

ORDINANCE NO. 2018-01

AN ORDINANCE OF THE CITY OF CLEWISTON, FLORIDA, REVISING ARTICLE III OF THE CODE OF LAWS AND ORDINANCES PROVIDING FOR; SEC. 2-76, PURPOSES AND CONSTRUCTION; SEC. 2-77, DEFINITIONS; SEC. 2-78, PURCHASING THRESHOLDS; SEC. 2-79, PURCHASING METHODS / COMPETITIVE BIDDING; SEC. 2-80, FACTORS FOR BID AWARDS; SEC. 2-81, NO PROPERTY RIGHTS IN CITY BIDS; SEC. 2-82, UNQUALIFIED OR IRRESPONSIBLE CONTRACTOR OR VENDOR; SEC. 2-83, PROTESTS AND APPEALS; SEC. 2-84, RESERVED; SEC. 2-85, LOCAL VENDOR PREFERENCE; INCLUSION IN THE CODE OF ORDINANCES, CONFLICT, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, the City of Clewiston has determined that it is in the best interests of its residents to modify the Purchasing requirements of the City so that they can avail themselves of alternative purchasing methods and opportunities.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COMMISSION OF THE CITY OF CLEWISTON, THAT Article III of the Code of Laws and Ordinances is hereby amended to read as follows:

ARTICLE III. - PURCHASING PROCEDURES

Sec. 2-76. - Purposes and construction.

(a) This section is enacted to provide definitions and procedures to ensure that the City obtains goods and services in a manner which maximizes the benefits received for the citizens and government of the City in the most efficient and cost effective manner possible, and shall be liberally construed to effect such purposes.

(b) In deciding issues which may arise in the bidding and purchasing activities of the City, decisions shall be based on factors relating to costs and benefits to the City and overall efficiency and effectiveness evaluations relating to a proposed bid or purchase award and contract.

Sec. 2-77. - Definitions.

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

Competitive bidding shall mean the methods of purchasing listed in Sec. 2-79.

False claim means a request for change order, request for payment, or a claim in any other form which is either not allowed under the contract or is based on or contains any false information as to quantities, actual costs or other material facts.

General services means support services performed by an independent contractor requiring specialized knowledge, experience, or expertise that includes, but is not limited to, pest control, janitorial, laundry, catering, security, lawn maintenance, and maintenance of equipment.

Historical under bidder means a contractor which, on at least one previous contract with the City or two or more contracts with other governmental agencies, has submitted change order requests for nonowner instigated increases in the contract price based on quantities, site conditions, unrequested delays, or the like which cumulatively would have increased the total contract price for a project by five percent or more if allowed.

Irresponsible contractor or vendor means a contractor or vendor which has, under a previous contract with the City, failed to fully perform its obligations in accordance with the contract terms, or on two or more government contracts received negative evaluations from the project's engineer or architect.

Local business means a vendor has its headquarters located in the City or a place of business located in the City where it will produce the goods or perform the services to be purchased, or owners of a business who live in, have a permanent residence in, and pay taxes in the City.

Professional services means any services where the City is obtaining advice, instruction, or specialized work from an individual, firm, or corporation specifically qualified in a particular area. The term "professional services" does not include those services procured pursuant to F.S. § 287.055.

Unlicensed contractor means a direct contractor which does not itself have either a general contractor's license or the specific licenses required by the City and state for all phases of the subject project for which it proposes to contract.

Unqualified contractor or vendor means a contractor who is determined to be unlicensed or incompetent or who has selected subcontractors for a particular project which are unlicensed or incompetent; or a vendor which provides products and goods which are inferior or do not meet specifications for a project.

Sec. 2-78. - Purchasing thresholds.

(a) Purchases in amounts of over \$5,000.00 but not exceeding \$25,000.00 may be effected without advertising, but will require written quotes, including fax transmissions and/or emails from prospective vendors which may be obtained by the using department. At least three written quotes shall be obtained if practicable. Purchases less than \$5,000.00 may be by documented verbal quote. In all instances, the City finance director shall have the right to require adequate documentation to ensure that bids are fairly acquired and that a competitive environment is maintained.

