

1 SDBE, Finance, RCD and Rules Committees jointly offer the following
2 second substitute to File No. 2004-602:

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ORDINANCE 2004-602-E

AN ORDINANCE AMENDING CHAPTER 26, SECTION
26.102, (PROCUREMENT DEPARTMENT), *ORDINANCE
CODE*; REPEALING SECTION 26.103 (DUTIES OF THE
DIRECTOR) AND REPLACING WITH A NEW SECTION
26.103 (DUTIES OF THE DIRECTOR); CREATING A
NEW PART 2 AND PART 3, CHAPTER 26 (PROCUREMENT
DEPARTMENT), *ORDINANCE CODE*; REPEALING CHAPTER
126 (PURCHASING CODE), *ORDINANCE CODE*, AND
CREATING A NEW CHAPTER 126 (PROCUREMENT CODE),
ORDINANCE CODE; AUTHORIZING 12 FULL TIME
POSITIONS WITHIN THE DEPARTMENT OF
PROCUREMENT; CONTINUING PARTICIPATION WITH THE
UNIFIED CERTIFICATION APPLICATION PROCESS;
AUTHORIZING THE MAYOR TO ENTER INTO CONTRACTS
TO PROVIDE SMALL BUSINESS CONTRACTING SUMMITS
AND PROGRAMS; WAIVING CHAPTER 126 TO GRANT
PROJECT TO FCCJ, EDWARD WATERS COLLEGE,
UNF/SBDC, CH.A.S.E. OR FIRST COAST AFRICAN
CHAMBER OF COMMERCE; APPROPRIATING \$500,000 TO
ASSIST JACKSONVILLE SMALL EMERGING BUSINESSES;
APPROPRIATING \$500,000 TO ASSIST JSEBS IN
OBTAINING PERFORMANCE BONDS; APPROPRIATING
\$300,000 FOR SUMMITS AND TO ASSIST IN A
TRAINING AND MENTORING PROGRAM; APPROPRIATING
\$500,000 TO ASSIST JSEB IN OBTAINING CAPITAL;
APPROPRIATING \$100,000 TO ESTABLISH AN
ACCOUNTING SCHOLARSHIPS FOR JACKSONVILLE SMALL

1 EMERGING BUSINESSES; APPROPRIATING \$200,000 TO
2 OBTAIN A CONSULTANT TO ANALYZE THE JSEB
3 CONTRACTS; PROVIDING A SEVERABILITY PROVISION;
4 PROVIDING AN EFFECTIVE DATE.
5

6 **WHEREAS,** the City of Jacksonville ("City") has determined
7 that growing Jacksonville Small and Emerging Businesses ("JSEBs")
8 is beneficial to the City and its individual residents. It has
9 been concluded that several issues impede the progress of small
10 businesses including bonding issues, access to capital, training,
11 city procurement barriers, and lack of resources for growth. To
12 that end, the City has devised a Jacksonville Small Emerging
13 Business Program (the "Program") to address these concerns; and

14 **WHEREAS,** significant components of the small business
15 community are comprised of African American businesses, along with
16 those of other minorities, and women. The City previously
17 performed two disparity studies: one in 1990 as a precursor to a
18 minority and female contracting program and one in 2002 to support
19 the 2003 legislation to that same end. Both identified the actual
20 availability of minority businesses in the City and also provided a
21 "but/for" analysis of the number of such businesses that would
22 exist but/for discrimination. These reports have been filed with
23 Council. These studies demonstrate a need to implement programs to
24 address minority and female participation in City contracts and are
25 the foundation for this legislation; and

26 **WHEREAS,** by Executive Order 04-02, the Mayor created the
27 Mayor's Commission on Small and Disadvantaged Businesses (the
28 "Commission") to review: 1) Financial programs, providing for
29 operating and capital expenditures, 2) Bonding programs, along with
30 existing City and State requirements relating to bonding, and 3)
31 The City's existing Small Disadvantaged Business Enterprise

1 ("SDBE") and Small Business Enterprise ("SBE") programs, including
2 their effectiveness and equity in their application for both small
3 and large businesses using existing ordinances; and

4 **WHEREAS**, the Commission took testimony from experts and
5 members of the public before issuing a report of its
6 recommendations, and providing that report to the Mayor and to the
7 Special Committee on April 29, 2004; and

8 **WHEREAS**, the President of Council created a Special Council
9 Committee on Small and Disadvantaged Business on January 26, 2004
10 (the "Special Committee"); and

11 **WHEREAS**, the Special Committee reviewed the Commission's
12 report, took testimony from the public and from experts, and
13 otherwise became apprised of issues regarding Ordinance 2003-629-E;
14 and

15 **WHEREAS**, the City has determined that there still exists
16 discrimination in the marketplace which precludes minorities and
17 women from obtaining equal access to City procurement
18 opportunities. Ordinance 2003-629-E addressed discrimination in the
19 marketplace. The creation of the Program is specifically designed
20 to address the concerns of minority owned small businesses in
21 addition to other small businesses. The creation of the Program is
22 intended to provide equal access to minority and small businesses
23 to City contracts; now therefore

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

25 **Section 1.** Section 26.102 is hereby amended to read as
26 follows:

27 **CHAPTER 26. PROCUREMENT DEPARTMENT.**

28 * * *

29 **Sec. 26.102. Director of Procurement.**

30 The Director of Procurement ("Director") is the head of the
31 Procurement Department. The Director shall be appointed by the

1 Mayor, subject to confirmation by Council, and shall serve at the
2 pleasure of the Mayor. The Director shall have a bachelor's degree
3 or higher from an accredited college or university and at least
4 five years of experience in an administrative or executive position
5 as purchasing agent for a business, corporation, governmental body
6 or have a law degree or other commensurate training and experience.

7 * * *

8 **Section 2.** There is hereby repealed Section 26.103 and is
9 created a new Section 26.103 to read as follows:

10 **CHAPTER 26. PROCUREMENT DEPARTMENT.**

11 * * *

12 **Sec. 26.103. Duties of the Director.**

13 It shall be the duty of the Director to:

14 (a) Procure or contract for all supplies, contractual
15 services, professional design services, professional services and
16 capital improvements required by using agencies, except as provided
17 herein.

18 (b) Prepare and enforce standard specifications.

19 (c) Transfer among using agencies or exchange or sell
20 material which is surplus, including salvage.

21 (d) Act to procure for the City the highest quality in
22 supplies, contractual services, professional design services,
23 professional services and capital improvements at the greatest
24 economic value to the City.

25 (e) Ensure compliance with the Procurement Code and rules and
26 regulations applicable to the same.

27 (f) Discourage uniform bidding and endeavor to obtain as full
28 and open competition as possible on all purchases and sales.

29 (g) Keep informed of current developments in the field of
30 purchasing, prices, market conditions and new products.

31 (h) Secure for the City the benefits of research done in the

1 field of purchasing by other governmental jurisdictions, national
2 technical societies, national trade associations and private
3 businesses and organizations.

4 (i) Prepare and adopt standard purchasing nomenclature for
5 using agencies and suppliers.

6 (j) Declare vendors who violate the requirements of this
7 Procurement Code or who default on their quotations to be
8 irresponsible bidders and discipline them regarding the submission
9 of proposals or bids and/or receiving business from the City for a
10 stated period of time, subject to review by the applicable Awards
11 or Evaluation Committee and approval by the Mayor or his designate.

12 (k) Prepare and maintain a current file of sources of
13 supplies and services, to be known as a bidders' list, to which
14 vendors may request to be included.

15 (l) Oversee the operation and management of the Department,
16 and perform such other duties and responsibilities as may be
17 assigned by the Mayor or his designate in connection with the
18 procurement of goods and services for the City, except where
19 specifically exempted by the Council.

20 **Section 3.** There is hereby created a new Chapter 26
21 (Procurement Department), Part 2 and Part 3 to read as follows:

22 **CHAPTER 26. PROCUREMENT DEPARTMENT**

23 * * *

24 **PART 2. Buying and Administration Division**

25 **Sec. 26.201. Establishment; functions.**

26 There is created a Buying and Administration Division. The
27 Division shall be responsible for enforcing and administering all
28 laws and ordinances establishing procurement guidelines, and shall:

29 (a) Assist and advise government agencies in the policies and
30 methods of procuring goods, services, capital improvements, etc.;

31 (b) Procure goods, services, capital improvements in

1 accordance with applicable laws;

2 (c) Provide administrative support to the Department of
3 Procurement;

4 (d) Provide a central reproduction center/mailroom for use by
5 using agencies;

6 (e) Provide a surplus facility and oversee the transfer and
7 disposal of City property in accordance with applicable laws; and

8 (f) Assist the Director in performing the various duties
9 defined in and/or required by Chapter 126, Jacksonville Ordinance
10 Code.

11 **Sec. 26.202. Chief, buying and administration.**

12 The Chief of Buying and Administration is the division chief
13 of the Buying and Administration Division. The Chief shall be
14 appointed by the Mayor, subject to confirmation by the City
15 Council, and shall serve at the pleasure of the Mayor. The Chief
16 shall have a bachelor's degree or higher from an accredited college
17 or university and at least five years of experience in an
18 administrative or executive position within a purchasing function
19 for a business, corporation, governmental body or other
20 commensurate training and experience.

21 **Sec. 26.203. Duties of Chief.**

22 The Chief of Buying and Administration shall oversee the
23 operation of the Buying and Administration Division in accordance
24 with applicable laws to include, but not limited to Chapter 126
25 (Procurement Code) and management of the Buying and Administration
26 Division, and shall perform such other duties and responsibilities
27 as may be assigned by the Mayor and the Director in connection with
28 the procurement of goods and services for the City, except where
29 specifically exempted by the Council.

30 **PART 3. Equal Business Opportunity/Contract Compliance Division**

31 **Sec. 26.301. Establishment; functions.**

1 There is created an Equal Business Opportunity/Contract
2 Compliance Division. The Division shall be responsible for
3 deployment and administration of Chapter 126, Part 6, and shall:

4 (a) Process certification applications;

5 (b) Assist the Director in setting participation JSEB and MBE
6 goals on a project by project basis;

7 (c) Monitor City projects for compliance with the
8 requirements of Chapter 126, Jacksonville Ordinance Code;

9 (d) Report on the expenditure of City funds paid to certified
10 companies;

11 (e) Assist in the resolution of disputes between City vendors
12 regarding issues of payment, performance and overall contract
13 compliance;

14 (f) Provide support services to assist certified vendors in
15 their efforts to secure training, bonding and access to capital
16 pursuant to Sections 6A and 6B herein; and

17 (g) Assist the Director in performing the various duties
18 defined in and/or required by Chapter 126, Jacksonville Ordinance
19 Code.

20 **Sec. 26.302. Chief, Equal Business Opportunity/Contract**
21 **Compliance.**

22 The Chief of Equal Business Opportunity/Contract Compliance is
23 the division chief of the Equal Business Opportunity/Contract
24 Compliance Division. The Chief shall be appointed by the Mayor,
25 subject to confirmation by the Council, and shall serve at the
26 pleasure of the Mayor. The Chief shall have a bachelor or higher
27 degree from an accredited college or university and at least five
28 years of experience in an administrative position that provides a
29 function of assisting small businesses and/or small disadvantaged
30 businesses for a business, corporation, governmental body, or other
31 commensurate training and experience.

1 **Sec. 26.303. Duties of Chief.**

2 The Chief of Equal Business Opportunity/Contract Compliance
3 shall oversee the operation and management of the Equal Business
4 Opportunity/Contract Compliance Division in accordance with
5 applicable laws, and shall perform such other duties and
6 responsibilities as may be assigned by the Mayor and the Director.

7 **Section 4.** Chapter 126 (Purchasing Code), *Ordinance Code*, is
8 hereby repealed in its entirety and there is created a new Chapter
9 126 (Procurement Code), *Ordinance Code*, to read as follows:

10 **CHAPTER 126. PROCUREMENT CODE.**

11 **PART 1. GENERAL REGULATIONS.**

12 **Sec. 126.101. Short title.**

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

15 **Sec. 126.102. Definitions.**

16 As used in this Chapter:

17 (a) *Capital improvement* means a public improvement
18 undertaking by a using agency, including the construction or
19 reconstruction in whole or in part, of a building, road, bridge,
20 street or water, sewer or storm water facility or a similar
21 physical structure or facility necessary to the performance of the
22 activities of the using agency.

23 (b) *Contractual services* means the rental, repair and
24 maintenance of equipment and personal property required by using
25 agencies but not furnished by their own employees, and utilities
26 and other services of all types, including types not enumerated
27 herein. This term shall not include professional services,
28 professional design services, or capital improvements as defined
29 herein.

30 (c) *Department* means the Department of Procurement.

31 (d) *Director* means the Director of the Department of

1 Procurement.

2 (e) *Emergency* means an immediate danger to the public health,
3 safety, or welfare, an immediate danger of loss of public or
4 private property, a reasonably unforeseen breakdown in machinery, a
5 reasonably unforeseen threatened curtailment, diminution, or
6 termination of an essential governmental service, the reasonably
7 unforeseen development of a dangerous condition or the development
8 of a reasonably unforeseen circumstance that threatens the
9 curtailment or diminution of an essential governmental service or
10 of deposits and investments of city capital or other threatened
11 losses to the City that, in the opinion of the Director, require
12 emergency action.

13 (f) *Formal purchase* means a purchase of: (i) supplies,
14 professional services, or contractual services, as defined herein,
15 where the estimated costs or fees thereof exceed the threshold
16 amount provided in § 287.017, Florida Statutes, for CATEGORY THREE,
17 as may be revised from time to time; (ii) professional design
18 services, as defined herein, where the estimated cost for the basic
19 construction of a project exceeds the threshold amount provided in
20 § 287.017, Florida Statutes, for CATEGORY FIVE, as may be revised
21 from time to time, or where the estimated fees for a planning or
22 study activity exceed the threshold amount provided in § 287.017,
23 Florida Statutes, for CATEGORY TWO, as may be revised from time to
24 time; or (iii) capital improvements where the estimated cost
25 thereof exceeds the threshold amount provided in § 255.0525(2),
26 Florida Statutes, as may be revised from time to time (on a case-
27 by-case basis, the Director shall have the discretion to reduce the
28 threshold amount for capital improvements consistent with the
29 competitive encouragement threshold amount of § 255.101(2), Florida
30 Statutes, as may be revised from time to time). Formal purchases
31 shall be publicly noticed or advertised and competitively procured

1 as provided herein. No formal purchase order, contract, or
2 agreement shall be subdivided to avoid this requirement.

3 (g) *Local bidder* means a bidder who maintains a permanent
4 place of business in the City and is a separate and distinct term
5 from that used in 6A and 6B, herein, which contains differing
6 requirements. If, with respect to a purchase or contract, there
7 shall be no local bidder within the City, the term local bidder
8 shall include a bidder whose principal office is located in and
9 whose principal business is conducted in the State of Florida.

10 (h) *May* denotes the permissive.

11 (i) *Must* denotes the imperative.

12 (j) *Procurement* means buying, purchasing, renting, leasing,
13 or otherwise acquiring any supplies, services, or construction. It
14 also includes all functions that pertain to the obtaining of any
15 supply, service, or construction, including the description of
16 requirements, selection and solicitation of sources, preparation
17 and award of contract and contract administration.

18 (k) *Professional design services* means those services within
19 the scope of the practice of architecture, professional
20 engineering, landscape architecture, or registered surveying and
21 mapping, as defined by the laws of the State of Florida, or those
22 performed by any architect, professional engineer, landscape
23 architect, or registered surveyor and mapper in connection with his
24 or her professional employment or practice.

25 (l) *Professional services* means services other than those
26 defined herein as "professional design services," the value of
27 which is substantially measured by the professional competence of
28 the person or entity performing them and which are not susceptible
29 to realistic competition by cost of services alone. Professional
30 services will generally include, without limitation, services
31 customarily rendered by medical practitioners or professionals,

1 certified public accountants, audit services, attorneys, financial,
2 political, personnel, technological, systems, planning and
3 management consultants, and insurance brokers for purposes of
4 consulting, structuring coverage and procuring insurance.

5 (m) *Public Notice or Advertisement* means the distribution or
6 dissemination of information using methods that are reasonably
7 available and accessible, including, without limitation,
8 publication in newspapers of general circulation, electronic or
9 paper mailing lists, or website(s) designated and maintained by the
10 Department. Unless otherwise required by law or provided herein,
11 the Department shall, at a minimum, publish the solicitation of
12 formal purchases in a newspaper of general circulation in the City
13 at least twenty one calendar days prior to the public opening date
14 set forth in the solicitation and at least five calendar days prior
15 to any scheduled pre-bid or pre-proposal conference.

16 (n) *Responsive bidder or proposer* means a bidder or proposer
17 who has submitted a bid or proposal that conforms, in all material
18 respects, to an invitation for bids or request for proposals.

19 (o) *Shall* denotes the imperative.

20 (p) *Supplies* means commodities, materials, equipment and
21 other tangible articles or things which shall be furnished to or
22 used by a using agency, including commercial printing, binding or
23 publication of stationery, forms, journals and reports.

24 (q) *Using agency* means a department, division, office, board,
25 agency, commission or other unit of the City and an independent
26 agency required by law or voluntarily requesting to utilize the
27 services of the Department.

28 (r) The Jacksonville Transportation Authority ("JTA"), as an
29 independent agency of the City, is required to procure certain
30 supplies, services, or capital improvements pursuant to the
31 procedures and/or requirements of this Chapter 126. JTA, upon

1 establishing its own procurement code, may continue to procure, but
2 shall no longer be required to procure any supplies, services, or
3 capital improvements pursuant to Chapter 126.

4 **Sec. 126.103. Execution and preservation of contracts.**

5 Contracts to which the City is a party and:

6 (a) Which are not the subject of another provision of law
7 shall be in writing and shall be executed or signed by the Mayor
8 and the Corporation Secretary, the City's copies thereof shall be
9 maintained by the Corporation Secretary.

10 (b) Which are entered into on behalf of the internal
11 operations of the office of the legislative branch shall be
12 executed and signed by the Council President or, if authorized by
13 the Council President, the President pro tempore and the Council
14 Secretary, the City's copies thereof shall be maintained by the
15 Council Secretary.

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

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

22 (1) The procedures of the City for determining with whom
23 the City transacts business exist to secure for the public the
24 benefits of free, fair, and open competition among those persons
25 whose conduct reflects good citizenship for the public.

26 (2) The opportunity to bid on public entity contracts or
27 to supply goods and services to the City or to otherwise transact
28 business with the City is a privilege, not a right.

29 (3) In order to preserve the integrity of the public
30 contracting and purchasing process, the privilege of transacting
31 business with the City should be denied to persons involved in

1 certain crimes other than in exceptional circumstances and only
2 after review by the Council.

3 (4) It is the intent of the Council to provide
4 sufficient authority to the City, its departments and independent
5 agencies, to ensure the integrity of public contracting and
6 purchasing.

7 (5) It is the intent of the Council that any contract
8 entered into in violation of this Section shall not be void, but
9 that the contract be voidable at the option of the Council. Nothing
10 herein modifies the City's right to terminate a contract in
11 accordance with its terms.

12 (b) Unless the application of this Section shall be waived by
13 the Council, the City shall not enter into a contract:

14 (1) With an individual who has been convicted of a
15 public entity crime within the past three years in a local, state
16 or federal court;

17 (2) With a corporation, partnership or other business
18 entity whose affairs and policies are legally or factually
19 controlled by an individual (either directly or through
20 intermediaries) convicted of a public entity crime within the past
21 three years in a local, state or federal court; or

22 (3) With a corporation, partnership or other business
23 entity which is owned by a corporation, partnership or other
24 business entity (either directly or indirectly through
25 intermediaries) convicted of a public entity crime within the past
26 three years.

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

29 (c) As used in this Section:

30 (1) *City* means the city and all its departments,
31 agencies, independent agencies and anyone required to use the

1 Department.

2 (2) *Convicted or conviction* means a finding of guilt or
3 a conviction of a public entity crime, with or without an
4 adjudication of guilt, in any federal, state or local court of
5 record relating to charges brought by indictment or information as
6 a result of a jury verdict, non-jury trial, or entry of a plea of
7 guilty or nolo contendere.

8 (3) *Owned* means a twenty percent or more ownership.

9 (4) *Public entity crime* means a violation of any state
10 or federal law by a person with respect to and directly related to
11 the transaction of business with any public entity or with an
12 agency or political subdivision of any other state or with the
13 United States, including, but not limited to, any bid or contract
14 for goods or services, any lease for real property, or any contract
15 for the construction or repair of a public building or public work
16 involving antitrust, fraud, theft, bribery, collusion,
17 racketeering, conspiracy, perjury, or material misrepresentation.

