

## ORDINANCE NO. 2021-009

AN ORDINANCE OF THE TOWN OF HOWEY-IN-THE-HILLS, FLORIDA ADOPTING A PURCHASING POLICY; REPEALING SECTIONS 5-1 THROUGH 5-6 OF CHAPTER 5 OF THE TOWN'S CODE OF ORDINANCES TITLED "BIDS"; ADOPTING A NEW SECTION 5-1 TO PROVIDE FOR THE ADOPTION, AMENDMENT AND REVISIONS TO THE TOWN'S PURCHASING POLICY TO BE DONE BY RESOLUTION; REPEALING THE CURRENT PURCHASING POLICY AND ADOPTING A NEW PURCHASING POLICY PERTAINING TO PURCHASING AND CONTRACT AWARD PROCEDURES, CONTRACT ADMINISTRATION, RIGHTS OF THE TOWN COUNCIL, TOWN PROCUREMENT RECORDS, AND ETHICS IN PUBLIC CONTRACTING; PROVIDING FINDINGS; PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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*Whereas*, the Town Council of the Town of Howey-in-the-Hills has adopted certain bid and purchase requirements codified in Chapter 5 of the Town's Code of Ordinances.

*Whereas*, the Town Council has determined that updates and modifications to these adopted requirements are necessary to ensure that procurement laws, rules and regulations are enforced and carried out to encourage full and open competition and to the extent possible, achieve the best value for the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF HOWEY-IN-THE-HILLS, FLORIDA:**

**Section 1. Recitals.** The recitals set forth above are true and correct and constitute the legislative findings of the Town Council.

**Section 2. Amendments to the Town of Howey-in-the-Hills' Code of Ordinances.** The Town Council hereby approves the following amendments to Chapter 5 of the Town's Code of Ordinances: Sections 5-1 through 5-6 are hereby repealed in their entirety as shown by the strikethrough language below, and Section 5-1 is revised as shown in the underlined language, below.

### **~~Chapter 5—BIDS~~**

~~Sec. 5-1.—Contracts to be bid; advertisement.~~

~~All contract labor and purchases made by the town in excess of \$10,000.00 shall be done under contract and let to the most responsible bidder, after not less than ten days' advertisement in a newspaper published in the county, which advertisement shall set out carefully the kind, nature and character of the work to be done.~~

~~Sec. 5-2.—Bond.~~

~~The most responsible bidder shall give a bond with an approved surety in such sum as the nature and character of the work demands. The bond shall be subject to the approval of the Town Council and the Mayor.~~

~~Sec. 5-3. Procedure when no bid is made.~~

~~If, for any reason, no bid is made, the Town Council may readvertise or proceed to have the work done by its own forces.~~

~~Sec. 5-4. Reservation of right to reject bid.~~

~~The Town Council shall at all times reserve the right to reject any or all bids.~~

~~Sec. 5-5. Purchases and contracts exempt from competitive bidding.~~

~~A. Sole source purchases. The Town Council may make or authorize the purchase of goods or services without competitive bid when the commodities or contractual services are available only from a single source, subject to the requirements of the Florida Statutes.~~

~~B. Emergency purchases. When certified by the Mayor in writing that an immediate danger to the public health, safety, or welfare requires emergency action, the town may proceed with the procurement of commodities or contractual services necessitated by the immediate danger, subject to the requirements of the Florida Statutes.~~

~~C. Cooperative purchases. The Town Council may enter into a cooperative purchasing arrangement with other governmental agencies and agencies qualified by the state for government purchasing for all services, supplies, materials, and equipment to be used by the town, providing the vendor extends the same terms and conditions of the contract to the town.~~

~~Sec. 5-6. Purchases by the Mayor.~~

~~The Mayor is authorized to make purchases of equipment, material, supplies, or services up to the value of \$1,000.00 without specific prior approval by the Town Council.~~

## **Chapter 5 PURCHASING POLICY**

**Sec. 5-1. Adoption, amendments and revisions to the purchasing policy.** The Town Council may adopt, amend and revise, from time-to-time, all by resolution, a purchasing policy. The purchasing policy shall be kept up-to-date by the Town Clerk and the latest up-to-date version shall be (i) on file in the office of the Town Clerk, and (ii) placed by the Town Clerk on the Town's website.

### **Section 3. Repeal of current Purchasing Policy; approval of the revised purchasing policy.**

The Town Council hereby repeals the Town's current Purchasing Policy and approves and adopts the "Purchasing Policy" attached hereto as **Attachment A**.

**Section 4. Severability.** The provisions of this Ordinance are declared to be separable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Codification.** The provisions of this Ordinance shall become and be made a part of the Town's Code of Ordinances and the sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase to accomplish such intentions.

