

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2018-56**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ADOPTING CERTAIN POLICIES AS REQUIRED TO REMAIN ELIGIBLE FOR PARTICIPATION IN THE FLORIDA SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon desires to maintain its eligibility to participate in the Florida Small Cities Community Development Block Grant (CDBG) program; and

WHEREAS, the adoption of certain CDBG related policies will allow the City to maintain its eligibility to participate in the CDBG program; and.

WHEREAS, by Resolution 2018-19, the City of Marathon authorized the execution of DEO Contract #18DB-OM-11-54-02-H07 with Special Conditions that listed said policies.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT THE FOLLOWING POLICIES ARE ADOPTED:

Section 1. The policies and plans attached hereto and incorporated herein as Exhibit A are hereby adopted and replace in their entirety earlier versions of these policies that have been adopted by the City.

Section 2. This Resolution shall take effect immediately upon its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12TH DAY OF JUNE, 2018.

THE CITY OF MARATHON, FLORIDA



Michelle Coldiron, Mayor

AYES: Bartus, Cook, Senmartin, Zieg, Coldiron
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**



David Migut, City Attorney

Exhibit A

1. CDBG Procurement Policy
2. CDBG Affirmative Action Plan
3. CDBG Housing Assistance Plan
4. CDBG Prohibition of Excessive Force Policy

THE CITY OF MARATHON, FLORIDA
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
PURCHASING POLICY

SECTION 1 PURPOSE

This policy is adopted to assure that commodities and services for the Community Development Block Grant Programs are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices. All City of Marathon staff and other persons (subgrantees or contractors) with designated responsibility for the administration of CDBG award contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations including Chapter 73C-23.0051(1), Florida Administrative Code, 2 Code of Federal Regulations 200.317-.326 (2CFR200.317 – 2CFR200.326), sections 255.0525 (Advertising for Bids or Proposals) and 287.055, Florida Statutes (Consultants Competitive Negotiation Act).

SECTION 2 APPLICATION OF POLICY

This policy shall apply to contracts or agreements for the procurement of all materials, supplies, services, construction and equipment for any Community Development Block Grant Program solicited or entered into after the effective date of this policy.

SECTION 3 PURCHASING DIRECTOR

The CDBG Local Government Contact shall serve as the central purchasing officer (the "Purchasing Officer") of the City of Marathon for all contracts or agreements described in Section 2.

SECTION 4 PURCHASING CATEGORIES; THRESHOLD AMOUNTS

Except as to Sole Source Purchases (Section 4.06) and Cooperative Purchasing (Section 4.07), all purchases and contract awards are to be made subject to the provisions of the appropriate Section according to the following threshold amounts:

- A. Small Purchases (Section 4.02)\$ 1 to \$ 25.00
- B. Purchasing Quotes (Section 4.03).....\$ 26.00 to \$ 10,000
- C. Competitive Sealed Bids/Proposals (Section 4.04 & 4.05).....\$ 10,001 and above

SECTION 4.02 SMALL PURCHASES

The purchase of commodities, equipment and services which cost less than the threshold authorized in Section 4 does not require solicitation of quotes or bids. Small purchases shall be authorized by the Purchasing Officer or his/her designees.

SECTION 4.03 PURCHASING QUOTES

The purchase of goods and services which cost within the range authorized for purchasing quotes in Section 4 shall require competitive quotations from three or more vendors. The quotations shall be obtained by the Purchasing Division and shall be reviewed and awarded by the Purchasing Officer.

SECTION 4.04 COMPETITIVE SEALED BIDDING

- A. Conditions For Use. All contracts for purchases of a single item, services or aggregate in excess of the established base amount for Competitive Sealed Bids/Proposals in Section 4, where price, not qualifications, is the basis for contract award, shall be awarded by competitive sealed bidding.
- B. Invitation to Bid. An invitation to bid shall be issued and shall include specifications, all contractual terms and conditions, and the place date, and time for opening or submittal. No later than five working days prior to the date for receipt of bids, a vendor shall make a written request to the City of Marathon for interpretations or corrections of any ambiguity, inconsistency or error which the vendor may discover. All interpretations or corrections will be issued as addenda. The City of Marathon will not be responsible for oral clarifications. No negotiations, decisions or actions shall be initiated or executed by the proposer as a result of any discussions with any City of Marathon employee prior to the opening of proposals. Only those communications which are in writing from the City of Marathon may be considered as a duly authorized expression on the behalf of the Council. Also, only communications from firms or individuals which are in writing and signed will be recognized by the Council as duly authorized expressions on behalf of proposers.
 - (1) Alternate(s). Alternate bids will not be considered unless authorized by and defined in the Special Conditions of the bid specifications.
 - (2) Approved Equivalents. The City of Marathon reserves the right to determine acceptance of item(s) as an approved equivalent. Bids which do not comply with stated requirements for equivalents in the bid conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the general conditions of the bid.
- C. Public Notice. Public notice shall be made in compliance with section 255.0525 Florida Statute, 24 CFR 85.36 and 73C-23 Florida Administrative Code according to the following thresholds:
 - (1) For contracts less than \$200,000, the notice shall be published at least twelve (12) calendar days prior to bid opening in a newspaper of general circulation and a nearby OMB-MSA daily newspaper.
 - (2) For awards greater than \$200,000 but less than \$500,000, the notice must be advertised at least once in a newspaper of general circulation in the county where the project is located and a nearby OMB-MSA daily newspaper at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference.
 - (3) For awards greater than \$500,000 the notice must be publicly advertised at least

once in a newspaper of general circulation in the county where the project is located and a nearby OMB-MSA daily newspaper at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference.

- (4) Notice of the invitation to bid shall give the date, time, and place set forth for the submittal of proposals and opening of bids.
 - (5) Bids or proposals shall be received and opened at the location, date, and time established in the bid or proposal advertisement.
- D. Bid Opening. Bids shall be opened publicly. The Purchasing Officer or his/her designee shall open the bids in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and other such relevant information as may be deemed appropriate by the Purchasing Officer together with the name of each bidder, and all witnesses shall be recorded. The record (Bid Report) and each bid shall be open to public inspection.
- E. Bid Acceptance and Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include, but not be limited to criteria to determine acceptability such as: inspection, testing, quality, recycled or degradable materials content, 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 measured, such as discounts, transportation costs, and total or life cycle costs. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid, in regulations, or in this policy.
- F. Bid Agenda Item. After evaluation, the Purchasing Officer will prepare a recommendation and shall place the item on the agenda of the City of Marathon Council.
- G. Correction or Withdrawal of Bids; cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall 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 Invitations for Bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can know by clear and convincing evidence that a mistake on a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in the bid price or other provisions of bids prejudicial to the interest of the City of Marathon 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 if:
- (1) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - (2) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. 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 Officer.
- H. Multi-Step Sealed Bidding. When it is considered impractical to initially 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.