(b) Purchases exceeding \$25,000.00 shall require public advertising in a newspaper of local circulation and advertising by posting in two conspicuous places in the City limits. Purchases shall be made according to the requirements for the method of purchasing used under Sec. 2-79.

(c) The City shall require that successful bidders provide bid bonds, performance bonds, labor and/or material bonds, or other appropriate types of bonds at the Commission's discretion. In connection with any awarded contract in excess of \$25,000.00 for material, equipment, work or services, ten percent of the contract amount shall be withheld subject to

final approval by the City Commission of material, equipment, work or services provided under the terms of such contract.

(d) The City Commission's approval shall be required for award of all contracts for material, equipment, work or services in excess of \$75,000.00 for all budgeted items, and in excess of \$25,000.00 for non-budgeted items. Budgeted purchases of \$75,000.00 or less may be approved by the City Manager, if approved in writing in advance by the Finance Director and the City Attorney. In all instances the purchasing methods of Sec. 2-79 must be used for all purchases in excess of \$5,000.00.

Sec. 2-79. – Purchasing Methods / Competitive Bidding

(a) Professional Services. The provisions contained in F.S. §287.055 (commonly known as the Consultant's Competitive Negotiation Act, "CCNA"), shall apply herein for the procurement of all architecture, professional engineering, landscape architecture, or registered surveying and mapping services for projects that exceed the specified statutory dollar thresholds. For projects that are less than the CCNA statutory thresholds, county staff may utilize any process they deem most appropriate, including contacting only one firm and entering into a written contract or issuing a purchase order with the firm, subject to the approval of the City Commission.

(b) Auditing Services. Auditing Services shall be procured in accordance with F.S. § 218.391.

(c) Emergency Procurement.

(1) in the case of emergencies that require the immediate purchase of commodities, equipment or services, the City Manager shall be empowered to secure such commodities, equipment or services without competitive bidding or quotes. In this event, all measures that are reasonably possible under the circumstances shall be taken to assure the maximum cost benefit to the City of the commodities, equipment or services procured.

(2) During a declared local state of emergency, the person or persons designated in the declaration is (are) empowered to purchase commodities, equipment or services without competitive bidding.

(d) Cooperative procurement.

(1) The City may cooperate with other government agencies and governmental associations in the purchase of commodities, equipment and services.

(2) When any other government agency or governmental association has competitively procured and awarded a contract for commodities, equipment or services, the City may purchase a commodity, equipment or service from the awarded vendor at the awarded price if the original bid specifications and award allow it and if the competitive procurement was conducted within the past three years. Such purchases shall be made without competitive procurement by the City and without any dollar limit provided that funding has been appropriated and approved by the City Commission. Cooperative procurement is not permitted for construction services or professional services as described in the CCNA.

(e) Sole source.

A contract may be awarded, except as otherwise provided for under state law, for a supply, service, material, equipment or construction item(s) without competition when the City Manager certifies in writing, after conducting a good-faith review of available sources, that there is only one legally available source for the required supply, service, material, equipment or construction item(s).

(f) Single Source

A contract may be awarded, except as otherwise provided for under state law, for a supply, service, material, equipment or construction item(s) without competition when the City Manager certifies in writing after conducting a good faith review of available resources, that there is only one economically feasible source for the purchase in order to meet functional or performance requirements.

(g) Requests for Proposals.

(1) The request for proposals method of procurement is used when it is not practicable to specifically define the commodities or contractual services which are needed. The City can describe the project but the methods or means to accomplish the desired outcome cannot be easily defined. There may be several methods available to accomplish a task, and the City is considering all the available options.

(2) The City Manager, in consultation with staff from other departments with expertise, shall outline needs and objectives that will make up the scope of services to be addressed by the proposers.

(3) Proposers shall be ranked by a selection committee and presentation may be made to the selection committee and/or the Commission.

(h) Requests for Qualifications.

The Request for Qualifications method of procurement is used in the recruitment of qualified professional services or construction management services.

(1) The City Manager shall outline specific needs and objectives that will make up the scope of services to be addressed by the proposers. The purchasing manager shall prepare the criteria and develop the Request for Qualifications.

(2) Proposers shall be ranked by a selection committee and presentations may be made to the selection committee and/or Commission for consideration.

(i) Invitation to Bid.

The Invitation to Bid method of procurement should be utilized when the City is capable of establishing precise specifications for a commodity or defining with specificity a scope of services for the commodities or contractual services sought. Through this process, vendors are able to compete on a cost basis for like items or services. The selection will be based upon the lowest priced responsible and responsive bidder and the factors in Sec. 2-80.

(j) Invitation to Negotiate.

The Invitation to Negotiate method of procurement should be utilized when the scope of a project is not clearly defined and the City has determined that negotiations may be necessary to

receive the best value. The invitation shall invite vendor input on the scope, schedule, and process for initiating the project. This method of procurement may be used in areas experiencing constant change in the marketplace and the City wants the opportunity to obtain current, up-to-date goods or services at the time of contracting.

(k) Recent City competitive procurements.

The City may contract for commodities and equipment with the selected vendor under a previous City competitive procurement if the competitive procurement was conducted within the past three years.

Sec. 2-80. - Factors for bid awards.

In awarding contracts for the procurement of goods and services for the City, the following factors shall be considered:

- (1) The bid or cost amount.
- (2) Analysis of a bidder's product or service quality.
- (3) For a person or entity which has previously provided similar goods or services to the City:
 - a. The person or entity's performance of all such prior contracts, with emphasis on its competence and responsibility and the quality of the product or service provided; and
 - b. Evaluation of that person or entity's performance by the City employee and/or consultant with oversight responsibilities for such previous projects.
- (4) For a person or entity which has not previously provided similar goods or services to the City:
 - a. Recommendations and comments from other of its clients regarding its performance, whether such comments are written or verbal; and
 - b. Evaluation of that person or entity's performance on any other contracts with the City.

Sec. 2-81. - No property rights in City bids.

No person or other entity shall be deemed to have any property right or other interest, claim or cause of action with regard to providing services or goods to the City, regardless of whether such person is licensed or unlicensed to provide such goods or services or whether such person or other entity submits a low bid under any bidding procedure, which may be undertaken by the City, except such rights that a person or other entity may have under the specific terms of a properly executed contract with the City, which such person or other entity has not breached, and such rights as may be provided by this section.

Sec. 2-82. – Unqualified or irresponsible contractor or vendor.

The City may disqualify a person or entity from eligibility to provide a service or product to the City at any time during a bidding purchasing process upon a determination by the City that

such person or entity is an unqualified or irresponsible contractor or vendor, or has been an historical under bidder, or has filed a false claim with City or any other governmental entity.

Sec. 2-83. – Protests and Appeals

(1) Bid protests. The protest period shall end upon award of the contract or seven (7) days after the announcement of the award.

(2) Who may file a protest. Any actual or prospective bidder, proposer, offerer or contractor who is aggrieved in connection with a solicitation or award of a contract may file a protest with the City Clerk.

(3) Form of protest. A protest must be in writing and filed with the City Clerk, 115 W. Ventura Avenue, Clewiston, FL 33440. A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived and may not be raised on appeal. The protesting party may submit with the protest any documents or information deemed relevant.

(4) Procedures.

a. The City Manager shall attempt to settle or resolve protests. The City Manager shall render a decision, in writing, within seven (7) calendar days following receipt of the protest.

b. Any person aggrieved by the decision of the City Manager may appeal to the City Commission within seven (7) calendar days from the date of the City Manager's decision.

Sec. 2-84. – Reserved.

Sec. 2-85. – Local Vendor Preference

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

General services means support services performed by an independent contractor requiring specialized knowledge, experience, or expertise that includes, but is not limited to, pest control, janitorial, laundry, catering, security, lawn maintenance, and maintenance of equipment.

Local business means the vendor has its headquarters located in the City; or the vendor has a permanent place of business located in the City where it will produce the goods or perform the services to be purchased; or owners of 25 percent or more of the business live in, have a permanent residence in, and pay real estate taxes in the City. Vendors shall affirm their status as a local business on a form provided by the City at the time of submitting their bid or proposal. A vendor who misrepresents its status as a local business will be barred from providing goods or services for the City for a period of one year.

Personal property includes, but is not limited to, supplies, equipment, materials and printed matter.

Professional services includes any services where the City is obtaining advice, instruction, or specialized work from an individual, firm, or corporation specifically qualified in a particular area.

(b) *Amount—Services and public equipment property.* Except where federal or state law mandates to the contrary, in the purchase of property, general services, or professional services by means of a competitive process, when a qualified and responsive nonlocal business submits the lowest bid, and the bid submitted by one or more qualified and

responsive nonlocal business is within ten percent of the bid submitted by the lowest bidder, then the lowest local bidder shall have the opportunity to match the bid made by the lowest qualified and responsive bidder. Should the lowest local business who submitted a bid within ten percent of the lowest bid decline to match the lowest bidder's bid, then, if there were other qualified and responsive local businesses whose bids were within ten percent of the lowest bid, those local businesses, in the order of lowest to highest, shall have the opportunity to match the lowest bid. If a local business matches the lowest bid within ten percent, it will be awarded the job if its bid otherwise satisfies the bidding requirements. In any event, if the nonlocal business that was the lowest bidder certified that it has a drug-free workplace program, in accordance with F.S. § 287.087, in order for a local business to be eligible to match the lowest bidder's bid, it must also have certified that it has a drug-free workplace program.

(c) *Same—Public works.* Except where federal or state law mandates to the contrary, in the purchase of, or contract for, the construction or renovation of public works or utilities improvements, by means of a competitive process, when a qualified and responsive nonlocal business submits the lowest bid, and the bid submitted by one or more qualified and responsive nonlocal businesses is within ten percent of the bid submitted by the lowest bidder, then the lowest local bidder shall have the opportunity to match the bid made by the lowest qualified and responsive bidder. Should the lowest local business who submitted a bid within ten percent of the lowest bid decline to match the lowest bidder's bid, then, if there were other qualified and responsive local businesses whose bids were within ten percent of the lowest bid, those local businesses, in the order of lowest to highest, shall have the opportunity to match the lowest bid. If a local business that is within ten percent matches the lowest bid, it will be awarded the job if its bid otherwise satisfies the bidding requirements. In any event, if the nonlocal business that was the lowest bidder certified that it has a drug-free workplace program, in accordance with F.S. § 287.087, in order for a local business to be eligible to match the lowest bidder's bid, it must also have certified that it has a drug-free workplace program.

(d) *Same—Point totals.* Except where federal or state law mandates the contrary, in the purchase of personal property, general services, or professional services by means of a letter of interest and competitive selection and negotiation in which objective factors used to evaluate the letters or interest or other submittals received from vendors are assigned point totals, a preference in the amount of ten percentage points of the total points that may be awarded may be given to a local business.

(e) *Other preferences.* The City Commission may always compare quality of materials proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids, proposals or quotes for purchase orders. The City Commission may waive the provisions of this article to a particular procurement.

SECTION 2. INCLUSION IN THE CODE OF ORDINANCES. The provisions of these ordinances shall become and be made a part of the City Code of Ordinances and the sections of these ordinances may be renumbered and codified to accomplish this end.

SECTION 3. **CONFLICT.** All ordinances or parts of ordinances in conflict herewith are hereby repealed. All ordinances or parts of ordinances not specifically in conflict herewith are hereby continued in full force and effect.

SECTION 4. **SEVERABILITY.** If any part of these ordinances are declared invalid by a court of competent jurisdiction, such part or parts shall be severable, and the remaining part or parts shall continue to be in full force and effect.

SECTION 5. **EFFECTIVE DATE.** These ordinances shall take effect immediately upon its passage and approval consistent with all requirements of general law.

PASSED on first reading by the City Commission on January 8, 2018.

PASSED AND ADOPTED on second and final reading by the City Commission on February 5, 2018.

ATTEST:

CITY OF CLEWISTON, FLORIDA

Mary K. Combass, Interim City Clerk

Mali Gardner, Mayor

(MUNICIPAL SEAL)

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Gary M. Brandenburg, City Attorney