

Meeting Date: 8/23/2011



Agenda Item # 8-c

CITY COUNCIL AGENDA ITEM

Contact Name: Debbie Renner Department Director: _____
Department/Contact # City Clerk City Manager: Jamie Croteau

Type of Item: Public Hearing Resolution
 Ordinance First Reading Discussion & Action
 Ordinance Second Reading Council Approval

Subject: Discuss Purchasing Code

BACKGROUND: This item was requested by Council Member Abraham at the July 26th Council Meeting.

RECOMMENDATIONS:

ATTACHMENTS: Orange City Purchasing Code

FINANCIAL IMPACT:

Reviewed by City Attorney _____
Reviewed by Finance Dept. _____
Reviewed by: _____

1st Discussion Date: date.	2nd Discussion Date: date.	Third Discussion Date: date.	Other Dates: date.
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Chapter 12.3 PURCHASING CODE*

***Editor's note:** Ord. No. 153, § 1, adopted July 8, 2003, amended ch. 12.3 in its entirety, in effect repealing and reenacting said chapter to read as herein set out. The former ch. 12.3, §§ 12.3-1--12.3-6, 12.3-21--12.3-31, 12.3-51--12.3-53, and 12.3-71--12.3-73, pertained to purchases and sales procedure and derived from Ord. No. 98-10-2, § 1, adopted Nov. 10, 1998.

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ARTICLE I. APPLICABILITY AND EXCLUSIONS

Sec. 12.3-1. Purpose.

The purpose of this chapter is to prescribe the manner in which the city shall purchase materials, supplies, equipment, and construction. It shall apply to every expenditure of public funds, irrespective of its source. When the procurement involves the expenditure of federal or state assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal or state law and regulation, which may not be reflected in this chapter. All procurement under this chapter shall comply with all applicable provisions of F.S. chs. 119 and 286 regarding public records and Government in the Sunshine. Nothing in this

chapter shall prevent the city from complying with the terms and conditions of any grant, gift, or bequest, which are otherwise consistent with law. This chapter shall not apply to:

- (1) Agreements between the city council and other governmental entities including the procurement, transfer, sale, or exchange of goods and/or services.
- (2) Procurement of direct pay items including: dues and memberships in trade or professional organizations; subscriptions for periodicals; advertisements; postage; expert witnesses; abstracts of titles for real property; closing costs and processing fees for acquisitions; title insurance for real property; water, sewer and electric utility services; copyrighted books and videos; fees for job-related seminars and training; licenses, permits; and approved travel expenses for city officials and employees.
- (3) Real property.
- (4) Goods and/or services given or accepted by the city council via grant, gift or bequest.
- (5) Items purchased for resale to the general public.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-2. Intent.

The city council hereby finds that it is in the best interest of the health, safety and welfare of the citizens of the city to purchase materials, supplies and contractual services from the lowest and best qualified vendor. It is further the council's intent that these procedures shall be binding on all agencies, boards, committees, departments, and employees responsible to the city council as established in this chapter. These procedures shall be deemed supplemental to any applicable state law.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-3. Ethics in purchasing.

All city officials and employees shall comply with all rules, procedures and applicable city and state laws governing their ethical conduct regarding purchasing in place at the date of enactment of this chapter or that are enacted by the city and state in the future. This includes but is not limited to:

- (1) Provisions of city personnel policies and procedures which may relate to purchasing ethics.
- (2) Use of confidential information for actual or anticipated personal gains or for the actual or anticipated personal gain of any other person.
- (3) Receipt of any payment, gratuity, or employment from/by a contractor or supplier of goods or services to the city.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-4. Implementation and enforcement.

The city manager shall be responsible, through and in conjunction with the finance director or his designee, a.k.a. the "purchasing agent," for implementing and enforcing the purchasing procedures on a citywide basis. Each department head shall be responsible for implementing and enforcing these purchasing procedures within his department.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-5. Payments.

The finance director shall issue payments for all approved contracts or items or services procured in accordance with these procedures, the provisions of an applicable contract, City Charter, Code and general law.

(Ord. No. 153, § 1, 7-8-03)

Secs. 12.3-6--12.3-20. Reserved.

