do so.
- (b) If an emergency occurs at a time other than during regular City business hours, the using agency may purchase directly the required professional services. Not later than the next regular City business day thereafter, the using agency shall submit to the Chief a requisition, a tabulation of bids received, if any, a copy of the statement of professional services provided and a brief written explanation of the circumstances of the emergency.
- (c) Prior to making an emergency purchase, the Chief or the using agency, whichever makes the purchase, shall, whenever practicable, secure competitive, qualified proposals and order professional services to be made by the best qualified and responsible supplier of the professional services required.
- (d) A complete record shall be maintained by the Chief explaining or otherwise supporting the



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reason for each emergency purchase of professional services. The records shall be available for public inspection during regular City business hours in the Chief's main offices.

- (e) The Chief shall submit monthly to the Chief a report covering all emergency purchases of professional services, with an explanation of the circumstances of emergency purchases in excess of \$1,000.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.312. - Single-source noncompetitive purchase of professional services.**

- (a) Consistent with Section 126.206 hereof, upon a recommendation by the Chief and proper notice and approval under this Procurement Code, an exceptional purchase or purchase made without competition or advertisement can be made from a "single-source." For purposes of this Section, a "single-source" shall mean a person or entity who: (i) provides necessary follow-up professional services to the City, including, but not limited to, related studies, that may only efficiently and effectively be provided by such person or individual; or (ii) is the only one justifiable source available to provide necessary professional services to the City. Without competition or advertisement, but only after posting prior notice on Procurement's website for no less than seven calendar days, a single-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 Chief a written justification for each single-source, noncompetitive purchase, including without limitation a sufficient explanation, as determined by the Chief, as to why only the proposed services will satisfactorily fulfill the needs of the using agency. A requirement for a particular service will not justify an award in circumstances where there is more than one potential source that can efficiently and effectively provide the same. Proposed awards made hereunder may be timely protested pursuant to the Division's protest procedures.
- (b) The authority granted in subsection (a) of this Section to awarding agencies in the case of independent agencies shall only be available to those independent agencies that adopt an internal procedural rule providing that a two-thirds vote of the independent agency is necessary for approval of a single-source purchase. Furthermore, the secretary of the independent agency shall certify to the Chief and the City Council Auditor that the rule was in effect and followed on each single-source purchase awarded by the independent agency under the authority granted by subsection (a) of this Section.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1; Ord. [2017-34-E](#), § 2; Ord. [2017-288-E](#), § 7)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### Sec. 126.313. - Financial related services.

- (a) Pursuant to Chapter 110 Part 2 of the Jacksonville Ordinance Code, as the same may be revised from time to time, all deposits and investments of City capital, including the General Employee Pension Fund, and other applicable financially related services, including, without limitation, credit enhancement, liquidity support, investment managers, financial and/or investment advisors, issuing, paying and/or tender agents, rating agencies, printing of preliminary and/or final official statements, offering memorandum, bonds, notes and/or commercial paper, and similar services that are offered in a limited market, that involve complex negotiations, or that require a limited time frame as necessary for a financial transaction involving bonds, notes, commercial paper or other similar transactions, may be procured in accordance with the City's Pension and Treasury Procurement Procedures. Notwithstanding the requirements of the City's Pension and Treasury Procurement Procedures, the Director of Finance and Administration and the City Treasurer, in cooperation with the Chief, shall develop written criteria and procedures necessary to evaluate and procure financially related services under this Section 126.313, which shall include, without limitation, such factors as historic investment performance, fee structure, professional staff, size of firm, research capabilities, area of specialization, strategic fit with the overall financial service goals and objectives. Any procurement under this Section shall include as much competition as practically possible under the circumstances, and shall include procedures necessary to ensure compliance with the requirement to procure the highest quality in financial services at the greatest economic value to the City.
- (b) Any public notice or advertisement required under procurement procedures developed in accordance with this Section 126.313, as well as responses thereto, shall be forwarded to the Division within one business day. Once an award is made pursuant to such procurement procedures, the Director of Finance and Administration shall notify the Chief within one business day, and the Chief shall include the awarding of the service on the next PSEC agenda for information purposes. When the procedures developed in accordance with this Section 126.313 are used for awards that are not time-sensitive, the Chief shall be notified prior to public notice or advertisement for solicitations, and the Chief shall place the public notice or advertisement on the PSEC agenda for informational purposes prior to solicitation or advertisement being made. The advanced notification requirement set forth in the preceding sentence shall not apply to time-sensitive bond, investment, cash, and other such related services as set forth in the written procedures developed in accordance with this Section 126.313. The notifications set forth in this subsection (b) shall not create the requirement for any notices or advertisements not otherwise required by this Chapter 126.

(Ord. 2004-602-E, § 4; Ord. [2016-140-E](#), § 16; Ord. [2018-270-E](#), § 2)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### **Sec. 126.314. - Consultants' Competitive Negotiation Act.**

If there is a conflict between the provisions of this Part and the provisions of the Consultants' Competitive Negotiation Act, (F.S. § 287.055), the provisions of such Act control.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.315. - Additional supplementary outside services related to Building Inspection Division work.**

- (a) This Section shall govern procurement of the following Building Inspection Division-related services used as a part of services performed under the supervision of the Chief of the Building Inspection Division (the "Division Chief"):
  - (1) Plan reviews.
  - (2) Building inspections.
  - (3) Such other Building Inspection Division services as may be approved by the Chief.
- (b) The Chief shall establish and update from time to time a list of qualified, interested and available sources of the Building Inspection Division-related services which the Division Chief finds are reasonably likely to be required, on a recurring basis. The Committee shall establish the list using the procedures in Section 126.302. As used in this subsection, the term qualified shall mean that an individual performing such Building Inspection Division-related services is properly licensed and authorized to perform such services under applicable provisions of the Florida Statutes and rules and regulations relative thereto.
- (c) No individual, corporation, partnership, joint venture or other legal entity, or any employee thereof may perform any Building Inspection Division-related service including any plan review, building inspection or any other service on plans or projects which the individual, corporation, partnership, joint venture or other legal entity, or any employee thereof designed, permitted or has or had any ownership interest of any kind.
- (d) Whenever the Division Chief requires a Building Inspection Division-related service, he shall:
  - (1) If a list of qualified, interested and available sources of that service has been established, procure or cause the procurement of the services from a source on the list.
  - (2) If no list has been established, procure the services from a qualified source in consultation with the Chief. The public notice or advertisement shall be forwarded to the Chief prior to publication. Receipt of responses shall be forwarded to the Division within one business day. The Chief shall include such public notice, advertisement, and responses on the next PSEC agenda for informational purposes. Once awarded, the Division Chief shall notify the Chief within one business day, and the Chief shall include the awarding of the service on the next PSEC agenda for informational purposes. The notifications set forth in this subsection (d) shall not create the requirement for any notices or advertisements not otherwise required by this Chapter 126.
  - (3) Ensure that the City is held harmless with respect to the City's obligation to make the payment from the contractor builder or other person requesting the supplementary outside service. In the event the contractor builder's check is returned for insufficient funds or if payment is refused for any other reason, the party requesting the requesting the service and the party agreeing to provide the service shall agree in writing to hold the City and its employees harmless with respect to the payment for services.

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- (4) Ensure that the service provider maintains the appropriate insurance coverages necessary to protect the City, the provider and the person/entity requesting the service during the applicable time periods.
- (5) Ensure that the service provider and party requesting the service indemnifies, defends and holds the City harmless for all acts and omissions occurring in connections with the procurement and delivery of services.

(Ord. 2004-602-E, § 4; Ord. [2018-270-E](#), § 2)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.316. - Contracts to Manage and or Promote Sports and Entertainment Facilities.**

- (a) Notwithstanding anything to the contrary in this Chapter, no contract with the City of Jacksonville, to manage or promote a sports or entertainment facility, which contract is awarded after May 22, 2012, shall be valid or binding against the City, unless and until approved by the City Council; and no City officer or employee shall execute same without City Council approval. This Section shall apply to all applicable proposed contracts, whether negotiated and preliminarily approved through the professional services processes of this Part, or by any other process.
- (b) In considering any proposed contract referred to in subsection (a) above, the City Council may accept, reject, or propose modifications to any such proposed contract, and may, subject to the approval of the other contracting parties, modify the terms thereof, including but not limited to the scope, financial, duration, renewal, and termination terms of the proposed contract; it being the intent of the City Council that no third party shall have any interest, anticipation or expectation in or to any proposed terms of a contract until such is approved by City Council and executed by all signatories thereto.

(Ord. 2012-316-E, § 1)

#### **Sec. 126.317. - Independent Audit.**

In accordance with Section 5.11 of the Charter, the annual independent audit shall be performed by an accountant or an accounting firm selected by City Council. The public notice or advertisement as well as receipts of responses shall be forwarded to the Division within one business day. The Council Auditor shall, within one business day, notify the Chief of the introduction of the proposed ordinance or resolution making the award, and the Chief shall place the title to such ordinance or resolution on the next PSEC agenda for informational purposes. Once the ordinance or resolution making the award becomes effective the Council Auditor's Office shall, within one business day, notify the Chief, and the Chief shall include the awarding of the service on the next PSEC agenda for informational purposes. The notifications set forth in this Section shall not create the requirement for any notices or advertisements not otherwise required by this Chapter 126.

(Ord. [2018-270-E](#), § 1)

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#### PART 4. - NONDISCRIMINATION POLICY

Sec. 126.401. - Policy.

Sec. 126.402. - Definitions.

Sec. 126.403. - Investigation of bidders for city contract for compliance with nondiscrimination policy.

Sec. 126.404. - Nondiscrimination provisions in all city contracts.

Sec. 126.405. - Investigation and findings procedure of commission.

Sec. 126.406. - Effect of final order finding noncompliance.

