

ORDINANCE NO. 2020-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA, REPEALING AND REPLACING CHAPTER 2, ARTICLE IV, PURCHASES, SALES AND CONTRACTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the overall goal of the City's purchasing and procurement policies shall be to provide the most appropriate quality of goods and services needed by the City at the least total public expense considering, as a minimum, initial cost, operating and maintenance costs, and estimated useful life; and

WHEREAS, it is the desire of the City Council of the City of South Daytona to continue to provide the most cost-effective purchases in the competitive marketplace, as well as ensuring fairness and impartiality in the City's dealings with vendors; and

WHEREAS, in order to instill more transparency and greater controls to purchasing and service acquisition, the City Council desires to repeal and replace Chapter 2, Article IV, as stated hereinafter.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF SOUTH DAYTONA, FLORIDA THAT:

SECTION 1. The City Council of the City of South Daytona hereby repeals Chapter 2, Article IV, Purchases, Sales and Contracts, of the *Code of Ordinances of the City of South Daytona* and replaces Article IV Purchases and Contractual Services as stated hereinafter:

ARTICLE IV. – PURCHASES, SALES AND CONTRACTS

Sec. 2-135. — Scope of article.

All purchases of supplies, equipment and contractual services and sales or personal property made by the city shall be by written contract or purchased order governed by the provisions of this article. All purchases shall comply with local, state and federal laws, rules, regulations and policies as applicable.

Sec. 2-136. — Written contract or purchase order required.

All purchases shall be made by written contract or purchase order and include a detailed receipt of such transaction.

Sec. 2-137. — Sound Discretion**Sound Discretion (\$0-\$3,000)**

All purchasing of supplies, equipment and contractual services with a total value of \$3,000 or less shall be made without formal bidding procedures by the city manager or department head. The city manager or department head shall judge the cost of the supplies, equipment or contractual services as reasonable and in the best interest of the City of South Daytona.

- a. The purchasing card is a tool for small purchases under \$3,000. Purchasing cards are issued with an employee's name with preset spending and control limits. Purchasing cards are only issued upon written request from the department director. The purchasing card is intended for small value, non-recurring needs. Acquisitions using a purchasing card must meet the procedures and guidelines contained herein along with the City's Purchasing Card Policy.

Sec. 2-138. — Written Quotes**Written Quotes (\$3,001 to \$25,000)**

Except as provided in this article, procurement of goods or services (including leases) with an estimated value greater than three thousand dollars (\$3,000) but less than or equal to twenty-five thousand dollars (\$25,000) require written quotes in accordance with the following procedures:

- a. Department head or their designee must solicit written quotes from at least three (3) qualified contractors, consultants, or suppliers.
- b. Award sale to the lowest responsible bidder after a minimum of a five (5) day bid solicitation.
 - 1) If the good or service is needed before the minimum five business days, then it shall be considered an emergency purchase governed by this article.
- c. Solicited bidders who do not submit a timely quote shall be considered as a "no quote" in response to the solicitation which can be used to meet the minimum solicited quote requirement.
- d. The department head is responsible for documenting the number of solicitations, listing the quotes received and documenting their efforts to assess the reasonableness of the quotes.
- e. The department head shall keep a record of all such open-market bids submitted, and such records shall be open to public inspection.

Sec. 2-139. — Formal Bid Solicitations**Formal Bid Solicitations (Greater than \$25,000)**

Except as otherwise provided in this article, procurement of goods or services (including leases) with an estimated value greater than twenty-five thousand dollars (\$25,000) shall require a formal sealed competitive bid solicitation.

- A. Items may not be purchased in divided quantities to avoid the requirements of this article. For example, a department may have several similar items that are needed for their operation throughout the fiscal year and individually these items are less than \$25,000 but in aggregate

the items are in excess of \$25,000. These items should not be split into several requisitions but should be consolidated and procured following the applicable solicitation process.