ARTICLE II. METHODS AND PROCEDURES

Sec. 12.3-21. Procedures for competitive sealed bidding in excess of ten thousand dollars.

- (a) *Invitation for bids.* An invitation for bids shall be issued following the written approval of a bid request, including a cost estimate, by the department/division head, the appropriate intermediate manager, if any, and the city manager. It shall include plans, specifications and all contractual terms and conditions applicable to the procurement.
- (b) *Public notice.* Adequate public notice of the invitation for bids shall be given a reasonable time, not less than ten calendar days, prior to the date set forth therein for the opening of bids. Such notice shall include publication in a newspaper of general circulation. All notices shall state the place, date and time of bid opening.
- (c) *Bid receipt and opening.* No bid shall be accepted unless it is received by the person designated at or before the time specified in the invitation for bids. Bids shall be opened publicly by the person designated to receive the same, in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as the purchasing agent deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection in accordance with general law.
- (d) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this section. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.
- (e) *Correction or withdrawal of bids, cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids before bid opening, or cancellation of awards or contracts

based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall not be permitted. No changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw his bid at the discretion of the city if:

- (1) The mistake is clearly evident on the face of the bid document; or
- (2) The evidence of the mistake submitted by the bidder shall be substantial and convincing.

All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the purchasing agent.

- (f) *Award.* After approval by the city council if over \$25,000.00, or the city manager if \$25,000.00 or under, the contract shall be awarded with reasonable promptness by appropriate written notice to the lowest, responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid for a construction project exceeds the architectural or engineering estimate, the city council or city manager if sealed bid price is \$25,000.00 or under may negotiate an adjustment of the bid price with the low responsive and responsible bidder in order to bring the bid within the amount of available funds, provided that time or economic considerations preclude resolicitation of work of a reduced scope.
- (g) *Multistep sealed bidding.* When it is considered impractical to prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (h) *Use of bids obtained by other governmental agencies.* The city may utilize a competitive bid solicited by any other municipal, county, or state or federal governmental agency, or any combination of such agencies, in purchasing items requiring competitive sealed bids.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-22. Procedures for purchases over five thousand dollars but not more than ten thousand dollars.

- (a) Contract requirements, requests for quotations or project definition shall not be artificially divided so as to constitute a purchase under the \$10,000.00 limit.
- (b) Items or services over \$5,000.00, but not more than \$10,000.00 shall be acquired through formal written quotations. At a minimum, the department head shall submit a request for formal written quotations along with the specification to applicable vendors. Department heads are responsible for obtaining at least three formal written quotations to insure that the best possible value is obtained for the city. The department head shall

select the vendor whose proposal is in the best interest of the city after considering: (1) the price; (2) the capability, integrity and reliability of the vendor and (3) any other special factors deemed important by the department head.

- (c) Upon selection of a vendor, the department head shall initiate the purchase order process. The finance director shall review the purchase order for budgetary compliance and cost consistency with similar purchases. Department heads shall provide the finance director with the written quotations. The purchase of items and services over \$5,000.00 shall require the approval of the finance director. The department head is authorized to proceed with the purchase upon receipt of a copy of the purchase order signed by the finance director.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-23. Procedures for purchases of less than five thousand dollars and more than seven hundred fifty dollars.

- (a) Contract requirements, requests for quotations or project definition shall not be artificially divided so as to constitute a purchase under the \$5,000.00 limit.
- (b) Items or services of \$5,000.00 or less but more than \$750.00 shall be acquired through informal quotations. The department head or his designee shall solicit informal quotations by telephone, in person or in writing. In requesting quotations, it is essential that all vendors be given the same information and that prices are not disclosed to other vendors. Department heads are responsible for obtaining at least three quotations to insure that the best possible value is obtained for the city. The department head shall select the vendor whose proposal is in the best interest of the city after considering: (1) the price; (2) the capability, integrity and reliability of the vendor and (3) any other special factors deemed important by the department head.
- (c) Upon selection of a vendor, the department head shall initiate the purchase order process. The department head is authorized to proceed with the purchase upon receipt of an approved purchase order following the finance director's review of the purchase order for budgetary compliance and cost consistency with similar purchases. The department head shall provide the finance director with the informal quotations along with the purchase order.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-24. Purchases of seven hundred fifty dollars or less.