#### **Sec. 126.401. - Policy.**

It is hereby declared to be the City policy to assure equal opportunities to every person, regardless of race, religion, sex, color, age, handicap or national origin, in securing or holding employment in a field of work or labor for which the person is qualified, as provided and enforced by Chapter 402. It is also the City policy that persons doing business with the City shall recognize and comply with this policy and will not expend public funds in a manner as will encourage, perpetuate or foster discrimination. Nevertheless, it is not the intent or policy of the City to impose or require quotas or other formulas based on race, religion, sex, color, age, handicap or national origin for securing or holding employment or awarding City contracts or to create a presumption of discrimination or nondiscrimination. This provision shall be automatically updated to conform to applicable state and federal law on protected categories.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.402. - Definitions.**

As used in this part:

- (a) *City contracts* means all contracts of the City for the purchase of supplies, contractual services, including professional design services, professional services and capital improvements.
- (b) *Commission* means the Human Rights Commission.
- (c) *Executive Director* means the Executive Director of the Human Rights Commission.
- (d) *Nondiscrimination provisions* means the contractual provisions set forth in Section 126.404.
- (e) *Policy of nondiscrimination* means a policy of nondiscrimination against an employee or applicant for employment on account of race, religion, sex, color, national origin, age or handicap, which policy applies in all areas of employee relations.

(Ord. 2004-602-E, § 4)

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#### **Sec. 126.403. - Investigation of bidders for city contract for compliance with nondiscrimination policy.**

If the Chief or the Mayor shall have reasonable cause to believe that a bidder may not have adopted and maintained a policy of nondiscrimination, the Chief or the Mayor shall request an appropriate investigation be undertaken consistent with the procedures of this Part, which investigation may, in the discretion of the Chief or the Mayor, require the postponement of a contract award, if any, pending the outcome of the investigation.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.404. - Nondiscrimination provisions in all city contracts.**

All City contracts shall contain the following provisions:

- (a) The contractor represents that he has adopted and will maintain a policy of nondiscrimination as defined by ordinance throughout the term of this contract.
- (b) The contractor agrees that, on written request, he will permit reasonable access to his records of employment, employment advertisement, application forms and other pertinent data and records by the Executive Director for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this contract; provided, that the contractor shall not be required to produce for inspection records covering periods of time more than one year prior to the date of this contract.
- (c) The contractor agrees that, if any of the obligations of this contract are to be performed by a subcontractor, the provisions of subsections (a) and (b) of this Section shall be incorporated into and become a part of the subcontract.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.405. - Investigation and findings procedure of commission.**

- (a) When requested by the Chief or the Mayor, it shall be the duty of the Executive Director to undertake an appropriate investigation to determine compliance or noncompliance:
  - (1) With the policy of nondiscrimination required by this Part with respect to a person seeking the award of a City contract.
  - (2) With the nondiscrimination provisions of a City contract.
- (b) At the conclusion of the investigation, the Executive Director shall issue an order finding compliance or noncompliance, including the facts upon which his findings and conclusions are based, to the bidder or contractor affected and to the Mayor, the Chief and the Awards Committee.
- (c) An order finding compliance shall become final upon issuance by the Executive Director. An order finding noncompliance shall become final 20 days after issuance by the Executive Director, unless the order is appealed.
- (d) An order finding noncompliance may be appealed by the bidder or contractor affected within 20 days after issuance by the Executive Director by the filing of a notice of appeal with the Commission. The filing of the notice of appeal shall act as a stay of the order until final disposition by the Commission.

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- (e) Upon the filing of a notice of appeal, the Commission shall afford the bidder or contractor affected an opportunity to be heard before the Commission and shall thereafter enter its order, by a vote of the majority of the entire membership of the Commission, upholding or reversing the order of the Executive Director. The order of the Commission shall become final upon issuance, unless appealed to a court of competent jurisdiction.
- (f) In the case of contracts which are funded in part or wholly by funds derived from the United States Government, the Executive Director and his staff shall not disclose employment records or other data obtained from employers and others in the course of investigations, except relevant information pertaining thereto or as reasonably required to be disclosed in connection with an appeal to the Commission. To the extent permitted by law, the members of the Commission, the Director and the Mayor shall also maintain the confidentiality of records and data which may be disclosed to them in the course of an investigation.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.406. - Effect of final order finding noncompliance.**

- (a) With respect to a person seeking the award of a City contract, a copy of a final order finding noncompliance with the policy of nondiscrimination required by this Part shall be furnished to the committee or the Mayor, whichever requested the investigation. No City contract shall be awarded to a person failing to comply with the policy of nondiscrimination required by this part.
- (b) With respect to the nondiscrimination provisions of a City contract, a copy of a final order finding noncompliance with the provisions shall be furnished to the Mayor and the Chief. Every order shall afford the bidder or contractor affected an opportunity to demonstrate to the satisfaction of the authority issuing the order which becomes final, within the reasonable time as the issuing authority determines, that the breach of the nondiscrimination provisions has been corrected. At the expiration of the reasonable time, the issuing authority shall enter a further order determining whether or not the breach has been corrected, furnishing copies thereof to the affected person, the Mayor and the Chief. A person failing to correct the breach of the nondiscrimination provisions within the time period permitted shall be deemed an irresponsible bidder, and no City contract shall be awarded to this person. An irresponsible bidder under this subsection shall have the opportunity to submit to the Commission at any time a program adopting and maintaining a policy of nondiscrimination and, upon approval thereof by the Commission, the prohibitions of this subsection shall terminate.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### PART 5. - EXTRAORDINARY CRITICAL PURCHASING PROCEDURES

Sec. 126.501. - Legislative intent.

Sec. 126.502. - Emergency conditions; declaration of emergency.

Sec. 126.503. - Use of formal purchasing procedures.

Sec. 126.504. - City-wide critical purchasing.

Sec. 126.505. - Single-item critical purchases.

Sec. 126.506. - Report to council and council auditor.

#### **Sec. 126.501. - Legislative intent.**

It is the intent of the City Council in enacting this Part to provide procedures whereby supplies, normally purchased by the City upon competitive bidding, are unobtainable by the formal purchasing procedures of this Chapter because of certain specified conditions, hereinafter set forth. It is the intent of the City Council that the provisions of this Part shall be invoked only after every other avenue of procurement under the Ordinance Code and state law has been explored and found inadequate and the Chief shall give due regard to this intent when recommending the use of the critical purchasing provisions contained herein. Because of the extraordinary nature of this part, the emergency purchasing procedures outlined in Section 126.207 are not superseded hereby and they shall be used in every instance requiring emergency procurement except when all the conditions outlined in Section 126.502 exist.

(Ord. 2004-602-E, § 4; Ord. [2017-288-E](#), § 7)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.502. - Emergency conditions; declaration of emergency.**

- (a) An emergency sufficient to invoke the procedures contained herein shall occur if all of the following conditions occur or are satisfied:
- (1) When the product sought to be declared an emergency:
    - (i) Is necessary to maintain the public health or safety, or
    - (ii) Is essential in the continuation of a governmental service that is itself necessary to maintain the public health or safety, or
  - (2) When the product sought to be declared an emergency cannot be replaced by another product that is available through the formal purchasing procedures of this Chapter.
  - (3) When competitive bids for the product sought to be declared an emergency cannot be obtained through the formal purchasing procedures of this Chapter or under the provisions of a state contract for the supply of the product.



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- (4) As concerns the supply of the product, when either of the following conditions occurs:
    - (i) A severe shortage of supply exists, as certified by the Chief.
    - (ii) The existence of an allocation system, not usually in use as regards the product, whether or not sanctioned or established by law or regulation, is documented by the Chief.
  - (5) As concerns the suppliers of the product, when each of the following occurs:
    - (i) If less than all of the suppliers of the product on the bidders' list respond, the Chief has contacted the usual suppliers and all other suppliers responding by the most reasonable method to determine their ability or willingness to respond to a further solicitation for bids.
    - (ii) Each supplier has set out in writing the terms and conditions, if any, under which he will supply the product, which terms and conditions shall specify at least that the supplier will supply the product if the contract period does not exceed one year in duration.
- (b) If the awarding authority declares an emergency, an Emergency Purchasing Committee, consisting of a representative of the using agency, the Chief and the General Counsel, shall proceed to negotiate the supply of the product on terms and conditions most favorable to the City for a period not to exceed one year and shall present its recommendations to the awarding authority.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.503. - Use of formal purchasing procedures.**

The formal purchasing procedures of this Chapter shall apply as nearly as may be possible to the critical purchasing procedures herein prescribed. In case of a conflict between these procedures and the formal purchasing procedures, the critical purchasing procedures shall control. The requirement for sealed bids shall not be enforced under the critical purchasing procedures but, except in cases where independent agencies are directed by law to award their respective contracts, the GGAC shall receive the recommendations of the Emergency Purchasing Committee and shall proceed as required by Section 126.201(d)(3), giving due regard to the critical nature of the recommendations made by the Emergency Purchasing Committee. The factors set out in Section 126.201 concerning the responsibility of bidders under the formal purchasing procedures, shall be applicable as to suppliers with whom the Emergency Purchasing Committee negotiates under these critical purchasing procedures, but they shall not be used to invalidate the negotiations or to refuse contracts for supplies because either of the following occurs:

- (a) The supplier cannot guarantee uninterrupted delivery of the product during the term of the contract, if he agrees to use his best efforts to secure reasonable deliveries and to inform the Chief of an anticipated delay or interruptions.
- (b) The quality, availability or adaptability of the product to the particular use for which it is required cannot be precisely established, if the general quality, availability or adaptability of the product is agreed upon and, in cases where it is possible, reasonable substitutes for the product can be agreed upon for delivery when the required product is unsuitable or unavailable.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### **Sec. 126.504. - City-wide critical purchasing.**

If the Chief, at the request of a using agency, concurs that an emergency be declared with respect to a particular product, he shall inform all using agencies that use the product of this intention and invite each of them to declare an emergency. If the awarding authority declares an emergency, all of the using agencies which made the declaration shall be entitled to send a representative to the Emergency Purchasing Committee; provided that, when two or more using agencies are subordinate to another agency which is itself a using agency, the latter agency may act as sole representative of itself and its subordinate agencies. A contract for supplies negotiated under these critical purchasing procedures shall be awarded for the entire City, including independent agencies utilizing the services of the Division. No additional or supplemental contract for the same supplies shall be negotiated under these critical purchasing procedures for a using agency which was invited, but declined, to participate in the original negotiations unless the agency can show good cause for an additional or supplemental contract to be negotiated hereunder.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

#### **Sec. 126.505. - Single-item critical purchases.**

Because of the emergency nature of these procedures and of the possibility of abuse thereof, a contract may not be negotiated for more than one item or one class of related items; provided, that the Emergency Purchasing Committee may conduct negotiations for contracts for more than one item or one class of items at a meeting of the Committee, but recommendations shall be made separately concerning each contract and the awarding authority shall consider the recommendations separately and award contracts separately.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.506. - Report to City Council and City Council Auditor.**

The Chief shall report to the City Council all requests for critical purchases under this Part and all contracts awarded as a result of the requests and shall furnish the City Council Auditor a copy of the contracts.