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

21 (1) The nature and details of the public entity crime.

22 (2) Whether the public entity crime was committed by the
23 individual, corporation, partnership or other public entity seeking
24 the contract or by an individual in factual control or by a direct
25 or an indirect owner.

26 (3) The degree of capability, if any, of the individual,
27 corporation, partnership or other business entity seeking the
28 contract.

29 (4) The promptness of the payment of any damages or
30 penalty agreed upon or assessed in connection with the conviction.

31 (5) The level of cooperation with state or federal

1 investigation or prosecution of the public entity crime at issue;
2 provided that a good faith exercise of any constitutional,
3 statutory, or other right during any portion of the investigation
4 or prosecution of any public entity crime shall not be considered a
5 lack of cooperation.

6 (6) The disassociation from any individual convicted of
7 the public crime.

8 (7) The commitment, if any, to self-policing to prevent
9 public entity crimes.

10 (8) The reinstatement or grant of clemency by any
11 jurisdiction in relation to the public entity crime at issue in the
12 proceeding.

13 (9) The need for completion in the procurement of goods
14 and services.

15 (10) The demonstration of good citizenship by the
16 individual, corporation, partnership or other business entity
17 seeking the contract.

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

20 A waiver or ratification under this Section shall only cure a
21 contract voidable under this Section to the extent of the
22 disclosure made in the sworn statement provided to the Director
23 includes, without limitation: (i) the name of the vendor; (ii) the
24 business address of the vendor; and (iii) a statement that the
25 vendor is not prohibited from contracting with the City under this
26 Section; or if the vendor is prohibited from contracting with the
27 City under this Section, the name and location of the local, state
28 or federal court, the style of the case (including the case number)
29 and a brief description of each count under which the vendor, the
30 corporation, partnership or other business entity which owns the
31 vendor, or the individual in control of the vendor was convicted.

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

3 **Sec. 126.105. Planning and Development Department review of**
4 **capital improvement projects.**

5 (a) No department, board or independent agency of the City
6 shall provide for a capital improvement or project, as defined in
7 subsection (b) of this Section, unless prior thereto the projects
8 and improvements have been submitted to the Planning and
9 Development Department in sufficient time to permit the Department
10 to advise the Mayor, the Council and the proposing department or
11 agency of the findings and recommendations of the Department
12 concerning the proposed project or improvement.

13 (b) For the purposes of this Section 126.105, a capital
14 improvement or project is defined as acquisition, lease,
15 construction or disposition of a street; park; public way; bridge;
16 ground; open space; a public building, including a hospital,
17 educational or other structures; public- or privately-owned utility
18 lines or terminals; and public developments or redevelopments or
19 renewal projects; which either have a useful life of more than five
20 years or require an appropriation that exceeds the threshold amount
21 provided in § 287.017, Florida Statutes, for CATEGORY TWO, as may
22 be revised from time to time, in any one fiscal year or as may be
23 reasonably foreseen for the period of its duration, excluding: (i)
24 routine widening or surfacing of streets and highways where
25 additional rights-of-way are not acquired; and (ii) the repair or
26 acquisition of new or used machinery.

27 **Sec. 126.106. Regulations and procedures.**

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

31 (a) Prescribe the operation of the City's Procurement system

1 to be followed by using agencies.

2 (b) Prescribe internal operations to be followed by the
3 Department.

4 (c) Prescribe the City's procurement regulations and policies
5 to be followed in its relations with the business community.

6 (d) Prescribe specifications for standardized items purchased
7 by the City and using agencies. The Director shall issue the manual
8 and shall secure compliance therewith by the using agencies. The
9 regulations and procedures shall represent a complete plan of
10 operation for the City's purchasing system.

11 (e) The Director shall prepare and publish rules and
12 regulations governing bid protests.

13 (f) Nothing in this Section shall be construed as limiting or
14 superseding the provisions of Section 126.201.

15 **Sec. 126.107. Exemptions.**

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

21 (a) Artistic services or performances;

22 (b) Lectures by individuals;

23 (c) Health services involving examination, diagnosis,
24 treatment, prevention, medical consultation, or administration;

25 (d) Services provided to persons with mental or physical
26 disabilities by not-for-profit corporations which have obtained
27 exemptions under the provisions of § 501(c)(3) of the United States
28 Internal Revenue Code (in acquiring such services, the ability of
29 the vendor, past performance, willingness to meet time requirements
30 and price shall be considered in an effort to obtain the highest
31 quality services at the greatest economic value to the City).

1 (e) Prevention services related to mental health, including
2 drug abuse prevention programs, child abuse prevention programs,
3 and shelters for runaways, operated by not-for-profit corporations
4 (in acquiring such services, the ability of the vendor, past
5 performance, willingness to meet time requirements and price shall
6 be considered in an effort to obtain the highest quality services
7 at the greatest economic value to the City).

8 (f) Supplies or services or commodities provided by
9 governmental entity or agencies.

10 (g) Supplies or services to be provided by those specifically
11 prescribed within authorizing legislation that appropriates the
12 same.

13 (h) Supplies or services procured utilizing General Services
14 Administration, State of Florida and other contracts and agreements
15 that have been competitively procured, awarded and contracted by a
16 federal, state, municipal, county, or local governmental entity,
17 body politic, or using agency, provided that said procurement is
18 not otherwise prohibited by law.

19 **Sec. 126.108. Access to and examination of records of certain**
20 **vendors.**

21 (a) A person or entity providing capital improvements,
22 contractual services, supplies, professional design services, or
23 professional services purchased by the City pursuant to a method of
24 purchase, unless otherwise provided herein, shall agree and be
25 deemed to have agreed by virtue of doing business under contract
26 with the City to allow access and examination at all reasonable
27 times by the Council Auditor or any duly authorized representative
28 of the Council Auditor to business records directly pertinent to
29 the transaction until the expiration of three years after final
30 payment pursuant to the transaction. No examination shall be
31 conducted until the Council Auditor has made a recommendation to

1 the Council President that the examination should or, in the
2 alternative, should not be conducted and until the Council
3 President has approved the conducting of the examination.

4 (b) Specific language that vendors shall comply with all
5 applicable federal, state and local laws, rules and regulations as
6 the same exist or as may be amended from time to time, including,
7 but not limited to the Public Records Law, F.S. Ch. 119, shall be
8 included in all contracts which fall within the criterion
9 established by subsection (a) of this Section.

10 **Sec. 126.109. Unauthorized purchases and contracts.**

11 (a) It shall be unlawful for an officer or employee of the
12 City or of an independent agency required to use the services of
13 the Department willfully or negligently to order any purchase or to
14 make a contract in a manner contrary to the provisions of this
15 Procurement Code. A purchase ordered or contract or sales
16 transaction made contrary to the provisions hereof shall be null
17 and void unless and until accepted and ratified by the appropriate
18 awarding authority, which awarding authority shall then advise the
19 Director and the Council Auditor as to its disposition. Unless
20 authorized or permitted to do so by executive order of the Mayor,
21 no one other than those described in Section 126.103 hereof shall
22 have the authority, whether actual or apparent, to execute or order
23 any purchase, make any contract or contract modification, or make
24 any sales transaction on behalf of the City.

25 (b) The Director shall refer all purchases, contracts, or
26 sales transactions made contrary to the provisions of this
27 Procurement Code to the appropriate awarding authority and a copy
28 to the Mayor and Council Auditor, designating the purchase,
29 contract, or sales transaction as unauthorized with a
30 recommendation as to its disposition. Relevant facts or information
31 in the possession of the Director believed to aid the awarding

1 authority in its determination shall be included.

2 **Sec. 126.110. Public official bid and contract disclosure and**
3 **prohibition.**

4 (a) A public official who knows that he or she has a
5 financial interest in a bid or contract shall make disclosure in
6 writing to the Department or using agency, whichever is receiving
7 or has received the bid or contract, (i) at the time that the bid
8 or contract is submitted or subsequently no later than the close of
9 the second full, regular work day after the bid or contract is
10 submitted (not including the day that the bid is submitted or any
11 Saturday, Sunday or City holiday), or (ii) prior to or at the time
12 that the public official acquires a financial interest in the bid
13 or contract and such disclosure shall include but not be limited to
14 the following: the bid number, the name of the public official and
15 his or her public office or position, the name and address of the
16 business entity in which the public official has a financial
17 interest, and the position or relationship of the public official
18 with that business entity.

19 (b) It shall be unlawful and a class D offense for a public
20 official to fail or refuse to make the disclosure required in
21 subsection (a) of this Section.

22 (c) For purposes of this Section, *bid* means any telephone or
23 written bid, written proposal, written quote or written offering of
24 any kind or description whatsoever submitted for the purpose of
25 being awarded or entering into a contract, purchase agreement,
26 sales transaction, or other contractual agreement with the City
27 under the provisions of this Procurement Code.

28 (d) For purposes of this Section, *Contract* means any
29 contract, agreement, purchase order or other document used to
30 evidence the existence of a purchase or sales transaction under the
31 provisions of this Procurement Code, or any subsequent change order

1 or amendment to any such contract document.

2 (e) For purposes of this Section, *public official* means any
3 one or more individuals who have been elected to any state or local
4 office and which office has a geographical jurisdiction or
5 description covering all of, more than but including all or a
6 portion of, or less than but including a portion of, Duval County,
7 Florida, any one or more individuals who have been appointed to the
8 governing body of any independent agency of the City, or an
9 appointed employee of the City.

10 (f) For purposes of this Section, *financial interest* means
11 any ownership interest of a public official in any proposer,
12 bidder, contractor, or first tier subcontractor (that is, a person
13 or business entity under contract to provide or providing capital
14 improvement services, professional design services, professional
15 services, labor, materials, supplies or equipment directly to the
16 proposer, bidder, or contractor) whereby the public official knows
17 that he or she has received or will receive any financial gain
18 resulting from or in connection with the soliciting, procuring,
19 awarding, or making of a bid or contract; provided, however,
20 financial interest shall not include any interest in any increase
21 in value of, or dividends paid on, any stock which is publicly
22 traded on any public stock exchange.

23 (h) Notwithstanding other penalties described herein, those
24 who violate this Part 6 shall be subject to withholding of payments
25 under the contract, termination of the contract for breach,
26 contract penalties, decertification and/or being debarred from or
27 deemed nonresponsive in future City solicitations and contracts for
28 up to three years (for less egregious violations, as determined by
29 the Director, a period of probation may be proposed, any violations
30 during which period will result in debarment of no less than three
31 years).

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

7 **Part 2. Supplies, contractual services and capital improvements**

8 **Sec. 126.201. General.**

9 (a) **Nondisclosure of bids.**

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

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

24 (b) **Bid bond and/or security.** Except as otherwise provided
25 herein, all bids under this Part 2 shall be submitted in sealed
26 form to the Director, who may require that each bid be accompanied
27 by a bid security in the form of a certified or cashier's check or
28 bid bond in the amount as shall be prescribed in the invitation for
29 bid. The purpose of bid security is to discourage the withdrawal
30 of bids, to encourage that bidders comply with the instructions
31 and/or requirements of the invitation for bids, and that the

1 apparent low bidder will enter into a binding contract to perform
2 the work in accordance with the bid documents and the apparent low
3 bidder's bid proposal. Bid securities ensure that a certain amount
4 of money will be paid in the event that an apparent low bidder
5 fails to abide by the instructions and/or requirements of the
6 invitation for bids or fails to enter into a formal contract
7 pursuant to the same. As such, unless otherwise permitted by the
8 Director, bid securities shall not be discharged until a contract
9 has been executed and a performance bond accepted in lieu of the
10 bid securities. In lieu of the furnishing of surety with each
11 individual transaction, bidders who regularly do business with the
12 City shall be permitted to file with the Director an annual or
13 continuing bid bond in an amount established by the Director. For
14 projects with a value under \$500,000: (i) bid bonds shall not be
15 required for certified JSEBs and MBEs (which, by definition in 6B,
16 includes minority and women-owned businesses), as defined in
17 Chapter 126 Part 6; and (ii) the Director shall have the discretion
18 to waive the requirement for bid bonds where there is a written
19 determination that the imposition of a bid bond may detract from
20 competition without adding a material benefit to the City.

21 (c) **Conflict of interest.** Bids submitted under this Part
22 shall include a statement under oath executed by the bidder
23 disclosing the names of all officers and employees of the City and
24 of independent agencies to which F.S. Ch. 112, Pt. III, applies who
25 may have a private financial interest, directly or indirectly, in
26 the subject matter of the bid.

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

28 (1) **Creation.** There is hereby created a General
29 Governmental Awards Committee (the "GGAC"), which shall consist of
30 the Director of Administration and Finance or his designee, who
31 shall act as the GGAC Chairperson, the General Counsel or his

1 designee, and Director of Public Works or his designee; provided,
2 that, when the using agency is an independent agency required by
3 law to utilize the services of the Department, the chief
4 administrative officer or his designee of the using agency shall be
5 a member of the GGAC in lieu of the Director of Administration and
6 Finance; and further provided, that, when the Downtown Development
7 Authority is the using agency, the executive director shall be a
8 member in lieu of the chief administrative officer. Whenever one of
9 the members is temporarily unable to serve on the GGAC, the member
10 shall designate a designee serving under him to serve on the GGAC
11 in his absence. A representative of a using agency shall be
12 entitled to attend meetings of the GGAC at which business affecting
13 the using agency is to be conducted. The representative shall be
14 entitled to be heard but shall have no vote at the meetings;
15 provided, that the provisions of this sentence shall not apply to
16 the executive director or the chief administrative officer, as the
17 case may be, of an independent agency when he is serving as a
18 member of the GGAC. An independent agency may promulgate its own
19 rules or procedures to resolve bid or qualification disputes or
20 employ those stated in this Part 2.

21 (2) **Formal Awards.** The GGAC shall act as provided in
22 this Part 2 but the awarding of formal bids and contracts shall
23 become final only upon approval by: (i) The independent agency when
24 it is the using agency; or (ii) the Mayor or his designee
25 (collectively hereafter referred to as "the Mayor) in all other
26 areas.

27 (3) **Duties.** Except in cases where independent agencies
28 are directed by law to award their respective formal bids and
29 contracts, the GGAC shall meet as required for the purpose of: (i)
30 reviewing the recommendations of the Director or his designee; (ii)
31 awarding formal bids and contracts solicited in accordance with

1 this Part 2; (iii) canceling any solicitation made in accordance
2 with this Part 2 or rejecting any and all bids, in whole or in
3 part, or bids for one or more supplies, contractual services or
4 capital improvements included in the proposed bid when the public
5 or City's interest will best be served thereby; and (iv) waiving
6 minor irregularities as the best interest of the City so dictates.
7 If there exists a tie between the lowest responsive, responsible
8 bids meeting or exceeding published specifications in regard to the
9 same total amount or unit price, including base bids and
10 alternates, if any, and quality and service are also equal, and if
11 the delay caused by readvertising for bids will be substantially
12 detrimental to the public interest, the GGAC shall give preference
13 to the local bidder. Subject to this consideration, the Mayor may
14 authorize the GGAC: (i) if there is no local tie bidder, to award
15 the contract to one of the tie bidders by drawing lots in public;
16 or (ii) if there is more than one local tie bidder, to award the
17 contract to one of the local tie bidders by drawing lots in public.

18 (4) **Negotiations.** In the event the base bids received
19 from all responsive, responsible bidders exceed available and/or
20 allocated funds, and the lowest, responsive, responsible bidder's
21 bid does not exceed said funds by more than ten percent (10%), or a
22 higher percentage if so warranted by circumstances that necessitate
23 an emergency award, and if the delay caused by readvertising for
24 bids will be substantially detrimental to the public interest, the
25 GGAC may authorize the using agency to enter into negotiations with
26 the lowest responsive responsible bidder for an adjustment of the
27 bid base price, including, without limitation, changes to the
28 criteria and/or scope of work set forth in the invitation for bids,
29 in an effort to bring the bid within available and/or allocated
30 funds. Upon the conclusion of the negotiations, the using agency
31 shall provide the Director with detailed written notification of

1 the results of negotiations for submission to and final
2 consideration and recommendation by the GGAC and approval in
3 accordance with Section 126.201(d)(2), hereof.

4 (5) **Minutes.** The GGAC shall keep official minutes of
5 its meetings, which shall be maintained on file in the Department
6 as a permanent electronic or physical public record. The minutes
7 may take the form of verbatim tape recording or other verbatim
8 electronic recordings of the GGAC proceedings.

9 (6) **Public notice of meetings.** The GGAC shall cause a
10 written notice of the time, place and purpose of each of its
11 meetings to be filed as a public record with the Corporation
12 Secretary and with the Council Secretary at least twenty-four hours
13 in advance of said meetings.

14 (e) **Bidder's responsibility.** After considering
15 recommendations made by the Director or his designee and the GGAC,
16 the Mayor may authorize the GGAC to award formal bids and contracts
17 to the lowest responsive, responsible bidder meeting or exceeding
18 published specifications set forth in the invitation for bids.
19 Prior to making a recommendation to the Mayor, the Director and the
20 GGAC shall make a determination as to the responsibility of
21 bidders, which determination shall consider the following factors:

22 (1) The ability, capacity, skill and applicable
23 licensing and insurance of the bidder to perform the contract or
24 provide the service required.

25 (2) The capability of the bidder to perform the contract
26 or provide the service promptly or within the time specified
27 without delay or interference.

28 (3) The character, integrity, reputation, judgment,
29 experience and efficiency of the bidder.

30 (4) The quality of performance of previous contracts or
31 services.

1 (5) The previous and existing compliance by the bidder
2 with laws relating to the contract or services.

3 (6) The sufficiency of the financial resources and
4 ability of the bidder to perform the contract or provide the
5 service.

6 (7) The quality, availability and adaptability of the
7 supplies, contractual services or capital improvements to the
8 particular use required.

9 (8) The ability of the bidder to provide further
10 maintenance and service for the use of the subject of the contract.

11 (9) The number and scope of the conditions attached to
12 the bid.

13 (10) Whether the bidder has engaged in conduct prohibited
14 by Section 126.201(k)(1), hereof.

15 (11) Where applicable, whether the bidder is prequalified
16 pursuant to the City's requirements.

17 (12) Other information as may be secured by the Director
18 having a bearing on the decision to award the contract.

19 (f) **Notice of non-compliance.** Prior to the award in question
20 and upon a determination of a bidder's irresponsibility, the
21 Director shall provide said bidder with a written notice of non-
22 compliance via certified mail, return receipt requested, and via
23 U.S. Mail or facsimile, stating the basis for the determination of
24 irresponsibility and, if applicable, the rejection of the bidder's
25 bid or proposal, and whether said irresponsibility will result in
26 the bidder's removal from the bidders' list or exclusion from
27 consideration on a particular procurement solicitation and/or
28 award. As part of the notice of non-compliance, the Director shall
29 advise the bidder: (i) of the date and time that the GGAC will hear
30 the recommendation of award in question, if any; and (ii) that, if
31 it fails to properly and timely provide the Director with a written

1 Notice of Protest in accordance with the Department's Protest
2 Procedures, stating, in detail, the grounds on which the protest is
3 based, then the action contained in the notice of non-compliance
4 shall become final without further notice, and shall represent
5 final administrative action. If, in response to a notice of non-
6 compliance, the bidder properly and timely provides a written
7 Notice of Protest in accordance with the Department's Protest
8 Procedures, the bidder shall be entitled to a hearing before the
9 GGAC within a reasonable time thereafter, which hearing must occur
10 prior to GGAC's decision regarding the award in question, if any.
11 Within a reasonable time after hearing the protest and considering
12 the evidence and/or statements presented, the GGAC shall issue its
13 recommendation regarding the award in question and the action
14 proposed by the Director in the notice of non-compliance. A
15 determination inconsistent with the notice of non-compliance shall
16 not preclude the factual particulars on which said notice was based
17 from being considered in conjunction with additional information in
18 subsequent evaluations of responsibility, disqualification, or
19 debarment.

20 (g) **Formal contract.** The Mayor may require the successful
21 bidder to promptly execute a formal contract approved as to its
22 form, terms and conditions, and legal sufficiency by the Office of
23 General Counsel and to execute and deliver to the Director a good
24 and sufficient payment and/or performance bonds in a form approved
25 by the Office of General Counsel, in an amount equal to one hundred
26 percent of the contract price of a capital improvement project and
27 in an amount established by the Director for all other projects,
28 subject to the discretion of the GGAC or as otherwise provided
29 herein, and executed by a surety company authorized to do business
30 in Florida; however, a successful bidder who is awarded a formal
31 contract for less than the discretionary threshold amount indicated

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

23 (h) **Legal approval.** Bond forms and contract forms shall be
24 approved by the Office of General Counsel.