The finance director/purchasing agent shall implement operational procedures for making purchases of \$750.00 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supplies or services being purchased. The department head is authorized to approve such purchases following a review of compliance with said policies.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-25. Procedures for purchases through competitive sealed proposals.

- (a) *Conditions for use.* When the city manager determines that the use of competitive

sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the competitive sealed proposal method.

- (b) *Request for proposals.* Proposals shall be solicited through a request for proposals.
- (c) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in section 12.3-21(b); provided the minimum time shall be ten calendar days.
- (d) *Receipt of proposals.* No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation.
- (e) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors.
- (f) *Discussion with responsible offerors and revisions to proposals.* For the purpose of clarification and to assure full understanding of conformance to the solicitation requirements, discussions may be conducted with responsible offerors whose proposals are determined to be reasonably susceptible of being selected for award, as provided in the request for proposals. Offerors shall be afforded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.
- (g) *Award.* Award shall be made to the responsible offeror whose proposal is determined, in writing, to be the most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-26. Contracting for professional services governed by the Consultants' Competitive Negotiations Act ("the Act").

- (a) Professional services required for any project which is not within the scope of a continuing contract between the city and a service provider, and which services are included within the scope of the Act (F.S. § 287.055), shall be procured in accordance with the provisions of the Act, including design-build contracts.
- (b) Professional services required for any project which is within the scope of a continuing contract between the city and a service provider, which services are included within the scope of the Act, shall be procured in accordance with the following procedure:
 - (1) The department head in charge of the project for which such services are required, shall after conferring with the city manager, determine which of the service providers then under continuing contract with the city are potentially capable of providing the required services.
 - (2) Such department head shall then request each such provider to submit a proposed scope of services and a corresponding fee quotation.

- (3) Such department head shall, in conjunction with the city manager, review the proposals received. In the event he determines it to be in the overall best interest of the city, he may enter into negotiations with any service provider which has submitted a proposal with respect to the proposed scope of services, the proposed fee, or both.
- (4) Upon completion of his review of the proposals, such department head shall prepare and submit to the city manager, his recommendation as to which of the aforescribed service providers should, in his professional judgment, receive authorization to perform the work required. In making such determination he shall take into account:
 - a. The factors set forth in F.S. § 287.055(4)(b)), with respect to the service providers then under continuing contract with the city; and
 - b. The price for which the services are to be rendered.
- (5) If the proposal is for more than \$25,000.00 the city manager shall submit his recommendations together with that of the department head to the city council for the final decision. If the proposal is \$25,000.00 or less, the city manager shall make the final decision.
- (6) The approving party shall, giving due consideration to the recommendation and to the overall general welfare of the citizens of the city, determine whether or not to issue the work authorization and, if so, to which of the aforescribed service providers. The decision of the approving party shall be final, subject only to certiorari review by the circuit court.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-27. Contracting for independent auditing services.

- (a) *Authority.* Independent auditing services shall be procured in accordance with the selection procedures specified in this section.
- (b) *Selection procedure.*
 - (1) The city council shall serve as the city's auditor selection committee.
 - (2) The committee shall prepare the request for proposals and publicly announce, in a uniform and consistent manner, each occasion when auditing services are required to be purchased. Public notice must include a general description of the audit and must indicate how interested certified public accountants can apply for consideration.
 - (3) The committee shall encourage firms engaged in the lawful practice of public accounting who desire to provide professional services to submit annually a statement of qualifications and performance data.
 - (4) Any certified public accountant desiring to provide auditing services must first be qualified pursuant to law. The committee shall make a finding that the firm or individual to be employed is fully qualified to render the required services. Among the factors to be considered in making this finding are the capabilities,

adequacy of personnel, past record, and experience of the firm or individual.