(Ord. 2004-602-E, § 4; Ord. [2017-288-E](#), § 7)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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

Sec. 126.601. - Creation of bond enhancement program.

Sec. 126.602. - Access to capital.

Sec. 126.603. - Continuing education and mentoring programs

Sec. 126.604. - Semi-monthly payments to certified JSEBs.

Sec. 126.605. - Insurance program review.

Sec. 126.606. – JSEB Monitoring Committee; Collecting data to evaluate the Program.

#### **Sec. 126.601. - Creation of bond enhancement program.**

- (a) The City shall issue a Request for Proposals ("RFP") within 60 days of the effective date of this Ordinance and contract with an entity to provide a bond enhancement program for the benefit of Jacksonville Small Emerging Businesses ("JSEBs") as defined below, with an established bond enhancement program entity. The purpose of this program is to provide support services to assist vendors certified hereunder in their efforts to secure performance and payment bonds for public and private contracts. The program shall not provide the underlying bond but shall provide a refined basis for underwriting bonds, in-house bonding authority (where the respondent to the RFP has the capability of writing bonds on its own company), small business support services and contractor monitoring necessary for such bond underwriting, as well as improvement plans for contractors who do not qualify. The contract shall provide for an initial two-year period with three, one-year renewals subject to usual City professional contract terms.
- (b) Section 126.201(a)(2)(b) provides that JSEBs do not have to submit bid bonds for projects under \$500,000. Section 126.201(j) provides that JSEBs do not need to provide performance bonds for projects under \$200,000, or such other minimum amount set by the Florida legislature under Fla. Stat. Section 255.05 as amended.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.602. - Access to capital.**

- (a) The City has created a funding source to assist JSEBs with obtaining access to capital (the "AC Program"). A private entity ("Program Manager"), or the Office of Economic Development ("OED"), shall manage the distribution of said funds, in accordance with guidelines approved by the City in order to ensure proper administration and monitoring and to ensure continuity for the program. All funds deposited into the Access to Capital Special Revenue Fund shall be the subject of a permanent and continuing appropriation when used for the purpose of loans to assist JSEBs with obtaining access to capital. In the event that OED serves as the manager of the AC Program, the Executive Director of the OED is authorized to execute on behalf of the City all loan agreements and related documents authorized pursuant to the AC Program.
- (b) The OED shall monitor and enforce the contract for disbursing funds and ensure that certified JSEBs are receiving funding assistance consistent with this Part.
- (c) The OED, on a quarterly basis, shall provide the JSEB Administrator a report on the activity in the AC Program for the preceding three-month period. Such reports will be posted on the OED Web site.

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- (d) As may be requested by the JSEB Administrator, OED staff or the Program Manager will attend workshops to inform potential JSEB participants about available Access to Capital programs.
- (e) The OED shall provide a quarterly activity report for the preceding three months to the JSEB Monitoring Committee for its use in complying with the reporting requirements pursuant to Section 126.606.

(Ord. 2004-602-E, § 4; Ord. 2012-364-E, § 10; Ord. 2013-209-E, §§ 33, 40; Ord. [2016-365-E](#), § 1; Ord. [2016-486-E](#), § 6; Ord. [2018-576-E](#), § 7)

#### **Sec. 126.603. - Continuing education and mentoring programs**

- (a) The City shall engage the Florida State College at Jacksonville (FSCJ) and Edward Waters College and other educational institutions to advise and implement continuing education, training and mentoring programs, including but not limited to training on doing business with the City, subcontracting documentation requirements, accounting for the small business, and related matters for construction related contractors and subcontractors, including technology, bidding, and bonding, and project management. The UNF Small Business Development Center ("UNF/SBDC") and the SBCG shall provide non-construction related small emerging businesses with continuing education and training and mentoring programs, including key management issues such as cash-flow management, business planning, marketing, accounting, and record keeping, human resources management, and other related business development education. FSCJ and Edward Waters College shall hold an initial summit, to inventory existing programs, which provide continuing education, apprentice or mentoring programs and to hear from the community and experts on what further programs or educational assistance may be needed. Thereafter, FSCJ and Edward Waters College shall hold a small business program workshop, to design and suggest the requisite needs, including the formation of a scholarship program for assistance to JSEBs. Funds appropriated for these activities are inclusive of scholarships. Annually, the City's Equal Business Opportunity Office shall survey certified JSEBs on a survey form approved by the JSEB Monitoring Committee to ascertain what education, training and mentoring programs JSEBs need most. The City's Equal Business Opportunity Office shall consider such survey results in determining which education, training and mentoring programs to pursue under this Section.
- (b) FSCJ, Edward Waters College, and UNF/SBDC, shall report their findings back to the Mayor within 180 days from the effective date of this ordinance FSCJ and Edward Waters College shall engage such private firms as may be necessary to provide such training.
- (c) Subject to availability of funds, the continuing education and mentoring programs required by this Section shall be funded at a minimum of \$200,000 or greater.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 33; Ord. [2017-288-E](#), § 2)

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#### **Sec. 126.604. - Semi-monthly payments to certified JSEBs.**

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

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1; Ord. 2013-209-E, § 34; Ord. [2016-140-E](#), § 16)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization. Former § 126.605; Ord. 2013-209-E, § 34, amended the Code by repealing former § 126.604, and renumbering subsequent sections of Pt. 6A. Former § 126.604 pertained to the Accounting Grant Program for Certified JSEBs and MBEs, and derived from Ord. 2004-602-E, § 4.

#### **Sec. 126.605. - Insurance program review.**

The Risk Manager for the City shall prepare a report on available insurance programs for Florida small businesses, and make recommendations regarding methods or programs to assist certified JSEBs in obtaining requisite insurance. Said report shall be provided to the Director of the Finance and Administration Department, with a copy to the JSEB Administrator, on or before January 15, 2014 and thereafter shall be prepared and submitted biannually, with a copy being sent to JSEBs.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 34; Ord. [2016-140-E](#), § 16)

**Note**— Former § 126.606. See editor's note, § 126.604.

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#### **Sec. 126.606. - JSEB Monitoring Committee; Collecting data to evaluate the Program.**

- (a) There is established a seven-member JSEB Monitoring Committee, to annually review the status of the goals of this Program, including the number and dollar value of contracts awarded, the training, capital, and bonding programs, and difficulties or accomplishments of the Program, along with a comparison of the achievements under the Program compared with the goals. The Committee shall also annually review the (i) maximum threshold amounts for personal net worth and averaged annual gross receipts referenced in Section 126.608(c)(2), and (ii) limitation on the number of program participation years in Section 126.608(9) to determine if such amounts and limitation on the number of years are appropriate for the Program. Based on the Committee's Program review, the Committee may recommend to the City Council for consideration amendments to the Program, including but not limited to, the Program goals, training, access to capital, bonding, certification requirements, maximum threshold amounts in Section 126.608(c)(2) and the limitation on the number of program participation years in Section 126.608(9). This Committee shall meet quarterly with the Director, who shall then generate a quarterly report for the Mayor and City Council no later than 14 days after each quarterly meeting. The Mayor shall appoint three members of the Committee, and the City Council shall appoint four members. The Committee shall be comprised of two non-JSEB contractors, one appointed by the Mayor and one appointed by the City Council, two certified JSEB contractors, one appointed by the Mayor and one appointed by the City Council, and two private citizens, one appointed by the Mayor, and one appointed by the City Council, and one representative from the Northeast Florida Builders Association, Inc, or similar trade association, appointed by the City Council, for three-year staggered terms. The two non-JSEB contractor members must have a current contract with the City or have had a contract with the City in the past. The Mayor shall appoint a Chair and the Chair shall serve until such a time as another Chair shall be appointed by the Mayor. The Mayor and City Council shall strive to reflect the diversity of Duval County in its appointments; each of the seven members shall be confirmed by City Council. The JSEB Monitoring Committee shall be governed by Chapter 50 (Boards and Commissions).

(Ord. 2004-602-E, § 4; Ord. 2006-826-E, § 1; Ord. 2013-209-E, § 40; Ord. [2017-288-E](#), §§ 2, 7)

**Note**— Former § 126.607. See editor's note, § 126.604.

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#### **PART 6B. - JACKSONVILLE SMALL EMERGING BUSINESS PROGRAM**

Sec. 126.607. - [Percentage of work to be accomplished by JSEBs.]