- B. The solicitation of competitive bids or proposals for professional services covered by the Consultants Competitive Negotiation Act (CCNA) shall be accomplished in accordance with the provisions of Section 287.055, Florida Statutes.
- C. The solicitation of competitive bids or proposals for any City construction project that is projected to cost more than \$200,000 shall be accomplished in accordance with the provisions of Section 255.0525, Florida Statutes.
- D. The solicitation of competitive bids or proposals for City utility projects shall be accomplished in accordance with the provisions of Chapter 180.24, Florida Statutes.
- E. Procurement for any projects funded with federal grant dollars shall follow the City's purchasing policy or 2 CFR 200 Uniform Guide rules, whichever is stricter.

For all purchases and sales requiring formal bids, the following procedure shall be followed:

(1) *Bid Invitation Notice.*

- a. *Manner of giving.* A bid invitation notice shall be published once in a newspaper published in Volusia County and having general distribution in the city. The bid invitation shall give at least ten (10) business days to submit a bid. If the award needs to be made in less than 10 days, it shall be considered an emergency purchase as governed by this article.
- b. *Scope.* The bid invitation notice shall include a general description of the articles to be purchased or sold or the contractual services desired, shall state where the project manual and specifications may be secured, and the time and place for opening bids. Such notice shall be posted at the entry door of City Hall, Public Works Administration Building and the Piggotte Community Center for duration of the solicitation.
- c. *Solicitation of bids.* In addition to the published bid invitation notice, the department head soliciting bids may also solicit sealed bids from all responsible prospective suppliers or contractors who are known to customarily deal in the articles or services to be purchased or sold, by sending them a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase or sale.

(2) *Bid deposits.* Bid deposits shall be prescribed in the bid invitation notice. Unsuccessful bidders shall be entitled to the return of their deposit. A successful bidder shall forfeit any deposit made upon their failure to enter into a contract or purchase order agreement within sixty (60) days after the award.

(3) *Sealed bids.* Bids shall be required to be submitted to the city manager in a sealed envelope, the outside of which shall be clearly labeled to show that it contains a bid.

(4) *Opening.* Bids shall be opened in public at the time and place stated in the notices.

(5) *Tabulation.* A tabulation of all bids received shall be made and shall be available for public inspection.

(6) *Rejection of Bids and Negotiations.* The city council shall have the authority to reject any and all bids. If the lowest responsible bid exceeds the budgeted amount and the city council does not make additional funds available, the department head shall have authority to negotiate

with the lowest responsible bidder to modify the scope of work by deleting or reducing bid items to meet budget requirements.

(7) *Waiver or irregularities.* The city council shall have the authority to waive any and all irregularities in any and all formal bids.

(8) *Single response to solicitation.* If only one response is received for a formal bid, then an award may be made to such respondent by the City Council pursuant to the determination (1) that the price and other items as submitted are fair and reasonable; (2) that other prospective respondents had a reasonable opportunity to respond; and (3) that the purchase is in the best interest of the City.

(9) *Determination of lowest and best bidder.*

(a) The city council shall award all contracts to the lowest responsible bidder for the purchase of equipment, materials and supplies based on the recommendation of the city manager.

(b) In determining the lowest responsible bidder including making a recommendation between two identical bids, in addition to price, the following will be considered:

- (1) The ability, capacity and skill of the bidder to perform the contract.
- (2) Whether the bidder can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality of performance of previous contract.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- (7) The quality, availability and adaptability of the supplies, or contractual services to the particular use required.
- (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
- (9) The number and scope of conditions attached to the bid.
- (10) Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