- (5) The committee shall adopt procedures for the evaluation of professional services, including, but not limited to, capabilities, adequacy of personnel, past record, experience, results of recent external quality control reviews, proposed fees for the performance of the services desired, and such other factors as may be determined by the committee to be applicable to its particular requirements.
- (6) The committee shall evaluate current statements of qualifications and performance data on file with the selection committee, together with those that may be submitted by other firms regarding the proposed audit, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the audit and ability to furnish the required services.
- (7) The committee shall select no fewer than three firms deemed to be the most highly qualified to perform the required services after considering such factors as the ability of professional personnel; past performance; willingness to meet time requirements; location; recent, current and projected workloads of the firms; proposed fees for the performance of the services desired; and the volume of work previously awarded to the firm by the city, with the object of effecting an equitable distribution of contracts among qualified firms provided such distribution does not violate the principle of selection of the most highly qualified firms. If fewer than three firms desire to perform the services, the committee shall recommend such firms as it determines to be qualified.
- (8) If the committee receives more than one proposal for the same engagement the committee may rank, in order of preference, the firms to perform the engagement. The firm ranked first may then negotiate a contract with the committee giving, among other things, a basis of its proposed fee for that engagement. If the committee is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the committee shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The Committee, in negotiating with firms, may reopen formal negotiations with any of the three top-ranked firms, but it may not negotiate with more than one firm at a time. The committee shall also negotiate on the scope and quality of services. In making such determination, the committee shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.
- (9) After the committee negotiates a satisfactory contract with any of the selected firms, the contract shall be placed on the city council agenda for acceptance and approval. The firm receiving the award shall execute a truth-in-negotiation certificate stating that the rates of compensation and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Such certificate shall also contain a description and disclosure of any understanding that places a limit on current or future year's audit contract fees, including any arrangements under which fixed limits will not be subject to

reconsideration if unexpected accounting or auditing issues are encountered. Such certificate will also contain a description of any services rendered by the certified public accountant or firm of certified public accountants at rates that are not customary.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-28. Contracting for designated professional services.

- (a) *Authority.* Professional services, other than independent auditing services and those services not included within the scope of the Consultants' Competitive Negotiations Act (F.S. § 287.055), shall be procured in accordance with the selection procedures specified in this subsection.
- (b) *Selection procedure.*
 - (1) *Conditions for use.* Except as provided under subsection (e) and section 12.3-24, such professional services shall be procured in accordance with this section.
 - (2) *Statement of qualifications.* Persons engaged in providing the types of professional services desired may submit statements of qualifications and expressions of interest in providing such professional services. A uniform format for statements of qualifications may be specified by the city. Persons may amend these statements at any time by filing a new statement.
 - (3) *Public announcement and form of request for proposals.* Adequate notice of the need for such services shall be given by the city through a request for proposals. The request for proposals shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.
 - (4) *Quotation of proposed fees.* All those interested persons submitting proposals shall include a quotation of their proposed fee for the performance of their services on behalf of the city. The quotation of proposed fees shall include rates, fees, charges and other detailed cost proposal or cost breakdown information may be required by the city's request for proposals. The fees quoted shall be considered as one factor in determining the person to render services to the city.
 - (5) *Discussions.* The department head procuring the required professional services or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
 - (6) *Award.* A written award shall be made to the offeror by the department/division head procuring the required professional services with the approval of the city manager, based on the evaluation factors set forth in the request for proposals and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by more than one qualified offeror, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking. The contract may be awarded to the offeror then ranked

best qualified if the amount of compensation is determined to be fair and reasonable.

- (c) *Current contracts.* No continuing contract between the city and any provider of professional services within the scope of this subsection in existence at the time of adoption shall be impaired.
- (d) *Contract document.* Every procurement of professional services in accordance herewith, the cost of which shall exceed \$5,000.00 shall be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services.
- (e) *Exception.* This section shall not be applicable to the provisions of health and mental health services or drugs in the examination, diagnosis or treatment of sick or injured city employees or the providing of other benefits as required by the provisions of F.S. ch. 440, or services excluded in section 12.3-1(1), (2), and (4).

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-29. Sole source procurement.