Sec. 126.608. - Jacksonville Small Emerging Businesses defined.

Sec. 126.609. - JSEB Program administration.

Sec. 126.610. - Jacksonville Small Emerging Business goals.

Sec. 126.611. - Contract pre-award compliance procedures.

Sec. 126.612. - Good faith efforts in lieu of meeting Program goals.

Sec. 126.613. - Continuing obligations of JSEBs and graduation.

Sec. 126.614. - De-certification, Denial and appeal procedure.

Sec. 126.615. - Project goals.

Sec. 126.616. - Pre-award review of compliance with numerical goals, including good faith efforts.

Sec. 126.617. - Contract performance compliance procedures.

Sec. 126.618. - Other provisions of purchasing code to apply.

Sec. 126.619. - JSEB and Program eligibility.

Sec. 126.620. - Counting subcontracting participation of JSEBs.

Sec. 126.621. - Acts which may result in expulsion from the JSEB program; fines, and criminal offenses.

Sec. 126.622. - Annual Budget Appropriation.

#### **Sec. 126.607. - Percentage of work to be accomplished by JSEBs.**

- (a) The City shall identify a goal of at least 20% of its work in its CIP program during the annual budget submission which shall be accomplished with JSEBs, using prime contracting opportunities and subcontracting goals. The City, through each Department head, shall commit in its budget to award at least 20 percent of its contracts for services, including contractual services, professional services, professional design services, construction services or other services, to JSEBs, provided, however, that such awards shall comply with local, state, and federal law and that there exist certified JSEBs to perform the work.
- (b) In implementing the Program, the Director of Finance and Administration shall first provide opportunities for direct or prime contracting. Such opportunities should be created by breaking

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procurement packages into smaller components, and separating work that requires licenses from that which does not in separate bid or proposal requests where feasible.

- (c) Subcontracting opportunities should be provided within vertical construction projects, with horizontal construction project opportunities being provided to the maximum extent possible, by prime or direct contracting. Nevertheless, the subcontracting opportunities shall be provided to those trades typically established as subcontractors.
- (d) The City may issue joint checks upon the request of the JSEB in order to facilitate bonding, financing, or other requirements of contracting with the City.
- (e) To assist the City in implementing the Program requirements of this Part 6B, the Equal Business Opportunity Office, through the JSEB Administrator, and the Chief of Procurement shall provide annual training to department heads and divisions chiefs, or their designees, and applicable staff of City boards and commissions regarding the JSEB program and the requirements set forth in Parts 6A and 6B of this Chapter.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 35; Ord. [2016-140-E](#), § 16; Ord. [2020-311-E](#), § 3)

**Editor's note**— Ord. 2013-209-E, § 35, amended the Code by renumbering former §§ 126.608—126.610.

#### **Sec. 126.608. - Jacksonville Small Emerging Businesses defined.**

- (a) All businesses certified as SBE, or SDBEs pursuant to the former Parts 6A, and 6B Chapter 126 as it existed on July 1, 2003, shall continue to be certified until March 31, 2005 and goals in Section 126.611(a) have been met or within 90 days of the date after which certification would otherwise expire; provided, however, that new certification applications must be filed within 90 days of the effective date of this Chapter. Thereafter the businesses must be certified under the provisions set forth below. Certifications will be granted only in those areas for which the owner(s) has the ability and expertise to manage and control the firm's operations and work.
- (b) Certifications granted after July 1, 2004 are valid for one year; provided however, that a certification, once granted, can be extended for up to four one-year terms upon the submission of an affidavit, under penalty of perjury, confirming the continued accuracy of the original certification, or identifying changes thereto; and provided further however that the JSEBs must submit the above affidavit no sooner than 60 days before certification expires, in the form created by the Procurement Division. Deceptive or fraudulent affidavits will result in the owner being barred from the program for three years, subject to the appeals process set forth in Section 126.621, below; and provided, further, that to remain or become certified after July 1, 2005, the JSEB must provide audited financial statements by a Certified Public Accountant and one or more training, education, or mentoring programs during each 12-month period and provide evidence of such to the JSEB Administrator. For the initial certification, such evidence may be provided in arrears, but must be provided on or before the submission of the second year certification affidavit.
- (c) To be certified as a JSEB, an individual owner must meet the following criteria:
  - (1) Reside currently in Duval County for a minimum twelve consecutive month period immediately preceding the JSEB application date; or have an established business headquartered for a minimum of three years in Duval County and reside in Duval, St. Johns, Nassau, Baker, or Clay County for one year total within the five County area;
  - (2) Have a personal net worth less than \$1,325,000, 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 annual gross receipts, averaged over the immediately



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preceding three-year period, not exceed \$12,000,000. The averaged annual gross receipts and personal net worth maximum threshold amounts shall be subject to annual analysis by the JSEB Administrator and reviewed by the JSEB Monitoring Committee pursuant to Section 126.606;

- (3) Have not been in the program for a total of more than nine years from the date of the JSEB's first contract as a prime contractor of the City or as a subcontractor retained by a prime contractor of the City, whichever is earlier, provided, however, that participation may be increased by two one-year periods for good cause as determined by the Chief;
  - (4) Own and control more than 51 percent of the business entity being certified;
  - (5) Own any license required by local, state, or federal law;
  - (6) Have expertise normally required by the industry for the field for which certification is sought;
  - (7) Be a for-profit small business concern;
  - (8) Not be a front, a broker, or a pass-through, which for purposes of this subsection (c)(8) means a JSEB that is not registered as a supplier or distributor through the Florida Department of Revenue;
  - (9) Perform a commercially useful function typical of the field for which certification is granted;
  - (10) Not be controlled or operate as front by non-JSEB family, former or present employers. Familial relationships where capital is provided for the business will be subject to scrutiny and possible rejection;
  - (11) The JSEB owner(s) contributions of capital or expertise to acquire the ownership interest must be real and substantial; and
  - (12) Be a business, including a sole proprietorship, partnership, corporation, limited liability company, or any other business or professional entity:
    - (i) Which is at least 51 percent owned by one or more of the individuals identified herein in paragraph (c)(1) the ownership of any such business that has been in existence for a year or over must have maintained such 51 percent ownership for at least one year; and
    - (ii) In the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more of such persons each of whom meets the personal net worth criteria set forth above; and
    - (iii) Be a citizen or lawfully admitted permanent resident of the United States and be compliant with the residency requirements of this Program.
- (d) Only a firm that is managed and controlled by a JSEB person(s) may be certified under this Program. The JSEB owner(s) must actually exercise control over the firm's operations, work, management and policy. Indicia of such control are set forth below.
- (1) A firm must not be subject to any formal or informal restrictions that limit the customary discretion of such owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the JSEB owner(s), without the cooperation or vote of a non-qualifying person or entity from making any business decision of the firm.
  - (2) The JSEB owner(s) may delegate various areas of the management or daily operations of the firm to persons who would not qualify to be JSEBs only if such delegation is typical in the industry for such businesses. Such delegations of authority must be revocable, and the JSEB must retain the power to hire and fire any such person. The JSEB owner must have an overall understanding of, and managerial and technical competence, experience and expertise, directly related to the firm's operations and work.

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- (3) The JSEB owner cannot engage in outside employment or other business interests that conflicts with the management of the firm or prevents the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its activities unless such activities would be appropriate with commensurate businesses, in order to avoid sham or fraudulent certifications.
- (e) Only an independent firm may be certified as a JSEB. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent. In determining whether an applicant is an independent business, the JSEB Administrator will:
  - (1) Scrutinize relationships with non-JSEBs in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
  - (2) Consider whether present or recent family, or employer/employee relationships between the JSEBs owner(s) of the applicant compromise the applicant's independence.
  - (3) Examine the applicant's relationships with non-JSEB prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the applicant's independence.
  - (4) Consider the consistency of relationships between the applicant and non-JSEBs with normal industry practices.
  - (5) An owner shall be certified only for specific types of work for which the owner(s) has the ability and expertise to manage and control the firm's operations and work.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1; Ord. 2013-209-E, § 35; Ord. [2017-288-E](#), § 3)

**Note**— Former § 126.609. See editor's note, § 126.607.

#### **Sec. 126.609. - JSEB Program administration.**

- (a) The JSEB Administrator shall manage the Program, including:
  - (1) Implementing and enforcing rules and regulations hereunder and, implementation and monitoring of the Program.
  - (2) Breaking larger contracts into smaller components where such actions will facilitate competition and provide opportunities under the Program.
  - (3) Providing information and assistance to JSEBs relating to City procurement opportunities, practices and procedures, and bid and proposal specifications, requirements and prerequisites.
  - (4) Certifying businesses as JSEBs, maintaining certification records, and ensuring that such information is available on the City's Procurement website identifying all such certified entities.
  - (5) Establishing Project Specific Goals after ensuring that adequate JSEBs are available to do the work.
  - (6) Evaluating contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.