Sec. 2-140. — Exemptions to Written Quotes and Formal Bid Solicitations

A. **Emergency Purchase:** An emergency exemption occurs when an unplanned or unexpected event that requires immediate action in order to prevent or remedy a service outage; or to prevent or remedy a situation that presents an immediate danger to human life, health or safety of a significant loss or damage to the property, and where failure to take immediate action would enhance the risk of loss or prolong the delay in restoring service. Routine repairs and planned refurbishment do not constitute emergencies. Therefore, the city may dispense with requirements for competitive solicitations and the city manager may acquire or contract for non-real property, goods, or services required in contemplation of, preparation for, or during an emergency. The city manager shall notify the City Council of all emergency purchases that

are in excess of \$25,000 at the next regularly scheduled City Council meeting. The requesting department shall state the reason for the emergency purchase, and what caused the emergency situation, including a statement of financial or operational damage or risk that will occur if needs are not satisfied immediately. Once a determination has been made, the city may procure commodities or contractual services needed. It shall be the responsibility of the city manager to ensure such emergency purchase is accomplished in accordance with City purchasing requirements and that emergency purchase procedures are invoked properly and not used solely to circumvent the regular established purchasing procedures.

B. Cooperative purchasing is a procedure of procuring goods or services without the formal bid solicitation process by means of utilizing another participating municipal contract.

(1) The City may forego the formal bid solicitation process by cooperative purchase. The award will be in accordance with all the terms and conditions, prices, time frames, and other criteria as included in the cooperating contract. Both parties in contract must agree to let the city use the contract. Expired contracts are not eligible.

(2) Cooperative purchases in excess of \$25,000 must be approved by city council.

C. The City Council may waive the written quote and formal bidding requirements where solicitation of bids is deemed not to be in the best interest of the City taking into consideration cost, delivery time, prior dealings with the vendor or product, consistency of product use, compatibility of product with existing equipment and such other considerations as deemed appropriate by the City Council.

D. Sole Proprietary Source: Sole proprietary source purchasing is when there is only one person or entity that can provide the goods and/or services needed because of the specialized or unique characteristics of the goods and/or services.

(1) The following criteria must be met in order to procure goods and services that are a sole proprietary source.

It is the only item that will produce the desired results (or fulfill the specific need) and,

(ii) The item is available from only one source of supply, or

(iii) The item is available from more than one vendor, but due to other circumstances (such as exclusive sales territory by manufacturer, prohibitive delivery time and cost, etc.), only one vendor is suited to provide the goods or services.

(2) Any purchase of goods and/or services with an estimated value greater than or equal to \$30,000 that is intended to be purchased from a sole source, must be electronically posted for seven (7) business days on the City's website prior to City Council meeting where the purchase is scheduled for approval. The notice must include a request that potential vendors provide information regarding their ability to supply the goods and/or services described.

(3) The request for sole source purchases shall set forth the purpose and need, an explanation why the item will exclusively produce the desired results (or fulfill the specific need) and the criteria. Compatibility to existing equipment shall be an acceptable justification for this exemption, provided the item is only available from a sole source of supply. The department head is responsible for providing this documentation to the finance department.

E. Additional Exemptions: The purchase of the following goods and services is exempt from quotes and formal solicitations.

- 1) Water, Sewer, Gas, Electrical and Other Utility Services; Telecommunication Services including, but not limited to, cable television, telephone lines, internet connectivity, data and voice circuits, voice over internet protocol ("VOIP"), cellular/wireless phones, wide area network ("WAN") connectivity, pagers, and wireless adapters for cellular data ("air cards").
- 2) Postage
- 3) Advertisements
- 4) Membership Fees
- 5) Subscriptions
- 6) Any items covered under the City's travel policy
- 7) Software/Technology Maintenance and Support renewal fees for existing software or technology licenses
- 8) Goods and/or services provided by governmental entities

Sec. 2-141 — Bid Protest Procedures

In any case where a bidder wishes to protest either the results of or intended disposition of any bid, the following action is required:

- (a) The bidder shall submit a formal written protest to the city manager 48 hours after the posting of the notice of decision or intended decision as set forth on a city council agenda item. With respect to a protest of the terms, conditions and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, bids, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 48 hours after the posting of the solicitation.
- (b) The formal written protest shall state with particularity the facts and law upon which the protest is based.
- (c) Failure to submit a formal written protest shall constitute a waiver of proceedings.
- (d) Upon receipt of the formal written protest that has been timely filed, the city shall stop the solicitation or contract award process until the subject of the protest is resolved by final city action. However, the city may continue the solicitation or award process, provided the city manager sets forth in writing particular facts and circumstances, which require the continuance of the solicitation or contract award process without delay, in order to avoid an immediate and serious danger to the public health, safety or welfare. The City will resolve the protest in the following manner:
 - (1) As soon as possible after receipt, the Finance Director shall provide written bid protest to the city manager, city attorney, department head involved, and supervisor directly involved in the acquisition.
 - (2) The Finance Director shall schedule within seven business days, excluding weekends and holidays a meeting with the above-mentioned individuals or designee and protestor. The intent of the meeting is to provide a review and/or solution prior to going before council. After reviewing all relevant information, the city manager shall render a decision.

- (3) If the protester disagrees, he may appeal to the city council at a formal council meeting. After reviewing the evidence, the city council will issue their decision. The city council's decision is final; however, the protester can appeal the administrative decision to the Circuit Court in Volusia County, Florida within 30 days of the city council's final decision. Decisions at all levels shall be in writing to the protestor.

Sec. 2-142. - Alterations or modifications of contracts.

Where, in the opinion of the department head and city manager, it becomes necessary for the prosecution of any work or improvement under contract to make alterations or modifications in such contract, such alterations or modifications may be approved by the city manager that have a net aggregate fiscal impact equal to or less than twenty-five thousand dollars (\$25,000) without receiving prior city council approval. Change orders in excess of twenty-five thousand dollars (\$25,000) must be approved in advance by the city council unless the change order is critical thereby requiring an immediate decision to avoid a threat to the health and safety of life and property or to avoid significant expenses caused by a delay. These critical change orders shall be made by the city manager who will notify the City Council of the decision at the next regularly scheduled City Council meeting.

Sec. 2-143. - Acquisition, sale or lease of real property.

- (a) The city shall comply with F.S. § 166.045 when acquiring real property. Pursuant to F.S. § 166.045(1)(b), the city council hereby waives the appraisal requirement for any purchase of real property in the amount of one hundred thousand dollars (\$100,000.00) or less.
- (b) The following regulations shall apply to the sale or lease of city property.
 - (1) *City property* includes but is not limited to any land, water or air rights and all fixtures or improvements attached to land owned, dedicated or under city control by lease or other means.
 - (2) *Lease of city property* means any right to lease city property by way of agreement, irrespective of consideration being paid to the city, and irrespective of the city also utilizing or being allowed to utilize the property for any purpose during the term of the lease. For purposes of this article, the term "lease" shall not include special event permits, revocable permits, concession agreements, management agreements, use agreement or leases for a term one (1) week or less, including option periods.
 - (3) *Sale of city property* means any conveyance, transfer, gift, exchange or other transaction in which legal title passes from the city to any person or entity, whether or not the city retains any partial title, interest, reservation, easement, right-of-way, restriction or license in regard to the property. This definition shall include any sale of development rights as defined in the city Code, and transfer of development rights. This definition shall not include a vacation or abandonment of a city public right-of-way, including streets or alleys, or the encroachment thereupon.
 - (4) All costs incurred by the city associated with the sale or lease of city property, including but not limited to attorney fees, appraisal costs, engineering fees, shall be paid by the purchaser or lessee, unless the city council waives this requirement.
 - (5) The city council must approve in advance the acquisition of any interest in real property by the city, including fee simple interest, easements or rights-of-way.

SECTION 3. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance

SECTION 4. CODIFICATION. It is the intention of the City Council of the City of South Daytona, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of South Daytona, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

SECTION 5. CONFLICTS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED upon first reading at the regular meeting of the City Council held in the City of South Daytona, Florida, on the 14th day of September, 2020.

PASSED AND ADOPTED upon second and final reading at the meeting of the City Council held in the City of South Daytona, Florida, on the 29th day of September, 2020.

SIGNED:

William C. Hall
Mayor

ATTEST:

James L. Gillis, Jr.
City Manager

APPROVED AS TO FORM AND LEGALITY:

Scott E. Simpson
City Attorney