25 (i) **Execution of purchase orders.** Purchase orders, except
26 those for capital improvements, shall be executed by the Director
27 after approval by the Mayor and the Director of Administration and
28 Finance as to the availability of funds.

29 (j) **Prequalification.** Consistent with Section 126.203,
30 hereof, bidders may be prequalified for any procurement that is in
31 the City or its using agency's best interests. The Director is

1 authorized to promulgate guidelines and criteria for the pre-
2 qualification of bidders. Provided, however, that for certified
3 JSEBs, as defined in Chapter 126, Part 6, prequalification is not
4 required for any capital project with a value less than \$500,000.

5 (k) **Value engineering.** As permitted by state law, in
6 addition to the purchasing provisions set forth in this Chapter,
7 value engineering may be negotiated post-bid and pre-award,
8 pursuant to the guidelines and criteria promulgated by the
9 Director, which guidelines and criteria require prior review and
10 approval by Council. Prior to negotiating value engineering, said
11 guidelines and criteria shall be filed with the Council Secretary
12 and Council Auditor. If value engineering is negotiated, post-bid
13 or pre-award, there shall be submitted to Council and Council
14 Auditor, within thirty days of contract award, a written report
15 identifying the project and reason for negotiated value
16 engineering.

17 (l) **Contractor debarment.**

18 (1) **Director's discretion and recommendation.** The
19 Director shall have the discretion to recommend the debarment or
20 removal of a contractor and/or vendor from the bidders' list
21 established herein, who: (i) is more than sixty calendar days in
22 default or breach of a contract with the City; (ii) has failed to
23 perform or has unsatisfactorily performed the terms and conditions
24 of one or more contracts with the City, which failure to perform or
25 unsatisfactory performance was the result of circumstances within
26 the contractor or vendor's control; (iii) may be precluded from
27 contracting with the City because of a public entity crime pursuant
28 to Section 126.104, hereof; (iv) has failed to abide by the
29 federal, state and local prompt payment requirements or contractual
30 terms and conditions regarding the same; (v) has failed to abide by
31 or honor commitments made pursuant to applicable participation

1 goals associated with small or disadvantaged businesses; (vi) has
2 violated § 101 of the Immigration Reform and Control Act of 1986,
3 as may be amended from time to time; (vii) has engaged in conduct
4 prohibited hereunder or that is a serious threat to the integrity
5 of the public procurement and contracting process, as determined by
6 the Director; or (viii) has been debarred by another government
7 entity within the past three years. No contractor or vendor shall
8 be entitled to have its name restored to the bidders' list unless
9 and until it shall have remedied any underlying default and/or
10 breach to the satisfaction of the Director. Repeated or recurring
11 violations under this Section shall be sufficient reason for the
12 Director to remove the contractor's name permanently from the
13 bidders' list, subject to review by the GGAC and approval by the
14 Mayor.

15 (2) **Notice of debarment.** Upon reaching a decision to
16 debar a contractor or vendor, the Director shall provide said
17 contractor or vendor with a written notice of debarment via
18 certified mail, return receipt requested, and via U.S. Mail or
19 facsimile, stating the reason for and the proposed period of
20 debarment (for less egregious violations, as determined by the
21 Director, a period of probation may be proposed, any violations
22 during which period will subject the contractor or vendor to
23 debarment of no less than three years). As part of the notice of
24 debarment, the Director shall advise the contractor or vendor that,
25 if, within ten calendar days after the date of the notice, it fails
26 to provide the Director with a written Notice of Protest that
27 states, in detail, the grounds on which the protest is based, then
28 the action contained in the notice of debarment shall become final
29 without further notice, and shall represent final administrative
30 action.

31 (3) **Protest.** If, in response to a Notice of Debarment,

1 a contractor or vendor timely provides a written Notice of Protest,
2 the Director shall schedule a hearing before the GGAC within a
3 reasonable period of time after receiving the Notice of Protest.
4 Within a reasonable time after hearing the protest and considering
5 the evidence and/or statements presented, the GGAC shall issue its
6 findings and recommendation regarding the action proposed by the
7 Director. Upon approval by the Mayor, the GGAC's recommendation
8 shall become final, and shall represent final administrative
9 action.

10 (4) **Determination.** The determination as to whether a
11 contractor or vendor is in violation hereunder and whether the
12 violation is within the contractor or vendor's control shall be
13 made by the Director. To aid in this duty, the chief administrative
14 officer of each independent or using agency must inform the
15 Director whenever a contractor or vendor is considered to be in
16 violation hereunder, regardless of the reason therefor, and provide
17 a statement of the circumstances surrounding the violation. Nothing
18 herein removes the appeals process set forth in this Chapter.

19 (m) **Compliance.** All contracts and purchase orders,
20 whether formal or otherwise, entered into pursuant to this Chapter,
21 shall contain specific language requiring the successful bidder or
22 contractor to comply with all applicable federal, state and local
23 laws, rules, regulations and ordinances, as the same exist and as
24 may be amended from time to time, including, but not limited to the
25 Public Records Law, F.S. Ch. 119.

26 (n) **Direct negotiations.** Unless otherwise provided
27 herein, direct negotiations with bidders to effect the best
28 interests of the City shall be permitted under all parts and/or
29 sections of this Chapter 126, pursuant to Florida law, for projects
30 that do not exceed the threshold amount provided in § 287.017,
31 Florida Statutes, for CATEGORY FIVE, as may be revised from time to

1 time. Direct negotiations shall be conducted in accordance with
2 the guidelines and criteria promulgated by the Director, which
3 guidelines and criteria require prior review and approval by
4 Council. Prior to using direct negotiations, said guidelines and
5 criteria shall be filed with the Council Secretary and Council
6 Auditor. If direct negotiations are used, there shall be submitted
7 to Council and Council Auditor, within thirty days after contract
8 award, a written report identifying the project and reason for
9 direct negotiations.

10 **Sec. 126.202. Competitive sealed bid.**

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

23 (a) **Solicitation and public notice or advertisement.** The
24 Director shall solicit bids from responsible bidders, and may do so
25 by issuing public notice or advertisement as will acquaint bidders
26 with the proposed solicitation. The Director shall cause public
27 notice or advertisement of the solicitation be given a reasonable
28 period of time prior to the public opening or the place, date and
29 time at which responses are due as set forth in the solicitation:
30 (i) by posting said public notice on a bulletin board located in
31 the office of the Department; and (ii) in accordance with Section

1 126.102(m), hereof. The solicitation shall contain a detailed
2 description of the services sought, the time and date for the
3 receipt of responses and of the public opening, and all contractual
4 terms and conditions applicable to the procurement, including the
5 criteria to be used in evaluating responsiveness and
6 responsibility. The solicitation shall contain a description of
7 any renewal(s) contemplated in the underlying contract, and shall
8 require responses thereto to include a price for each renewal year
9 for which the contract may be renewed. Evaluation of responses
10 shall include, in addition to other criteria described in the
11 solicitation, consideration of the proposed total cost for each
12 renewal year. Renewals shall be contingent upon satisfactory
13 performance evaluations by the using agency in question and shall
14 be subject to the availability of appropriated funds. Criteria that
15 are not set forth in the solicitation may not be used in evaluating
16 responses.

17 (b) **Public opening and tabulation.** Solicitation responses
18 shall be opened publicly by the Department in the presence of one
19 or more witnesses at the time and place set forth in the
20 solicitation (any response received in advance of the date and time
21 of the public opening shall not be opened until the time set forth
22 in the solicitation). Unless otherwise designated by the Director,
23 the time of the public opening shall be established by the official
24 bid clock located in the office of the Department, with which
25 potential bidders and proposers are encouraged to familiarize
26 themselves. Subject to the Director and the GGAC's discretion to
27 waive minor irregularities that will not result in an unfair
28 economic or competitive advantage or disadvantage to any bidder or
29 proposer, any response not received prior to the time specified, as
30 determined by the official bid clock, will not be considered and
31 will be returned as non-responsive. For each timely submitted

1 response, the Department shall immediately record the bidder or
2 proposer's name and information necessary to evaluate the criteria
3 set forth in the solicitation, including, without limitation, the
4 proposed amount, alternates, unit prices, fees, contract renewal
5 amount(s), if any, and such other relevant information as deemed
6 appropriate by the Director. Responses and tabulations received
7 and/or generated by the Department pursuant to solicitations
8 hereunder are exempt from public inspection or disclosure until
9 such time as the Department provides notice of a decision and/or
10 award regarding the same or within ten calendar days after public
11 opening, whichever is earlier.

12 (c) **Response acceptance, evaluation, correction and**
13 **withdrawal.** Except as otherwise provided herein, timely submitted
14 bids shall be accepted as submitted without alteration,
15 modification, or correction, and shall be evaluated pursuant to the
16 objectively measurable evaluation criteria or factors set forth in
17 the solicitation. After public opening, bidders or proposers shall
18 not be permitted to alter, modify, correct, or unilaterally
19 withdraw their responses and other requirements to the extent the
20 same would negatively impact the integrity of the competitive
21 procurement process or would result in an unfair economic or
22 competitive advantage or disadvantage to any bidder or proposer
23 (any request for alteration, modification, correction, or
24 withdrawal, whether before or after public opening, must be
25 submitted in writing to the Director). Bidders or proposers shall
26 not be permitted to withdraw their responses unless approved by the
27 Director upon a showing of the following equitable factors: (i) the
28 bidder or proposer acted in good faith in submitting its response;
29 (ii) in preparing the response there was an error of such magnitude
30 that enforcement of the response would work severe hardship upon
31 the bidder or proposer; (iii) the error was not a result of gross

1 negligence or willful inattention; (iv) the error was discovered
2 and communicated to the Director, along with a written request for
3 permission to withdraw the response, which request must be
4 submitted before acceptance of the response; and (v) bidder or
5 proposer has no history of submitting erroneous bids or proposals
6 that result in requests to withdraw or alter the same.

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

28 (e) **Award.** Consistent with the requirements of Section
29 126.201(d), awards shall be made with reasonable promptness by
30 written notification to the lowest, responsive, responsible bidder,
31 as recommended by the Director and the GGAC Awards Committee and

1 approval by the Mayor, in accordance with only those objectively
2 measurable evaluation criteria or factors set forth in the
3 solicitation. Written notification will also be given to each
4 unsuccessful bidder. An award or decision, recommendation, or
5 action of the Director or GGAC under this Section may be protested,
6 in accordance with the Department's Protest Procedures, by those
7 adversely affected thereby and who: (i) have standing to do so
8 under Florida law; and (ii) have properly and timely complied with
9 the requirements of the protest procedures established by the
10 Director that are in existence at the time of bid opening.

11 **Sec. 126.203. Multi-Step competitive sealed bidding process.**

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

24 (a) **Invitation for multi-step competitive sealed bids.** The
25 invitation for bids and public notices under this Section shall be
26 governed by the requirements of Section 126.202(a), hereof, and
27 shall establish the place, date(s) and time(s) at which both the
28 technical offering and the priced bid must be submitted (the
29 technical offering and the priced bid shall be submitted in
30 separate sealed envelopes). The invitation for bid may require the
31 priced bid be submitted either simultaneously with or subsequent to

1 the technical offering; however, whether submitted simultaneously
2 with or subsequent to the technical offering, the priced bid shall
3 not be considered unless the technical offering is found to be
4 acceptable and/or responsive, in that the technical offering meets
5 or exceeds the objectively measurable evaluation criteria or
6 factors only as set forth in the solicitation. If, prior to the
7 submission of the priced bid, a particular bidder's technical
8 offering is found to be unacceptable, said bidder shall be provided
9 prompt written notice of the same, and its priced bid shall not be
10 considered. Technical offerings, priced bids and tabulations
11 received and/or generated by the Department pursuant to this
12 Section are exempt from public inspection or disclosure until such
13 time as the Department provides notice of a decision and/or award
14 regarding the same or within ten calendar days after bid opening,
15 whichever is earlier (for public inspection or disclosure exemption
16 purposes, technical offerings and the evaluation thereof shall be
17 considered separately from priced bids and tabulations).

18 (b) **Acceptance, evaluation, corrections, withdrawal and**
19 **award.** Issues regarding the acceptance, evaluation, correction and
20 withdrawal of unpriced technical offerings and priced bids under
21 this Section shall be governed by the requirements of Sections
22 126.202(b) and (c), hereof. Awards under this Section shall be
23 governed by Section 126.202(e), hereof.

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

25 Upon the recommendation of the Director and approval by the
26 GGAC that the formal procurement of supplies, contractual services
27 and capital improvements pursuant to Sections 126.202 or 126.203 is
28 impracticable, the same may be procured by formal written contract
29 and/or agreement based upon an award via Competitive Sealed
30 Proposal, whereby a Request For Proposals ("RFP") shall be publicly
31 noticed or advertised consistent with Section 126.202(a), hereof.

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

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

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

- 19 (i) The general purpose of the required services.
20 (ii) The objectives of the services.
21 (iii) The estimated period of time needed for the
22 services.
23 (iv) The estimated cost of the services.
24 (v) Whether the proposed service would or would
25 not duplicate existing services.
26 (vi) List of current contracts or prior services
27 which are related to the proposed services.

28 (2) Upon receipt of the scope and the certification
29 letter, the Director shall immediately send copies to the Council
30 Auditor and to the CSPEC. The Director shall then review the scope
31 and certification and make recommendations in writing to the

1 remaining members of the CSPEC, a copy of which shall be furnished
2 simultaneously to the Council Auditor. The CSPEC shall then review
3 the scope, the certification letter and the recommendations of the
4 Director and approve or disapprove the scope of services.

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

15 (4) If the CSPEC determines that it is unable to define
16 with reasonable precision the nature and scope of the services
17 needed by the using agency, it shall also solicit interested
18 persons to assist in the preparation of a detailed description of
19 the work to be performed in order to meet the general service
20 requirements, which interested person, once selected and/or
21 contracted for the purpose of defining with reasonable precision
22 the nature and scope of services needed by the using agency, shall
23 be disqualified from the award of a contract to perform the
24 services that the interested person was contracted to define.

25 (b) **Acceptance, corrections and withdrawal.** Issues regarding
26 the acceptance, correction and withdrawal of proposals under this
27 Section shall be governed by the requirements of Sections
28 126.202(b) and (c), hereof. Proposals and tabulations received
29 and/or generated pursuant to solicitations under this Section are
30 exempt from public inspection or disclosure until such time as the
31 Department provides notice of a decision and/or award regarding the

1 same or within ten calendar days after public opening, whichever is
2 earlier.

3 (c) **Award.** Subject to the approval of the Mayor, awards
4 under this Section shall be made to the responsible and responsive
5 proposer whose proposal is determined in writing by the CSPEC to be
6 the most advantageous to the City, based solely upon the relative
7 importance assigned to price and each of the criteria set forth in
8 the RFP. The contract file shall contain documentation supporting
9 the basis on which the award is made.

10 (d) **Minutes.** The CSPEC shall keep official minutes of its
11 meetings, which shall be maintained on file in the Department as a
12 permanent electronic or physical public record. The minutes may
13 take the form of verbatim tape recording or other verbatim
14 electronic recordings of the CSPEC proceedings.

15 (e) **Public notice of meetings.** The CSPEC shall cause a
16 written notice of the time, place and purpose of each of its
17 meetings to be filed as a public record with the Corporation
18 Secretary and with the Council Secretary at least 24 hours in
19 advance of the meeting.

20 **Sec. 126.205. Informal purchases and sales transactions.**

21 Purchases and sales other than those defined in Section
22 126.102(f), hereof, shall be made in accordance with regulations
23 established by the Director and approved by the Mayor.

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

25 (a) Upon a recommendation by the Director that a purchase can
26 be made only from one justifiable source, such as patented and
27 manufactured products and services offered for sale in a
28 noncompetitive market or solely by a manufacturer's authorized
29 dealer, and without publishing in a newspaper an advertised call
30 for bids, the GGAC, for purchases by the City, or the awarding
31 authority, for purchases by an independent agency may, if it

1 specifically finds from all of the relevant facts that a sole-
2 source purchase is proper under this Section, approve the purchase
3 in accordance with regulations established by the Director and
4 approved by the Mayor. There shall be submitted to the GGAC or the
5 awarding authority, as the case may be, by either the Director or
6 the using agency and acknowledged by the Director, a written
7 justification for each sole-source, noncompetitive purchase under
8 this Section, including when applicable a sufficient explanation,
9 as determined by the Director, as to why only the proposed make or
10 kind of goods or services will satisfactorily fulfill the needs of
11 the using agency. A requirement for a particular proprietary good
12 or service will not justify a sole source award in circumstances
13 where there is more than one potential contractor, vendor, or
14 offeror for the same.

15 (b) The authority granted in subsection (a) of this Section
16 to awarding agencies in the case of independent agencies shall only
17 be available to those independent agencies that adopt an internal
18 procedural rule providing that a two-thirds vote of the independent
19 agency is necessary for approval of a sole-source purchase.
20 Furthermore, the secretary of the independent agency shall certify
21 to the Director and the Council Auditor that the rule was in effect
22 and followed on each sole-source purchase awarded by the
23 independent agency under the authority granted by subsection (a) of
24 this Section.

25 **Sec. 126.207. Emergency purchases.**

26 (a) If an emergency occurs during regular City business
27 hours, the using agency shall immediately notify the Director, who
28 shall either purchase the required supplies or contractual services
29 or authorize the using agency to do so.

30 (b) If an emergency occurs at a time other than during
31 regular City business hours, the using agency shall attempt to

1 contact the Director by phone or e-mail, and may purchase directly
2 the required supplies or contractual services. Not later than the
3 next regular City business day thereafter the using agency shall
4 submit to the Director a requisition, a tabulation of bids
5 received, if any, a copy of the delivery record and a brief written
6 explanation of the circumstances of the emergency.

7 (c) Prior to making an emergency purchase, the Director or
8 the using agency, whichever makes the purchase, shall, whenever
9 practicable, secure competitive telephone bids and order delivery
10 to be made by the lowest responsible bidder.

11 (d) A complete record shall be maintained by the Director
12 explaining or otherwise supporting the reason for each emergency
13 purchase. The records shall be available for public inspection
14 during regular City business hours in the Director's main offices.

15 (e) The Director shall submit monthly to the Mayor a report
16 covering all emergency purchases, with an explanation of the
17 circumstances of emergency purchases in excess of the threshold
18 amount provided in § 287.017, Florida Statutes, for CATEGORY ONE,
19 as may be revised from time to time.

20 **Sec. 126.208. Prohibition of purchases from certain**
21 **persons.**

22 (a) No purchase of supplies, contractual services or capital
23 improvements shall be made from a person who is an officer or
24 employee subject to F.S. Ch. 112, Pt. III or in which any officer
25 or employee has a private financial interest, direct or indirect,
26 within the meaning of F.S. Ch. 112, Pt. III. However, in cases
27 where the Director shall have obtained more than one written sealed
28 bid, whether or not required by law to advertise for bids, this
29 prohibition shall not apply.

30 (b) No purchase of supplies, contractual services or capital
31 improvements shall be made from a person or entity who pleads nolo

1 contendere or guilty or who is convicted in a court of competent
2 jurisdiction for violating Section 101 of the Immigration Reform
3 and Control Act of 1986 (unlawful employment of an alien) for a
4 period of two years beginning from the date of such plea of nolo
5 contendere, guilty plea or conviction by a court of competent
6 jurisdiction.

7 **Sec. 126.209. Purchase of art reproductions.**

8 (a) During the month of October of each year, the Director
9 shall ascertain with due diligence the names and addresses of
10 businesses engaged in the sale of art reproductions in the City and
11 shall cause to be prepared a list of the local vendors. Thereafter,
12 each local vendor and any other local vendor of art reproductions
13 who tenders a request to the Director, at a time during the ensuing
14 12-month period, shall be mailed a letter requesting a statement of
15 his interest in selling art reproductions to the City and other
16 reasonable information as may be required by the Director in regard
17 to the nature or sale of art reproductions by the vendor, including
18 the following subjects: (1) Quantity; (2) Quality, brands or names
19 of manufacturer; (3) Variety; (4) Price or discount; and (5) Past
20 performance to the City.

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

30 (b) Persons purchasing art reproductions in an amount
31 exceeding the certified available balance or in another manner

1 violating this Section shall be personally liable to the City for
2 the excess amount, if any, and shall be guilty of a class D
3 offense.