- I. Award. The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. The City of Marathon reserves the right to waive any informality in bids and to make an award in whole or in part when either or both conditions are in the best interest of the City of Marathon providing that such waiver does not violate federal or state CDBG requirements. Any requirement which is waived must be documented and kept in the file.
 - (1) Notice of Intended Award. The contract shall be awarded by written notice. Every procurement of contractual services shall be evidenced by a written agreement. Notice of the intended award, including rejection of some or all of bids received, may be given by posting the bid tabulations where the bids were opened, by telephone, by first class mail, or by certified United States mail, return receipt requested, whichever is specified in bid solicitation. A vendor may request, in their bid submittal, a copy of the tabulation sheet to be mailed in a vendor provided, stamped, self-addressed envelope for their record.
 - (2) Notice of Right to Protest. All notices of decision or intended decisions shall contain the statement: Failure to file a protest within the time prescribed in Section 4.08 of the CDBG Purchasing Policy of the City of Marathon shall constitute a waiver of proceedings under that section of this Policy.
- J. Cancellation of Invitations for Bids. An invitation for bids or other solicitation may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interests of the City of Marathon, as determined by the Council. 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 re-solicitation or any future procurement of similar items.
- K. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Purchasing Director or Purchasing Officer, for the following reasons:
 - (1) Failure to respond to bid invitation three consecutive times within the last eighteen (18) months period.
 - (2) Failure to update the information on file including address, project or service, or business description.
 - (3) Failure to perform according to contract provisions.
 - (4) Conviction in a court of law of any criminal offense in connection with the conducting of business.
 - (5) Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
 - (6) Clear and convincing evidence that the vendor has attempted to give a City of Marathon employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the City of Marathon's purchasing activity.

- (7) Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133(3)(a).
- (8) Other reasons deemed appropriate by the City of Marathon.

SECTION 4.05 COMPETITIVE SEALED PROPOSALS

All contracts for purchases of a single item or services or aggregate in excess of the established base amount for Competitive Sealed Bids/Proposals in Section 4, where qualifications, not price, is the basis for contract award, shall be awarded by competitive sealed proposals. All contracts for the procurement of professional architectural, engineering, landscape architectural, and land surveying services will be awarded according to the provisions of Section 4.051. All other contracts required to be awarded by competitive sealed proposals will be awarded according to the provisions of Section 4.052.

SECTION 4.051 PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, AND LAND SURVEYING SERVICES

A. Public Announcement. It is the policy of the City of Marathon to publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the City of Marathon may require firms to submit a statement of qualifications, performance data, and other related information for the performance of professional services.

- (1) Scope of Project Requirements. Prior to submission of the request for proposals for professional services an item shall be placed on the agenda for approval by the City of Marathon Council indicating the nature and scope of the professional services needed, including but not limited to the following:
 - (a) the general purpose of the service or study;
 - (b) the objectives of the study or service;
 - (c) estimated period of time needed for the service or the study;
 - (d) the estimated cost of the service or study;
 - (e) whether the proposed study or service would or would not duplicate any prior or existing study or service;
 - (f) list of current contracts or prior services or studies which are related to the proposed study or services;
 - (g) the desired qualifications, in order of importance, of the person or firm applicable to the scope and nature of the services requested.
- (2) Distribution of Project Requirements. All persons on the City of Marathon's vendor list who have indicated an interest in being considered for the performance of such professional services and any other additional parties deemed desirable by the Purchasing Officer shall be notified of the project requirements including a statement of relative importance of each of the requirements. The project

requirements shall be accompanied by an Invitation to such persons to submit an indication of interest in performing the required services, and by notification of the date and time when such indications of interest are due. This date shall not be less than 14 calendar days from the date of public notice which the Purchasing Officer shall publish in at least one newspaper of wide general circulation in the region.

- (3) Modification Prohibition. After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correcting of clerical errors or other similar minor irregularities as may be allowed by the Selection Committee (defined in Section 4.051B) prior to making its selection of those best qualified.
- (4) Reuse of Existing Plans. There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the City of Marathon is able to reuse existing plans from a prior project. However, public notice of any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.

B. Selection Committee Membership and Evaluation. Depending on the expected complexity and expense of the professional services to be contracted the City of Marathon may determine whether a three member or five member selection committee will best serve the needs of the Council.

- (1) Three to Five Member Committee Composition. Membership of a selection committee shall consist of persons appointed by the Mayor.
- (2) Selection Committee Evaluation. Only written responses of statements of qualifications, performance data, and other data received in the purchasing office by the publicized submission time and date shall be evaluated. Only evaluation of written responses and selected for formal interview may submit additional data. From among those persons evidencing, by timely submission of written responses, an interest in performing the services the Selection Committee shall:
 - (a) prepare an alphabetical list of those persons determined by the Selection Committee to be qualified, interested and available; and
 - (b) designate no less than three persons, unless there were less than three submissions, on the alphabetical list considered by the selection committee to be best qualified to perform the work required.
- (3) Shortlisting. The best qualified respondents shall be based upon the Selection Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed. The Selection Committee shall determine qualifications, interest and availability by reviewing the written responses that express an interest in performing the services, and by conducting formal interviews of no less than three selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determinations may be based upon, but not limited to, the following considerations: (a) competence, including technical education and training, experience in the kind of project to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons, and person to actual cost of

previous projects; (b) current work load; (c) financial responsibility; (d) ability to observe and advise whether plans and specifications are being complied with, where applicable; (e) record of professional accomplishments; (f) proximity to the project involved, if applicable; (g) record of performance; and (h) ability to design an approach and work plan to meet the project requirements, where applicable.

- (4) Interview and Council Approval. After conducting the formal interviews, the Selection Committee shall list those respondents interviewed in order of preference based upon the considerations listed in subsection (4) above. The respondents so listed shall be considered to be the most qualified and shall be listed in order of preference starting at the top of the list. The list of best qualified persons shall be forwarded to the Council for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.

- C. Negotiation Staff. Contract negotiations shall be conducted by the Purchasing Officer unless the Mayor directs that negotiations be conducted by a Negotiation Committee.

Negotiation. The Purchasing Officer or the Negotiation Committee shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the Purchasing Officer or the Negotiation Committee determines to be fair and reasonable to the City of Marathon. In making this decision, the Purchasing Officer or the Negotiation Committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. As a part of the negotiation, the Purchasing Officer or the Negotiating Committee shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price. Should the Purchasing Officer or the Negotiation Committee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be formally terminated. The Purchasing Officer or the Negotiation Committee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Purchasing Officer or the Negotiation Committee shall formally terminate negotiations, and shall then undertake negotiations with the third most qualified firm. Should the Purchasing Officer or the Negotiation Committee be unable to negotiate a satisfactory contract with any of the selected firms, the selection shall select additional firms in order of their competence and qualifications, and the Purchasing Officer or the negotiation Committee shall continue negotiations in accordance with this selection until an agreement is reached or until a determination has been made not to contract for services.