After conducting a good faith review of available sources, a contract may be awarded without competition when the department head certifies, in writing, to the purchasing agent and the approving authority, that there is only one source for the required supply, service or construction item. The department head shall conduct negotiations as appropriate as to price, delivery and terms. A record of sole procurements shall be maintained as a public record.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-30. Emergency procurements.

Notwithstanding any other provisions of this chapter, the finance director may make or authorize others to make emergency procurements of supplies, services or construction items when there is an eminent threat to public health, welfare or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be submitted to the finance director and city manager by the department head and shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract and a listing of the items procured under the contract. A copy of such record shall be promptly provided to the city manager for purchases of more than \$750.00 to and including \$5,000.00; and to the city council for purchases of over \$5,000.00, for confirmation and ratification purposes.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-31. Cancellation of invitations for bids or requests for proposals.

An invitation for bids, a request for proposals or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part and may be specified in the solicitation, when it is for good cause and in the best interests of the city. The reasons therefore shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for

good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-32. Alternative procurement method.

Notwithstanding any other provision of this chapter to the contrary, any purchase of used vehicles or used equipment may be made through a bid at a public auction, or through competitive negotiations, when such method(s) are recommended by the city manager and determined by the city council to best protect the public welfare.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-33. Unique circumstances.

The city council reserves the right to consider purchasing needs on their merits and make appropriate purchasing decisions for unique circumstances which may arise.

(Ord. No. 247, § 2, 6-14-05)

Secs. 12.3-34--12.3-50. Reserved.

ARTICLE III. SPECIFICATIONS

Sec. 12.3-51. Maximum practicable competition.

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the city by architects, engineers, designers and draftsmen.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-52. Brand name or equal specification.

(a) *Use.* Brand name or equal specifications may be used when the department/head determines in writing that:

- (1) No other design or performance specification or qualified products list is available;
- (2) Time does not permit the preparation of another form of purchase description not including a brand name specification;
- (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (4) Use of a brand name or equal specification is in the city's best interests.

- (b) *Designation of several brand names.* Brand name or equal specifications shall seek to designate three or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) *Required characteristics.* Unless the purchasing agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand names or equal specifications shall include a description of the particular design, functional or performance characteristics which are required.
- (d) *Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performances and characteristics desired and is not intended to limit or restrict competition.
- (e) *Competition.* Should it be determined by the department head and the purchasing agent that only one source can supply the product/item, the procurement shall be made under section 12.3-29.

(Ord. No. 153, § 1, 7-8-03)

Secs. 12.3-53--12.3-70. Reserved.

ARTICLE IV. APPEALS AND REMEDIES

Sec. 12.3-71. Authority of the city manager to settle bid protests and contract claims.

The city manager is authorized to settle any protest regarding the solicitation or award of a city contract or any claim arising out of the performance of a city contract, prior to an appeal to the city council or the commencement of an action in a court of competent jurisdiction.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-72. Bid protests.

- (a) *Right to protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the city council. Protesters are urged to seek resolution of their complaints initially with the purchasing agent. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within five calendar days after such aggrieved person knows or should have known the facts giving rise thereto.
- (b) *Stay of procurements during protests.* In the event of a timely protest under subsection (a), the purchasing agent shall not proceed further with the solicitation or award of the

contract until all administrative and judicial remedies have been exhausted or until the city council makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the city.

(Ord. No. 153, § 1, 7-8-03)

Sec. 12.3-73. Remedies for solicitations or awards in violation of law.

- (a) *Prior to bid opening or closing date for receipt of proposals.* If, prior to the bid opening or the closing date for the receipt of proposals, the purchasing agent, after consultation with the city attorney, determines that a solicitation is in violation of federal, state or municipal law, then the solicitation shall be canceled or revised to comply with applicable law.
- (b) *Prior to award.* If, after bid opening or the closing date for receipt of proposals, the purchasing agent after consultation with the city attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state or municipal law, then the solicitation or proposed award shall be canceled.
- (c) *After award.* If, after an award, the purchasing agent, after consultation with the city attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:
 - (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - a. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the city; or
 - b. The contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit prior to the termination.
 - (2) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void, or voidable, if such action is in the best interests of the city.

(Ord. No. 153, § 1, 7-8-03)