4 **Sec. 126.210. Purchase of property from governmental bodies**
5 **at auction.**

6 (a) The purchase of property by the City and its independent
7 agencies may be made for cash using oral or sealed bid at an
8 auction conducted by a governmental body for the purpose of
9 disposing of surplus property of a governmental body; provided,
10 that the purchasing agency is not otherwise prohibited by law from
11 making these purchases. Section 126.105 shall apply to purchases
12 for capital outlay projects made pursuant to this Section.

13 (b) The Director shall establish regulations controlling
14 purchases made under subsection (a) of this Section. The
15 regulations shall require:

16 (1) Prior approval of the Director for purchases made
17 hereunder.

18 (2) If the purchaser is the City, prior written
19 certification of availability of funds for the purchase by the
20 Director of Administration and Finance, and

21 (3) If the purchaser is:

22 (i) The City, prior approval of the GGAC for
23 formal purchases.

24 (ii) An independent agency, prior
25 authorization of the governing body of the independent agency
26 seeking to make purchases hereunder.

27 (c) A person purchasing property under this Section in an
28 amount exceeding the certified available balance or violating this
29 Section in another manner shall be personally liable to the City
30 for the excess amount, if any, and shall be guilty of a class D
31 offense.

1 **Sec. 126.211. Utilization of competitively procured**
2 **governmental agreements.**

3 (a) The procurement of supplies, professional design
4 services, professional services, contractual services and capital
5 improvements by the City and its independent and/or using agencies
6 may be made by utilizing General Services Administration, State of
7 Florida and other contracts and agreements that have been
8 competitively procured, awarded and contracted by a federal, state,
9 municipal, county, or local governmental entity, body politic, or
10 using agency, provided that said procurement is not otherwise
11 prohibited by law. Purchases made pursuant to the provisions of
12 this Section 126.211 shall not be required to be formally
13 advertised. The use of this method of procurement does not negate
14 the requirement to procure for the City the highest quality in
15 supplies, contractual services, professional design services,
16 professional services and capital improvements at the greatest
17 economic value to the City. Section 126.105 hereof shall apply to
18 purchases for capital improvement projects made pursuant to this
19 Section.

20 (b) The Director shall establish regulations controlling
21 purchases made under subsection (a) of this Section. The
22 regulations shall require, at a minimum, prior approval of the
23 Director, for informal purchases, and of the Director and the GGAC,
24 for formal purchases.

25 (c) Purchases under this Section 126.211, may include the use
26 of a quote request to obtain written pricing or services
27 information from a vendor for services that have been competitively
28 procured, awarded and contracted by a federal, state, municipal,
29 county, or local governmental entity, body politic, or using
30 agency. The purpose of a quote request is to secure a more
31 favorable price, term, or condition than that provided in the

1 federal, state, municipal, county, or local governmental entity,
2 body politic, or using agency contract being considered, the
3 successful negotiation and use of said more favorable prices,
4 terms, or conditions are permissible hereunder. Use of a quote
5 request does not constitute a waiver of any kind or a decision or
6 intended decision that is subject to protest.

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

15 **Sec. 126.212. Specifications.**

16 (a) Using agencies shall prepare and submit to the Director
17 written specifications applicable to purchases of supplies,
18 contractual services and capital improvements, subject to the
19 review and approval of the Director or committee established by the
20 Director under this Chapter.

21 (b) Technical or performance descriptions shall be specified
22 whenever possible. Brand name or equal descriptions may be
23 specified when technical or performance descriptions are not
24 available. When brand name or equal descriptions are specified,
25 prospective bidders shall be informed that the reference is
26 intended to be descriptive and not restrictive and is for the sole
27 purpose of indicating to prospective bidders a description of the
28 article that will be satisfactory.

29 **Sec. 126.213. Standardization of supplies and equipment.**

30 (a) The Director, with the approval of the Mayor, is
31 authorized to establish an Advisory Committee on Standardization

1 (the "Advisory Committee") composed of the officials or employees
2 of the City, as designate by the Director. With the advice of the
3 using agencies and subject to the approval of the Advisory
4 Committee, the Department shall formulate and adopt standards for
5 supplies and contractual services required by the using agencies.
6 The using agencies and the Department shall cooperate fully to the
7 end that the City may obtain the maximum advantages afforded by
8 centralized purchasing.

9 (b) The duties of the Advisory Committee shall be:

10 (1) To classify repetitively purchased supplies and
11 equipment common to the needs of two or more using agencies.

12 (2) To adopt as standards the minimum number of
13 qualities, sizes and varieties of supplies and equipment consistent
14 with the successful operation of the City.

15 (3) To the maximum extent possible, to adopt standard
16 specifications of other governmental jurisdictions and nationally
17 organized standardizing bodies.

18 (4) To assist the Director in preparing written
19 specifications of standard supplies.

20 (5) To conduct studies of estimates of requirements for
21 supplies and contractual services and recommend to the Director and
22 the Mayor the rules governing estimates of needs as will best serve
23 the interests of efficient central purchasing without adding
24 burdensome procedures to using agencies.

25 (6) To recommend to the Director changes or improvements
26 in the purchasing system.

27 (7) At the request and discretion of the Director, to
28 review and recommend approval, modification to, or rejection of
29 specifications, project requirements and various other bid or
30 proposal documents submitted to the Department under this Chapter.

31 (c) The Director and the Advisory Committee are authorized to

1 utilize the technical facilities of the City in the development of
2 specifications and testing of supplies.

3 **Sec. 126.214. Surplus supplies.**

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

10 **Sec. 126.215. Purchase of passenger motor vehicles.**

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

16 **PART 3. PROFESSIONAL SERVICES CONTRACTS**

17 **Sec. 126.301. Award of professional services contracts.**

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

1 by the Mayor or his designee (collectively hereafter referred to as
2 "the Mayor"). No formal purchase order, contract, or agreement
3 shall be subdivided to avoid the requirements of this Section.

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

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

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

16 (1) The using agency shall submit to the Director
17 written service requirements indicating the nature and scope of the
18 professional services needed by the using agency and shall also
19 submit a certification letter of information required by the
20 Committee, including the following:

- 21 (i) The general purpose of the service or study.
22 (ii) The objectives of the study or services.
23 (iii) The estimated period of time needed for the
24 service or the study.
25 (iv) The estimated cost of the service or study.
26 (v) Whether the proposed study or service would or
27 would not duplicate a prior or existing study or service.
28 (vi) List of current contracts or prior services or
29 studies which are related to the proposed study or service.

30 (2) Upon receipt of the scope and the certification
31 letter, the Director shall immediately send copies to the Council

1 Auditor and to PSEC. The Director shall then review the scope and
2 certification letter and make recommendations in writing to PSEC, a
3 copy of which shall be furnished simultaneously to the Council
4 Auditor. PSEC shall then review the scope, the certification letter
5 and the recommendations of the Director and approve or disapprove
6 the scope of services.

7 (3) PSEC shall have the prepared written evaluation
8 criteria and service requirements indicating the nature and scope
9 of the professional services needed by a using agency incorporated
10 into an RFP, which shall be publicly noticed or advertised
11 consistent with Section 126.202(a), hereof, and distributed by the
12 Department. Notwithstanding other requirements contained in this
13 Chapter, the Department shall publish solicitations under this
14 Section 126.204 in a newspaper of general circulation in the City
15 at least ten business days prior to the public opening date set
16 forth in the RFP.

17 (c) **Acceptance, corrections and withdrawal.** Issues regarding
18 the acceptance, correction and withdrawal of proposals under this
19 Section shall be governed by the requirements of Sections
20 126.202(b) and (c), hereof. Proposals and tabulations received
21 and/or generated pursuant to solicitations under this Section are
22 exempt from public inspection or disclosure until such time as the
23 Department provides notice of a decision and/or award regarding the
24 same or within ten calendar days after public opening, whichever is
25 earlier.

26 (d) **Work description.** If PSEC determines that it is unable
27 to define with reasonable precision the nature and scope of the
28 professional services needed by the using agency, it shall also
29 solicit interested persons to assist in the preparation of a
30 detailed description of the work to be performed in order to meet
31 the professional service requirements, which interested person,

1 once selected and/or contracted for the purpose of defining with
2 reasonable precision the nature and scope of services needed by the
3 using agency, shall be disqualified from the award of a contract to
4 perform the services that the interested person was contracted to
5 define.

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

7 While PSEC may request, accept and consider proposals for the total
8 compensation to be paid under a professional design services
9 contract only during contract negotiations, it may require all
10 interested proposers responding to an RFP pursuant to this Part 3
11 to submit a quotation of their proposed unit prices, including,
12 without limitation, hourly rates, fees, or other charges that will
13 ultimately be used during contract negotiations to calculate or
14 determine total compensation. For the purposes of this Section,
15 *total compensation* shall mean the total amount that will be paid by
16 the City or using agency in exchange for the performance of the
17 desired professional services. The total compensation restriction
18 of this Section shall be applicable only to professional design
19 services specifically within the scope of the practice of
20 architecture, professional engineering, landscape architecture, or
21 registered surveying and mapping, as defined by the laws of the
22 State of Florida, or those performed by any architect, professional
23 engineer, landscape architect, or registered surveyor and mapper in
24 connection with his or her professional employment or practice.
25 For all other professional services, PSEC may require interested
26 persons responding to an RFP pursuant to this Part 3 to submit
27 their proposed total compensation at the time of public opening as
28 set forth in the RFP.

29 (f) **Resolicitation.** If, as a result of solicitations under
30 this Part 3, PSEC receives responses from less than three
31 proposers, it shall resolicit proposals from proposers previously

1 solicited and from additional persons, unless it determines, in
2 writing, that no advantage would be obtained by resoliciting.
3 Notwithstanding the number of responses received, PSEC may proceed
4 to consider those proposers responding to the resolicitation or to
5 the initial solicitation if it determines, in writing, that no
6 advantage would be obtained by resoliciting.

7 (g) **Modifications prohibited.** Once responses to an RFP under
8 this Section have been received by the Department, they shall not
9 be modified or allowed to be modified subsequently in any manner
10 whatsoever except for minor irregularities, which, in the opinion
11 of the Director, will not result in an unfair economic or
12 competitive advantage or disadvantage to any proposer, and which
13 modifications are made prior to PSEC beginning its evaluation
14 process.

15 (h) **Selection of qualified, interested and available**
16 **proposers.**

17 (1) From among those proposers evidencing an interest in
18 performing the professional services solicited hereunder, PSEC
19 shall:

20 (i) Prepare an alphabetical list of those
21 proposers determined to be qualified, interested and available, and

22 (ii) Subject to Sections 126.302(f) and 126.314,
23 hereof, designate no fewer than three proposers on the alphabetical
24 list considered by the PSEC to be best qualified to perform the
25 work required.

26 (2) The best-qualified selections shall be based upon
27 PSEC's ability to differentiate qualifications applicable to the
28 scope and nature of the services to be performed.

29 (3) The PSEC shall determine qualifications, interest
30 and availability by reviewing the written responses received, and,
31 when deemed necessary, by conducting formal interviews of selected

1 proposers that are determined to be best qualified based upon the
2 evaluation of written responses. The determinations shall be based
3 upon the following evaluation criteria, the relative importance of
4 which shall be indicated in the RFP:

5 (i) Competence, including technical education,
6 licensure and training, experience in the kind of project to be
7 undertaken, availability of adequate personnel, equipment and
8 facilities, the extent of repeat business of the persons and, where
9 applicable, the relationship of construction cost estimates by the
10 person to actual costs on previous projects.

11 (ii) Recent, current and projected work load.

12 (iii) Financial responsibility.

13 (iv) Ability to observe and advise whether plans
14 and specifications are being complied with, where applicable.

15 (v) Past and present record of professional
16 accomplishments which includes the use of JSEBs.

17 (vi) Proximity to the project involved.

18 (vii) Past and present demonstrated commitment to
19 small and minority businesses and contributions toward a diverse
20 market place.

21 (viii) Ability to design an approach and work plan
22 to meet the project requirements, where applicable.

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

29 (x) The volume of current and prior work performed
30 for using agencies shall be considered a minus factor, with the
31 objective of effecting an equitable distribution of contracts among

1 qualified firms, provided such distribution does not violate the
2 principle of selection of the most highly qualified firms.

3 (4) The absence of professional experience in a
4 specialized area shall not preclude proper consideration of
5 otherwise qualified, competent persons.

6 (5) In determining the best-qualified proposers, PSEC
7 shall give preference to persons having local places of business
8 where no other differentiation in qualifications can be made.

9 (6) Subject to Section 126.314, hereof, an actuary
10 selected to provide actuarial services to the Board of Pension
11 Trustees shall be an enrolled pension actuary and possess expertise
12 and experience in the pension actuary field.

13 (k) **Minutes.** PSEC shall keep official minutes of its
14 meetings, which shall be maintained on file in the Department as a
15 permanent electronic or physical public record. The minutes may
16 take the form of verbatim tape recording or other verbatim
17 electronic recordings of PSEC proceedings.

18 (l) **Public notice of meetings.** The PSEC shall cause a written
19 notice of the time, place and purpose of each of its meetings to be
20 filed as a public record with the Corporation Secretary and with
21 the Council Secretary at least twenty-four hours in advance of the
22 meeting.

23 **Sec. 126.303. Contract negotiation and award; independent**
24 **agencies.**

25 In cases where independent agencies are directed by law to
26 award their respective contracts, PSEC shall forward to the
27 independent agency the alphabetical list of persons qualified,
28 interested and available and its recommendation regarding the three
29 proposers considered best qualified. After receipt of the list and
30 recommendation, the independent agency shall select three proposers
31 in order of preference based on most qualified to perform the

1 services and shall engage in negotiation according to this order,
2 beginning with the first best-qualified person until successful
3 negotiation is reached, or upon terminating unsuccessful
4 negotiation with the first best qualified, proceeding to commence
5 negotiation with the second best-qualified person or, failing
6 accord with the second most qualified and terminating the
7 negotiation, proceeding to undertake the negotiation with the third
8 best-qualified person. Thereafter, the selection and negotiation
9 procedure shall be continued with additional selected proposers in
10 order of best qualified until a mutual agreement is reached or
11 until the list of selected best-qualified proposers is exhausted.
12 No independent agency which is required by law to utilize the
13 services of the Department shall award a contract for professional
14 services until after receipt of the recommendations of the PSEC.

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

16 In all cases to which Section 126.303 does not apply, PSEC,
17 subject to Section 126.302(f) hereof, shall forward to the Mayor
18 the alphabetical list consisting of no fewer than three best
19 qualified, interested and available proposers, in order of first,
20 second and third best qualified. The Mayor shall approve or
21 disapprove the recommendation of PSEC. Upon approval, PSEC shall
22 negotiate with the first most qualified proposer and recommend to
23 the Mayor, for approval, mutually satisfactory terms of employment,
24 including the professional fee to be charged. If negotiations with
25 the first most qualified proposer reach an impasse, PSEC shall
26 recommend to the Mayor that said negotiations be terminated, and,
27 upon the Mayor's approval, PSEC shall terminate said negotiations
28 by written notice, and shall commence the negotiation process with
29 the second most qualified proposer. Upon reaching an impasse and
30 terminating negotiation with the second most qualified proposer,
31 PSEC shall commence the negotiation process with the third most

1 qualified proposer. This selection and negotiation procedure may be
2 continued with additional selected proposers in order of best
3 qualified until a mutual agreement is approved by the Mayor or
4 until the list of selected best-qualified proposers is exhausted.
5 If the negotiation process results in the Mayor's approval of a
6 mutual agreement, the Mayor shall then order the award of a
7 contract for the performance of the required professional services
8 to the proposer with whom a mutual agreement is reached. If the
9 negotiation process fails to result in a mutual agreement for the
10 performance of the required professional services, then the
11 selection process shall terminate and all proposals shall be deemed
12 rejected, and the using agency in question, with the assistance of
13 the Department, may modify the specifications or scope of services
14 and resolicit proposals, which modifications shall be documented in
15 writing and maintained in the resulting contract file. If delays
16 resulting from resolicitation efforts will be substantially
17 detrimental to the City's best interest, PSEC, upon the approval of
18 the Mayor, may reinitiate the negotiation process described herein,
19 beginning with the first most qualified proposer, which reinitiated
20 negotiations may include, without limitation, modifications to the
21 specifications or scope of services set forth in the initial
22 solicitation, which modifications shall be documented in writing
23 and maintained in the resulting contract file. If the reinitiated
24 negotiation process results in the Mayor's approval of a mutual
25 agreement, the Mayor shall then order the award of a contract for
26 the performance of the required professional services to the
27 proposer with whom a mutual agreement is reached. To the extent a
28 contract awarded hereunder is terminated, PSEC, upon the Mayor's
29 approval, shall have the discretion to: (i) commence negotiations
30 as described in this Section 126.304, beginning with the next most
31 qualified proposer, for the professional services remaining and/or

1 necessary for the completion of said contract; or (ii) to procure
2 said professional services pursuant to Part 3, hereof.

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

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

17 **Sec. 126.306. Contingent fees prohibited.**

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

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

31 (b) For the breach or violation of this provision, the City

1 or independent agency shall have the right to terminate the
2 agreement without liability and, at its discretion, to deduct from
3 the contract price, or otherwise recover the full amount of the
4 fee, commission, percentage, gift or consideration.

5 **Sec. 126.307. Exemptions.**

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

8 (a) For the performance of professional services for a
9 professional fee, exclusive of reimbursed expenses, of less than
10 the applicable threshold amounts indicated in Section 126.102(f),
11 hereof.

12 (b) With another local, state or federal governmental agency
13 for the performance of professional services.

14 (c) For the performance of professional services by a
15 nonprofit professional organization or the members thereof, if the
16 membership includes substantially all of the persons engaged in the
17 City in the practice of the particular profession.

18 (d) For the performance of professional services under
19 circumstances otherwise exempt under this Chapter.

20 **Sec. 126.308. Services related to legal work.**

21 (a) This Section shall govern procurement of the following
22 legal-related services used as a part of legal services performed
23 under the supervision of the General Counsel, the State Attorney or
24 the Public Defender, or their designees:

25 (1) Appraisal, acquisition, disposition and/or
26 relocation services in connection with property transactions.

27 (2) Title insurance and abstracts.

28 (3) Court reporters.

29 (4) Expert witnesses who will or may be called upon to
30 testify in an administrative, quasi-judicial or judicial proceeding
31 on behalf of a using agency where the employment is primarily for

1 the purpose of preparation for or presentation at the proceeding.

2 (5) Printing of legal briefs.

3 (6) Publication of legal advertisements and notices.

4 (b) Annually, during the month of October, the PSEC shall
5 establish a list of qualified, interested and available sources of
6 the legal-related services which the General Counsel, the State
7 Attorney and the Public Defender each find are reasonably likely to
8 be required by each of them, respectively, on a recurring basis
9 during the ensuing year. PSEC shall establish the list using the
10 procedures in Section 126.302. Upon recommendation of the
11 Director, the PSEC may add to or delete from the list at any time
12 for good cause as determined by the PSEC.

13 (c) Whenever the General Counsel, the State Attorney or the
14 Public Defender requires a legal-related service, he shall:

15 (1) If a list of qualified, interested and available
16 sources of that service has been established, procure the services
17 from a source on the list.

18 (2) If no list has been established, procure the
19 services from a qualified source.

20 **Sec. 126.309. Utilization of competitively procured**
21 **governmental agreements.**

22 (a) Consistent with Section 126.211, hereof, the procurement
23 of professional services by the City and its independent and/or
24 using agencies may be made by utilizing General Services
25 Administration, State of Florida and other contracts and agreements
26 that have been competitively procured, awarded and contracted by a
27 federal, state, municipal, county, or local governmental entity,
28 body politic, or using agency, provided that said procurement is
29 not otherwise prohibited by law.

30 (b) The Director shall establish regulations controlling
31 purchases made under subsection (a) of this Section, which

1 regulations shall, at a minimum, require prior approval of the
2 Director for informal purchases and of the Director and PSEC for
3 formal purchases.

4 **Sec. 126.310. Bond Counsel.**

5 Notwithstanding the limitations hereunder concerning awards of
6 contracts for legal services, the provisions of this Part shall
7 apply to the selection of, and negotiation with, bond counsel to
8 represent the City and its independent agencies in financial
9 matters, except that the selection of the best-qualified person,
10 interested and available, shall be done by the General Counsel,
11 subject to the approval of the Council, with respect to services to
12 be performed for the City, or by the governing body of an
13 independent agency with respect to services to be performed for the
14 independent agency.