SECTION 4.052 OTHER COMPETITIVE SEALED PROPOSALS (non-287.055 services)

- A. Conditions for use. All contracts required by Section 5.05 to be awarded by competitive sealed proposals that are not for the procurement of professional architectural, engineering, landscape architectural, and land surveying services, will be awarded according to the provisions of this section.
- B. Consultant's Competitive Negotiation Act. Professional services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered

- land surveying, as defined under the Consultant's Competitive Negotiation Act (Section 287.055, Florida Statutes), shall be secured under the provisions of Section 4.051.
- C. Council Approval. Proposals anticipated to exceed the threshold established in Section 4 for Competitive Sealed Proposals shall be approved by the City of Marathon prior to solicitation.
 - D. Public Notice. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in subsection 4.04C of this policy for competitive sealed bidding.
 - E. Evaluation Factors. The Request for Proposals shall state the relative importance of criteria outlined in the scope of services.
 - F. Proposal Cancellation or Postponement. The Purchasing Officer may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission.
 - G. Revisions and Discussions with Responsible Offerors. As provided in the request for proposals, and under regulations promulgated by the Council of the City of Marathon, discussions may be conducted with responsible offerors who submit proposals determined to be qualified of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by proposals and make a written recommendation of award to the City of Marathon Council. As a part of the recommendation, the Purchasing Officer shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price.
 - H. Award. Award shall be made by the City of Marathon Council to the lowest responsible offeror whose proposal is determined in writing to be the most advantageous to the City of Marathon, taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation criteria that is not included in the Request for Proposal.

SECTION 4.06 SOLE SOURCE PURCHASES

- A. Sole Source Certification. A contract may be awarded for a supply, service, material, equipment or construction item(s) without competition when the Purchasing Officer with the concurrence of the City of Marathon Clerk, certifies in writing, after conducting a good faith review of available sources, that there is only one available source for the required material, supply, service equipment, or construction item(s). Such awards will be made within the authorized procurement limits. When a purchase exceeds five thousand dollars (\$5,000), the item will be placed on the agenda for Council approval and clarification that the vendor has been determined to be a sole source. When a purchase exceeds (\$25,000) it will require prior DEO approval.
- B. Additional Purchases From Certified Sole Source. The Purchasing Officer may be

authorized, after initial sole source certification, to make additional purchases from a sole source vendor for not less than one year or until such time as contrary evidence is presented regarding sole source eligibility, whichever period is less.

SECTION 4.07 COOPERATIVE PURCHASING

- A. State Contracts. The Purchasing Officer is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts of the Department of General Services, subject otherwise to the requirements of this policy.
- B. Other Governmental Units. The Purchasing Officer shall have the authority to join with other units of government in cooperative purchasing ventures when the best interest of the City of Marathon would be served thereby, and the same is in accordance with this policy and with City of Marathon and State law.

SECTION 4.08 BID PROTEST

- A. Right to Protest. Any actual prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award or contract may protest to the City of Marathon Council. Protestors shall seek resolution of their complaints initially with the Purchasing Officer and secondly with the City of Marathon Clerk prior to protesting to the City of Marathon Council.
- B. Filing a Protest. Any person who is affected adversely by the decision or intended decision of the City of Marathon shall file with the Purchasing Officer a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of intended decision and file a formal written protest within 10 calendar days after the date he/she filed the notice of protest. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this Section. A written protest is filed with the City of Marathon when it is delivered to and received in the office of the Purchasing Officer.
 - (1) The notice of protest shall contain at a minimum: the name of the bidder; the bidder's address and phone number; the name of the bidder's representative to whom notices may be sent; the name and bid number of the solicitation; and a brief factual summary of the basis of the protest.
 - (2) The formal written protest shall: identify the protestant and the solicitation involved; include a plain, clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and specifically request the relief to which the protestant deems himself entitled by application of such authorities to such grounds.
- C. Settlement and Resolution. The Purchasing Officer shall, within 14 days of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position. Provided, however, if such settlement will have the effect of determining a substantial interest of another party or business, such settlement must be reached in the course of the proceedings provided herein.

- D. Protest Proceedings. If the protest cannot be resolved by mutual agreement, the Purchasing Officer shall conduct or designate another to conduct a protest proceeding pursuant to the following procedures.
- (1) Protest Proceeding Procedures
 - (a) The presiding officer shall give reasonable notice to all substantially affected persons of businesses. Otherwise petitions to intervene will be considered on their merits as received.
 - (b) At or prior to the protest proceeding, the protestant may submit any arguments which he/she deems relevant to the issues raised.
 - (c) In the proceeding, the protestant, or his representative or counsel, may also make an oral presentation of his evidence and arguments. However, neither direct nor cross examination of witness shall be permitted, although the presiding officer may make whatever inquiries he/she deems pertinent to a determination of the protest.
 - (d) The judicial rules of evidence shall not apply and the presiding officer shall base his/her decision on such information given in the course of the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.
 - (e) Within seven (7) working days of the conclusion of the proceeding, the presiding officer shall render a decision which sets forth the terms and conditions of any settlement reached. Such decision of the presiding officer shall be conclusive as to the recommendation to the City of Marathon Council.
 - (f) Any party may arrange for the proceedings to be steno-graphically recorded and shall bear the expense of such recording.
 - (2) Intervener. The participation of interveners shall be governed by the terms of the order issued in response to a petition to intervene.
 - (3) Time Limits. The time limits in which protests must be filed as provided herein may be altered by specific provisions in the invitation for bids or request for proposals documents.
 - (4) Entitlement to Costs. In no case will the protesting bidder or offeror be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney's fees.
- E. Stay of Procurement During Protests. In the event of a timely protest under Subsection A of this Section, the Purchasing Officer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or unless the City of Marathon Council makes a determination that the award of a contract without delay is necessary to protect the substantial interests of the City of Marathon.

SECTION 4.09 CONTRACT CLAIMS

- A. Authority of the Purchasing Officer to Settle Bid Protests and Contract Claims. The Purchasing Officer is authorized to settle any protest regarding the solicitation or award of a City of Marathon contract, or any claim arising out of the performance of a City of Marathon, prior to an appeal to the City of Marathon Council or the commencement of an action in a court of competent jurisdiction of \$1,000.00 or greater in value without the

- prior approval of the City of Marathon Council.
- B. Decision of the Purchasing Officer. All claims by a contractor against the City of Marathon relating to a contract, except bid protest, shall be submitted in writing to the Purchasing Officer for a decision. The contractor may request a conference with the Purchasing Officer on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
 - C. Notice to the Contractor of the Purchasing Officer's Decision. The decision of the Purchasing Officer shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his appeal rights under Subsection D of this Section.
 - D. Finality of the Purchasing Officer Decision; Contractor's Right to Appeal. The Purchasing Officer's decision shall be final and conclusive unless, within ten calendar days from the date of receipt of the decision, the contractor file a notice of appeal with the City of Marathon Council.
 - E. Failure to Render Timely Decision. If the Purchasing Officer does not issue a written decision regarding any contract controversy within fourteen calendar days after receipt of a written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been issued.