**Section 6. Effective Date.** This Ordinance takes effect immediately upon its enactment.

**PASSED AND ORDAINED** on \_\_\_\_\_, 2021, by the Town Council of the Town of Howey-in-the-Hills, Florida.

\_\_\_\_\_  
Martha MacFarlane, Mayor

**ATTEST:**

**APPROVED AS TO FORM AND LEGALITY**  
for use and reliance by the Town of Howey-in-the-Hills, Florida, only.

\_\_\_\_\_  
John Brock, Town Clerk

\_\_\_\_\_  
Thomas J. Wilkes, Town Attorney

First Reading of Ordinance held November 25, 2021

Advertised \_\_\_\_\_, 2021

Second Public Hearing and Adoption held \_\_\_\_\_, 2021

## **ATTACHMENT A**

### **TOWN OF HOWEY-IN-THE-HILLS PURCHASING POLICY**

#### **Section 1: PURPOSE**

This policy is adopted to assure that commodities and services are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices. All Town of Howey-in-the-Hills (“Town”) staff and other persons with designated responsibility for purchasing are responsible for ensuring compliance with this policy and with all applicable federal and state laws and regulations.

#### **Section 2: APPLICATION OF POLICY**

This policy shall apply to all contracts or agreements, whether oral or written, for the procurement of any materials, supplies, services, construction and equipment entered into by or on behalf of the Town after the effective date of this policy, (“Purchases”).

#### **Section 3: PURCHASING OFFICER; DEPARTMENT DIRECTORS; BUDGET AND CASH FLOW LIMITATIONS**

The Mayor or his/her designee shall serve as the Purchasing Officer of the Town for all Purchases, and may establish procedures for the approval of and documentation of Purchases as follows:

- “Department Directors” (Chief of Police, Public Services Director, Town Clerk and Library Director), may make Purchases according to the threshold Purchase limits as set forth in Section 4, below.
- No Purchase may be made unless such Purchase is within the budgeted amount authorized by the Town Council for the relevant department.
- The Mayor may impose further restrictions upon Purchases if reasonably required by cash flow limitations.
- Emergency Purchases. The Mayor shall have the authority to waive any of the provisions of this policy, and may make emergency purchases in any amount to alleviate a situation in which there is a threat to health, welfare, or safety under certain conditions defined as an emergency by the Federal Government, the State of Florida, or the Town, that does not allow time for normal, competitive purchasing procedures.
- Cooperative Purchases. The Town Council may enter into a cooperative purchasing arrangement (also known as piggybacking) with other governmental agencies and agencies qualified by the state for government purchasing for all services, supplies, materials, and equipment to be used by the Town, providing the vendor extends the same terms and conditions of the contract to the town.

## **Section 4: PURCHASING AND CONTRACT AWARD PROCEDURES**

### **Section 4.01: PURCHASING CATEGORIES; THRESHOLD AMOUNTS**

Except 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) any amount under \$3,000.00.
- B. Purchasing Quotes (Section 4.03) \$3,000.01 to \$10,000.00.
- C. Competitive Sealed Bids and Requests for Proposals (Section 4.04 & 4.05) \$10,00.01 and above.

### **Section 4.02: SMALL PURCHASES**

Purchases of commodities, equipment and services which cost \$3,000.00 or less ("Small Purchases"), do not require solicitation of quotes or bids. Small purchases may be authorized by the Department Director.

### **Section 4.03: PURCHASING QUOTES**

The purchase of goods and services which cost within the range authorized for purchasing quotes in Section 4.01 require competitive quotations from three or more vendors, if available. Purchasing quotes may be obtained and awarded by the Department Director.

### **Section 4.04: COMPETITIVE SEALED BIDS**

- 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 in Section 4.01, where price, not qualifications, is the basis for contract award, shall be awarded by competitive sealed bidding. The Purchasing Officer may award bids for Purchases up to the amount of **\$50,000.00**. The Town Council shall award bids for Purchases over this amount pursuant to the procedures set forth in subsection H, below.
- 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 (5) working days prior to the date for receipt of bids, a vendor shall make a written request to the Town for interpretations or corrections of any ambiguity, inconsistency or error which the vendor may discover. All interpretations or corrections will be issued as addenda.
- C. **Public Notice.** Public notice shall be provided in at least one of the following: newspaper of general circulation, the Town's website, or Demandstar, at least ten (10) calendar days prior to bid opening. Notice shall give the date, time, and place set forth for the submittal of proposals and opening of bids.