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- (7) Working with City departments to ensure prompt, timely, payments to JSEBs for work performed in accordance with 126.604 herein.
  - (8) Receiving, reviewing, and acting upon complaints and suggestions concerning the Program. The JSEB Administrator shall create a complaint form as part of this process that identifies both parties.
  - (9) Providing quarterly open houses to answer questions regarding the operation of the Program.
  - (10) Posting all contracting opportunities on the Department website under "JSEB Program."
  - (11) Identifying all certified companies on its website within three business days of certification.
  - (12) As appropriate, advertising all pre-bid conferences in applicable JSEB newspapers, direct- mail or e-mail notices to certified JSEBs, and otherwise seek to increase the interest of all JSEBs certified in the scopes of work of the contract.
  - (13) The Director shall provide interested JSEBs with timely, adequate information about the plans, specifications and requirements of the contract to allow them to respond to the solicitation either directly or by referral to the City department seeking the procurement.
  - (14) The Director shall maintain a list of certified JSEBs, shall have copies available for distribution and shall post such information on the City's Procurement website.
  - (15) The Director shall be allowed to adjust the annual gross receipts for good cause shown. An appeal of the decision of the director may be appealed pursuant to 126.614.
- (b) Each City department shall identify to the Director the person with the responsibility of ensuring JSEB participation; said person shall receive diversity training and shall prepare quarterly reports to the Director identifying the extent of non-JSEB, JSEB participation in any procurement within their Department that month.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, §§ 35, 40)

**Note**— Former § 126.610. See editor's note, § 126.607.

#### **Sec. 126.610. - Jacksonville Small Emerging Business goals.**

The overall small business goal is at least 20 percent, such that the City shall award at least 20 percent of total City contracts to JSEBs; provided that such awards do not violate state or federal law and provided further that there are certified JSEBs to perform the work. The Director shall award at least 50 percent of the JSEBs contracts through direct contracting.

(Ord. 2004-602-E, § 4; Ord. [2020-311-E](#), § 3)

**Editor's note**— Former § 126.612; Ord. 2013-209-E, § 36, amended the Code by repealing former § 126.611 and renumbering subsequent sections of Pt. 6B. Former § 126.611 pertained to numerical goals, and derived from Ord. 2004-602-E, § 4.

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#### **Sec. 126.611. - Contract pre-award compliance procedures.**

- (a) For all solicitations, the bidder/proposer shall submit a Schedule of Participation detailing all JSEB, and non-JSEB subcontractors from which the bidder/proposer solicited bids or quotations. The entities comprising the JSEB goal of at least 20 percent, or the goals as set forth supra, shall be identified, or the basis for a waiver for good faith efforts shall be provided with the bid or proposal. The lists of JSEBs posted on the City's website establishes the group from which a bidder/proposer must solicit subcontractors under this program. The Schedule of Participation shall be due at the time set out in the solicitation documents.
- (b) Any agreement between a bidder/proposer that prevents a JSEB from providing quotations to other bidders/proposers is prohibited.
- (c) Joint ventures shall only be allowed under this Program in cases that demonstrate legitimate, detailed JSEB partnerships with non-JSEBs, proof of which shall be provided to the Director.
- (d) Where the bidder/proposer cannot achieve the Project Specific Goal(s), the Director will determine whether Good Faith Efforts have been made. In making this determination, the Director will consider, at a minimum, a matrix to determine the bidder/proposer's efforts to:
  - (1) Solicit certified subcontractors in the scopes of work of the contract. The bidder/proposer shall provide interested JSEBs with timely, adequate information about the plans, specifications, and other such requirements of the contract to facilitate their quotation. The bidder/proposer must follow up initial solicitations with interested JSEBs.
  - (2) Identify a portion of the work available to JSEBs consistent with their availability.
  - (3) Negotiate in good faith with interested JSEBs. Price sharing is prohibited in negotiations. Evidence of such negotiation includes the names, addresses, and telephone numbers of JSEBs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with them. The ability or desire of a bidder/proposer to perform the work of a contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all scopes of work subject to subcontracting.
  - (4) Facilitate the leasing of equipment supplies or equipment when they are of such a specialized nature that the JSEB could not readily and economically obtain them in the marketplace, where feasible.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 36)

**Note**— Former § 126.613. See editor's note, § 126.610.

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#### **Sec. 126.612. - Good faith efforts in lieu of meeting Program goals.**

For a contract with JSEB subcontracting goals, a contractor must comply by either meeting the goal or demonstrating Good Faith Efforts to achieve it that are consistent with the requirements set forth in this Chapter. In determining whether a bidder/proposer has made Good Faith Efforts, in lieu of achieving the stated goals, the Director shall consider all relevant factors, which include:

- (a) The ability of other bidders/proposers in meeting the Project Specific Goal(s) may be considered.
  - (1) A contact log showing the name, address, and contact number (phone or fax) used to contact the proposed certified subcontractors, nature of work requested for quote, date of contact, person making the effort;
  - (2) The description of work for which a quote was requested;
  - (3) The amount of the quote given, if one was obtained;
  - (4) The list of divisions of work not subcontracted and an explanation why not; and
  - (5) Subcontractor information as requested by forms developed by the Department.
- (b) For contracts other than for construction related professional services, a signed letter of intent from all listed JSEBs describing the work, materials, equipment or services to be performed or provided by the JSEBs and the agreed upon dollar value shall be due with the bid documents but in no event before the expiration of 48 hours after the submission of the bid.
- (c) For construction related professional services contracts, the highest ranked proposer must deliver at the time of fee and contract negotiations signed letters of intent between itself and the JSEBs to be utilized.

If the Director finds that a bidder/proposer did not make sufficient Good Faith Efforts, the Director shall communicate this finding to the User Department and recommend that the bid/proposal be rejected. A bidder/proposer may protest this determination pursuant to the City's bid protest procedures.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 36)

**Note**— Former § 126.614. See editor's note, § 126.610.

#### **Sec. 126.613. - Continuing obligations of JSEBs and graduation.**

The certification status of all JSEBs shall be reviewed annually by the Director through re-certification application. Failure of the firm to seek re-certification by filing the necessary documentation with the Department within 60 days from the date of receipt of written notification from Department may result in de-certification.

- (a) It is the responsibility of the JSEB to notify the Department of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the firm's de-certification and preclusion from future participation.
- (b) The JSEB that no longer meets certification may be decertified at any time.
- (c) A firm, or qualifying individuals, who have participated in the JSEB program for a total of 15 years shall graduate from the Program.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 36)

**Note**— Former § 126.615. See editor's note, § 126.610.

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#### **Sec. 126.614. - De-certification, Denial and appeal procedure.**

- (a) The Director may move to decertify a JSEB that repeatedly fails to honor quotations in good faith, or otherwise comply with Program requirements.
- (b) A firm that has been denied certification or re-certification or been decertified may protest the denial or de-certification as follows:
  - (1) Within 15 days of receipt of denial of certification or re-certification, or notice of intent to decertify, the firm may protest such action in writing to the Director.
  - (2) An informal hearing shall be held by the Director, at which the firm may present additional facts and evidence in support of its eligibility. The Director may request the attendance of any witness and production of any documents concerning the applicant's affairs. The applicant's failure to comply promptly with these requests may be grounds for denial of the appeal.
  - (3) The Director shall determine the firm's eligibility on the basis of the information provided at the hearing. The Director's written decision shall be communicated to the firm within ten days of the hearing.
  - (4) The applicant may appeal the Director's decision in writing to the City's Government Awards Committee or the Professional Services Evaluation Committee within five days of receipt of the determination. The Committee shall hold a hearing within ten days of receipt of the written notice of appeal, and render a final decision within 30 days of the hearing. The presumption that the decertified firm is eligible shall remain in effect until the City renders a final decision.
  - (5) A firm denied or found to be ineligible may not apply for certification for one year after the effective date of the final decision.
- (c) A third party may challenge the eligibility of an applicant for certification or a certified firm. The presumption that the challenged firm is eligible shall remain in effect until the City renders a final decision.
  - (1) The challenge shall be made in writing to the Director and shall include all information relied upon by the challenging party.
  - (2) The Director shall notify the challenged firm in writing of the challenge, identify the challenging party and summarize the grounds for the challenge. The notice may also require the challenged firm to provide the Director, within a reasonable time, any information requested to permit the Director to evaluate the eligibility of the firm.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 36)

**Note**— Former § 126.616. See editor's note, § 126.610.

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#### **Sec. 126.615. - Project goals.**

- (a) The Director shall establish Project Specific Goal(s) based on the availability of at least normal industry practice, as determined in consultation with the User Department, the availability of at least two JSEBs to perform the functions of those individual contracts and the City's utilization of such to date. Project Specific Goal(s) may be set for African Americans, Hispanic, Asian, and Native-American or in an aggregation of groups of such individuals, or for such individuals as a whole.
- (b) Project Specific Goal(s) shall not be set on emergency contracts as defined by City Code or for purchases made in conjunction with the State although JSEBs shall be considered for such single source or emergency procurements if qualified.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 36; Ord. [2017-34-E](#), § 3)

**Note**— Former § 126.617. See editor's note, § 126.610.

#### **Sec. 126.616. - Pre-award review of compliance with numerical goals, including good faith efforts.**

- (a) The Director shall timely review the Schedule of Participation prior to award, including the scope of work and the letters of intent from JSEBs. The Director may request clarification in writing of items listed in the Schedule of Participation, provided such clarification shall not include the opportunity to augment listed JSEBs participation or Good Faith Efforts. The Director shall review all submittals and document the participation of each submittal.
- (b) If the Director determines that the Schedule of Participation demonstrates that the Project Specific Goal(s) have been achieved or Good Faith Efforts made, and the User Department concurs, the Director shall recommend award to the General Awards Committee. The Director shall verify with each JSEB that a contract in the specified amount has been awarded.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 36)

**Note**— Former § 126.618. See editor's note, § 126.610.

#### **Sec. 126.617. - Contract performance compliance procedures.**

- (a) Upon award of a contract by the City that includes Project Specific Goal(s), the prompt pay obligations in the City's contract with the prime contractor, and the contract between the prime contractor and the subcontractors and subconsultants named in response to this Act become covenants of performance by the contractor in favor of the City.
- (b) The contractor shall provide a listing of all JSEBs and any other subcontractors to be used in the performance of the contract, and subcontractor payment information to the City with each request for payment submitted to the City. The Director and the User Department shall monitor subcontractor participation during the course of the contract and shall have reasonable access to all contract-related documentation held by the contractor.