SECTION 4.10

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 receipt of proposals, the Purchasing Officer after consultation with the City of Marathon Attorney, determines that a solicitation is in violation of federal, state or local law or ordinance, 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, but prior to the award contract, the Purchasing Officer after consultation with the City of Marathon Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.
- C. After Award. If, after award, the Purchasing Officer after consultation with the City of Marathon Attorney, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, 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 interest of the City of Marathon; or
 - (b) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonable incurred under the contract plus a reasonable profit, but excluding attorney's fees, prior to

- termination; or
- (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 interest of the City of Marathon.

SECTION 5 CONTRACT ADMINISTRATION

SECTION 5.1 CONTRACT PROVISIONS

- A. Standard Contract Clauses and Their Modification. The City of Marathon after consultation with the City of Marathon Attorney, may establish standard contract clauses for use in City of Marathon contracts. However, the Purchasing Officer may, upon consultation with the City of Marathon Attorney, vary any such standard contract clauses for any particular contract.
- B. Contract Clauses. All City of Marathon contracts for supplies, services and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Officer after consultation with the City of Marathon Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - (1) the unilateral right of the City of Marathon to order, in writing, changes in the work within the scope of the contract;
 - (2) the unilateral right of the City of Marathon to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - (3) variations occurring between estimated quantities or working contract and actual quantities;
 - (4) defective pricing;
 - (5) time of performance and liquidated damages;
 - (6) specified excuses for delay or nonperformance;
 - (7) termination of the contract for default;
 - (8) termination of the contract in whole or in part for the convenience of the City of Marathon;
 - (9) suspension of work on a construction project ordered by the City of Marathon;
 - (10) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract;
 - (a) when the contract is negotiated;
 - (b) when the contractor provides the site or design; or
 - (c) when the parties have otherwise agreed with respect to the risk of differing site conditions;
 - (11) value engineering proposals;
 - (12) remedies;
 - (13) access to records/retention records;
 - (14) environmental compliance; and
 - (15) prohibition against contingent fees;

- (16) insurance to be provided by contractor covering employee, property damage, liability and other claims, with requirements of certificates of insurance and cancellation clauses;
 - (17) bonding requirements as set by the City of Marathon Council;
 - (18) causes of and authorization for suspension of contract for improper contractor activity.
 - (19) the required contract clauses, as modified, under 2 CFR 200.326 and 2 CFR Part 200, Appendix II
- C. DEO APPROVAL. All contracts and agreements, and any and all amendments, extensions, modifications, and material changes thereto, being reimbursed with Community Development Block Grant (CDBG) funds, shall be submitted to the Department of Economic Opportunity (DEO) for prior, written approval by DEO.

SECTION 5.2 PRICE ADJUSTMENTS

- A. Methods of Price Adjustment. Adjustments in price during the term of a contract shall be computed in one or more of the following ways upon approval by the City of Marathon:
- (1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) by unit prices specified in the contract or subsequently agreed upon;
 - (3) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the City of Marathon;
 - (4) in such other manner as the contracting parties may mutually agree;
 - (5) in the absence of agreement by the parties, by a unilateral determination by the City of Marathon of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the City of Marathon, subject to the provisions of this section.
- B. Cost or Pricing Data Required. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

SECTION 5.3 CHANGE ORDERS/CONTRACT AMENDMENTS

Change orders and contract amendments, which provide for the alteration of the provisions of a contract may be approved by the Purchasing Officer based upon the dollar value of the change or amendment. The purchasing categories thresholds designated in Sections 4.01 shall govern the appropriate level of approval.

SECTION 5.4 ASSIGNMENT OF CONTRACTS

No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the City of Marathon nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of

the City of Marathon.

SECTION 5.5 RIGHT TO INSPECT PLANT

The City of Marathon may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded, or to be awarded, by the City of Marathon. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the City of Marathon.

SECTION 6 RIGHTS OF CITY OF MARATHON COUNCIL

Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Council, in the best interests of the City of Marathon, to reject all bids received in response to a request, to determine in its sole discretion the responsiveness and responsibility of any bidder, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when desirable for the public good provided that such waiver doesn't violate Federal or State CDBG program requirements.

SECTION 7 CITY OF MARATHON PROCUREMENT RECORDS

- A. Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City of Marathon in a contract file.

- B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the City of Marathon in accordance with records retention guidelines and schedules established by the State of Florida.

SECTION 8 SPECIFICATIONS

SECTION 8.1 MAXIMUM PRACTICABLE COMPETITION

All specifications shall be drafted to promote overall economy and encourage competition in satisfying the City of Marathon needs and shall not be unduly restrictive. This policy applies to all specifications including, but not limited to, those prepared for the City of Marathon by architects, engineers, designers, and draftsmen.

SECTION 8.2 USE OF BRAND NAME OR EQUIVALENT SPECIFICATIONS

- A. Use. Brand name or equivalent specifications may be used when the City of Marathon determines that:
 - (1) no other design, performance, or qualified product 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 of Marathon requirements makes use of a brand name of equivalent specification suitable for the procurement; or
 - (4) use of a brand name or equivalent specification is in the City of Marathon's best interest.
- B. Designation of Several Brand Names. Brand name or equivalent specifications shall seek to designate three, or as many different brands as are practicable, as "or equivalent" references and shall further state the substantially equivalent products to those designated may be considered for award.
 - C. Required Characteristics. The brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.
 - D. Nonrestrictive Use of Brand Name or Equivalent Specifications. Where a brand name or equivalent 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, performance, and characteristics desired and is not intended to limit or restrict competition.
 - E. Determination of Equivalents. Any prospective bidder may apply, in writing, for a pre-bid determination of equivalence by the Purchasing Director. If sufficient information is provided by the prospective bidder, the Purchasing Director may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.
 - F. Specifications of Equivalents Required for Bid Submittal. Vendors proposing equivalent products must include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purpose only.

SECTION 8.3 BRAND NAME SPECIFICATIONS

- A. Use of Brand Name Specifications. Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Director makes a determination that only the identified brand name item or items will satisfy the City of Marathon needs.
- B. Competition. The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 4.10, Sole Source Purchases.