15 **Sec. 126.311. Emergency purchases of specified professional**
16 **services.**

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

19 (a) If an emergency occurs during regular City business
20 hours, the using agency shall immediately notify the Director who
21 shall either purchase the required professional services or
22 authorize the using agency to do so.

23 (b) If an emergency occurs at a time other than during
24 regular City business hours, the using agency may purchase directly
25 the required professional services. Not later than the next regular
26 City business day thereafter, the using agency shall submit to the
27 Director a requisition, a tabulation of bids received, if any, a
28 copy of the statement of professional services provided and a brief
29 written explanation of the circumstances of the emergency.

30 (c) Prior to making an emergency purchase, the Director or
31 the using agency, whichever makes the purchase, shall, whenever

1 practicable, secure competitive, qualified proposals and order
2 professional services to be made by the best qualified and
3 responsible supplier of the professional services required.

4 (d) A complete record shall be maintained by the Director
5 explaining or otherwise supporting the reason for each emergency
6 purchase of professional services. The records shall be available
7 for public inspection during regular city business hours in the
8 Director's main offices.

9 (e) The Director shall submit monthly to the Director a
10 report covering all emergency purchases of professional services,
11 with an explanation of the circumstances of emergency purchases in
12 excess of \$1,000.00.

13 **Sec. 126.312. Sole-source noncompetitive purchases of**
14 **professional services.**

15 (a) Upon certification by the PSEC that a purchase of
16 professional services can reasonably be made only from a sole
17 source or proprietary procurement method, such as follow-up or
18 related studies by the professional originally performing the
19 service, and without publishing in a newspaper an advertised call
20 for bids, the PSEC, for purchases by the City, or the awarding
21 Authority for purchases by an independent agency, may, if it
22 specifically finds from all of the relevant facts that a sole-
23 source or proprietary purchase of professional services is proper
24 under this Section, approve the purchase in accordance with
25 regulations established by the Director and approved by the Mayor.
26 There shall be submitted to the PSEC or the awarding authority, as
27 the case may be, by either the Director or the using agency, a
28 written justification for each sole-source or proprietary,
29 noncompetitive purchase of professional services under this
30 Section, including when applicable an explanation as to why only
31 the proposed professional will satisfactorily fulfill the needs of

1 the City's agency.

2 (b) The authority granted in subsection (a) of this Section
3 to awarding agencies in the case of independent agencies shall only
4 be available to those independent agencies that adopt an internal
5 procedural rule providing that a two-thirds vote of the independent
6 agency is necessary for approval of a sole-source or proprietary
7 purchase. Furthermore, the secretary of the independent agency
8 shall certify to the Director and the Council Auditor that the rule
9 was in effect and followed on each sole-source or proprietary
10 purchase awarded by the independent agency under the authority
11 granted by subsection (a) of this Section.

12 **Sec. 126.313. Financial related services.**

13 Pursuant to Chapter 110 Part 2 of the Jacksonville Ordinance
14 Code, as the same may be revised from time to time, all deposits
15 and investments of City capital, including the General Employee
16 Pension Fund, and other applicable financially related services,
17 including, without limitation, credit enhancement, liquidity
18 support, investment managers, financial and/or investment advisors,
19 issuing, paying and/or tender agents, rating agencies, printing of
20 preliminary and/or final official statements, offering memorandum,
21 bonds, notes and/or commercial paper, and similar services that are
22 offered in a limited market, that involve complex negotiations, or
23 that require a limited time frame as necessary for a financial
24 transaction involving bonds, notes, commercial paper or other
25 similar transactions, may be procured in accordance with the City's
26 Pension and Treasury Procurement Procedures. Notwithstanding the
27 requirements of the City's Pension and Treasury Procurement
28 Procedures, the Director of Administration and Finance and the City
29 Treasurer, in cooperation with the Director, shall develop written
30 criteria and procedures necessary to evaluate and procure
31 financially related services under this Section 126.313, which

1 shall include, without limitation, such factors as historic
2 investment performance, fee structure, professional staff, size of
3 firm, research capabilities, area of specialization, strategic fit
4 with the overall financial service goals and objectives. Any
5 procurement under this Section shall include as much competition as
6 practically possible under the circumstances, and shall include
7 procedures necessary to insure compliance with the requirement to
8 procure the highest quality in financial services at the greatest
9 economic value to the City.

10 **Sec. 126.314. Consultants' Competitive Negotiation Act.**

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

14 **Sec. 126.315. Additional supplementary outside services**
15 **related to Building Inspection Division work.**

16 (a) This Section shall govern procurement of the following
17 Building Inspection Division-related services used as a part of
18 services performed under the supervision of the Chief of the
19 Building Inspection Division (the "Division Chief"):

20 (1) Plan reviews.

21 (2) Building inspections.

22 (3) Such other Building Inspection Division services as
23 may be approved by the Director.

24 (b) The Director shall establish and update from time to time
25 a list of qualified, interested and available sources of the
26 Building Inspection Division-related services which the Division
27 Chief finds are reasonably likely to be required, on a recurring
28 basis. The Committee shall establish the list using the procedures
29 in Section 126.302. As used in this subsection, the term *qualified*
30 shall mean that an individual performing such Building Inspection
31 Division-related services is properly licensed and authorized to

1 perform such services under applicable provisions of the Florida
2 Statutes and rules and regulations relative thereto.

3 (c) No individual, corporation, partnership, joint venture or
4 other legal entity, or any employee thereof may perform any
5 Building Inspection Division-related service including any plan
6 review, building inspection or any other service on plans or
7 projects which the individual, corporation, partnership, joint
8 venture or other legal entity, or any employee thereof designed,
9 permitted or has or had any ownership interest of any kind.

10 (d) Whenever the Division Chief requires a Building
11 Inspection Division-related service, he shall:

12 (1) If a list of qualified, interested and available
13 sources of that service has been established, procure or cause the
14 procurement of the services from a source on the list.

15 (2) If no list has been established, procure the
16 services from a qualified source in consultation with the Director.

17 (3) Ensure that the City is held harmless with respect
18 to the City's obligation to make the payment from the contractor
19 builder or other person requesting the supplementary outside
20 service. In the event the contractor builder's check is returned
21 for insufficient funds or if payment is refused for any other
22 reason, the party requesting the requesting the service and the
23 party agreeing to provide the service shall agree in writing to
24 hold the City and its employees harmless with respect to the
25 payment for services.

26 (4) Ensure that the service provider maintains the
27 appropriate insurance coverages necessary to protect the City, the
28 provider and the person/entity requesting the service during the
29 applicable time periods.

30 (5) Ensure that the service provider and party
31 requesting the service indemnifies, defends and holds the City

1 harmless for all acts and omissions occurring in connections with
2 the procurement and delivery of services.

3 **PART 4. NONDISCRIMINATION POLICY**

4 **Sec. 126.401. Policy.**

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

20 **Sec. 126.402. Definitions.**

21 As used in this part:

22 (a) *City contracts* means all contracts of the City for the
23 purchase of supplies, contractual services, including professional
24 design services, professional services and capital improvements.

25 (b) *Commission* means the Human Rights Commission.

26 (c) *Executive Director* means the Executive Director of the
27 Human Rights Commission.

28 (d) *Nondiscrimination provisions* means the contractual
29 provisions set forth in Section 126.404.

30 (e) *Policy of nondiscrimination* means a policy of
31 nondiscrimination against an employee or applicant for employment

1 on account of race, religion, sex, color, national origin, age or
2 handicap, which policy applies in all areas of employee relations.

3 **Sec. 126.403. Investigation of bidders for city contract for**
4 **compliance with nondiscrimination policy.**

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

12 **Sec. 126.404. Nondiscrimination provisions in all city**
13 **contracts.**

14 All City contracts shall contain the following provisions:

15 (a) The contractor represents that he has adopted and will
16 maintain a policy of nondiscrimination as defined by ordinance
17 throughout the term of this contract.

18 (b) The contractor agrees that, on written request, he will
19 permit reasonable access to his records of employment, employment
20 advertisement, application forms and other pertinent data and
21 records by the Executive Director for the purpose of investigation
22 to ascertain compliance with the nondiscrimination provisions of
23 this contract; provided, that the contractor shall not be required
24 to produce for inspection records covering periods of time more
25 than one year prior to the date of this contract.

26 (c) The contractor agrees that, if any of the obligations of
27 this contract are to be performed by a subcontractor, the
28 provisions of subsections (a) and (b) of this Section shall be
29 incorporated into and become a part of the subcontract.

30 **Sec. 126.405. Investigation and findings procedure of**
31 **commission.**

1 (a) When requested by the Director or the Mayor, it shall be
2 the duty of the Executive Director to undertake an appropriate
3 investigation to determine compliance or noncompliance:

4 (1) With the policy of nondiscrimination required by
5 this Part with respect to a person seeking the award of a City
6 contract.

7 (2) With the nondiscrimination provisions of a City
8 contract.

9 (b) At the conclusion of the investigation, the Executive
10 Director shall issue an order finding compliance or noncompliance,
11 including the facts upon which his findings and conclusions are
12 based, to the bidder or contractor affected and to the Mayor, the
13 Director and the Awards Committee.

14 (c) An order finding compliance shall become final upon
15 issuance by the Executive Director. An order finding noncompliance
16 shall become final twenty days after issuance by the Executive
17 Director, unless the order is appealed.

18 (d) An order finding noncompliance may be appealed by the
19 bidder or contractor affected within twenty days after issuance by
20 the Executive Director by the filing of a notice of appeal with the
21 Commission. The filing of the notice of appeal shall act as a stay
22 of the order until final disposition by the Commission.

23 (e) Upon the filing of a notice of appeal, the Commission
24 shall afford the bidder or contractor affected an opportunity to be
25 heard before the Commission and shall thereafter enter its order,
26 by a vote of the majority of the entire membership of the
27 Commission, upholding or reversing the order of the Executive
28 Director. The order of the Commission shall become final upon
29 issuance, unless appealed to a court of competent jurisdiction.

30 (f) In the case of contracts which are funded in part or
31 wholly by funds derived from the United States Government, the

1 Executive Director and his staff shall not disclose employment
2 records or other data obtained from employers and others in the
3 course of investigations, except relevant information pertaining
4 thereto or as reasonably required to be disclosed in connection
5 with an appeal to the Commission. To the extent permitted by law,
6 the members of the Commission, the Director and the Mayor shall
7 also maintain the confidentiality of records and data which may be
8 disclosed to them in the course of an investigation.

9 **Sec. 126.406. Effect of final order finding noncompliance.**

10 (a) With respect to a person seeking the award of a City
11 contract, a copy of a final order finding noncompliance with the
12 policy of nondiscrimination required by this Part shall be
13 furnished to the committee or the Mayor, whichever requested the
14 investigation. No City contract shall be awarded to a person
15 failing to comply with the policy of nondiscrimination required by
16 this part.

17 (b) With respect to the nondiscrimination provisions of a
18 City contract, a copy of a final order finding noncompliance with
19 the provisions shall be furnished to the Mayor and the Director.
20 Every order shall afford the bidder or contractor affected an
21 opportunity to demonstrate to the satisfaction of the authority
22 issuing the order which becomes final, within the reasonable time
23 as the issuing authority determines, that the breach of the
24 nondiscrimination provisions has been corrected. At the expiration
25 of the reasonable time, the issuing authority shall enter a further
26 order determining whether or not the breach has been corrected,
27 furnishing copies thereof to the affected person, the Mayor and the
28 Director. A person failing to correct the breach of the
29 nondiscrimination provisions within the time period permitted shall
30 be deemed an irresponsible bidder, and no City contract shall be
31 awarded to this person. An irresponsible bidder under this

1 subsection shall have the opportunity to submit to the Commission
2 at any time a program adopting and maintaining a policy of
3 nondiscrimination and, upon approval thereof by the Commission, the
4 prohibitions of this subsection shall terminate.

5 **PART 5. EXTRAORDINARY CRITICAL PURCHASING PROCEDURES**

6 **Sec. 126.501. Legislative intent.**

7 It is the intent of the Council in enacting this Part to
8 provide procedures whereby supplies, normally purchased by the City
9 upon competitive bidding, are unobtainable by the formal purchasing
10 procedures of this Chapter because of certain specified conditions,
11 hereinafter set forth. It is the intent of the Council that the
12 provisions of this Part shall be invoked only after every other
13 avenue of procurement under the Ordinance Code and state law has
14 been explored and found inadequate and the Director shall give due
15 regard to this intent when recommending the use of the critical
16 purchasing provisions contained herein. Because of the
17 extraordinary nature of this part, the emergency purchasing
18 procedures outlined in Section 126.207 are not superseded hereby
19 and they shall be used in every instance requiring emergency
20 procurement except when all the conditions outlined in Section
21 126.502 exist.

22 **Sec. 126.502. Emergency Conditions; Declaration of Emergency.**

23 (a) An emergency sufficient to invoke the procedures
24 contained herein shall occur if all of the following conditions
25 occur or are satisfied:

26 (1) When the product sought to be declared an emergency:

27 (i) Is necessary to maintain the public health or
28 safety, or

29 (ii) Is essential in the continuation of a
30 governmental service that is itself necessary to maintain the public
31 health or safety, or

1 (2) When the product sought to be declared an emergency
2 cannot be replaced by another product that is available through the
3 formal purchasing procedures of this Chapter.

4 (3) When competitive bids for the product sought to be
5 declared an emergency cannot be obtained through the formal
6 purchasing procedures of this Chapter or under the provisions of a
7 state contract for the supply of the product.

8 (4) As concerns the supply of the product, when either
9 of the following conditions occurs:

10 (i) A severe shortage of supply exists, as
11 certified by the Director.

12 (ii) The existence of an allocation system, not
13 usually in use as regards the product, whether or not sanctioned or
14 established by law or regulation, is documented by the Director.

15 (5) As concerns the suppliers of the product, when each
16 of the following occurs:

17 (i) If less than all of the suppliers of the
18 product on the bidders' list respond, the Director has contacted
19 the usual suppliers and all other suppliers responding by the most
20 reasonable method to determine their ability or willingness to
21 respond to a further solicitation for bids.

22 (ii) Each supplier has set out in writing the terms
23 and conditions, if any, under which he will supply the product,
24 which terms and conditions shall specify at least that the supplier
25 will supply the product if the contract period does not exceed one
26 year in duration.

27 (b) If the awarding authority declares an emergency, an
28 Emergency Purchasing Committee, consisting of a representative of
29 the using agency, the Director and the General Counsel, shall
30 proceed to negotiate the supply of the product on terms and
31 conditions most favorable to the City for a period not to exceed

1 one year and shall present its recommendations to the awarding
2 authority.

3 **Sec. 126.503. Use of formal purchasing procedures.**

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

21 (a) The supplier cannot guarantee uninterrupted delivery of
22 the product during the term of the contract, if he agrees to use
23 his best efforts to secure reasonable deliveries and to inform the
24 Director of an anticipated delay or interruptions.

25 (b) The quality, availability or adaptability of the product
26 to the particular use for which it is required cannot be precisely
27 established, if the general quality, availability or adaptability
28 of the product is agreed upon and, in cases where it is possible,
29 reasonable substitutes for the product can be agreed upon for
30 delivery when the required product is unsuitable or unavailable.

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

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

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

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

28 **Sec. 126.506. Report to Council and Council Auditor.**

29 The Director shall report to the Council all requests for
30 critical purchases under this Part and all contracts awarded as a
31 result of the requests and shall furnish the Council Auditor a copy

1 of the contracts.

2 **PART 6A.**

3 **SMALL BUSINESS CAPITAL, BONDING, AND OUTREACH PROGRAM**

4 **Sec. 126.601. Creation of Bond Enhancement Program.** The City
5 shall issue a Request for Proposals ("RFP") within sixty days of
6 the effective date of this Ordinance and contract with an entity to
7 provide a bond enhancement program for the benefit of Jacksonville
8 Small Emerging Businesses ("JSEBs") as defined below, with an
9 established bond enhancement program entity. The purpose of this
10 program is to provide support services to assist vendors certified
11 hereunder in their efforts to secure performance and payment bonds
12 for public and private contracts. The program shall not provide the
13 underlying bond but shall provide a refined basis for underwriting
14 bonds, in-house bonding authority (where the respondent to the RFP
15 has the capability of writing bonds on its own company), small
16 business support services and contractor monitoring necessary for
17 such bond underwriting, as well as improvement plans for
18 contractors who do not qualify. The contract shall provide for an
19 initial two year period with three, one-year renewals subject to
20 usual City professional contract terms.

21 (b) Section 126.201(a)(2)(b) provides that JSEBs do not have
22 to submit bid bonds for projects under \$500,000. Section
23 126.201(j) provides that JSEBs do not need to provide performance
24 bonds for projects under \$200,000, or such other minimum amount set
25 by the Florida legislature under Fla. Stat. Section 255.05 as
26 amended.

27 **Sec. 126.602. Access to capital.**

28 (a) The City shall create a pool of resources, in conjunction
29 with lending institutions" to assist MBEs and JSEBs with obtaining
30 access to capital (the "AC Program"). JEDCO or a similar private
31 entity approved by the lending institutions shall manage the

1 distribution of said funds, in accordance with guidelines adopted
2 by the lenders and approved by the City in order to ensure proper
3 administration and monitoring and to ensure continuity for the
4 program.

5 (1) The City's ombudsman, set forth in section 126.619,
6 shall work closely with the existing business specialist and other
7 key Ch.A.S.E. members or similar private entity to ensure that
8 certified JSEBs are receiving recommended assistance.

9 (2) The Ombudsman, working with the Small Business Center
10 at Gateway ("SBCG") and the First Coast African-American Chamber of
11 Commerce ("FCAACC") or similar private entities shall gather
12 information on all available programs for access to capital,
13 including but not limited to local bank liaisons and programs, SBA
14 programs, BBIC, JEDCO, JEDC and any other program which assists
15 small and or minority businesses to obtain capital.

16 (3) The Director shall provide biannual reports to the
17 Mayor, with a copy to City Council Audit Committee, identifying the
18 size and number of businesses assisted in the two preceding
19 quarters. Said reports shall include the nature of the service or
20 product provided; the program (whether JSEB, MBE, or Majority); the
21 nature of the contracts awarded and the dollar value of each
22 contract awarded).

23 (4) The Director and Ombudsman, working with the SBCG and
24 the FCAACC shall also hold biannual open houses or workshops to
25 showcase available assets and obtain information from JSEBs and
26 MBEs on available programs.

27 (b) The Ombudsman shall staff a series of meetings initiated
28 by the Mayor between the City and any Financial Institutions with
29 offices in Jacksonville who wish to participate in the creation of
30 JSEBs banking managers who will assist JSEBs in obtaining credit.
31 The Ombudsman may be the Director or staff, as may be required, to

1 support applications for various City, state, or federally-funded
2 programs including New Market Tax Credits.

3 **Sec. 126.603. Continuing education and mentoring programs**

4 (a) The City shall engage FCCJ and Edward Waters College and
5 other educational institutions to advise and implement continuing
6 education, training and mentoring programs, including but not
7 limited to training on doing business with the City, subcontracting
8 documentation requirements, accounting for the small business, and
9 related matters for construction related contractors and
10 subcontractors, including technology, bidding, and bonding, and
11 project management. The UNF Small Business Development Center
12 ("UNF/SBDC") and the SBCG shall provide non-construction related
13 small emerging businesses with continuing education and training
14 and mentoring programs, including key management issues such as
15 cash-flow management, business planning, marketing, accounting, and
16 record keeping, human resources management, and other related
17 business development education. FCCJ and Edward Waters College
18 shall hold an initial summit, to inventory existing programs, which
19 provide continuing education, apprentice or mentoring programs and
20 to hear from the community and experts on what further programs or
21 educational assistance may be needed. Thereafter, FCCJ and Edward
22 Waters College shall hold a small business program workshop, to
23 design and suggest the requisite needs, including the formation of
24 a scholarship program for assistance to JSEBs. Funds appropriated
25 for these activities are inclusive of scholarships.

26 (b) FCCJ, Edward Waters College, UNF/SBDC, SBCG and the
27 FCAACC shall report their findings back to the Mayor within one
28 hundred and eighty days from the effective date of this ordinance
29 FCCJ and Edward Waters College shall engage such private firms as
30 may be necessary to provide such training.

31 **Sec. 126.604. Accounting Grant Program for Certified JSEBs**

1 **and MBEs.**

2 The City shall establish an Accounting Grant Program which
3 shall either (1) provide for up to one \$500 reimbursement in
4 matching funds for each certified JSEB and MBE, to procure
5 accounting services from a Certified Public Accountant, which will
6 include the provision of a book value for the business; or (2)
7 provide all but \$25 of a fee charged by the UNF/SBDC program for a
8 Fiscal Physical, which will include the provision of a book value
9 for the business.