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- (c) The contractor cannot make changes to the Schedule of Participation or substitute subcontractors named in the Schedule of Participation without the prior written approval of the Director upon recommendation of the Ombudsman. Unauthorized changes or substitutions shall be a violation of this chapter, and may constitute grounds for rejection of the bid or proposal or cause termination of the executed contract for breach, the withholding of payment and/or subject the contractor to contract penalties or other sanctions.
- (1) All requests for changes or substitutions of the subcontractors named in the Schedule of Participation shall be made to the Ombudsman with a copy to the Director in writing, and shall clearly and fully set forth the basis for the request. A contractor shall not substitute a subcontractor or perform the work designated for a subcontractor with its own forces unless and until the Director approves such substitution in writing. A contractor shall not allow a substituted subcontractor to begin work until both the Director and the City's project manager have approved the substitution.
  - (2) The facts supporting the request must not have been known nor reasonably should have been known by either party prior to the submission of the Schedule of Participation. Bid shopping is prohibited. The contractor must bring this dispute to the Ombudsman for resolution.
  - (3) The Director's final decision whether to permit or deny the proposed substitution, and the basis therefore, will be communicated to the parties in writing by the Director, with a copy to the CAO.
  - (4) If the City requires the substitution of a subcontractor listed in the Schedule of Participation, the contractor shall undertake Good Faith Efforts to fulfill the Schedule of Participation if the Project Specific Goals would not otherwise be met. If the Goal(s) cannot be reached and Good Faith Efforts have been made, the contractor may substitute with a non-JSEBs.
- (d) If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Schedule of Participation, the contractor shall obtain the approval of the Director to modify the Schedule of Participation and must make Good Faith Efforts to ensure that JSEBs have a fair opportunity to bid on the new scope of work.
- (e) Changes to the scopes of work shall be documented by the User Department at the time they arise, to establish the reasons for the change and the effect on achievement of the Project Specific Goal(s).

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 36)

**Note**— Former § 126.619. See editor's note, § 126.610.

#### **Sec. 126.618. - Other provisions of purchasing code to apply.**

Except as provided in this part to implement the Program, the provisions of Parts 1, 2, 3 and 4, of Chapter 126, apply. The Director shall establish rules that specify the manner in which conflicts between the provisions of Parts 1, 2, 3, or 4 of this chapter are to be resolved.

(Ord. 2004-602-E, § 4)

**Note**— Former § 126.620. See editor's note, § 126.610.



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#### **Sec. 126.619. - JSEB and Program eligibility.**

- (a) Only businesses that meet the criteria of JSEBs may be certified for participation in the Program. The applicant has the burden of persuasion.
- (b) Only an independent firm may be certified as a JSEB. An independent business is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent. The Director must determine that an owner has an independent business in order to certify the business as a JSEB. In doing so, the Director will take into account all reasonable criteria for reviewing control of a business.
- (c) The certification status of all JSEBs shall be reviewed annually by the Department. Failure of the firm to seek re-certification by filing the necessary documentation with the Department within 60 days from the date of receipt of written notification from the Department may result in de-certification.
- (d) It is the responsibility of the JSEBs to notify the Department of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the firm's de-certification.
- (e) The Director shall decertify a firm that does not meet the eligibility criteria.
- (f) A JSEB may receive no more than five prime contracts set aside per year or an aggregate total prime contracts set aside per year in the amount of \$4,000,000, which ever is greater.
- (g) Joint ventures between JSEBs and non-JSEBs are not eligible for the Program, unless they provide structured, detailed, mentoring opportunities, proof of which shall be provided to the Director.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 36)

**Note**— Former § 126.621. See editor's note, § 126.610.

#### **Sec. 126.620. - Counting subcontracting participation of JSEBs.**

- (a) The entire amount of that portion of a construction subcontract that is performed by the JSEBs own forces shall be counted, including the cost of supplies and materials obtained by the JSEBs for the work of the subcontract, and supplies purchased or equipment leased by the JSEBs. Supplies and equipment the JSEBs purchases or leases from the prime contractor or its Affiliate shall not count as JSEB participation.
- (b) The entire amount of fees or commissions charged by a JSEBs for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
- (c) If a firm ceases to be a certified JSEBs during a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall be counted in the City's internal accounting. No contractor shall be penalized in any way as a result of the failure of a project to achieve its Project Specific Goals because of the operation of this Section.
- (d) In determining achievement of a Subcontracting Participation Goal, the participation of a JSEB shall not be counted until the amount being counted has been paid to that entity.
- (e) Achievement of Project Specific Goal(s) shall be evaluated following the completion of the project.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1; Ord. 2013-209-E, § 36)

**Note**— Former § 126.622. See editor's note, § 126.610.

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#### **Sec. 126.621. - Acts which may result in expulsion from the JSEB program; fines, and criminal offenses.**

- (a) The following violations of this chapter are unlawful and may be prosecuted in Municipal Court as Class D offenses:
- (1) Providing information to the City in connection with an application for or challenge to certification, re-certification or de-certification as JSEBs that the providing party knew or should have known to be false or misleading.
  - (2) Providing information to the City in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations that the providing party knew or should have known to be false or misleading.
  - (3) Falsely attesting to re-certification under this program.
  - (4) Substituting JSEBs subcontractors without first receiving approval for such substitutions.
  - (5) Committing any other violations of the provisions of this chapter.
  - (6) Submitting false documentation for payments.
- (b) A bidder, proposer, contractor, or subcontractor is subject to withholding of payments under the contract, termination of the contract for breach, contract penalties, de-certification as a JSEB, or being barred or deemed non-responsive in future City solicitations and contracts for up to two years, if it is found to have:
- (1) Provided information in connection with an application for certification or re-certification that it knew or should have known to be false or misleading.
  - (2) Provided information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations that it knew or should have known to be false or misleading.
  - (3) Failed in bad faith to fulfill the Subcontracting Participation Goal, thereby materially breaching the contract.
  - (4) Repeatedly failed to comply in good faith with substantive provisions of this chapter.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 36)

**Note**— Former § 126.623. See editor's note, § 126.610.

#### **Sec. 126.622. - Annual Budget Appropriation.**

The JSEB programs, as provided for in this Chapter, shall be funded at a minimum of \$500,000 or greater excluding staff.

(Ord. 2004-602-E, § 4; Ord. 2013-209-E, § 36)

**Note**— Former § 126.624. See editor's note, § 126.610.

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

Sec. 126.700. - Intent.

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

Sec. 126.702. - Definitions.

Sec. 126.703. - Preparation of design criteria package.

Sec. 126.704. - Rules and procedures.

Sec. 126.705. - Consultants' competitive negotiation act.

#### **Sec. 126.700. - Intent.**

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

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1)

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

(a) *Selection by competitive sealed proposal.* Upon the determination and written recommendation of the Chief and CSPEC that it is more advantageous or both time and cost effective to award a single contract for the design and construction of a capital improvement project and that it is in the overall best interest of the City to employ the design-build approach instead of the traditional design-bid-build approach for the formal procurement of a capital improvement project, the same, upon the approval of the Mayor, may be procured by formal written contract and/or agreement based upon an award pursuant to the requirements and/or procedures of F.S. § 287.055, this Part 7 and the Competitive Sealed Proposal requirements and/or procedures of Section 126.204, hereof, whereby a Request For Proposals ("RFP") shall be publicly noticed or advertised consistent with Section 126.202(a), hereof. The RFP shall define the public opening or the place, date and time at which proposals are due, define or include the design requirements or design criteria package, solicit proposals and development documents, define or include bonding, insurance and all other contractual terms and conditions applicable to the desired design-build services and include the evaluation criteria that shall be the sole basis for the CSPEC, as defined in Section 126.204, to evaluate and tabulate proposals received in response to the RFP. In addition to the requirements and/or procedures of Section 126.204, hereof, the procedures for the use of the competitive sealed proposal process shall include, as a minimum, the following:

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- (1) The preparation of a design criteria package for the design and construction of the capital improvement project.
- (2) The solicitation and evaluation of no fewer than three design-build firms (in evaluating the design-build firms under F.S. § 287.055, and this Part 7, the CSPEC shall conduct discussions with and require public presentations by each design-build firms regarding their qualifications, approach to and schedule for the project, project organization, development documents and ability to furnish the required design-build services). If, as a result of a solicitation for design-build services for a capital improvement project under this Part 7, the CSPEC receives proposals from less than three design-build firms, it shall publicly notice or advertise the resolicitation of said services from design-build firms previously solicited and from additional design-build firms, unless the CSPEC determines, in writing, that no advantage would be obtained by the resolicitation. Notwithstanding the number of proposals received, the CSPEC may proceed to consider those design-build firms responding to the resolicitation or responding to the initial solicitation if it determines, in writing, that no advantage would be obtained by resoliciting.
- (3) The criteria, procedures, and standards for the evaluation of proposals. The evaluation criteria shall include, but need not be limited to, price, to be used in determining acceptability and/or responsiveness of the proposal. The relative importance of the evaluation criteria shall be provided in the RFP, which evaluation criteria shall include: (i) price; (ii) demonstrated compliance with the design requirements or design criteria package; (iii) qualifications; (iv) bonding, insurance and financial capacity; (v) project schedule; (vi) licensing, certification and registration requirements as defined in Section 126.702(c) and/or applicable federal, state and local laws, statutes, ordinances, rules and regulations; and (vii) other factors approved by the CSPEC.
- (4) The employment or retention of a design criteria professional, as defined herein, to: (i) develop the design criteria package for inclusion in the RFP; (ii) assist the CSPEC in the evaluation of proposals submitted in response to the RFP; and (iii) assist the using agency in reviewing and/or approving the detailed working drawings of the project and in the evaluation of whether the construction of the project complies with the design criteria package.
- (5) Notwithstanding other requirements contained in this Chapter, the Division shall publish solicitations under this Part 7 in a newspaper of general circulation in the City at least 20 business days prior to the public opening date set forth in the RFP. In the case of emergencies, as defined herein, the Mayor shall declare an emergency and authorize negotiations with the best qualified design-build firm available at that time.

