

ORDINANCE 06- 06

AN ORDINANCE AMENDING ARTICLE V. FINANCES; DIVISION 2. PURCHASING OF THE CITY OF MARCO ISLAND CODE OF ORDINANCES; PROVIDING AUTHORITY FOR THE CITY MANAGER TO REJECT BIDS; PROVIDING A BASIS FOR THE REJECTION OF BIDS; PROVIDING FOR THE DIRECT PURCHASE OF MATERIALS; PROVIDING FOR A DISPUTE RESOLUTION PROCESS; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the purchasing policy for the City of Marco Island was adopted as Ordinance No. 98-6 on August 17, 1998; and

WHEREAS, the purchasing policy was codified in the Marco Island Code of Ordinances as Division 2. Purchasing of Article V. Finances; and

WHEREAS, it is in the best interests of the City of Marco Island to clearly define the City Manager's authority in the area of rejecting bids and directing for re-bids or negotiations of contracts, and in the area of direct purchase of materials on contracts awarded; and

WHEREAS, it is in the best interests of the City of Marco island to establish a Dispute Resolution process;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

Sec. 1. That Section 2-252. Authority of the City Manager is hereby amended to add the following section and re-number the final section, as follows:

(8) Reject all bids received, when the best interests of the City would be served.

(9) Establish administrative policies and procedures for the implementation of this division.

Sec. 2. That Section 2-256. Sealed Competitive Bidding is hereby amended to add the following sub-section:

(d) *Rejection of bids.* The City reserves the right to reject any bids or portions of them, as best serves the interest of the city. By way of example and not limitation, bids may be rejected if:

- (1) They are nonresponsive.
- (2) They are materially higher than expected.
- (3) Errors in specifications may have caused confusion.
- (4) Sufficient funds are not available.
- (5) The item or service is no longer needed.
- (6) There is a lack of competition.
- (7) The item or service can be provided in-house.
- (8) The bidder does not qualify under state or federal law.
- (9) The bidder is not in compliance with city ordinances. This requirement may be waived if the city finds that the noncompliance is inadvertent, minor and curable as a condition of the award.
- (10) The bidder does not appear to have the expertise, financial capability or other ability to meet the requirements of the contract to be awarded, or is otherwise shown not to be responsible.

Sec. 3. That Section 2-260. Administration of Contracts is hereby amended to read as follows:

While administration of contracts (including purchase orders) requires the efforts and skills of many city employees, the city manager shall provide guidance regarding contract administration functions. Once a contract has been awarded pursuant to Approval of Contract requirements in this chapter, the city manager is authorized to issue purchase orders for the direct purchase of materials as part of a contract award. Competitive proposals shall not be required when a purchase is made for materials, equipment, prefabricated elements and components, appliances, fixtures and supplies bought under a sales tax savings procedure constituting part of a construction project, which construction contract has been awarded in compliance with this chapter. Concurrent with the issuance of a direct materials purchase order, a deduct purchase order amendment shall be issued to the contract holder.

Sec. 4. That Section 2-261 be deleted and replacement in its entirety by the following provision:

Sec.2-261. Dispute Resolution

Any unresolved dispute pertaining to:

- (1) Unadvertised or non-competitive purchases made under this division shall be submitted to the city manager for resolution and/or final determination.
- (2) Protests by bidders on advertised solicitations for purchases greater than \$10,000 shall follow the following Bid/Proposal Protest Procedure.

Bid/Proposal protest Procedure. Any firm that has submitted a formal bid/proposal to the City and who is adversely affected by an intended decision with respect to the

award of the formal bid/proposal, must file a written "Notice of Protest" with the Purchasing/Contracts Manager within three business days of the posting date of the recommended award. Failure to submit the Notice of Protest as outlined in the Code shall constitute a waiver of proceedings.

- (1) The "Notice of Protest" shall identify the solicitation and specify the basis for the protest. The "Notice of Protest" must be received by the City Clerk and time stamped no later than 4:00 PM on the third working day following the posting date of the recommended award.
- (2) The protesting party must then file a Formal Written Protest within five (5) calendar days after the receipt of the Notice of Protest. The protesting party shall post a bond (bond, cashier's check, or letter of credit) in an amount equal to five percent (5%) of the firm's total bid/proposal or ten thousand dollars (\$10,000), whichever is less. Said bond shall be designated and held for the payment of any costs that may be levied against the protesting firm by the City Council, if the protest is deemed by the Council to be a frivolous protest.
- (3) The Formal Written Protest shall contain the following:
 - a. Bid/Proposal (RFB, RFP, or RFQ) identification number and title.
 - b. Name and address of the affected party and the title or position of the person submitting the Protest.
 - c. A statement of all claimed disputed issues of material fact. If there are no disputed material facts, the Formal Written Protest must so indicate.
 - d. A concise statement of the facts alleged and the rules, regulations, statutes or constitutional provisions which entitle the affected party to relief.
 - e. All information, documents, other materials, calculations and any statutory or case law authority in support of the ground for the Protest.
 - f. A statement indicating the relief sought by the affected (protesting) party.
 - g. Any other relevant information that the affected party deems to be material to the protest.
- (4) Upon receipt of a timely filed Notice of Protest, the Purchasing/Contracts Manager will abate the award of the formal bid/proposal as appropriate until the Protest is heard pursuant to the informal hearing process as further outlined below, except and unless the City Manager shall find and set forth in writing particular facts and circumstances that would require an immediate award of the formal bid/proposal for the purpose of avoiding a danger to the public health, safety or welfare. Upon such written finding by the City Manager, the City Manager may authorize an expedited Protest hearing and may void the requirement for a formal written Protest and bond.

- (5) A Dispute Committee, comprised of the City Manager or designee, Finance Director or designee, Public Works Director or designee and, as deemed appropriate, the City Attorney to provide legal counsel, but not as a voting member, will convene a meeting within seven (7) working days from receipt of the Formal Written Protest with the protesting firm to attempt to resolve the Protest. The hearing is to (1) review the basis of the Protest; (2) to evaluate the facts and merits of the Protest; and (3) to make a determination whether to accept or reject the Protest. If at all possible, the parties will resolve the Protest at this first meeting.
- (6) If a resolution to the satisfaction of the Dispute Committee and the protesting firm cannot be accomplished during the meeting, the Dispute Committee, with respect to the merits of the Protest, shall place the Protest on the City Council agenda with the staff recommendation and relevant background information.
- (7) City Council shall conduct a hearing on the matter at the regularly scheduled City Council meeting. Following presentations by the affected parties, the Council shall render its decision on the merits of the Protest.
- (8) If the Council's decision upholds the recommendation by the Dispute Committee in denial of the Protest regarding the award and further finds that the Protest was either frivolous and/or lacked merit, the Council, at its discretion, may assess costs, charges or damages associated with any delay of the award and any costs incurred with regard to the Protest. The bond posted by the party filing the protest may be applied by city council at its discretion to pay in whole or in part said costs, charges, or damages.
- (9) If the Council's decision upholds the position of the party filing the Protest, the Purchasing/Contracts Manager will cancel any prior award and award the contract to the party filing the Protest in the amount of that party's original bid/proposal.

Sec. 5. Incorporation, Conflict, and Severability.

(a) It is the intention of the City Council 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 Marco Island, Florida, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section", "article" or other appropriate word.

(b) All sections or parts of sections of the Marco Island City Code of Ordinances, all City of Marco Island resolutions or parts of resolutions made applicable by City Charter in conflict herewith are hereby repealed to the extent of such conflict.



(c) If any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid by any court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

Sec. 6. Effective Date.

This Ordinance shall take effect immediately upon adoption at second reading.

First Reading passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida, this 5th day of June, 2006.

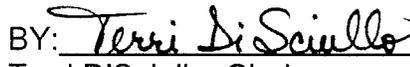
Second Reading passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida, this 19 day of June, 2006.

Attest:

CITY OF MARCO ISLAND, FLORIDA



Laura Litzan
City Clerk

BY: 

Terri DiSciullo, Chairwoman

Approved as to form and
legal sufficiency:



Richard Yovanovich
City Attorney