SECTION 9 ETHICS IN PUBLIC CONTRACTING

SECTION 9.1 CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

SECTION 9.2 EMPLOYEE CONFLICT OF INTEREST

- A. Participation. It shall be unethical for any City of Marathon employee, officer or agent to participate directly or indirectly in a procurement or administration of a contract. A conflict of interest would arise when:
- (1) the City of Marathon employee, officer or agent;
 - (2) any member of his immediate family;
 - (3) his or her partner; or
 - (4) an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.
- B. Blind Trust. A City of Marathon employee, officer or agent or any member of their family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

SECTION 9.3 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It shall be unethical for any City of Marathon employee who is participating directly or indirectly in the procurement process to become or to be, while such a City of Marathon employee, the employee of any person contracting with the City of Marathon.

SECTION 9.4 USE OF CONFIDENTIAL INFORMATION

It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

SECTION 9.5 GRATUITIES AND KICKBACKS

- A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any City of Marathon employee, officer or agent or for any City of Marathon employee, officer or agent to solicit, demand, accept, or agree to accept from another, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase requests, influencing the content of any specification or procurement standard rendering of advise, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.
- B. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

- C. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefore.

SECTION 9.6 SANCTIONS

- A. Employee Sanctions. Upon violation of the ethical standards by an employee officer or agent the City of Marathon, or other appropriate authority may:
- (1) impose one or more appropriate disciplinary actions as defined in the City of Marathon Personnel rules and Regulations, up to and including termination of employment; and
 - (2) may request investigation and prosecution.
- B. Non-employee Sanctions. The Council may impose any one or more of the following sanctions on a non-employee for violation of the ethical standards:
- (1) written warnings;
 - (2) termination of contracts; or
 - (3) debarment or suspension in accordance with applicable state and federal laws.

SECTION 9.7 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

- A. General Provisions. The value of anything being transferred or received in breach of the ethical standards of this policy by a City of Marathon employee or non-employee may be recovered from both City of Marathon employee and non-employee.
- B. Recovery of Kickbacks by the City of Marathon. Upon showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City of Marathon and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

SECTION 10 FEDERAL POLICY NOTICE

SECTION 10.1 PATENTS

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, than the contract shall include the following provisions.

- A. Notice to Contractor. The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or invention arising out of the contract.
- B. Notice By Contractor. The contract shall require the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

SECTION 10.2

NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS

- A. Applicability. If the contract is being funded in whole or in part by assistance from any federal agency, the contract is subject to one or more federal public policy requirements such as:
- (1) equal employment opportunity;
 - (2) affirmative action;
 - (3) fair labor standards;
 - (4) energy conservation;
 - (5) environmental protection; or
 - (6) other similar socio-economic programs
- B. Notice. The Purchasing Director shall include in the contract all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Purchasing Director shall include in the contract provisions the requirement that the contractor give similar notice to all of its subcontractors.

SECTION 11 PAYMENT TO VENDORS

All payment to vendors shall also be in accordance with the amended "Prompt Payment Act", Chapter 218.70-218.80, Florida Statutes.

SECTION 12 AFFIRMATIVE ACTION PROGRAM

- A. Purpose and Scope. The purpose of the Affirmative Action Program is to enhance the participation of qualified minority and women-owned businesses in providing goods and services and construction contracts required by the City of Marathon Council. This program describes procedures to accomplish this purpose and to monitor and evaluate progress. All Departments and Divisions under the jurisdiction of the City of Marathon Council are responsible for implementing this program.
- B. Policy Statement.
- (1) It is the policy goal of the City of Marathon that all of the council approved procurement as contained with both operating and capital improvement budgets shall be:
 - (a) made available to all qualified applicants for equal consideration regardless of race, color, religion, sex, national origin, disability, age, or genetics; and
 - (b) let through a race neutral, competitive bid process that encourages the participation of minority and women businesses or persons.
 - (2) All departments and divisions under the jurisdiction of the City of Marathon Council are responsible for implementing this program and for making every reasonable effort to utilize MBEs when opportunities are available. The Purchasing Officer will take the lead role in this process by taking active steps to encourage minority or women owned -businesses.
 - (3) Regarding the implementation of this policy, it is the Council's intent to foster economic development in the City of Marathon's area by establishing its MBE goals based on availability of minority and women-owned businesses located

within the City of Marathon. This is no way intended to limit or restrict competition. Rather, availability of area companies will be used to guide MBE goals. Such geographical preference may be adjusted, amended or repealed by the City of Marathon Council, with or without a public hearing, as deemed necessary provided such decision does not violate state or federal CDBG program requirements.

(4)

C. Definition. Minority Business Enterprise (MBE) as used herein, means a business that is owned and controlled at least 51% by one or more minority persons (MBE) or by one or more women (WBE) and whose management and daily operations are controlled by one or more such persons.

D. Administrative Responsibilities. The Purchasing Officer is responsible for the coordination of the Affirmative Action Program and registration.

(1) Capital Improvement Projects

(a) Review

The Purchasing Officer and an appropriate department representative shall review each proposed project or bid to determine potential for utilization of MBE/WBEs availability of capable MBE/WBE in the area in relation to the scope of the bid package and considers how a project might be broken down into sub-bids.

(b) Pre-Bid Activity

- (1) Language regarding the Minority Business Enterprise Program will be inserted into bid specifications to assure that prospective bidders are aware of a requirement to make good faith efforts to utilize MBE/WBEs.
- (2) Registered MBE/WBEs, the Minority Contractors Association and other organizations for minority and women owned businesses will be notified in writing regarding pre-bid conferences where information on project scope and specifications will be presented, along with other types of technical assistance.
- (3) Available plans and specifications will be made available to MBE/WBE associations along with any special instructions on how to pursue bids.
- (4) Majority (prime) contractors on a bid list will be sent a letter outlining the Affirmative Action Program procedures, the supportive documentation required for submittal with their bid, and a list of MBE/WBE contractors on the bid list.
- (5) No contractor will be awarded a bid until the contractor has provided specific detailed documentation on how MBE/WBEs will be utilized, and such a plan is approved by the Council.
- (6) The MBE/WBE participation plan for a specific project and the contractor commitment to carry out the program will become a part of the contract awarded by the City of Marathon. Failure to keep these commitments will be deemed noncompliance with the contract and may result in a breach of contract.