*Request for qualifications.* Upon the recommendation of the Chief and approval of the CSPEC, solicitations under this Part 7 may be accomplished pursuant to the procedures outlined in the Consultants' Competitive Negotiation Act, F.S. § 287.055(9), in particular, or, if part of an RFP, by issuing a Request For Qualifications ("RFQ") for the purpose of prequalifying proposers in order to develop a short list of no fewer design-build firms than that required in Section 126.701(a)(2), hereof. Simultaneously with the RFP, the RFQ shall be publicly noticed or advertised consistent with Section 126.202(a), hereof, and shall define the public opening or the place, date and time at which qualification responses are due, which qualification responses shall be due no more than ten business days after the date on which the RFQ is publicly noticed or advertised. The RFQ shall include: (i) design requirements; (ii) qualifications-based evaluation criteria including, without limitation, experience and competence in the kind of design-build project to be undertaken, availability of adequate personnel, equipment and facilities, financial responsibility, past record of professional accomplishments, past record of performance for using agencies; and (iii) other requirements considered to be important in the process of prequalifying design-build firms, as determined and/or approved by the CSPEC (proposers may request confidential designation for those portions of their RFQ or RFP response that contain information only to be viewed by the Division, such as trade secrets, proprietary data, or other confidential information). Only those design-build firms short-listed pursuant to this Section shall be afforded an opportunity to submit a proposal in response to the RFP in question. Upon the CSPEC's recommendation and the Mayor's approval of the short-listed design-build firms, the Division shall

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provide written notice of the same to the short-listed design-build firms, indicating, at a minimum, the date, time, place and manner the submission of their proposals in response to the RFP shall be due and/or publicly presented, which shall take place no less than 15 business days after the date of the written short list notification (the Division shall also provide written notice of the short-listed design-build firms to each unsuccessful design-build firm).

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization

#### Sec. 126.702. - Definitions.

For the purpose of this part, the following terms have the meanings indicated:

- (a) *Design-Bid-Build* means a project delivery method or approach involving the sequential award of separate contracts, the first for architectural, engineering, or professional design services to design the project and the second for construction of the project in accordance with the previously awarded professional design services.
- (b) *Design-Build* means a project delivery method or approach involving a single contract for both the design and construction of a project. Upon approval of City Council, the award of a single design-build contract may, in addition to the design and construction of the project, include the financing, operation and/or maintenance of the project over a contractually defined period of time.
- (c) A *design-build firm* means a partnership, corporation, or other legal entity which:
  - (1) Is certified under F.S. § 489.119 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
  - (2) Is certified under F.S. § 471.023 to practice or to offer to practice engineering; certified under F.S. § 481.219 to practice or offer to practice architecture; or certified under F.S. § 481.319 to practice or to offer to practice landscape architecture.
- (d) A *design-build contract* means a single contract with a design-build firm for, at a minimum, the design and construction of a public construction project.
- (e) A *design criteria package or the design requirements* shall mean concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information so as to permit design-build firms to prepare a bid or a response to a request for proposal, or to permit the City to enter into a negotiated design-build contract. The design criteria package shall specify such performance-based criteria for the public construction project, including, but not limited to, the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and features, functions, characteristics and other conceptual design criteria of the project, cost or budget estimates for design, construction and, if applicable, operation and maintenance, anticipated schedule(s) of design and construction components, including durations and start and completion dates, site development requirements, provisions of utilities, storm water retention and disposal, and parking requirements, as may be applicable to the project.
- (f) A *design criteria professional* means a firm who holds a current certificate of registration under F.S. Ch. 481, to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under F.S. Ch. 471, to practice engineering and who is employed by or under contract to the City for the providing of professional architect services,

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landscape architect services, or engineering services in connection with the preparation of the design criteria package.

- (g) *Development documents* means design related drawings and other documents provided in response to an RFP under this Part 7, which are sufficient for the CSPEC to evaluate a demonstrated compliance with the design requirements or design criteria package, and which establishes the site, size, capacity, features, functions and other characteristics of the project as to utility, infrastructure, landscaping, architectural, structural, mechanical, fire suppression, electrical, telecommunication, data, security and other project systems, materials and components typical to the design-build delivery method or approach.
- (h) *City* shall mean the City or any of its independent and using agencies that desire to or must adhere to the provisions of this Chapter.

(Ord. 2004-602-E, § 4; Ord. [2017-288-E](#), § 7)

#### **Sec. 126.703. - Preparation of design criteria package.**

A design criteria package shall be prepared and sealed by a design criteria professional employed by or retained by the City. If the City elects to retain a design criteria professional and enter into a professional design services contract for the preparation of a design criteria package, then the design criteria professional shall be selected and contracted with in accordance with the requirements of Part 3 of this Chapter. A design criteria professional who has been selected to prepare the design criteria package shall not be eligible to render services under a design-build contract executed pursuant to the design criteria package.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.704. - Rules and procedures.**

The Chief shall promulgate rules and procedures for the implementation of this Part 7, subject to the approval of the CSPEC. The Chief shall also recommend necessary revisions to the rules and procedures from time to time, subject to the approval of the CSPEC. The CSPEC shall conduct a public hearing before adopting rules and procedures or any substantial revision thereof. The rules and procedures shall, at a minimum, provide for the requirement enumerated in Section 126.701, hereof.

(Ord. 2004-602-E, § 4)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization

#### **Sec. 126.705. - Consultants' competitive negotiation act.**

If there is a conflict between the provisions of this Part and the provisions of the Consultants' Competitive Negotiation Act, (F.S. § 287.055), the provisions of such Act control.

(Ord. 2004-602-E, § 4)

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**PART 8. - FEDERAL AFFIRMATIVE ACTION COMPLIANCE**

Sec. 126.801. - Intent.

Sec. 126.802. - Enforcement.

**Sec. 126.801. - Intent.**

It is the intent of the City Council that to the extent that federal affirmative action compliance is required to be implemented by the City in conjunction with the bidding and awarding of City contracts that the City shall assure such compliance. This compliance shall include but not be limited to the provisions of Presidential Executive Order 11246, and those federal laws and regulations set forth in Section 400.103, Ordinance Code.

(Ord. 2004-602-E, § 4; Ord. [2017-288-E](#), § 7)

**Sec. 126.802. - Enforcement.**

It shall be the responsibility and duty of the Mayor to carry out the intent of the City Council as expressed in Section 126.801 herein.

(Ord. 2004-602-E, § 4; Ord. [2017-288-E](#), § 7)

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#### PART 9. - ART IN PUBLIC PLACES

Sec. 126.901. - Definitions.

Sec. 126.902. - Public art standards.

Sec. 126.903. - Art in Public Places Committee.

Sec. 126.904. - Funding.

Sec. 126.905. - Duties.

Sec. 126.906. - Art selection panels.

Sec. 126.907. - Art selection; methods.

Sec. 126.908. - Ownership; maintenance.

Sec. 126.909. - Cultural Council responsibility.

Sec. 126.910. - School Board; independent authorities authorized to use program.

Sec. 126.911. - Schedule.

#### **Sec. 126.901. - Definitions.**

For the purposes of this part, the following terms shall have the following meanings:

- (a) *Capital improvement program* means and includes the capital improvement programs adopted or approved by the City Council.
- (b) *Construction costs* means the estimated cost of vertical construction or alterations of a project or projected component listed within the capital improvement program including engineering, architectural and other design costs. Land acquisition costs, site preparation including remediation and abatement, furniture, fixtures and equipment costs as well as demolition and any allowance for tree mitigation shall be excluded from the definition of vertical construction costs. Furthermore, the purchase of a building, cost overruns and change-order costs shall not be considered construction costs for the purposes of the funding calculations set forth in this part.
- (c) *Construction or alterations* means new construction, where construction costs are \$100,000 or more, and rehabilitation, renovation, remodeling, or improvements (herein collectively "alterations") to existing buildings. Alterations to buildings that are under \$100,000 in cost, or are primarily "redecorating" and involve no actual structural alterations, shall be excluded. Alterations of a strictly structural or mechanical nature necessary to keep the facility functional, but without altering the aesthetic character of the facility shall be excluded. Examples of this type of alteration would be replacing an air conditioning system or major repairs to a leaking roof or windows. These types of structural items shall be included when part of a larger renovation project involving aesthetic changes to facilities.



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- (d) *Public facility* means any City-owned or controlled building or facility intended for habitation where public employees work on a regular basis or which the general public uses on a regular basis. Public facility includes, but is not limited to, office buildings, recreation and community centers, libraries, firehouses, police substations, vertical construction within parks and recreation spaces. Public facility specifically excludes water and sewer pump stations, electrical and communications substations and switching houses, and similar unoccupied structures except in designated Urban Art and Streetscaping Areas.
- (e) *Urban Art and Streetscaping Areas* are defined as art within the boundaries of the Downtown Community Redevelopment Area, Riverside Avondale Historic District Overlay, San Marco Neighborhood Overlay Zone and Springfield Historic District Overlay, which have been identified and approved by the Art in Public Places Selection Panel.

(Ord. 2004-602-E, § 4; Ord. 2014-730-E, § 1; Ord. [2017-3-E](#), § 1; Ord. [2017-288-E](#), § 7; Ord. [2019-888-E](#), § 1)

#### **Sec. 126.902. - Public art standards.**

- (a) Public art is a work of art to which the general public has open and easy access and which will enrich and give dimension to the public environment, and which reflects generally accepted community standards of aesthetic appeal and artistic expression in the decorative arts.
- (b) The goal of the Art in Public Places Committee of the Cultural Council of Greater Jacksonville will be to choose art which is compatible with and which will enhance the architecture and general environment of the City. In some cases, the work will be site specific (i.e. art which is commissioned especially for the specific space and becomes integral to the site). Such art may relate to the function and the users of the facility, to the history or population of its neighborhood and/or may become a part of its architecture. Planning of site specific works will begin early in the project and may be collaboration between artist and architect.
- (c) Acceptable forms of public art shall include all visual arts mediums, including, but not limited to, painting, drawing, original prints, mixed media, sculpture, bas relief, mobiles, murals, kinetic art, electronic art, photography, clay, glass, fiber and textiles, as well as art which may be functional (e.g. doors, gates, furniture, flooring and walls).
- (d) Public art shall not include items that are mass-produced or of standard design.
- (e) Works shall be created by artists of appropriate status who shall be selected by the means outlined in detail in this part. Such artists shall generally be recognized by recognized art professionals, as artists of serious intent and recognized ability, and shall not be a member of the project architectural, engineering, or design team or of the Art in Public Places Committee, Art Selection Panel or the Cultural Council Board or their respective Staffs.
- (f) Appropriate sites for placement of public art include any outdoor, easily accessible public facility or the interior of public buildings. Appropriate sites for placement of art within public buildings include, but are not limited to, lobbies, foyers, corridors, waiting rooms, conference rooms, plazas, courtyards, transportation facilities, facades, and any other sites without restricted visual or physical public access. Private meeting rooms and offices are examples of inappropriate sites with restricted access.

(Ord. 2004-602-E, § 4; Ord. 2006-289-E, § 2; Ord. [2017-3-E](#), § 1)

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#### **Sec. 126.903. - Art in Public Places Committee.**

There is hereby created an Art In Public Places Committee. The Committee will be an 11-member board appointed by the Mayor as follows: two from the Cultural Council of Greater Jacksonville Board of Directors; three from the professions of architecture, interior design, landscape architecture, planning, art professional, or art historian; and six from the community at large as community representatives, each residing within a different planning district whose interests, professions and community activities reflect the diversity of the Jacksonville arts community and of the community at large. All members shall be confirmed by the City Council. Initially one member of each group shall be appointed for three years, one of each shall serve two years and one of each shall serve one year. Thereafter, all terms shall be for three years. No member appointed to the Committee for two consecutive full terms shall be eligible for appointment to the next succeeding term. The Committee shall be responsible for receiving, reviewing and acting on the recommendations of the Art Selection Panels.

(Ord. 2004-602-E, § 4; Ord. 2006-289-E, § 2; Ord. [2017-3-E](#), § 1; Ord. [2017-288-E](#), § 7)

#### **Sec. 126.904. - Funding.**

- (a) A percentage of the total allocation ("allocation percentage")(including multi-year phasing) for construction costs of a public facility, as determined by that percentage existing by ordinance at its initial inclusion within the capital improvement program, and as outlined in section 126.911, Ordinance Code, shall be appropriated to the Art In Public Places Trust Fund.
- (b) Funds appropriated to the Art In Public Places Trust Fund shall be used to implement a city-wide plan for the creation and placement of public art as developed and administered by the Cultural Council.
- (c) Eighty percent of the allocation percentage shall be dedicated to the public art, ten percent of the allocation percentage shall be dedicated to public art maintenance, and up to ten percent of the allocation percentage shall be dedicated to public art administration and community education; provided however, the maintenance and administration allocation percentages shall not apply to appropriations originating from any funds which prohibit expenditures for maintenance and administration. These amounts shall be used at the discretion of the Cultural Council in collaboration with the Department of Finance and Administration and any other City department as appropriate for the public art maintenance and administration and community education.
- (d) The maintenance costs for any installation shall be included in the initial project budget.

(Ord. 2004-602-E, § 4; Ord. 2006-289-E, § 2; Ord. 2014-730-E, § 2; Ord. [2016-140-E](#), § 16; Ord. [2017-3-E](#), § 1)

**Editor's note**— Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

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#### Sec. 126.905. - Duties.

The duties of the Cultural Council are as follows:

- (a) Create updates to the five-year plan known as the Art in Public Places Program Five Year Plan for Program Development and Implementation. This plan may also be revised from time to time by the Cultural Council. Updates shall be provided to the Mayor and City Council at least six months prior to the expiration of the five-year plan and shall be placed on file with the Legislative Services Division. The updates and revisions to the plan shall be reviewed by City Council and shall not take effect until City Council approval.
- (b) Review annual City Capital Improvement Projects with appropriate boards, agencies, authorities and departments and establish a list of eligible projects to include in the program.
- (c) Develop budgets for public art administration, maintenance, conservation and community education.
- (d) Develop an annual plan and budget for public art projects.
- (e) Develop and oversee policy implementation and administration of the public art program, which may include such things as acceptance of gifts. All gifts, grants and award of monies shall be deposited in the Art in Public Places Trust Fund.
- (f) Be responsible, in its discretion, for applying for and receiving state, federal and private funds related to public art on behalf of the City through appropriate grant applications, and for the administration thereof.

(Ord. 2004-602-E, § 4; Ord. 2006-289-E, § 2; Ord. [2017-3-E](#), § 1; Ord. [2017-288-E](#), § 7)

#### Sec. 126.906. - Art selection panels.

The Art in Public Places Committee shall, when deemed appropriate by, and as outlined in, the Art in Public Places Program Five-Year Plan for Program Development and Implementation, form Art Selection Panels to make recommendations to the Committee on the selection of public art. Each Selection Panel will be composed of up to nine members: a Chair, who will be a member of and represent the Art In Public Places Committee; a representative of the site selected for the art (Staff or Board member); architect or other design professional for the project, if available; two artists, art educators or art professionals; and one to three community representatives, at least one of whom shall reside in the planning district within which the art shall be sited. The artists or arts professional representatives will be selected from a list, maintained by the Committee, of interested and qualified individuals. The Chief Administrative Officer shall select a department representative to provide subject matter expertise and city process guidance, including but not limited to risk management, ADA compliance, and ordinance code compliance.

(Ord. 2004-602-E, § 4; Ord. 2006-289-E, § 2; Ord. 2014-730-E, § 3; Ord. [2017-3-E](#), § 1)

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#### **Sec. 126.907. - Art selection; methods.**

- (a) The Art Selection Panel shall select artists and art work in one of the following ways:
  - (i) Open competition: Requesting artists' submissions with specifications regarding local, state, regional or national scope.
  - (ii) Limited competition: Inviting a small number of artists to respond with examples of past work or to prepare formal proposals, and selecting a specific artist based on these submissions.
  - (iii) Direct purchase: Purchase of existing work and all rights thereto.
  - (iv) Invitational commission: Selecting a specific artist for direct commission.
- (b) The Cultural Council and the Art in Public Places Committee shall seek to ensure that at least 15 percent of the artists selected for purchase or commission will be resident(s) in the Greater Jacksonville area, (the counties of Duval, St Johns, Nassau, Clay and Baker). The Cultural Council and the Art in Public Places Committee will also encourage the selection of regional artists e.g. Florida and the Southeastern United States.
- (c) All purchases made pursuant to this Section shall be made pursuant to an evaluated bid process created by the Purchasing Division and modified as necessary to accomplish the objectives of this Chapter. A proposal fee and/or travel reimbursement may be offered for the invited artists to cover the cost of the formal proposals at the discretion of the Art in Public Places Committee. The proposal fee and/or travel reimbursement shall be part of the amount funded pursuant to Section 126.904(a) and (b).

Any provisions of this Chapter conflicting with the expressed intent and procurement methodology of the Art In Public Places program are hereby waived.

(Ord. 2004-602-E, § 4; Ord. 2006-289-E, § 2)

#### **Sec. 126.908. - Ownership; maintenance.**

- (a) The City will own all the rights to the art produced by the Art In Public Places program, subject to the provisions of the Visual Artists Act of 1990. All contracts with artists and all art purchases will require the Artist to waive the following restrictions:
  - (1) Photographic reproduction rights (to be shared by artist and owner);
  - (2) Right to remove/relocate art;
  - (3) Right to repair art in case of emergency;
- (b) Artist will retain the copyright and the right to be notified if the work is to be destroyed, or deaccessioned or radically repaired on a nonemergency basis.
- (c) City will retain ownership of proposal models or drawings of commissioned art.
- (d) Maintenance will be the responsibility of the City and will be funded by that portion of the trust fund which is allocated for maintenance and conservation, and will be administered in cooperation with the Cultural Council based on a conservation evaluation plan.

(Ord. 2004-602-E, § 4; Ord. 2006-289-E, § 2)

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#### **Sec. 126.909. - Cultural Council responsibility.**

The Cultural Council shall administer the Art In Public Places program on behalf of the City. The Cultural Council will provide professional and support staff for the operation of the program and administration of the Art in Public Places Program and the art selection process.

(Ord. 2004-602-E, § 4; Ord. 2006-289-E, § 2)

#### **Sec. 126.910. - School Board; independent authorities authorized to use program.**

- (a) The City Council hereby urges and requests the Duval County School Board and the independent authorities of the City to adopt Art In Public Places programs.
- (b) The Duval County School Board and the independent authorities of the City are hereby authorized to utilize any portion of this Part 9 in order to implement an Art in Public Places program.

(Ord. 2004-602-E, § 4; Ord. 2006-289-E, § 2; Ord. [2017-288-E](#), § 7)

#### **Sec. 126.911. - Schedule.**

The allocation percentage appropriation created in Section 126.904(a) shall apply as follows:

- (a) 0.75 percent to any project subject to the provisions of this Part and adopted by the City Council.

(Ord. 2004-602-E, § 4; Ord. 2006-289-E, § 2; Ord. 2006-1084-E, § 1; Ord. [2017-3-E](#), § 1; Ord. [2017-288-E](#), § 7)