- D. **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the solicitation. The amount of each bid, and other such relevant information as may be deemed appropriate, together with the name of each bidder, and all witnesses shall be recorded. The record and each bid shall be open to public inspection.
- E. **Bid Acceptance and Evaluation.** Upon opening, bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Following acceptance, the Purchasing Officer or his/her designee shall evaluate the bids based on the requirements set forth in the solicitation.
- F. **Bid Agenda Item.** For bids that are to be awarded by the Town Council, the Purchasing Officer or his/her designee, after evaluation, will prepare a recommendation and shall place the item on the agenda of the Town 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 Invitation 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 show by clear and convincing evidence that a mistake of 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 Town 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. **Award.** The Town Council or the Purchasing Officer, as applicable, shall award the contract with reasonable promptness to the responsible and responsive bidder whose bid meets the requirements and criteria set forth in the solicitation. The Town reserves the right to waive any informality in bids and to make an award in whole or in part, or cancel the solicitation when in the best interest of the Town. 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 shall follow the process specified in the solicitation.

- (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 Purchasing Policy of the Town of Howey in the Hills shall constitute a waiver of proceedings under that section of this Policy”.
- (3) **Bond.** If required in the solicitation, the most responsible bidder shall give a bond with an approved surety in such sum as the nature and character of the work demand. The bond shall be subject to the approval of the Town Council and the Mayor.
- I. **Cancellation of Invitations for Bids.** An invitation for bids or other solicitation may be cancelled, or any or all bids may be rejected in whole or in part when it is in the best interest of the Town, as determined by a Department Director, the Purchasing Officer, or the Town Council, as applicable. Notice of cancellation shall be posted on the Town’s website and 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.
- J. **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 twelve (12) 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 conduct 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 Town employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Town’s purchasing activity.
  - (7) Failure to execute a sworn statement on Public Entity Crimes Statement in compliance with subsection 287.133(3)(a) of the Florida Statutes.
  - (8) Other reasons deemed appropriate by the Town.

#### **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 Request for Proposals in Section 4.01, 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 (Sec. 287.055, Fla. Stat. services)**

- A. Public Announcement.** It is the policy of the Town 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 Town 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 as an agenda item for approval by the Town Council, the Purchasing Officer shall submit to the Town written project requirements 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 service;
  - g) The desired qualifications, listed in order of importance, of the person or firm applicable to the scope and nature of the services requested.
- (2) Public Notice.** Public notice shall be provided in at least one of the following: newspaper of general circulation, the Town's website, or Demandstar.
- (3) 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 Town is able to reuse existing plans from a prior project.
- B. Evaluation Team Membership and Evaluation.** Depending on the expected complexity and expense of the professional services to be contracted, the Town may determine the number of members to serve on an Evaluation Team to best

serve the needs of the Town.

- (1) **Appointment.** Members of the Evaluation Team shall be appointed by the Mayor or his/her designee.
- (2) **Evaluation Team.** 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 those respondents who are determined to be best qualified based upon the evaluation of written responses and selected for formal interview may submit additional data. From among those persons timely submission of written responses the Evaluation Team shall:
  - (a) prepare an alphabetical list of those persons determined by the Evaluation Team to be qualified, interested and available; and
  - (b) designate no less than three (3) persons on the alphabetical list considered by the Evaluation Team to be best qualified to perform the work required.
- (3) **Shortlisting.** The best qualified respondents shall be based upon the Evaluation Team's ability to differentiate qualifications applicable to the scope and nature of the services to be performed. The Evaluation Team 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 (3) 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 educational 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 where applicable, the relationship of construction cost estimates by the person to actual cost on 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.

As per (f) above, although it does not constitute a formal vendor preference criterion, geographic location may be a consideration in evaluation under the following circumstances: When required to meet or support operational

requirements, purchases may be restricted to, or provide preference for, vendors within a stated geographic area. Similarly, to ensure operational responsiveness, relative proximity of a vendor to a job site(s) may be considered as a significant evaluation factor under purchases of professional services.

- (4) **Interview and Council Approval.** After conducting the formal interviews, the Evaluation Team shall list those respondents interviewed in order of preference based upon the considerations listed in subsection (3) 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 respondents shall be forwarded to the Town Council for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.