(2) Contractor Responsibilities

- (a) Contractors must indicate all MBE/WBEs contracted for quotes regarding a particular scope of work and submit a completed "Intent to Perform" sheet containing information and documentation obtained from each MBE/WBEs.
 - (b) A contractor who determines that a MBE/WBEs, names in the bid submittal, is unavailable or cannot perform will request approval from the Purchasing Officer to name an acceptable alternate. Such requests will be approved when adequate documentation of cause for the change is presented by the contractor.
 - (c) A contractor's MBE/WBE plan will utilize MBE/WBEs to perform commercially useful functions in the work bid. A MBE/WBE is performing a commercially useful function when it is responsible for the management and performance of a distinct element of the total work.
 - (d) Contractors are required to make good faith efforts to obtain MBE/WBE participation when so stipulated by bid specifications and/or contracts. If these efforts are unsuccessful, the contractor will submit a non-availability or refusal to participate and will request waiver of MBE/WBE participation.
 - (e) The contractor who is the successful bidder will attend pre-construction conferences with appropriate City of Marathon representatives to review the project scope and the MBE/WBE utilization plan.
 - (f) The contractor who is the successful bidder must request a change order for any modification to the MBE/WBE plan. Change orders require Council approval and are contingent on contractor documentation of MBE/WBE involvement in the change requested and documentation of cause for the change.
- (3) WBE/MBE Contractor's Responsibilities
- (a) MBEs/WBEs must register with the Purchasing Officer in order to participate in the Affirmative Action Program.
 - (b) MBEs/WBEs should attend pre-construction conferences to obtain information and technical assistance on projects and bid procedures in which they (MBE/WBEs) have submitted bids.
- (4) Joint Venture Responsibilities
- (a) All joint ventures between minority and non-minority contractors must meet the "joint venture" definition included in this Policy.
 - (b) The use by MBE/WBEs or prime contractors of "minority fronts" or other fraudulent practices which subvert the true meaning and spirit of the Minority Business Enterprise Program, will not be tolerated and may result in termination of participation.
 - (c) A joint venture consisting of minority and non-minority business enterprises will be credited with MBE/WBE participation on the basis of the percentages of the dollar amount of the work to be performed by the MBE/WBEs.
 - (d) Contracts subject to this policy shall contain provisions stating that liquidated damages may be assessed against the general contractor and/or

the MBE/WBE firm for violations of this policy and MBE/WBE specifications in the contract(s). Such liquidated damage provisions shall be in a form approved by the Council.

E. Fulfilling MBE/WBE Participation Requirements

For the purpose of this policy, a general contractor may utilize the services of a MBE/WBE subcontractor, manufacturer, and/or supplier in estimating and satisfying the scope of work, provided that written contract/agreement is executed between the general contractor and the subcontractor, manufacturer, and/or the supplier.

F. Payment

(1) Payment will be expedited by the Council within thirty (30) days upon completion and acceptance of the project. Special consideration may be given to hardship cases upon notification by MBE/WBEs.

(2) The City of Marathon will provide work progress payments to all businesses at the completion and subsequent acceptance by Council representatives within various stages of a particular project.

G. Waiver of Bid Bond Requirements

The Council may, at its discretion, waive any of the requirements of this Section when it is determined to be in the best interest of the City of Marathon “provided that such waiver does not violate state or federal requirements.”

H. Bid List

A bid list for the purpose of bid solicitations shall be maintained by the City of Marathon. The list shall consist of firms that apply.

(1) The City of Marathon may remove firms from the bid list for any of the following reasons:

(a) consistent failure to respond to bid invitations (three (3) consecutive instances) within the last eighteen month period; or

(b) failure to update the information on file including address, product or service description or business description.

(2) The City of Marathon may remove firms from the bid list for the following reasons:

(a) failure to perform according to contract provisions;

(b) conviction in a court of law of any criminal offense in connection with the conduct of business;

(c) clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals or awarding of contracts;

(d) clear and convincing evidence that the vendor has attempted to give a Council employee, officer or agent a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Council's purchasing activity;

(e) violation or circumvention of the Minority Business Enterprise Program; or

(f) other reasons deemed appropriate by the City of Marathon Council.

(3) This policy is consistent with and subordinate to the City of Marathon Purchasing Policy. Wherever conflicts may exist, the provision in the Purchasing Policy will prevail.

- J. Reporting
The Purchasing Officer or designated person will report, at least annually, to the Council on the status of the Minority Business Enterprise Program. Records will be maintained reflecting participation of local minority and women owned businesses and shall be reported.
- K. Severability Clause
Each separate provision of this program is deemed independent of all other provisions herein so that if any provision or provisions be declared invalid, all other provisions hereof shall remain valid and full force and effect.

SECTION 13 AFFIRMATIVE ACTION/EQUAL OPPORTUNITY

- A. Policy Statement: The City of Marathon is committed to eliminating discrimination based upon race, color, religion, sex or gender, sexual orientation, gender identity or expression, National origin, disability, age, genetics, marital or familial status, amnesty, citizenship, status as a covered veteran or any other status protected by law regarding employment or contracting opportunities offered through the City of Marathon for projects funded wholly or in part by the CDBG Program.
- B. Administrative Responsibilities: The City of Marathon Clerk shall serve as the Equal Opportunity Officer.

CITY OF MARATHON
SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT
HOUSING CATEGORY - HOUSING ASSISTANCE PLAN

1. All funds awarded will be a grant to the low-to-moderate income (LMI) beneficiary and housing unit.
2. The process for selecting, accepting, reviewing and approving requests for assistance will be by advertisement in local newspapers of general circulation on at least two occasions for a minimum thirty (30) day application period. Any subsequent application periods shall meet the criteria outlined above. The only exception to this process will be applicants receiving assistance from Habitat for Humanity of the Middle Keys. These applicants will receive first priority for assistance, assuming said applicants are eligible and can be assisted with CDBG funds.

Properties to be addressed shall meet all of the following criteria:

- Single Family
- Owner occupied
- Primary residence
- Contain Housing Code, Housing Quality Standards or Health/Safety Violations

Priority within the applications meeting the primary criteria shall be as follows:

- Multiple citations for violation of Housing Code 15 points
- Elderly 10 points
- Handicapped 5 points
- Single Head of Household (2 or more persons) 5 points
- Length of Ownership 5 points maximum
(0-5 yrs=0, 6-10 yrs=2, 11-15 yrs=3, 16 yrs+=5)

In the event of tie scores, very low-income households will receive priority.

3. It is a priority of the City of Marathon to assist Habitat for Humanity of the Middle Keys with their mission to provide housing to low income residents of Marathon. In order to further this priority, applicants to the CDBG program who are receiving assistance from Habitat for Humanity will receive first priority for assistance. These applicants and their respective housing units must meet all eligibility standards of the CDBG program as would any other applicant.
4. Conflicts of interest will be addressed pursuant to 24 C.F.R. Section 570.489 and Chapter 112.311-112.3143, F.S. timely by immediate identification of potential conflicts.

Additionally, beneficiaries will be identified in the minutes of the Marathon City Council so that any previously unknown conflicts may be surfaced. The conflicts will be acknowledged publicly along with the final selection of beneficiaries.

It is the intent of the City of Marathon to deal with these conflicts if the conflict occurs on a local level and request waiver for acknowledgement of the conflicts when appropriate.