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

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

28 **Sec. 126.606. Insurance program review**

29 The Risk Manager for the City shall prepare a report on
30 available insurance programs for Florida small businesses, and make
31 recommendations regarding methods or programs to assist certified

1 JSEBs in obtaining requisite insurance. Said report shall be
2 provided to the Mayor, with a copy to Council, on or before January
3 15, 2005 and thereafter shall be prepared and submitted biannually,
4 with a copy being sent to JSEBs.

5 **Sec. 126.607. Collecting data to evaluate the Program.**

6 (a) The City shall issue an RFP within sixty days of the
7 effective date of this ordinance to engage a consultant to develop
8 and use measures to quantify and categorize the contracts being
9 awarded to all contractors and consultants, including JSEBs. Said
10 consultant shall submit the format for its work to the Mayor, with
11 a copy to the COO, Director and the Council within sixty days of
12 the award of the RFP.

13 (b) Thereafter the consultant shall prepare quarterly reports
14 in the format filed as described in Section (a) above and shall
15 include data on prime contractors and subcontractors bidding on and
16 awarded City projects, including at a minimum without limitation:
17 the race, gender, or nationality of the contractor or consultant,
18 along with the scope of services, SOIC code, size of contracts
19 awarded in the categories used by Fla. Stat. Section 287.017 and
20 255.0525. The Director shall report on a quarterly and an annual
21 basis to the Mayor and the Council on the number and value of
22 contracts awarded, by category or work, contract size,
23 characteristic of company (i.e., African American, Hispanic, Native
24 American, Asian, Women, and Majority) and whether certified or not.

25 (c) There is established a JSEB Monitoring Committee, to
26 review the status of the goals of this Program, including the
27 number and dollar value of contracts awarded, the training,
28 capital, and bonding programs, and difficulties or accomplishments
29 of the Program, along with a comparison of the achievements under
30 the Program compared with the goals. This Committee shall meet
31 with the Director quarterly, who shall generate a report for the

1 Mayor with a copy to the COO and the Council within fourteen days
2 of each quarterly meeting. The Mayor shall appoint 3 members of
3 the Committee, and the City Council shall appoint 2 members. The
4 Committee shall be comprised of two non-JSEB contractors, one
5 appointed by each of the Mayor and the Council, two JSEB
6 contractors, one appointed by each of the Mayor and the Council,
7 and one private citizen for one-year terms. The Mayor and Council
8 shall strive to reflect the diversity of Duval county in its
9 appointments; each of the five members shall be confirmed by
10 Council.

11 **CHAPTER 126**

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

13 **Sec. 126.608.**

14 (a) The City shall identify at least 20% of its work in its
15 CIP program during the annual budget submission which shall be
16 accomplished with JSEBs, using set-asides, prime contracting
17 opportunities and subcontracting goals. The City, through each
18 Department head shall commit in its budget to award at least 20% of
19 its contracts for services, and non-construction contracts to
20 JSEBs, provided, however, that such awards shall comply with local,
21 state, and federal law and that there exist certified JSEBs to
22 perform the work.

23 (b) In implementing the Program, the Director shall first
24 provide opportunities for direct or prime contracting. Such
25 opportunities should be created by breaking procurement packages
26 into smaller components, and separating work that requires licenses
27 from that which does not in separate bid or proposal requests where
28 feasible.

29 (c) Subcontracting opportunities should be provided within
30 vertical construction projects, with horizontal construction
31 project opportunities being provided to the maximum extent

1 possible, by prime or direct contracting. Nevertheless, the
2 subcontracting opportunities shall be provided to those trades
3 typically established as subcontractors.

4 (d) The City may issue joint checks upon the request of the
5 JSEB in order to facilitate bonding, financing, or other
6 requirements of contracting with the City.

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

8 (a) All businesses certified as SBE, or SDBEs pursuant to the
9 former Parts 6A, and 6B Chapter 126 as it existed on July 1, 2003,
10 shall continue to be certified until March 31, 2005 and goals in
11 Section 126.611(a) have been met or within 90 days of the date
12 after which certification would otherwise expire; provided,
13 however, that new certification applications must be filed within
14 ninety days of the effective date of this Chapter. Thereafter the
15 businesses must be certified under the provisions set forth below.
16 Certifications will be granted only in those areas for which the
17 owner(s) has the ability and expertise to manage and control the
18 firm's operations and work.

19 (b) Certifications granted after July 1, 2004 are valid for
20 one year; provided however, that a certification, once granted, can
21 be extended for up to four one-year terms upon the submission of an
22 affidavit, under penalty of perjury, confirming the continued
23 accuracy of the original certification, or identifying changes
24 thereto; and provided further however that the JSEBs must submit
25 the above affidavit no sooner than 60 days before certification
26 expires, in the form created by the Procurement Department.
27 Deceptive or fraudulent affidavits will result in the owner being
28 barred from the program for three years, subject to the appeals
29 process set forth in Section 126.623, below; and provided, further,
30 that to remain or become certified after July 1, 2005, the JSEB
31 must have participated in either the accounting grant program or

1 the Fiscal Physical or provide audited financial statements by a
2 Certified Public Accountant and one or more training, education, or
3 mentoring programs during each twelve month period and provide
4 evidence of such to the Director. For the initial certification,
5 such evidence may be provided in arrears, but must be provided on
6 or before the submission of the second year certification
7 affidavit.

8 (c) To be certified as a JSEB, an individual owner must meet
9 the following criteria:

10 1) reside in Duval County for a minimum of one year
11 prior to the application; or have an established business
12 headquartered for a minimum of three years in Jacksonville, and
13 reside in Duval, St. Johns, Nassau, Baker, or Clay County for one
14 year total within the five county area;

15 2) have a personal net worth less than \$605,000,
16 excluding personal residence, including but not limited to business
17 value and assets (measured as book value), ownership in other
18 businesses and all other assets personally owned, held in trust for
19 the individual owner's benefit, or held by a spouse. Provided;
20 however, that the following caps apply: 1) for capital improvement
21 pursuant to 126.102(a), \$3,000,000 in annual gross receipts on
22 average, over the immediately preceding three year period; 2) for
23 suppliers, \$2,000,000 in annual gross receipts on average, over the
24 immediately preceding three year period; 3) for professional
25 services, \$2,000,000 in annual gross receipts on average, over the
26 immediately preceding three year period; and 4) for contractual
27 services, \$1,000,000 in annual gross receipts on average, over the
28 immediately preceding three year period. These amounts shall be
29 subject to annual analysis by the Director who, should the annual
30 gross receipts in any category change by 5%, will recommend to the
31 City Council Committee responsible for Audit review for

1 consideration by the City Council amounts that may be more
2 appropriate;

3 3) have not been in the program for a total of more than
4 thirteen years, provided, however, that participation may be
5 increased by two one-year periods for good cause;

6 4) own and control more than 51% of the business entity
7 being certified;

8 5) own any license required by local, state, or federal
9 law;

10 6) have expertise normally required by the industry for
11 the field for which certification is sought;

12 7) be a for-profit small business concern.

13 8) not be a front, a broker, or a pass-through;

14 9) perform a commercially useful function typical of the
15 field for which certification is granted;

16 10) not be controlled or operate as front by non-JSEB
17 family, former or present employers. Familial relationships where
18 capital is provided for the business will be subject to scrutiny
19 and possible rejection;

20 11) the JSEB owner(s) contributions of capital or
21 expertise to acquire the ownership interest must be real and
22 substantial; and

23 12) be a business, including a sole proprietorship,
24 partnership, corporation, limited liability company, or any other
25 business or professional entity:

26 (i) Which is at least 51% owned by one or more of
27 the individuals identified herein in paragraph (c)(1) the ownership
28 of any such business that has been in existence for a year or over
29 must have maintained such 51% ownership for at least one year; and

30 (ii) in the case of a publicly owned business, at
31 least 51% of all classes of the stock of which is owned by one or

1 more of such persons each of whom meets the personal net worth
2 criteria set forth above; and

3 (iii) be a citizen or lawfully admitted permanent
4 resident of the United States and be compliant with the residency
5 requirements of this Program.

6 (d) Only a firm that is managed and controlled by a JSEB or
7 MBE person(s) may be certified under this Program. The JSEB and MBE
8 owner(s) must actually exercise control over the firm's operations,
9 work, management and policy. Indicia of such control are set forth
10 below.

11 (1) A firm must not be subject to any formal or informal
12 restrictions that limit the customary discretion of such owner(s).
13 There can be no restrictions through corporate charter provisions,
14 by-law provisions, contracts or any other formal or informal
15 devices that prevent the JSEB or MBE owner(s), without the
16 cooperation or vote of a non-qualifying person or entity from
17 making any business decision of the firm.

18 (2) The JSEB or MBE owner(s) may delegate various areas
19 of the management or daily operations of the firm to persons who
20 would not qualify to be JSEBs or MBEs only if such delegation is
21 typical in the industry for such businesses. Such delegations of
22 authority must be revocable, and the JSEB or MBE must retain the
23 power to hire and fire any such person. The JSEB or MBE owner must
24 have an overall understanding of, and managerial and technical
25 competence, experience and expertise, directly related to the
26 firm's operations and work.

27 (3) The JSEB or MBE owner cannot engage in outside
28 employment or other business interests that conflicts with the
29 management of the firm or prevents the owner from devoting
30 sufficient time and attention to the affairs of the firm to manage
31 and control its activities unless such activities would be

1 appropriate with commensurate businesses, in order to avoid sham or
2 fraudulent certifications.

3 (e) Only an independent firm may be certified as a JSEB. An
4 independent firm is one whose viability does not depend on its
5 relationship with another firm. Recognition of an applicant as a
6 separate entity for tax or corporate purposes is not necessarily
7 sufficient to demonstrate that a firm is independent. In
8 determining whether an applicant is an independent business, the
9 Director will:

10 (1) Scrutinize relationships with non-JSEBs in such
11 areas as personnel, facilities, equipment, financial and/or bonding
12 support, and other resources.

13 (2) Consider whether present or recent family, or
14 employer/employee relationships between the JSEBs owner(s) of the
15 applicant compromise the applicant's independence.

16 (3) Examine the applicant's relationships with non-JSEB
17 prime contractors to determine whether a pattern of exclusive or
18 primary dealings with a prime contractor compromises the
19 applicant's independence.

20 (4) Consider the consistency of relationships between
21 the applicant and non-JSEBs with normal industry practices.

22 (5) An owner shall be certified only for specific types
23 of work for which the owner(s) has the ability and expertise to
24 manage and control the firm's operations and work.

25 (f) to be certified as an MBE, an individual must meet the
26 following criteria:

27 (1) own a business certified as a JSEB;

28 (2) and be an individual who is a member of one
29 of the following categories:

30 (i) Blacks/African-Americans, which includes
31 persons having origins in any of the Black racial groups of Africa;

1 (ii) Hispanic-Americans, which includes
2 persons of Mexican, Puerto Rican, Cuban, Dominican, Central or
3 South American, or other Spanish or Portuguese culture or origin,
4 regardless of race;

5 (iii) Native-Americans, which includes persons
6 who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

7 (iv) Asian-Americans (persons whose origins
8 are in any of the original peoples of the Far East, Southeast Asia,
9 the islands of the Pacific or the Northern Marianas, or the Indian
10 Subcontinent);or

11 (v) Women.

12 **Sec. 126.610. JSEB Program administration.**

13 (a) The Director shall manage the Program, including:

14 (1) Implementing and enforcing rules and regulations
15 hereunder and, implementation and monitoring of the Program.

16 (2) Breaking larger contracts into smaller components
17 where such actions will facilitate competition and provide
18 opportunities under the Program.

19 (3) Providing information and assistance to MBES and
20 JSEBs relating to City procurement opportunities, practices and
21 procedures, and bid and proposal specifications, requirements and
22 prerequisites.

23 (4) Certifying businesses as MBEs and JSEBs,
24 maintaining certification records, and ensuring that such
25 information is available on the City's Procurement website
26 identifying all such certified entities.

27 (5) Establishing Project Specific Goals after ensuring
28 that adequate MBES and JSEBs are available to do the work.

29 (6) Evaluating contractors' achievement of Project
30 Specific Goals or Good Faith Efforts to meet Project Specific
31 Goals.

1 (7) Working with City departments to ensure prompt,
2 timely, payments to JSEBs for work performed in accordance with
3 126.605 herein.

4 (8) Receiving, reviewing, and acting upon complaints
5 and suggestions concerning the Program. The Director shall create a
6 complaint form as part of this process that identifies both parties.

7 (9) Providing quarterly open houses to answer questions
8 regarding the operation of the Program.

9 (10) Posting all contracting opportunities on the
10 Department website under "JSEB Program".

11 (11) Identifying all certified companies on its website
12 within three business days of certification.

13 (12) As appropriate, advertising all pre-bid conferences
14 in applicable JSEB and MBE newspapers, direct-mail or e-mail notices
15 to certified JSEBs, and otherwise seek to increase the interest of
16 all JSEBs certified in the scopes of work of the contract.

17 (13) The Director shall provide interested JSEBs with
18 timely, adequate information about the plans, specifications and
19 requirements of the contract to allow them to respond to the
20 solicitation either directly or by referral to the City department
21 seeking the procurement.

22 (14) The Director shall maintain a list of certified MBES
23 and JSEBs, shall have copies available for distribution and shall
24 post such information on the City's Procurement website.

25 (15) The Director shall be allowed to adjust the
26 annual gross receipts for good cause shown. An appeal of the
27 decision of the director may be appealed pursuant to 126.616.

28 (b) Each City department shall identify to the Director the
29 person with the responsibility of ensuring JSEB and MBE
30 participation; said person shall receive diversity training and
31 shall prepare quarterly reports to the Director identifying the

1 extent of non-JSEB, JSEB and MBE participation in any procurement
2 within their Department that month.

3 **Sec. 126.611. Numerical goals**

4 The percentages set forth below for MBEs and JSEBs are annual
5 goals and are considered to be targets, not quotas, set to achieve
6 participation levels commensurate with available businesses. The
7 following goals shall pertain to all of the following subsections
8 as applicable: Construction (19%), Construction-Related
9 Professional Services (17%), Contractual Services (19%) and
10 Commodities Contracts (19%).

11 (a) Minorities and Women. Based upon the historical data
12 referenced above, and consistent with records of the City's
13 Procurement Department, the following percentages of contract value
14 are adopted as goals to be achieved by this program from July 1,
15 2004 to September 30, 2005:

16 (i) For African Americans - 7% and 7% for
17 construction related professional services

18 (ii) For Hispanic Americans - 2% and 1.50% for
19 construction related professional services

20 (iii) For Asian Americans and/or Native Americans -
21 2% and 1.50% for construction related
22 professional services

23 (iv) For Women - 8% and 7% for construction related
24 professional services

25 (b) The Director shall make an evaluation of the relevant
26 contracting data to determine the performance of the program and
27 whether the individual and specific goals set forth in section
28 126.611(a) have been achieved. Such evaluation shall be conducted
29 on or about September 30, 2005 (data collected from 10/1/04 to
30 9/30/05), and evaluations shall be conducted annually thereafter.
31 The individual and specific goals set forth in subsection (a) shall

1 not be adjusted as required in subsection (c) without a report to
2 the Audit Committee, Council and the Mayor, that demonstrates the
3 goals in section 126.611(a) have been met. The report shall be due
4 annually on or about November 1.

5 (c) The Director is authorized to include the following as
6 numerical goals in conjunction with the JSEB program:

7 (1) For October 1, 2005/September 30, 2006:

8 (i) For African Americans - 75% of 7% = 5.25% and
9 75% of 7% = 5.25% for construction related
10 professional services

11 (ii) For Hispanic Americans - 75% of 2% = 1.5% and
12 75% of 1.50% = 1.13% for construction related
13 professional services

14 (iii) For Asian Americans and/or Native Americans -
15 75% of 2% = 1.5% and 75% of 1.50% = 1.13% for
16 construction related professional services

17 (iv) For Women - 75% of 8% = 6% and 75% of 7% =
18 5.25% for construction related professional
19 services

20 (2) For October 1, 2006/September 30, 2007:

21 (i) For African Americans - 50% of 7% = 3.5% and
22 50% of 7% = 3.50% for construction related
23 professional services

24 (ii) For Hispanic Americans - 50% of 2% = 1% and
25 50% OF 1.50% = 0.75% for construction related
26 professional services

27 (iii) For Asian Americans and/or Native Americans -
28 50% of 2% = 1% and 50% of 1.50% = 0.75% for
29 construction related professional services

30 (iv) For Women - 50% of 8% = 4% and 50% of 7% =
31 3.50% for construction related professional

1 services

2 (3) For October 1, 2007/September 30, 2008:

3 (i) For African Americans - 25% of 7% = 2% and 25%
4 of 7% = 1.75% for construction related
5 professional services

6 (ii) For Hispanic Americans - 25% of 2% = .5% and
7 25% OF 1.50% = 0.38% for construction related
8 professional services

9 (iii) For Asian Americans and/or Native Americans -
10 50% of 2% = .5% and 25% of 1.50% = 0.38% for
11 construction related professional services

12 (iv) For Women - 25% of 8% = 2% and 25% of 7% =
13 1.75% for construction related professional
14 services

15 (d) **Sunset and Review Provision.** This Section 126.611 shall
16 sunset on September 30, 2009, provided, however, that Council
17 shall, prior to the Sunset date, review the JSEB program and this
18 Section 126.611, and determine whether City procurement with race
19 and gender conscience goals have been achieved. If by September
20 30, 2009, the City has not achieved the goals outlined in Section
21 126.611(a), the City shall conduct a disparity study and complete
22 an analysis of the Program. The goals outlined in Section
23 126.611(a) shall continue until the disparity study and analysis is
24 completed. Then the City shall consider legislation to modify the
25 goals as applicable.

26 **Sec. 126.612. Jacksonville Small Emerging Business goals.**

27 The following goals are for JSEBs in the Program.

28 (a) The overall small business goal is at least 20%, such
29 that the City shall award at least 20% of total City contracts to
30 JSEBs; provided that such awards do not violate state or federal
31 law and provided further that there are certified JSEBs to perform

1 the work. The Director shall award at least 50% of the JSEBs
2 contracts through direct contracting.

3 (b) It is expected that the provisions of the race and gender
4 neutral program will be sufficient to provide the remaining
5 contracts to achieve the goal for the race and gender contract
6 goals set forth above.

7 **Sec. 126.613. Contract pre-award compliance procedures.**

8 (a) For all solicitations, the bidder/proposer shall submit a
9 Schedule of Participation detailing all JSEB, MBE, and non-JSEB
10 subcontractors from which the bidder/proposer solicited bids or
11 quotations. The entities comprising the JSEB goal of at least 20%,
12 or the MBE goals as set forth supra, shall be identified, or the
13 basis for a waiver for good faith efforts shall be provided with
14 the bid or proposal. The lists of JSEBs or MBEs posted on the
15 City's website establishes the group from which a bidder/proposer
16 must solicit subcontractors under this program. The Schedule of
17 Participation shall be due at the time set out in the solicitation
18 documents.

19 (b) Any agreement between a bidder/proposer that prevents a
20 JSEB or MBE from providing quotations to other bidders/proposers is
21 prohibited.

22 (c) Joint ventures shall only be allowed under this Program in
23 cases that demonstrate legitimate, detailed JSEB partnerships with
24 non-JSEBs, proof of which shall be provided to the Director.

25 (d) Where the bidder/proposer cannot achieve the Project
26 Specific Goal(s), the Director will determine whether Good Faith
27 Efforts have been made. In making this determination, the Director
28 will consider, at a minimum, a matrix to determine the
29 bidder/proposer's efforts to:

30 (1) Solicit certified subcontractors in the scopes of
31 work of the contract. The bidder/proposer shall provide interested

1 JSEBs or MBEs with timely, adequate information about the plans,
2 specifications, and other such requirements of the contract to
3 facilitate their quotation. The bidder/proposer must follow up
4 initial solicitations with interested JSEBs and MBEs.

5 (2) Identify a portion of the work available to JSEBs
6 and MBEs consistent with their availability.

7 (3) Negotiate in good faith with interested JSEBs and
8 MBEs. Price sharing is prohibited in negotiations. Evidence of
9 such negotiation includes the names, addresses, and telephone
10 numbers of JSEBs and MBEs that were contacted; a description of the
11 information provided regarding the plans and specifications for the
12 work selected for subcontracting; and why agreements could not be
13 reached with them. The ability or desire of a bidder/proposer to
14 perform the work of a contract with its own organization does not
15 relieve it of the responsibility to make Good Faith Efforts on all
16 scopes of work subject to subcontracting.

17 (4) Facilitate the leasing of equipment supplies or
18 equipment when they are of such a specialized nature that the JSEB
19 or MBE could not readily and economically obtain them in the
20 marketplace, where feasible.

21 **Sec. 126.614. Good faith efforts in lieu of meeting Program**
22 **goals.**

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

30 (a) The ability of other bidders/proposers in meeting the
31 Project Specific Goal(s) may be considered.

1 (1) A contact log showing the name, address, and
2 contact number (phone or fax) used to contact the proposed
3 certified subcontractors, nature of work requested for quote, date
4 of contact, person making the effort;

5 (2) The description of work for which a quote was
6 requested;

7 (3) The amount of the quote given, if one was
8 obtained;

9 (4) The list of divisions of work not
10 subcontracted and an explanation why not; and

11 (5) Subcontractor information as requested by
12 forms developed by the Department.

13 (b) For contracts other than for construction related
14 professional services, a signed letter of intent from all listed
15 JSEBs and MBEs describing the work, materials, equipment or
16 services to be performed or provided by the JSEBs and MBEs and the
17 agreed upon dollar value shall be due with the bid documents but in
18 no event before the expiration of forty-eight hours after the
19 submission of the bid.

20 (c) For construction related professional services contracts,
21 the highest ranked proposer must deliver at the time of fee and
22 contract negotiations signed letters of intent between itself and
23 the JSEBs and MBEs(s) to be utilized.

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

29 **Sec. 126.615. Continuing obligations of JSEBs and MBEs and**
30 **graduation.**

31 The certification status of all JSEBs and MBEs shall be

1 reviewed annually by the Director through re-certification
2 application. Failure of the firm to seek re-certification by filing
3 the necessary documentation with the Department within ninety days
4 from the date of receipt of written notification from Department
5 may result in de-certification.

6 (a) It is the responsibility of the JSEB or MBE to notify the
7 Department of any change in its circumstances affecting its
8 continued eligibility for the Program. Failure to do so may result
9 in the firm's de-certification and preclusion from future
10 participation.

11 (b) The JSEB or MBE that no longer meets certification may be
12 decertified at any time.

13 (c) A firm, or qualifying individuals, who have participated
14 in the JSEB program for a total of fifteen years shall graduate
15 from the Program.

16 **Sec. 126.616. De-certification, Denial and appeal procedure.**

17 (a) The Director may move to decertify a JSEB or MBE that
18 repeatedly fails to honor quotations in good faith, or otherwise
19 comply with Program requirements.

20 (b) A firm that has been denied certification or re-
21 certification or been decertified may protest the denial or de-
22 certification as follows:

23 (1) Within fifteen days of receipt of denial of
24 certification or re-certification, or notice of intent to
25 decertify, the firm may protest such action in writing to the
26 Director.

27 (2) An informal hearing shall be held by the Director,
28 at which the firm may present additional facts and evidence in
29 support of its eligibility. The Director may request the attendance
30 of any witness and production of any documents concerning the
31 applicant's affairs. The applicant's failure to comply promptly

1 with these requests may be grounds for denial of the appeal.

2 (3) The Director shall determine the firm's eligibility
3 on the basis of the information provided at the hearing. The
4 Director's written decision shall be communicated to the firm
5 within ten days of the hearing.

6 (4) The applicant may appeal the Director's decision in
7 writing to the City's Government Awards Committee or the
8 Professional Services Evaluation Committee within five days of
9 receipt of the determination. The Committee shall hold a hearing
10 within ten days of receipt of the written notice of appeal, and
11 render a final decision within thirty days of the hearing. The
12 presumption that the decertified firm is eligible shall remain in
13 effect until the City renders a final decision.

14 (5) A firm denied or found to be ineligible may not
15 apply for certification for one year after the effective date of
16 the final decision.

17 (c) A third party may challenge the eligibility of an
18 applicant for certification or a certified firm. The presumption
19 that the challenged firm is eligible shall remain in effect until
20 the City renders a final decision.

21 (1) The challenge shall be made in writing to the
22 Director and shall include all information relied upon by the
23 challenging party.

24 (2) The Director shall notify the challenged firm in
25 writing of the challenge, identify the challenging party and
26 summarize the grounds for the challenge. The notice may also
27 require the challenged firm to provide the Director, within a
28 reasonable time, any information requested to permit the Director
29 to evaluate the eligibility of the firm.

30 **Sec. 126.617. Project goals.**

31 (a) The Director shall establish Project Specific Goal(s)

1 based on the availability of at least normal industry practice, as
2 determined in consultation with the User Department, the
3 availability of at least two JSEBs or MBEs to perform the functions
4 of those individual contracts and the City's utilization of such to
5 date. Project Specific Goal(s) may be set for African Americans,
6 Hispanic, Asian, and Native-American or in an aggregation of groups
7 of such individuals, or for such individuals as a whole.

8 (b) Project Specific Goal(s) shall not be set on emergency
9 contracts as defined by City Code or for purchases made in
10 conjunction with the State although JSEBs and MBEs shall be
11 considered for such sole-source or emergency procurements if
12 qualified.

13 **Sec.126.618. Pre-award review of compliance with numerical**
14 **goals, including good faith efforts.**

15 (a) The Director shall timely review the Schedule of
16 Participation prior to award, including the scope of work and the
17 letters of intent from JSEBs or MBEs. The Director may request
18 clarification in writing of items listed in the Schedule of
19 Participation, provided such clarification shall not include the
20 opportunity to augment listed JSEBs or MBEs participation or Good
21 Faith Efforts. The Director shall review all submittals and
22 document the participation of each submittal.

23 (b) If the Director determines that the Schedule of
24 Participation demonstrates that the Project Specific Goal(s) have
25 been achieved or Good Faith Efforts made, and the User Department
26 concurs, the Director shall recommend award to the General Awards
27 Committee. The Director shall verify with each JSEB that a contract
28 in the specified amount has been awarded.

29 **Sec. 126.619. Contract performance compliance procedures.**

30 (a) Upon award of a contract by the City that includes
31 Project Specific Goal(s), the prompt pay obligations in the City's

1 contract with the prime contractor, and the contract between the
2 prime contractor and the subcontractors and subconsultants named in
3 response to this Act become covenants of performance by the
4 contractor in favor of the City.

5 (b) The contractor shall provide a listing of all JSEBs, MBEs
6 and any other subcontractors to be used in the performance of the
7 contract, and subcontractor payment information to the City with
8 each request for payment submitted to the City. The Director and
9 the User Department shall monitor subcontractor participation
10 during the course of the contract and shall have reasonable access
11 to all contract-related documentation held by the contractor.

12 (c) The contractor cannot make changes to the Schedule of
13 Participation or substitute subcontractors named in the Schedule of
14 Participation without the prior written approval of the Director
15 upon recommendation of the Ombudsman. Unauthorized changes or
16 substitutions shall be a violation of this chapter, and may
17 constitute grounds for rejection of the bid or proposal or cause
18 termination of the executed contract for breach, the withholding of
19 payment and/or subject the contractor to contract penalties or
20 other sanctions.

21 (1) All requests for changes or substitutions of the
22 subcontractors named in the Schedule of Participation shall be made
23 to the Ombudsman with a copy to the Director in writing, and shall
24 clearly and fully set forth the basis for the request. A contractor
25 shall not substitute a subcontractor or perform the work designated
26 for a subcontractor with its own forces unless and until the
27 Director approves such substitution in writing. A contractor shall
28 not allow a substituted subcontractor to begin work until both the
29 Director and the City's project manager have approved the
30 substitution.

31 (2) The facts supporting the request must not have been

1 known nor reasonably should have been known by either party prior
2 to the submission of the Schedule of Participation. Bid shopping is
3 prohibited. The contractor must bring this dispute to the Ombudsman
4 for resolution.

5 (3) The Director's final decision whether to permit or
6 deny the proposed substitution, and the basis therefore, will be
7 communicated to the parties in writing by the Director, with a copy
8 to the COO.

9 (4) If the City requires the substitution of a
10 subcontractor listed in the Schedule of Participation, the
11 contractor shall undertake Good Faith Efforts to fulfill the
12 Schedule of Participation if the Project Specific Goals would not
13 otherwise be met. If the Goal(s) cannot be reached and Good Faith
14 Efforts have been made, the contractor may substitute with a non-
15 JSEBs or MBEs.

16 (d) If a Contractor plans to hire a subcontractor on any
17 scope of work that was not previously disclosed in the Schedule of
18 Participation, the contractor shall obtain the approval of the
19 Director to modify the Schedule of Participation and must make Good
20 Faith Efforts to ensure that JSEBs or MBEs have a fair opportunity
21 to bid on the new scope of work.

22 (e) Changes to the scopes of work shall be documented by the
23 User Department at the time they arise, to establish the reasons
24 for the change and the effect on achievement of the Project
25 Specific Goal(s).

26 **Sec. 126.620. Other provisions of purchasing code to apply.**
27 Except as provided in this part to implement the Program, the
28 provisions of Parts 1, 2, 3 and 4, of Chapter 126, apply. The
29 Director shall establish rules that specify the manner in which
30 conflicts between the provisions of Parts 1, 2, 3, or 4 of this
31 chapter are to be resolved.

1 **Sec. 126.621. JSEB and Program eligibility.**

2 (a) Only businesses that meet the criteria of JSEBs and MBEs
3 may be certified for participation in the Program. The applicant
4 has the burden of persuasion.

5 (b) Only an independent firm may be certified as a JSEB. An
6 independent business is one whose viability does not depend on its
7 relationship with another firm. Recognition of an applicant as a
8 separate entity for tax or corporate purposes is not necessarily
9 sufficient to demonstrate that a firm is independent. The Director
10 must determine that an owner has an independent business in order
11 to certify the business as a JSEB. In doing so, the Director will
12 take into account all reasonable criteria for reviewing control of
13 a business.

14 (c) The certification status of all JSEBs and MBEs shall be
15 reviewed annually by the Department. Failure of the firm to seek
16 re-certification by filing the necessary documentation with the
17 Department within sixty days from the date of receipt of written
18 notification from the Department may result in de-certification.

19 (d) It is the responsibility of the JSEBs and MBEs to notify
20 the Department of any change in its circumstances affecting its
21 continued eligibility for the Program. Failure to do so may result
22 in the firm's de-certification.

23 (e) The Director shall decertify a firm that does not meet
24 the eligibility criteria.

25 (f) A JSEB or MBE may receive no more than five prime
26 contracts set aside per year or an aggregate total prime contracts
27 set aside per year in the amount of \$4,000,000, which ever is
28 greater.

29 (g) Joint ventures between JSEBs and non-JSEBs are not
30 eligible for the Program, unless they provide structured, detailed,
31 mentoring opportunities, proof of which shall be provided to the

1 Director.

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

4 (a) The entire amount of that portion of a construction
5 subcontract that is performed by the JSEBs and MBEs own forces
6 shall be counted, including the cost of supplies and materials
7 obtained by the JSEBs and MBEs for the work of the subcontract, and
8 supplies purchased or equipment leased by the JSEBs and MBEs.
9 Supplies and equipment the JSEBs and MBEs purchases or leases from
10 the prime contractor or its Affiliate shall not count as JSEB or
11 MBE participation.

12 (b) The entire amount of fees or commissions charged by a
13 JSEBs and MBEs for providing a bona fide service, such as
14 professional, technical, consultant or managerial services, or for
15 providing bonds or insurance specifically required for the
16 performance of a contract shall be counted, provided the fee is
17 reasonable and not excessive as compared with fees customarily
18 charged for similar services.

19 (c) If a firm ceases to be a certified JSEBs and MBEs during
20 a contract, the dollar value of work performed under a contract
21 with that firm after it has ceased to be certified shall not be
22 counted in the City's internal accounting. No contractor shall be
23 penalized in any way as a result of the failure of a project to
24 achieve its Project Specific Goals because of the operation of this
25 Section.

26 (d) In determining achievement of a Subcontracting
27 Participation Goal, the participation of a JSEB or MBE shall not be
28 counted until the amount being counted has been paid to that
29 entity.

30 (e) Achievement of Project Specific Goal(s) shall be
31 evaluated following the completion of the project.

1 **Sec. 126.623. Acts which may result in expulsion from the**
2 **JSEB Program; fines, and criminal offenses.**

3 (a) The following violations of this chapter are unlawful and
4 may be prosecuted in Municipal Court as Class D offenses:

5 (1) Providing information to the City in connection
6 with an application for or challenge to certification, re-
7 certification or de-certification as JSEBs or MBEs that the
8 providing party knew or should have known to be false or
9 misleading.

10 (2) Providing information to the City in connection
11 with submission of a bid, responses to requests for qualifications
12 or proposals, Good Faith Efforts documentation, post-award
13 compliance, or other Program operations that the providing party
14 knew or should have known to be false or misleading.

15 (3) Falsely attesting to re-certification under this
16 program.

17 (4) Substituting JSEBs or MBEs subcontractors without
18 first receiving approval for such substitutions.

19 (5) Committing any other violations of the provisions of
20 this chapter.

21 (6) Submitting false documentation for payments.

22 (b) A bidder, proposer, contractor, or subcontractor is
23 subject to withholding of payments under the contract, termination
24 of the contract for breach, contract penalties, de-certification as
25 a JSEB, or being barred or deemed non-responsive in future City
26 solicitations and contracts for up to two years, if it is found to
27 have:

28 (1) Provided information in connection with an
29 application for certification or re-certification that it knew or
30 should have known to be false or misleading.

31 (2) Provided information in connection with the

1 submission of a bid or proposal or documentation of Good Faith
2 Efforts, post-award compliance, or other Program operations that it
3 knew or should have known to be false or misleading.

4 (3) Failed in bad faith to fulfill the Subcontracting
5 Participation Goal, thereby materially breaching the contract.

6 (4) Repeatedly failed to comply in good faith with
7 substantive provisions of this chapter.

8 **Sec. 126.624. Annual Budget Appropriation.**

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

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

13 **Sec. 126.700. Intent.**

14 It is the intent of this Section to establish a uniform
15 procedure in compliance with state law to permit the use of a
16 design-build approach for the construction of capital improvement
17 projects. The City is authorized by § 287.055, Florida Statutes,
18 to adopt an ordinance governing the award of design-build
19 contracts.

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

21 (a) **Selection by competitive sealed proposal.** Upon the
22 determination and written recommendation of the Director and both
23 the GGAC and PSEC that it is more advantageous or both time and
24 cost effective to award a single contract for the design and
25 construction of a capital improvement project and that it is in the
26 overall best interest of the City to employ the design-build
27 approach instead of the traditional design-bid-build approach for
28 the formal procurement of a capital improvement project, the same,
29 upon the approval of the Mayor, may be procured by formal written
30 contract and/or agreement based upon an award pursuant to the
31 requirements and/or procedures of this Part 7 and the Competitive

1 Sealed Proposal requirements and/or procedures of Section 126.204,
2 hereof, whereby a Request For Proposals ("RFP") shall be publicly
3 noticed or advertised consistent with Section 126.202(a), hereof.
4 The RFP shall define the public opening or the place, date and time
5 at which proposals are due, define or include the design
6 requirements or design criteria package, solicit proposals and
7 development documents, define or include bonding, insurance and all
8 other contractual terms and conditions applicable to the desired
9 design-build services and include the evaluation criteria that
10 shall be the sole basis for the CSPEC, as defined in Section
11 126.204, to evaluate and tabulate proposals received in response to
12 the RFP. In addition to the requirements and/or procedures of
13 Section 126.204, hereof, the procedures for the use of the
14 competitive sealed proposal process shall include, as a minimum,
15 the following:

16 (1) The preparation of a design criteria package for the
17 design and construction of the capital improvement project.

18 (2) The solicitation and evaluation of no fewer than
19 three design-build firms (in evaluating the design-build firms
20 under this Part 7, the CSPEC shall conduct discussions with and
21 require public presentations by each design-build firms regarding
22 their qualifications, approach to and schedule for the project,
23 project organization, development documents and ability to furnish
24 the required design-build services). If, as a result of a
25 solicitation for design-build services for a capital improvement
26 project under this Part 7, the CSPEC receives proposals from less
27 than three design-build firms, it shall publicly notice or
28 advertise the resolicitation of said services from design-build
29 firms previously solicited and from additional design-build firms,
30 unless the CSPEC determines, in writing, that no advantage would be
31 obtained by the resolicitation. Notwithstanding the number of

1 proposals received, the CSPEC may proceed to consider those design-
2 build firms responding to the resolicitation or responding to the
3 initial solicitation if it determines, in writing, that no
4 advantage would be obtained by resoliciting.

5 (3) The criteria, procedures, and standards for the
6 evaluation of proposals. The evaluation criteria shall include,
7 but need not be limited to, price, to be used in determining
8 acceptability and/or responsiveness of the proposal. The relative
9 importance of the evaluation criteria shall be provided in the RFP,
10 which evaluation criteria shall include: (i) price; (ii)
11 demonstrated compliance with the design requirements or design
12 criteria package; (iii) qualifications; (iv) bonding, insurance and
13 financial capacity; (v) project schedule; (vi) licensing,
14 certification and registration requirements as defined in Section
15 126.702(c) and/or applicable federal, state and local laws,
16 statutes, ordinances, rules and regulations; and (vii) other
17 factors approved by the CSPEC.

18 (4) The employment or retention of a design criteria
19 professional, as defined herein, to: (i) develop the design
20 criteria package for inclusion in the RFP; (ii) assist the CSPEC in
21 the evaluation of proposals submitted in response to the RFP; and
22 (iii) assist the using agency in reviewing and/or approving the
23 detailed working drawings of the project and in the evaluation of
24 whether the construction of the project complies with the design
25 criteria package.

26 (5) Notwithstanding other requirements contained in this
27 Chapter, the Department shall publish solicitations under this Part
28 7 in a newspaper of general circulation in the City at least 20
29 business days prior to the public opening date set forth in the
30 RFP. In the case of emergencies, as defined herein, the Mayor

1 shall declare an emergency and authorize negotiations with the best
2 qualified design-build firm available at that time.

3 (b) **Request for qualifications.** Upon the recommendation of
4 the Director and approval of the CSPEC, solicitations under this
5 Part 7 may include, as part of the RFP, a Request For
6 Qualifications ("RFQ") for the purpose of prequalifying proposers
7 in order to develop a short list of no fewer design-build firms
8 than that required in Section 126.701(a)(2), hereof.
9 Simultaneously with the RFP, the RFQ shall be publicly noticed or
10 advertised consistent with Section 126.202(a), hereof, and shall
11 define the public opening or the place, date and time at which
12 qualification responses are due, which qualification responses
13 shall be due no more than ten business days after the date on which
14 the RFQ is publicly noticed or advertised. The RFQ shall include:

15 (i) design requirements; (ii) qualifications-based evaluation
16 criteria including, without limitation, experience and competence
17 in the kind of design-build project to be undertaken, availability
18 of adequate personnel, equipment and facilities, financial
19 responsibility, past record of professional accomplishments, past
20 record of performance for using agencies; and (iii) other
21 requirements considered to be important in the process of
22 prequalifying design-build firms, as determined and/or approved by
23 the CSPEC (proposers may request confidential designation for those
24 portions of their RFQ or RFP response that contain information only
25 to be viewed by the Department, such as trade secrets, proprietary
26 data, or other confidential information). Only those design-build
27 firms short-listed pursuant to this Section shall be afforded an
28 opportunity to submit a proposal in response to the RFP in
29 question. Upon the CSPEC's recommendation and the Mayor's approval
30 of the short-listed design-build firms, the Department shall
31 provide written notice of the same to the short-listed design-build

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

8 **Sec. 126.702. Definitions.**

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

11 (a) *Design-Bid-Build* means a project delivery method or
12 approach involving the sequential award of separate contracts, the
13 first for architectural, engineering, or professional design
14 services to design the project and the second for construction of
15 the project in accordance with the previously awarded professional
16 design services.

17 (b) *Design-Build* means a project delivery method or approach
18 involving a single contract for both the design and construction of
19 a project. Upon approval of Council, the award of a single design-
20 build contract may, in addition to the design and construction of
21 the project, include the financing, operation and/or maintenance of
22 the project over a contractually defined period of time.

23 (c) A *design-build firm* means a partnership, corporation, or
24 other legal entity which:

25 (1) Is certified under F.S. § 489.119 to engage in
26 contracting through a certified or registered general contractor or
27 a certified or registered building contractor as the qualifying
28 agent; or

29 (2) Is certified under F.S. § 471.023 to practice or to
30 offer to practice engineering; certified under F.S. § 481.219 to
31 practice or offer to practice architecture; or certified under F.S.

1 § 481.319 to practice or to offer to practice landscape
2 architecture.

3 (c) A *design-build contract* means a single contract with a
4 design-build firm for, at a minimum, the design and construction of
5 a public construction project.

6 (d) A *design criteria package or the design requirements*
7 shall means concise, performance-oriented drawings or
8 specifications of the public construction project. The purpose of
9 the design criteria package is to furnish sufficient information so
10 as to permit design-build firms to prepare a bid or a response to a
11 request for proposal, or to permit the City to enter into a
12 negotiated design-build contract. The design criteria package shall
13 specify such performance-based criteria for the public construction
14 project, including, but not limited to, the legal description of
15 the site, survey information concerning the site, interior space
16 requirements, material quality standards, schematic layouts and
17 features, functions, characteristics and other conceptual design
18 criteria of the project, cost or budget estimates for design,
19 construction and, if applicable, operation and maintenance,
20 anticipated schedule(s) of design and construction components,
21 including durations and start and completion dates, site
22 development requirements, provisions of utilities, storm water
23 retention and disposal, and parking requirements, as may be
24 applicable to the project.

25 (e) A *design criteria professional* means a firm who holds a
26 current certificate of registration under F.S. Ch. 481, to practice
27 architecture or landscape architecture or a firm who holds a
28 current certificate as a registered engineer under F.S. Ch. 471, to
29 practice engineering and who is employed by or under contract to
30 the City for the providing of professional architect services,
31 landscape architect services, or engineering services in connection

1 with the preparation of the design criteria package.

2 (f) *Development documents* means design related drawings and
3 other documents provided in response to an RFP under this Part 7,
4 which are sufficient for the CSPEC to evaluate a demonstrated
5 compliance with the design requirements or design criteria package,
6 and which establishes the site, size, capacity, features, functions
7 and other characteristics of the project as to utility,
8 infrastructure, landscaping, architectural, structural, mechanical,
9 fire suppression, electrical, telecommunication, data, security and
10 other project systems, materials and components typical to the
11 design-build delivery method or approach.

12 (g) *City* shall mean the city or any of its independent and
13 using agencies that desire to or must adhere to the provisions of
14 this Chapter.

15 **Sec. 126.703. Preparation of design criteria package.**

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

26 **Sec. 126.704. Rules and procedures.**

27 The Director shall promulgate rules and procedures for the
28 implementation of this Part 7, subject to the approval of the
29 CSPEC. The Director shall also recommend necessary revisions to the
30 rules and procedures from time to time, subject to the approval of
31 the CSPEC. The CSPEC shall conduct a public hearing before adopting

1 rules and procedures or any substantial revision thereof. The rules
2 and procedures shall, at a minimum, provide for the requirement
3 enumerated in Section 126.701, hereof.

4 **Sec. 126.705. Consultants' competitive negotiation act.**

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

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

9 **Sec. 126.801. Intent.**

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

17 **Sec. 126.802. Enforcement.**

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

21 **PART 9. ART IN PUBLIC PLACES**

22 **Sec. 126.901. Definitions.**

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

25 (a) Capital improvement program means and includes the
26 capital improvement programs adopted or approved by the Council.

27 (b) Construction costs means the estimated cost of
28 construction or alterations of a project listed as Priority One
29 within the capital improvement program including engineering and
30 architectural costs. Land acquisition costs, site preparation and
31 specific equipment and furnishings costs shall be excluded from the

1 definition of construction costs. Furthermore, cost overruns and
2 change-order costs shall not be considered construction costs for
3 the purposes of the funding calculations set forth in this part.

4 (c) Construction or alterations means new construction, where
5 construction costs are \$100,000.00 or more, and rehabilitation,
6 renovation, remodeling, or improvements (herein collectively
7 "alterations") to existing buildings. Alterations to buildings that
8 are under \$100,000.00 in cost, or are primarily "redecorating" and
9 involve no actual structural alterations, shall be excluded.
10 Alterations of a strictly structural or mechanical nature necessary
11 to keep the facility functional, but without altering the aesthetic
12 character of the facility shall be excluded. Examples of this type
13 of alteration would be replacing an air conditioning system or
14 major repairs to a leaking roof. These types of structural items
15 shall be included when part of a larger renovation project
16 involving aesthetic changes to facilities.

17 (d) Public facility means any city-owned building or facility
18 intended for habitation where public employees work on a regular
19 basis or which the general public uses on a regular basis. Public
20 facility includes, but is not limited to, office buildings,
21 recreation and community centers, libraries, maintenance garages,
22 firehouses, police substations, and the like. Public facility
23 specifically excludes water and sewer pump stations, electrical and
24 communications substations and switching houses, and similar
25 unoccupied structures.

26 **Sec. 126.902. Public art standards.**

27 (a) Public art is a work of art to which the general public
28 has open and easy access and which will enrich and give dimension
29 to the public environment, and which reflects generally accepted
30 community standards of aesthetic appeal and artistic expression in
31 the decorative arts.

1 (b) The goal of the Commission will be to choose art which is
2 compatible with and which will enhance the architecture and general
3 environment of the facility, whether it be interior or exterior. In
4 some cases, the work will be site specific (i.e. art which is
5 commissioned especially for the specific space and becomes integral
6 to the site). Such art may relate to the function and the users of
7 the facility, to the history or population of its neighborhood
8 and/or may become a part of its architecture. Planning of site
9 specific works will begin early in the project and may be a
10 collaboration between artist and architect.

11 (c) Acceptable forms of artwork shall include all visual arts
12 mediums, including, but not limited to, painting, drawing, original
13 prints, mixed media, sculpture, bas relief, mobiles, murals,
14 kinetic art, electronic art, photography, clay, glass, fiber and
15 textiles, as well as art which may be functional (e.g. doors,
16 gates, furniture, etc).

17 (d) Public art shall not include items that are mass-produced
18 or of standard design.

19 (e) Works shall be created by artists of appropriate status
20 who shall be selected by the means outlined in detail in this part.
21 Such artists shall generally be recognized by recognized art
22 professionals, as artists of serious intent and recognized ability,
23 and shall not be a member of the project architectural,
24 engineering, or design team or of the Commission, an Art Selection
25 Committee or the Cultural Council Board or Staff.

26 (f) Appropriate sites for placement of public art include any
27 outdoor, easily accessible public facility or the interior of
28 public buildings. Appropriate sites for placement of art within
29 public buildings include, but are not limited to, lobbies, foyers,
30 corridors, waiting rooms, conference rooms, plazas, courtyards,
31 transportation facilities, facades, and any other sites without

1 restricted visual or physical public access. Private meeting rooms
2 and offices are examples of inappropriate sites with restricted
3 access.

4 **Sec. 126.903. Art in public places commission.**

5 There is hereby created an Art In Public Places Commission.
6 The Commission will be an eleven member board appointed by the
7 Mayor as follows: Three from the Cultural Council of Greater
8 Jacksonville Board of Directors; three from the professions of
9 architecture, interior design, landscape architecture, planning,
10 art professional, or art historian; and five from the community at
11 large as community representatives, each residing within a
12 different planning district whose interests, professions and
13 community activities reflect the diversity of the Jacksonville arts
14 community and of the community at large. All members shall be
15 confirmed by the council. Initially one member of each group shall
16 be appointed for three years, one of each shall serve two years and
17 one of each shall serve one year. Thereafter, all terms shall be
18 for three years. No member appointed to the Commission for two
19 consecutive full terms shall be eligible for appointment to the
20 next succeeding term.

21 **Sec. 126.904. Funding.**

22 (a) Three-quarters of one percent of the total allocation
23 (including multi-year phasing) for construction costs of a public
24 facility as shown on its initial inclusion within the capital
25 improvement program shall be appropriated to the Art In Public
26 Places Trust Fund.

27 (b) Funds appropriated to the Art In Public Places Trust Fund
28 shall be used to implement a city-wide plan for the creation and
29 placement of artworks as developed and administered by the Art In
30 Public Places Commission.

31 (c) Up to five percent of the 0.75 percent shall be dedicated

1 to maintenance, and up to ten percent of the 0.75 percent shall be
2 dedicated to administration and community education; provided
3 however, these percentages shall not apply to appropriations
4 originating from any funds which prohibit expenditures for
5 maintenance and administration. These amounts shall be used at the
6 discretion of the Art In Public Places Commission in collaboration
7 with the Department of Administration and Finance and any other
8 City department as appropriate for maintenance and in collaboration
9 with the Cultural Council of Greater Jacksonville for
10 administration and community education.

11 **Sec. 126.905. Duties.**

12 The duties of the Commission are as follows:

13 (a) Create a five year plan known as the Art in Public Places
14 Program Five Year Plan for Program Development and Implementation.
15 This plan will be reevaluated and may be revised. It shall be
16 provided to the Mayor and Council both initially and upon any
17 revision and shall be placed on file with the Legislative Services
18 Division. The plan shall be reviewed by Council both initially and
19 as updated and shall not take effect until Council approval.

20 (b) Review annual City Capital Improvement Projects with
21 appropriate boards, agencies, authorities and departments and
22 establish a list of eligible projects to include in the program.

23 (c) Develop budgets for public art administration,
24 maintenance, conservation and community education.

25 (d) Develop an annual plan and budget for public art
26 projects.

27 (e) Develop and oversee policy implementation and
28 administration of the public art program, which may include such
29 things as acceptance of gifts.

30 (f) Determine the selection process for each project and
31 authorize selection committee formation where deemed appropriate by

1 the Art in Public Places Commission and as outlined in the Art in
2 Public Places Program Five Year Plan for Program Development and
3 Implementation.

4 (g) Designate a member of the Commission to serve as chair of
5 each Art Selection Committee.

6 (h) Receive, review and act on the recommendations of the Art
7 Selection Committees.

8 (i) Be responsible, in its discretion, for applying for
9 and receiving state, federal and private funds related to public
10 art on behalf of the City through appropriate grant applications,
11 and for the administration thereof.

12 **Sec. 126.906. Art selection committees.**

13 The Commission shall, when deemed appropriate by the Art in
14 Public Places Commission and as outlined in the Art in Public
15 Places Program Five Year Plan for Program Development and
16 Implementation, form Art Selection Committees to make
17 recommendations to the Commission on the actual selection of the
18 art. Each Selection Committee will be composed of nine members: a
19 Chair, who will be a member of and represent the Art In Public
20 Places Commission; a representative of the site selected for the
21 art (Staff or Board member); architect or other design professional
22 for the project, if available; one artist or art professional; and
23 one to three community representatives, at least one of whom shall
24 reside in the planning district within which the art shall be
25 sited. The artists or arts professional representatives will be
26 selected from a list, maintained by the Commission, of interested
27 and qualified individuals.

28 **Sec. 126.907. Art selection; methods.**

29 (a) The Art Selection Committee shall select artists and art
30 work in one of the following ways:

31 (i) Open competition: Requesting artists' submissions

1 with specifications regarding local, state, regional or national
2 scope.

3 (ii) Limited competition: Inviting a small number of
4 artists to respond with examples of past work or to prepare formal
5 proposals, and selecting a specific artist based on these
6 submissions. A proposal fee may be offered for the invited artists
7 to cover the cost of the formal proposals. The proposal fee shall
8 be part of the amount budgeted to the Cultural Council for
9 Administration and Community Education as funded pursuant to
10 Section 126.904(a).

11 (iii) Direct purchase: Purchase of existing work and all
12 rights thereto.

13 (iv) Invitational commission: Selecting a specific artist
14 for direct commission.

15 (b) The Commission shall seek to ensure that during the life
16 of the five year plan for program development and implementation
17 and during subsequent five year segments, at least 15 percent of
18 the artists selected for purchase or commission will be resident(s)
19 in the Greater Jacksonville area, (the counties of Duval, St Johns,
20 Nassau, Clay and Baker). The Commission will also encourage the
21 selection of regional artists e.g. Florida and the Southeastern
22 United States.

23 (c) All purchases made pursuant to this Section shall be made
24 pursuant to an evaluated bid process created by the Purchasing
25 Division and modified as necessary to accomplish the objectives of
26 this Chapter. Any provisions of this Chapter conflicting with the
27 expressed intent and procurement methodology of the Art In Public
28 Places program are hereby waived.

29 **Sec. 126.908. Ownership; maintenance.**

30 (a) The City will own all the rights to the art produced by
31 the Art In Public Places program, subject to the provisions of the

1 Visual Artists Act of 1990. All contracts with artists and all art
2 purchases will require the Artist to waive the following
3 restrictions:

4 (1) Photographic reproduction rights (to be shared by
5 artist and owner);

6 (2) Right to remove/relocate art;

7 (3) Right to repair art in case of emergency;

8 (b) Artist will retain the copyright and the right to be
9 notified if the work is to be destroyed, or deaccessioned or
10 radically repaired on a nonemergency basis.

11 (c) City will retain ownership of proposal models or drawings
12 of commissioned art.

13 (d) Maintenance will be the responsibility of the City and
14 will be funded by that portion of the trust fund which is allocated
15 for maintenance and conservation, and will be administered in
16 cooperation with the Art In Public Places Commission based on a
17 conservation evaluation plan.

18 **Sec. 126.909. Cultural Council responsibility.**

19 The Cultural Council of Greater Jacksonville shall provide
20 administrative support to the Art In Public Places program on
21 behalf of the City. The Cultural Council will provide professional
22 and support staff for the operation of the program and
23 administration of the Art In Public Places Commission activities.
24 Funds for the administration of the program will be provided by an
25 allocation up to ten percent of the amount available in the trust
26 account. An additional amount up to five percent will be allocated
27 for maintenance and conservation which will be administered by the
28 Cultural Council. None of the funds for administration or
29 maintenance, however, shall come from tax-free bond funds.

30 (a) Consultants may be retained as needed, for particular
31 projects. Consultant costs shall be part of the amount budgeted to

1 the Cultural Council for Administration and Community Education as
2 funded pursuant to Section 126.904(a).

3 **Sec. 126.910. School Board; independent authorities**
4 **authorized to use program.**

5 (a) The Council hereby urges and requests the Duval County
6 School Board and the independent authorities of the City to adopt
7 Art In Public Places programs.

8 (b) The Duval County School Board and the independent
9 authorities of the City are hereby authorized to utilize any
10 portion of this Part 9 in order to implement an Art in Public
11 Places program.

12 **Sec. 126.911. Schedule.**

13 The 0.75 percent appropriation created in Section 126.904(a)
14 shall apply to any project subject to the provisions of this Part
15 and declared by the Council to have Priority One status on or after
16 July 1, 1997. The 0.75 percent appropriation created in Section
17 126.904(a) shall apply to any project subject to the provisions of
18 this Part and declared to be a Priority One before July 1, 1997 if
19 the construction contract for such project is fully executed after
20 July 1, 1997; provided, however, that for such projects the term
21 "construction costs" shall be limited to the amount of construction
22 costs in the contract.

23 **Section 5.** There is hereby authorized the establishment
24 of twelve full-time positions within the Department of Procurement
25 for the following positions: Chief of Equal Business
26 Opportunity/Contract Compliance; Chief of Buying and
27 Administration; Administrative Assistant to support Chief of Equal
28 Business Opportunity/Contract Compliance and Chief of Buying and
29 Administration; Analyst I; Clerical Support Aide III; Data Analyst;
30 Ombudsman; Senior EBO specialist; Surplus Driver; Sr. Buyer and
31 Buyer.

1 **Section 6.** The City of Jacksonville shall continue to
2 participate in the Unified Certification Application Process
3 (UCAP), along with the other independent authorities, in an effort
4 to reduce the burden of certification on the MBE and JSEB
5 companies.

6 **Section 7.** There shall be developed through the
7 coordination of the Public Works and Procurement Departments an
8 electronic on-line plan review system to permit prospective
9 contractors and subcontractors to review bid specifications and
10 plans. Funds for this system shall be budgeted and appropriated in
11 the primary 2004-2005 fiscal year budget ordinance. The Public
12 Works and Procurement Departments shall provide all prospective
13 bidders with information for accessing on-line plan review.

14 **Section 8.** The Mayor and Corporation Secretary are hereby
15 authorized to execute all necessary contracts with FCCJ, Edwards
16 Waters College, UNF/SBDC, Ch.A.S.E., and the FCAACC, for the
17 program described in Section 2 herein.

18 **Section 9.** The provisions of Chapter 126, Purchasing
19 Code, are hereby waived for the purpose of awarding the two small
20 businesses contracting summits to FCCJ, Edward Waters College,
21 UNF/SBDC, Ch.A.S.E., or the FCAACC. The Mayor is directed to
22 appoint the appropriate City department to insure compliance with
23 the agreement and all other appropriate laws. Further, should FCCJ
24 or Edward Waters College receive any funds which are unspent on
25 this project, said funds shall be returned to the City within sixty
26 days of the completion of the Project, or by November 30, 2004,
27 whichever occurs first.

28 **Section 10.** For the 2004-2005 fiscal year, within the
29 City's budget, there shall be appropriated \$500,000 to assist
30 JSEBs, pursuant to Chapter 126, part 6A, Section 126.601, in
31 obtaining performance bonds for public and private contracts. The

1 program shall have the capability of underwriting marginal risks to
2 supplement existing bonding capacity, but shall not provide the
3 underlying bond.

4 **Section 11.** For the 2003-2004 fiscal year, within the
5 City's budget, there are hereby appropriated the indicated sum(s)
6 from the account(s) listed in subsection (a) to the account(s)
7 listed in subsection (b):

8 (a) Appropriated from:

9 Drop Reserve JZRS011MADR-09910 \$300,000

10 (b) Appropriated to:

11 Other Misc. Services and Charges PSPS011-04938 \$300,000

12 (c) The purpose of this appropriation is to engage FCCJ and
13 Edwards Waters College for \$15,000 each in holding two summits,
14 provide educational programs including training and doing business
15 with the City and private entities, and to provide a small business
16 program workshop, and to fund the FCCJ, Edward Waters College, UNF,
17 Ch.A.S.E., FCAACC, Industry and apprenticeship programs, as more
18 fully described in Chapter 126, Part 6A, Section 126.603.

19 **Section 12.** For the 2004-2005 Fiscal year, within the
20 City's budget, there shall be appropriated \$500,000 to assist JSEBs
21 pursuant to Chapter 126, Part 6A, Section 126.602, in obtaining
22 capital.

23 **Section 13.** For the 2004-2005 fiscal year, within the
24 City's budget, there shall be appropriated \$100,000 to establish an
25 accounting scholarship program which would provide up to \$500 in
26 matching funds annually for each certified JSEBs, pursuant to
27 Chapter 126, Part 6A, Section 125.604, to procure accounting
28 services from a certified public accountant.

29 **Section 14.** For the 2004-2005 fiscal year, within the
30 City's budget, there shall be appropriated \$200,000 to hire a
31 consultant to develop and use measurements to quantify and

1 categorize the contracts being awarded to all contractors and JSEBs
2 as more fully described in Chapter 126, Part 6A, Section 126.607.

3 **Section 15. Severability.** In the event that a court of
4 competent jurisdiction declares any portion of this ordinance
5 unconstitutional, invalid, or otherwise unenforceable, then it is
6 the intent of the City that all remaining provisions shall be
7 severable, valid and enforceable regardless of the invalidity of
8 any other provision.

9 **Section 16.** Should the City be sued under this program,
10 the City shall retain an expert to provide a more detailed
11 disparity study to gather the evidentiary evidence necessary to
12 defend said lawsuit.

13 **Section 17. Effective Date.** This ordinance shall become
14 effective upon signature by the Mayor or upon becoming effective
15 without the Mayor's signature.

16
17

18 Form Approved:

19
20



21 Office of General Counsel

22 Legislation Prepared By: Margaret M. Sidman

23

24 8/11/2004 G:\shared\LEGIS.CC\2004\Amend\2004-602\2004-602 New Sub 6-24\2004-602 Final Sub 7-8-

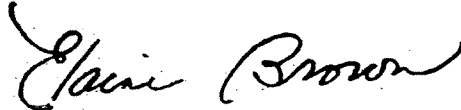
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ORDINANCE 2004-602-E

CERTIFICATE OF AUTHENTICATION

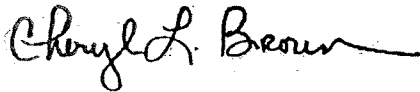
ENACTED BY THE COUNCIL

AUGUST 10, 2004



ELAINE BROWN
COUNCIL PRESIDENT

ATTEST:



CHERYL L. BROWN
COUNCIL SECRETARY

AUG 17 2004

APPROVED:



JOHN PEYTON, MAYOR