- C. **Negotiations.** Contract negotiations shall be conducted by the Purchasing Officer or his/her designee. The Purchasing Officer 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 determines to be fair and reasonable to the Town. Should the Purchasing Officer 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 shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Purchasing Officer shall formally terminate negotiations, and shall then undertake negotiations with the third most qualified firm. Should the Purchasing Officer be unable to negotiate a satisfactory contract with any of the selected firms, the Evaluation Team shall select additional firms in order of their competence and qualifications, and the Purchasing Officer shall continue negotiations in accordance with this section 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 4.05 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. The Purchasing Officer may award contracts under this section up to the amount of **\$25,000.00**. The Town Council shall award contracts under this section over this amount.
- 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. **Request for Proposals.** The Purchasing Officer shall prepare a Request for Proposal when the resulting contract is anticipated to exceed the threshold established in Section 4.01 for Request for Proposals. If award by the Town Council is required, the Town Council shall review the Request for Proposal 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, fee proposal, and other evaluation.
- 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. **Proposal Opening. Proposals shall be opened publicly.** The Town Council or the Purchasing Officer, as applicable, shall open the proposals in the presence of one or more witnesses at the time and place designated in the Request for Proposals. All relevant information as may be deemed appropriate, together with the name of each proposer, and all witnesses shall be recorded. The proposal record and each proposal shall be open to public inspection.
- H. **Revisions and Discussions with Responsible Offerors.** As provided in the Request for Proposals, 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. The Purchasing Officer shall prepare a written summary of the proposals and make a written recommendation of award.
- I. **Bid Agenda Item.** For bids that are to be awarded by the Town Council, the Purchasing Officer, after evaluation, will prepare a recommendation and shall place the item on the agenda of the Town Council.
- J. **Award.** The Purchasing Officer or the Town Council, as applicable, shall make the award to the most responsive and responsible offeror whose proposal is determined to be the most advantageous to the Town of Howey in the Hills, 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 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 **\$10,000.00**, the item will be placed on the agenda for Town Council approval and clarification that the vendor has been determined to be a sole source.
- B. **Additional Purchases from Certified Sole Source.** The Purchasing Officer and/or Department Director, as applicable, may, after initial sole source certification, make additional purchases from a sole source vendor for not less than one (1) 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 Management Services. The provisions of sections 4.01, 4.02, 4.03 and 4.04 shall not apply to such purchases. All other requirements of this policy shall apply.
- 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 Town would be served thereby, and the same is in accordance with this policy and with Town and State law.

#### **Section 4.08: BID PROTEST**

- A. **Right to Protest.** A prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of contract may protest to the Town Council. Protesters shall seek resolution of their complaints initially with the Purchasing Officer and secondly with the Town Council.
- B. **Filing a Protest.** Any person who is affected adversely by the decision or intended decision of the Town 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 ten (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 Town when it is delivered to and received in the office of 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.
  - (3) The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom he/she is in dispute.
- C. **Settlement and Resolution.** The Purchasing Officer shall, within fourteen (14) days of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position.
- 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 my written or physical materials, objects, statements, affidavits, ant 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 Town Council.
    - (f) Any party may arrange for a court reporter to record the proceedings. Such party shall bear the expense of the court reporter.
  - (2) **Intervenor.** The participation of intervenors 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 B 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 Town Council makes a determination that the award of a contract without delay is necessary to protect the substantial interests of the Town.

## **Section 5: CONTRACT ADMINISTRATION**

### **Section 5.1: CONTRACT PROVISIONS**

- A. **Standard Contract Clauses and Their Modification.** The Town, after consultation with the Town Attorney, may establish standard clauses for use in Town contracts. However, the Purchasing Officer may, upon consultation with the Town Attorney, vary any such standard contract clauses for any particular contract.
- B. **Contract Clauses.** All Town 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 Town Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:
  - (1) The unilateral right of the Town to order, in writing, changes in the work within the scope of the contract;
  - (2) The unilateral right of the Town 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 work in 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 convenience of the Town;
  - (9) Suspension of work on a construction project ordered by the town;
  - (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 contempt 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 Town Council.
  - (18) Causes of and authorization for suspension of contract for improper contractor activity.

### **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 an appropriate person 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 6: RIGHTS OF TOWN COUNCIL**

Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Town Council, in the best interests of the Town, 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.

### **Section 7: TOWN 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 Town in a contract file.

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

## **Section 8: ETHICS IN PUBLIC CONTRACTING**

### **Section 8.1: 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 8.2: EMPLOYEE CONFLICT OF INTEREST**

- A. Participation.** It shall be unethical for any Town 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 Town 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 sub agreements.
- B. Blind Trust.** A Town 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 8.3: CONTEMPORANEOUS EMPLOYMENT PROHIBITED**

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

### **Section 8.4: 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 8.5: GRATUITIES AND KICKBACKS**

- A. **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any Town employee, officer or agent or for any Town employee, officer or agent to solicit, demand, accept, or agree to accept from another person, 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 request, influencing the content of any specification or procurement standard rendering of advice, 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 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.

#### **Section 8.6: SANCTIONS**

- A. **Employee Sanctions.** Upon violation of the ethical standards by an employee, officer or agent the Town, or other appropriate authority may:
- (1) impose one or more appropriate disciplinary actions as defined in the Town Personnel Rules and regulations, up to and including termination of employment;
  - (2) 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) Any other sanction available by law.