5. The City will perform HUD Section 8 Housing Quality Standards (HOS) inspections on all properties to be rehabilitated to ensure compliance with the local safe housing code and safe, sanitary and decent housing to determine what rehabilitation work must be done on each eligible housing structure. All work required to meet HUD

Housing Quality Standards and local housing code will be completed for each unit addressed.

6. The maximum amount of CDBG funds that may be expended on any one housing unit is \$100,000.00. This amount may only be exceeded by vote of the Marathon City Council.

7. Applicants who receive assistance will enter into a Deferred Payment Loan (DPL) agreement and Note that specifies the assisted housing unit will remain the applicant's primary, homesteaded residence for a period of five years, amortizing 1/5 upon the anniversary of execution of the DPL each year until completely forgiven at the conclusion of the fifth year. Failure to maintain the assisted unit as the primary, homesteaded residence or sale of the property prior to complete amortization will result in repayment of the non-amortized balance of the DPL. The DPL will be recorded.
8. The City will not address the rehabilitation of rental units under this process, although sewer connections are eligible as outlined in Section 20.
9. The City of Marathon will assist in the rehabilitation of mobile homes, modular homes or other forms of manufactured housing subject to paragraph 8 below.
10. The City will not provide assistance to beneficiaries for those housing units that are unfeasible to repair under CDBG and Housing Assistance Plan guidelines. Additionally, the City will not provide assistance to properties where the post rehabilitation value, exclusive of land, is less than the cost of rehabilitation. It is noted that due to extremely high median housing values, this is an unlikely situation.
11. All program participants will be advised routinely via formal written notification of their status in the program and specifically when a previously selected housing unit is deleted from the rehabilitation program.
12. The City will not provide CDBG assistance to beneficiaries of housing units who do not participate in the National Flood Insurance Program. The amount of said insurance must be equal to or greater than the amount of CDBG funds expended on the rehabilitation of said unit. Potential beneficiaries will be provided the opportunity to purchase said insurance at their own expense.
13. The City will require a final inspection by qualified entities for acceptance of the contractor's final work. All rehabilitation work is subject to the City's building permit and inspection process.
14. The City will ensure that ownership of non-rental units by the occupying beneficiary is confirmed, they have the right to encumber the property and provide permission to a contractor to undertake construction work on the unit. This will be accomplished through coordination with the Monroe County Tax Appraiser's Office.
15. The City through the CDBG Program does not have any plans to declare a housing structure to be demolished or through its action, be converted to a non-LMI structure.
16. The City will develop bid proposals to be bid upon by contractors and interface with beneficiaries to ensure the contractor performs to the contract terms. All construction contracts will be between the property owner and the contractor.

The following "Green" Rehabilitation Standards shall apply to all housing rehabilitation work:

1. Any appliances replaced or installed shall be Energy Star;
2. Any door and/or window replaced or installed shall be Energy Star.
3. Any lighting fixture replaced or installed shall be Energy Star.
4. Weatherization of all homes rehabilitated. At a minimum, weatherization shall include attic, and if appropriate, floor insulation as well as sealing all exterior walls. Other weatherization activities are at the local government's option. (New home construction is presumed to meet the minimum insulation and sealing requirements.
5. Any replaced or new (for new home construction) HVAC unit shall have a SEER rating of at least 14.

17. The City will review its local codes to determine that the property proposed for rehabilitation is in compliance with local codes prior to the initiation of any housing rehabilitation activities and issuance of a building permit.
18. The age of participating housing unit to be addressed will be verified by obtaining the Property Records Card for each unit in the Official Records of the Monroe County Tax Appraiser's Office. Coordination with the Bureau of Historic Preservation will take place as appropriate.
19. The City will test as required for lead based paint abatement when addressing pre- 1978 homes following whatever program requirements exist.
20. Since virtually all housing structures to be addressed will be contained in the 100- year flood plain by virtue of the geographic configuration and location of the City, the City will follow and comply with all applicable Federal Emergency Management Agency (FEMA) requirements when addressing housing units.
21. The City of Marathon, will document completion of construction by ensuring that each housing unit case file shall contain the following information:
 - a. A statement from the contractor that all items on the initial work write up as modified through change orders have been completed;
 - b. An acknowledgement that the housing unit meets the applicable local codes and Section 8 Housing Quality Standard (HOS);
 - c. A signed acknowledgment by the housing unit owner or his or her personal representative that the work has been completed based on the work write up and change orders. Should all requirements be fulfilled and the homeowner or their representative refuse to acknowledge completion of the work, the housing unit case file shall be documented with a statement detailing the stated reason for said refusal;
 - d. The documentation shall be completed prior to the submission of the administrative closeout package and shall accompany the administrative closeout package when submitted to the Department of Economic Opportunity; and
 - e. The following data will be provided by housing unit and summarized by activity as part of the administrative closeout for each activity providing direct benefit:
 - Address of each housing unit rehabilitated with CDBG funds, the date the construction was completed on the housing unit, and the amount of CDBG funds expended on that unit;
 - Whether the household is headed by a female, the number of handicapped persons in the household, the number of elderly persons in the household, and the LMI or VU status of the household.
 - The number of occupants of the household, categorized by sex; and
 - The racial demographics of the household by number (white, black, Hispanic, Asian/Pacific Islander, or American Indian/Alaskan Native.
22. Sewer Connections: In certain cases, CDBG funds may be made available to income-eligible residents or rental property owners solely to provide connections to a central wastewater collection system (sewer connections). This activity is considered to be housing rehabilitation and, although similar in many ways to standard housing rehabilitations, has a number of differences. Sewer connections are subject to the following:
 - a. Sewer connections are essentially housing rehabilitations and the applicant must document LMI status, ownership, and full-time residency.
 - b. Funds provided for sewer connections to single family units are grants and do not require repayment.

- c. Rental units may be eligible for assistance if the beneficiaries are LMI and are full-time residents. In addition, the property owner must enter into a deferred payment loan (DPL) agreement that provides for an affordability period of three- years, amortizing 1/3 upon the anniversary of execution of the DPL each year until completely forgiven at the conclusion of the third year, and that states the units that received assistance shall remain available and affordable, as defined by HUD guidelines, to LMI tenants. Failure to do so will result in repayment of the non-amortized balance of the DPL. The DPL will be recorded.
 - d. Applicants are selected based on the basis of "first come, first ready" until funds are exhausted. Sewer connection applicants are not ranked.
 - e. Sewer connection projects generally do not undertake repairs to the interior of housing units unless such repairs are absolutely necessary for a code-compliant sewer connection.
23. Bids for rehabilitation or reconstruction of housing units shall only be accepted from licensed contractors licensed by the State of Florida, Department of Business and Professional Regulation.
24. Contractors must agree in their bid and contract documents that all change orders for housing rehabilitation or reconstruction shall be approved by the housing unit owner or his or her representative and the contractor and a representative of the local government prior to any initiation of additional work based on that change order.

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

EEO/AA POLICY AND PLAN

EEO/AA POLICY STATEMENT

It is the policy of the City of Marathon to comply and cooperate to the fullest extent with all applicable regulations of the Equal Employment Opportunity Provisions of the Civil Rights Act of 1964, Executive Order 11246, the Rehabilitation Act of 1973 (29 U.S.C. 793), the Americans with Disabilities Act (ADA) of June 26, 1990 and the Vietnam Era Veterans Readjustment Assistance Act of 1972, all as amended. This policy pertains, as far as the responsibility of the City of Marathon is concerned, to any arrangement under which employees, including trainees, are selected for work.

It is the policy of the City of Marathon not to discriminate against any employee or applicant for employment because of race, religion, color, age, sex, genetics, and national origin, disabilities or Vietnam Era and Special Disabled Veterans status.

The City of Marathon will take affirmative action to assure an equal employment opportunity to all qualified persons, and that employees are treated equally during employment without regard to their race, religion, color, age, sex, genetics, national origin, disabilities, or Vietnam Era and Special Disabled Veteran's status. Such action shall include but not be limited to:

1. Employment, upgrading, demotion, or transfer.
2. Recruitment and recruitment advertising
3. Layoff or termination
4. Rate of pay or other forms of compensation
5. Selection for training, including apprenticeship, pre-apprenticeship and/or on-the-job training.

EEO OFFICER DUTIES

It is the policy of the City of Marathon to continuously maintain the appointment of an Equal Employment Opportunity Officer (EEO Officer). The name and contact information for the EEO Officer will be communicated along with this policy. The EEO Officer has responsibility for effectively administering and promoting an active program of equal employment opportunity. The EEO Officer will coordinate the EEO efforts of superintendents, supervisors, foremen and others in the position of hiring personnel.

The City of Marathon's EEO Officer has the responsibility for effectively administering and promoting an active program of equal employment opportunity within the City. The EEO Officer will make recommendations, where appropriate, to correct any deficiencies found in the City's program. The EEO Officer will ensure that this policy and plan are being carried out.

EEO/AA PLAN

It is the policy of the City of Marathon that there not be any discrimination by virtue of race, religion, color, age, sex, genetics, national origin, disabilities or Vietnam Era and Special Veterans status, in the functions of hiring, placement, up-grading, transfer or demotion. In addition, there shall not be any discriminatory practices in recruitment, advertising, or solicitation for employment, rates of pay or other forms of compensation, selection for training including apprenticeship, layoff or termination, or treatment during employment. The City has affirmative action obligations in the hiring of minorities, females, disabled and veteran's applicants.

We will not use goals, timetables or affirmative action standards to discriminate against any person because of their race, religion, color, age, sex, genetics national origin, disabilities, or Vietnam Era and Special Disabled Veteran's status.

The City of Marathon shall take specific affirmative actions to ensure equal opportunity. Our compliance with this policy and plan shall be based upon our efforts to achieve maximum results from our actions and we shall document our efforts fully. The City of Marathon will implement specific affirmative action steps, at least as extensive as the following actions to ensure equal employment opportunity:

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all times and in all facilities at which our employees are assigned to work. We shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out our obligations to maintain such a working environment.
2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when we have employment opportunities available, and maintain a record of the organization's responses.
3. Maintain a current file of the names, addresses and telephone number of each minority and females off-the-street applicant or female referral from a union and minority or female referrals from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. When applicable if such individual was sent to the Union hiring hall for referral and was not referred back to the City by the union or, if referred, not employed by the City, this shall be documented in the file with the reason therefore, along with whatever additional actions the City may have taken.

4. When applicable provide immediate written notification to the Director when the union or unions with which we have a collective bargaining agreement have not referred to us a minority person or woman sent by us, or when we have other information that the union referral process has impeded our efforts to meet our obligations.
5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the City's employment needs, especially those programs funded or approved by the Department of Labor. We shall provide notice of these programs to the sources complied under "2" above.
6. Disseminate the City EEO policy notice by providing notice to the unions and training programs and requesting their cooperation in assisting us in meeting our EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the local newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the City EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
7. Review, at least annually, the City's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc. prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
8. Disseminate the City EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media and providing written notification to and discussing the City EEO policy with other contractors and subcontractors with whom the City does or anticipates doing business.
9. Direct our recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to female recruitment and training organizations serving our recruitment area and our employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, we shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. We will encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both on the site and in other areas of our workforce.

11. Validate all test and other selection requirements where there is an obligation to do so under 41 CFP Part 60-3.
12. Conduct at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to prepare for, through appropriate training, etc. such opportunities.
13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory affect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and our obligations under these specifications are being carried out.
14. Ensure that all facilities and City activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.
15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the City EEO policies and affirmative action obligations.

RECORDS

The City of Marathon will keep records to monitor all employment related activity to ensure that the City's EEO policy is being carried out. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates and changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed.

REPORTING OF COMPLAINTS

If at any time anyone feels he or she has been discriminated against because of sex, race, religion, color, age, genetics national origin, disabilities or Vietnam Era and Social Disabled Veteran status, they should report this matter to the City EEO Officer whose name and contact information is communicated along with this policy.

The EEO Officer will investigate all complaints of alleged discrimination made to the City in connection with its contractual obligations. The EEO Officer will attempt to resolve such complaints, corrective actions to be taken and will then follow up on actions taken and their effect. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective actions shall include such other persons. Upon completion of each investigation, the EEO Officer will inform every complainant of all of his or her avenues of appeal. The addresses shown below are such avenues for appeals.

<p>City of Marathon EEO Officer David Migut, City Attorney 9805 Overseas Hwy. Marathon, FL 33050 (305)289-4103</p>	<p>Florida Commission on Human Relations 2009 Apalachee Parkway, Tallahassee, FL 32303-4102 (850) 488-7082 or (800) 342-8170</p>
<p>U.S. Dept. of Labor, Regional Director Office of Federal Contract Compliance 61 Forsyth Street, SW, Room 7B-75 Atlanta, GA 30303 (404)-562-2424</p>	<p>U.S. Federal Highway Administration 545 John Knox Road Suite 200 Tallahassee, FL 32303 (850) 942-9650</p>
<p>U.S. Equal Employment Opportunity Commission Miami District Office One Biscayne Tower, Suite 2700 Miami, FL 33131 (800) 669-4000</p>	<p>U.S. Equal Employment Opportunity Commission Tampa District Office 501 East Polk Street, Suite 1020 Tampa, FL 33602 (800) 669-4000</p>

-end: EEO/AA Policy & Plan-

_____ has made the following
designation in accordance with the EEO/AA Policy and Plan.
Date: _____ By: _____

**EQUAL EMPLOYMENT OPPORTUNITY OFFICER:
EEO OFFICER**

NAME:

ADDRESS:

PHONE: