

DIVISION 3. PROCUREMENT CODE

Sec. 2-101. Short title.

This division shall be known and may be cited as the "Bay County Procurement Code."

(Ord. No. 07-52, § 1, 11-6-07)

Sec. 2-102. Purpose.

The purpose and intent of this division is:

- (1) To clarify the law governing the county's procurement system.
- (2) To ensure the fair, equitable, and uniform treatment of all persons who deal with the procurement system of this county.
- (3) To foster effective broad based competition within the free enterprise system in procurement activities.
- (4) To establish a purchasing department under the management supervision of the county manager. The county manager may delegate such authority as he/she deems applicable, to the chief procurement officer or others to facilitate the day-to-day operations of the purchasing department.

(Ord. No. 07-52, § 2, 11-6-07; Ord. No. 22-44 , § 2(Exh.), 10-4-22)

Sec. 2-103. Definitions.

Amendment. The method of changing the terms, conditions, or requirements of a contract or agreement beyond what is specifically provided for in that contract or agreement. All amendments shall be approved with equal dignity and formality as the original contract signed by the individuals holding the positions of the original signatories; provided however, that any amendment which causes a contract expenditure to exceed original signatory's amount, shall be approved by the appropriate signatory.

Best and final offer (BAFO). A process requested from one proposer or short-listed proposers for their best price(s) for a specific solicitation prior to determining of contract award. Sometimes referred to as BAFO.

Best value. The process used in competitive, negotiated contracting to select the most advantageous offer by evaluating and comparing factors in addition to cost or price.

Capital improvement project. Any public improvement which the county undertakes including the construction or reconstruction in whole or in part of any building, road, highway, street improvements, plant, structure, or facility necessary or convenient in carrying out the functions of the county government.

Change order. A written order amending a purchase order to correct errors, omissions, or discrepancies in it, to cover acceptable cost over-runs and freight costs, to incorporate requirements to expand or reduce the scope of goods or services ordered, or to direct other changes in the contract execution to meet unforeseen field, emergency, climatic, regulatory, or market conditions.

Competitive solicitation. The document used to obtain sealed bids or proposals for the purpose of entering into a contract.

Consultant's Competitive Negotiation ACT (CCNA). The official name for F.S. § 287.055, relating to the procurement of architectural, engineering, landscape architecture, mapping, and registered land surveying services. These services shall be procured by letters of interest and qualifications, and competitive selection and negotiation.

Contract. A written agreement between two or more competent parties to perform or not perform a specific act or acts. Any type of agreement regardless of what it is called for the procurement or disposal of supplies, services or construction.

Contractor. A person who contracts to sell commodities or contractual services to the county.

Invitation to bid. A written solicitation for competitive sealed bids with the title, date, and hour of the public bid opening designated and specifically defining the commodity, group of commodities, or services for which bids are sought. It includes instructions prescribing all conditions for bidding. The invitation to bid is used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.

Multi-step solicitation. A method of source selection involving at least two competitive steps.

Pre-qualification. The screening of potential vendors in which such factors as experience, financial capability, reputation, and management are considered in order to develop a list of qualified vendors who may then be allowed to submit bids/proposals. Pre-qualification is not a conclusive determination of responsibility, and a prequalified vendor may be rejected as nonresponsible at a subsequence stage in the procurement process.

Request for proposal (RFP). A solicitation of the responses for good and/or service for which the scope of work, specifications or contractual terms and conditions cannot reasonably be closely defined, or when the county is requesting that a qualified vendor propose goods and/or services or when the county determines that it is in the best interest of the county that the award be made after determining the response that is the best value and most advantageous to the county. Evaluation of a proposal is based on prior established criteria which may include but may or may not be totally limited to price. The solicitation may include a provision for best and final offers and may be a single-step or multi-step process. The solicitation shall include the title, date and hour of the public opening.

Respondent. A person or entity who submits an offer in response to a solicitation. May also be referred to as proposer, offerer or bidder.

Response. Any response of a respondent to a solicitation, which may include, as context requires, bids, offers, proposals, quotations, or other responses.

Responsible respondent. An individual or business which has submitted a bid, offer, proposal, quotation, or response which, as determined by the county, has the capability in all respects to perform fully the contract requirements and the experience, integrity, reliability and capacity, facilities, equipment and credit which give reasonable assurance of good faith and performance. The county may also consider and give weight to the respondent's previous conduct and performance under previous contracts with the county and other agencies (including, but not limited to, delinquency), and determine the quality of the respondent's previous work. County staff may, after bid opening, request additional information from the respondent concerning his ability to perform; and the respondent may voluntarily, after opening, provide additional or corrective information concerning his responsibility as respondent.

Responsive bid. A bid or proposal which conforms in all material respects to the competitive solicitation.

Responsive respondent. An individual or business which had submitted a bid, offer, proposal, quotation or response which, as determined by the county, conforms in all material respects to the solicitation which may include, but is not limited to, pricing, surety, insurance, specifications of the goods or services requested or any other matter unequivocally stated in the invitation for bids as a determinant of responsiveness. A lack of

conformity in these matters which is nonsubstantive in nature may be considered a technicality or irregularity which may be waived by the county; provided, however, that failure of a respondent or proposer to certify the firm has a drug free workplace in accordance with F.S. § 287.087, shall result in rejection of the bid or proposal as nonresponsive.

(Ord. No. 07-52, § 3, 11-6-07; Ord. No. 13-08, § 2(Exh. 1), 3-5-13; Ord. No. 14-04, § 1, 2-18-14; Ord. No. 18-04, § 1, 3-20-18; Ord. No. 20-03, § 1, 2-19-19; Ord. No. 22-44, § 2(Exh.), 10-4-22)

Sec. 2-104. Applicability.

This division shall apply to every procurement except as otherwise stated herein, of the Bay County Board of County Commissioners or any governmental body, unit or department under the control or supervision of said board acting in any capacity, irrespective of the source of funds involved.

(Ord. No. 07-52, § 4, 11-6-07)

Sec. 2-105. Exemptions.

With the exception of section 2-115, Approval, this division shall not apply to the following purchasing activities:

- (1) Procurement contracts between the board of county commissioners and non-profit organizations, other governments, or other public entities.
- (2) Procurement of dues and memberships in trade or professional organizations.
- (3) Procurements made from petty cash accounts.
- (4) Any procurement under State of Florida purchasing agreements and contracts. Procurement may also be through contracts competitively awarded by counties or municipalities within the state if the vendors agree to provide Bay County the same goods or services, under the same conditions, terms and prices.
- (5) Procurements of goods and services as part of the process of apprehending persons suspected of violating the law.
- (6) Books, periodicals and other published materials not available by competitive pricing.
- (7) Services of attorneys and other legally related services, including legislative consultants. Contracts for attorney services and other legal services shall be secured by negotiation of the county attorney as approved by the board of county commissioners, or by the county attorney within established spending limits.
- (8) Appraisers, and expert witnesses for condemnation matters, and similar services; sale, acquisition or lease of real property; real estate brokers; title insurance, abstracts or opinions or title: surveys in connection with the acquisition, sale or lease of real property; room and board for social service clients and funeral related services. Contracts for these services shall be negotiated by the county attorney.
- (9) All heavy equipment repairs. The department/division shall request and evaluate the quotations and make the recommendation for award.
- (10) Service/maintenance contracts: continuing service and/or maintenance contracts that are initially awarded by the board as part of a product acquisition/installation to a vendor who is the manufacturer, developer, or who is the authorized service agent thereof and for which funds are annually appropriated in the budget are exempt from further competitive requirements of the

Procurement Manual. Examples are software/hardware maintenance, building systems maintenance, security systems, etc.

- (11) All purchases of used equipment having a value of \$150,000.00 or less. All purchases of used equipment having a value greater than \$150,000.00 should be supported by an equipment appraisal or market value assessment.
- (12) Software. Upgrades, software modification services by the copyright holder, and related software enhancements to installed software purchased through competitive means are exempt. The purchase of new software packages or systems shall follow the thresholds and procedures of the Procurement Manual to ensure competitive selection.
- (13) Corporate and media sponsorship agreements.
- (14) Pharmaceutical products and health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration, including, but not limited to, substance abuse and mental health services, involving examination, diagnosis, treatment, prevention, or medical consultation, when such services are offered to eligible individuals participating in a specific program that qualifies multiple providers and uses a standard payment methodology. Reimbursement of administrative costs for providers of services purchased in this manner shall also be exempt. For purposes of this sub-subparagraph, "providers" means health professionals, health facilities, or organizations that deliver or arrange for the delivery of health services.
- (15) Training and educational courses, meeting rooms, and hotels; continuing education events or programs; and lectures by individuals.
- (16) Advertisements; works of art for public display; performances, shows or other cultural events.
- (17) Payroll, personnel, full or part-time, whether in the classified service or not.
- (18) Travel arrangements and expenses.
- ~~(19) Reserved.~~
- ~~(20) (19) Petroleum products (fuel and oil).~~
- ~~(2120) Procurement of banking services for any bond or loan issuance, refund, or other related activities.~~
- ~~(22) Procurements regarding transit governed by procurement policies of the Bay County transportation planning organization.~~
- ~~(23)(21) Purchases of insurance coverages for the county.~~
- ~~(2422) Purchases made with the proceeds from any grant, gift, bequest, or donation to the extent the application of this chapter would conflict with the requirements, conditions, or limitations attached to the grant, gift, bequest, or donation.~~
- ~~(2523) Water, sewer, electrical, cable television, internet, telephone, fiber or other utility services.~~
- ~~(2624) Agreements between the county and other entities for economic development services, grants, incentive programs, redevelopment agreements, and other related development awards approved by the board of county commissioners.~~

This division shall not apply to any purchase governed by explicit provisions of general law or other county ordinance or board policies unless the solicitation indicates the applicability of this chapter, and this chapter shall apply only to the extent set out in the solicitation.

(Ord. No. 07-52, § 5, 11-6-07; Ord. No. 13-08, § 2(Exh. 1), 3-5-13; Ord. No. 14-29, § 1, 11-18-14; Ord. No. 15-19, § 1, 5-19-15 ; Ord. No. 18-04, § 2, 3-20-18; Ord. No. 20-03 , § 2, 2-19-19; Ord. No. 22-44 , § 2(Exh.), 10-4-22)

Sec. 2-106. Central procurement system.

- (a) There is hereby established a central procurement system which consists of a purchasing department supervised by a chief procurement officer and specified staff members of the department and deemed appropriate and budgeted for by the county manager and approved by the board of county commissioners. All procurements for goods and services for the county, except those goods and services excluded from the application of this division, shall be effected through the central procurement system.
- (b) The county is authorized to procure goods and services of every description and nature necessary to the operation of county government under this division.

(Ord. No. 07-52, § 6, 11-6-07; Ord. No. 22-44 , § 2(Exh.), 10-4-22)

Sec. 2-107. Procurement of goods or services.

- (a) Any procurements of less than \$150,000.00 may be made on the open market without formal bidding. Such procurement, when practicable, shall utilize informal competitive procurement procedures as described in the procurement manual, utilizing a competitive oral or written request for quotations for goods and services. Awards shall be made to the respondent providing the best value to the county. Procurements shall not be artificially divided so as to constitute a procurement of less than \$150,000.00.
- (b) Unless otherwise permitted under this section 2-107, procurement of goods or services over \$150,000.00 shall be made using invitation to bid methods and procedures.
- (c) Alternative procurement procedures. When it is determined in accordance with procedures adopted by the county manager and set out in the procurement manual that the use of an invitation to bid is either not practicable or not advantageous to the county, a contract may be entered into by any of the following:
 - (1) Request for qualification;
 - (2) Request for proposal;
 - (3) Single/Sole source procurement;
 - (4) Design-build services procurement in accordance with the CCNA and after coordination with the county manager;
 - (5) Request for qualification for construction management at risk services; or
 - (6) Multi-step bidding, as prescribed in the procurement manual, including pre-qualification of respondents.
- (d) The county manager or his designee shall have the authority, subject to the approval of the board of county commissioners, to cooperate with other federal, state and local governments or federal, state or local public entities in the development and use of mutually cooperative purchasing contracts. Such contracts, irrespective of the sponsoring entity, as they pertain to the county, shall be awarded by the board of county commissioners.
- (e) The county manager or his designee shall have the authority to utilize contracts of other federal, state or local governments or other public entities to procure goods and services, if the vending contractor extends the terms and conditions of the contract to the county, and the contract has been awarded through procedures substantially equivalent to the requirements of this division.
- (f) Non-competitive negotiations may be used as a procurement method for purchases of supplies or services available from only one source; or sole brand or when it is determined by the department director of the using department or the chief procurement officer that competitive solicitation is not feasible or not

advantageous to the county. Single/Sole source purchasing of goods and services requires a written finding that only one qualified source is available; and also requires a written statement that a search for an alternative source has been made; and a justification of why the only source is acceptable to fit the needs of the using department.

- (g) Where the county manager or his/her designee finds it to be in the best interest of the county, it may declare the existence of an emergency procurement condition, and, based thereon, suspend any or all of the provisions of this division and authorize an emergency procurement; provided that such emergency procurement shall be made with such competition as is practicable under the circumstance. When an emergency procurement is authorized, the factual basis for the emergency and for the selection of the particular contractor shall be documented in an agenda item and approved by the board of county commissioners at a regularly scheduled meeting within a reasonable time. Notwithstanding the foregoing, in the event a local state of emergency is declared. All provisions of this procurement code except section 2-116 are automatically suspended with respect to procurements that are necessary for the response to and recovery from the emergency condition for so long as the local state of emergency declaration is in effect.
- (h) In the procurement of professional, architectural, engineering, landscape architectural or land surveying services, the county shall comply with the provisions of F.S. § 287.055, Consultants Competitive Negotiation Act (CCNA), as may be amended from time to time, and the Bay County procurement manual.
- (i) Adequate public notice of any competitive procurement procedure shall be given in the same manner as provided for in section 2-113 solicitation.
- (j) Any certified public accountant for auditing services required by F.S. § 11.45, as may be amended from time to time, shall be selected in accordance with the provisions of that statute. Any selection of a certified public accountant for any other purpose shall be done by any procedure designed to select the best firm at the least cost to the county.

(Ord. No. 07-52, § 7, 11-6-07; Ord. No. 08-26, § 2, 5-27-08; Ord. No. 13-08, § 2(Exh. 1), 3-5-13; Ord. No. 15-19, § 1, 5-19-15 ; Ord. No. 18-04, § 3, 3-20-18; Ord. No. 20-03 , § 3, 2-19-19; Ord. No. 22-44 , § 2(Exh.), 10-4-22)

Sec. 2-108. Conflict of interest.

- (a) For the purpose of this section:
 - (1) "Restricted individuals" are county reporting individuals within the meaning of F.S. § 112.3148(2)(d) and employees and agents of the County that would otherwise meet the definition of a procurement employee within the meaning of F.S. § 112.3148(2)(e).
 - (2) "Immediate family" means any parent, spouse, child, sibling, or domestic partner of a restricted individual.
 - (3) "Employer" means any business or organization which employs a restricted individual or their immediate family in a managerial capacity, or any business or organization for which a restricted individual or their immediate family serves as an officer, director, partner or similar capacity. It shall not include a nonprofit organization for which a restricted individual or their immediately family serves as an officer or director without compensation.
 - (4) "Conflict of interest" means a circumstance in which any restricted individual, any member of his or her immediate family, or any employer of the foregoing, shall be financially interested or have any personal beneficial interest, directly or indirectly, in any purchase or contract of any supplies, materials, equipment, or services used by or furnished for the county.
- (b) Restricted individuals shall recuse themselves from the selection, award, or administration of any county procurement in which they have a conflict of interest, and shall disclose to their supervisor the nature of the

conflict of interest. Restricted individuals who are appointed or elected public officials shall disclose their conflict of interest on the commission on ethics forms promulgated for such purpose.

- (c) Restricted individuals and their immediate family are prohibited from accepting or receiving from any county vendor or lobbyist any money, rebate, gift or anything of value or any promise, obligation or contract for future reward of compensation.
- (d) Notwithstanding the foregoing, with respect to restricted individuals who are only restricted individuals because of their appointment to a county board without compensation, the restrictions contained in section (b) and (c) shall only relate to contracts, vendors, and lobbyists related to the work of their board.
- (e) As required by Title 2 of the Code of Federal Regulations (CFR) 200.112, Conflict of Interest and 200.318(c)(1), General Procurement Standards, the county has designated the county manager as the reporting official for all instances of real or apparent conflicts of interest. Any employee, officer, or agent of the county who has knowledge or suspicion of a conflict of interest will report this to their immediate supervisor who will then report the instance to the county manager for him or her to further evaluate. In the case that the conflict of interest involves the employee, officer, or agent's immediate supervisor, the employee may report the instance to the next person in the county's hierarchy. In the governance of performance of its employees engaged in the selection, award and administration of contracts associated with federal awards, the county will ensure that no employee, officer, or agent participates in the aforementioned mentioned activities if he or she has a real or apparent conflict of interest. If the county manager has determined that a real or apparent conflict of interest has occurred, disciplinary action, at a level consistent with the nature of the event and at management's discretion, will be taken to ensure that the conflict is eliminated and that the county is not at risk for reoccurrence. The county manager will submit in writing the nature and extent of any potential conflict of interest to the federal awarding agency as well as any actual conflict of interest that has occurred.

(Ord. No. 07-52, § 8, 11-6-07; Ord. No. 13-08, § 2(Exh. 1), 3-5-13; Ord. No. 16-26, § 1, 7-19-16; Ord. No. 18-04, § 4, 3-20-18; Ord. No. 20-03, § 4, 2-19-19)

Sec. 2-109. Purchasing card.

The purpose of the purchasing card program is to:

- (1) Provide an efficient method of purchasing and paying for goods and services not exceeding the limit of the card.
- (2) Ensure purchasing card purchases are in accordance with the County's Code, policies and procedures.
- (3) Ensure that the county bears no legal liability from inappropriate use of purchasing cards.
- (4) Provide for disciplinary action if the purchasing cards are misused.

The policies and procedures as detailed in the procurement manual are minimum standards for departments. Departments may establish additional controls if necessary with approval of county administration.

(Ord. No. 07-52, § 9, 11-6-07; Ord. No. 13-08, § 2(Exh. 1), 3-5-13; Ord. No. 18-04, § 5, 3-20-18)

Sec. 2-110. Authority of county manager or his or her designee.

Unless otherwise provided for in this division, the procurement of all goods and services shall be under the supervision and management of the county manager or his or her designee. It shall be the duty, responsibility, and authority of the county manager or his or her designee to:

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- (1) Supervise the procurement of all goods and services except as otherwise provided for herein, required by the board of county commissioners and departments and divisions under its control, and for which payment is made from funds of the county.
 - (2) In conjunction with using departments and divisions, prepare and enforce standard specifications which shall apply to all goods and services purchased for the use of the county.
 - (3) Maintain current files, or contract with a qualified agency for maintenance of current files, for sources of supply for goods and services required by the county.
 - (4) Perform other related duties as may be assigned by the board of county commissioners.
 - (5) Sign, duly issued purchase orders or assign said responsibility to a designee.
 - (6) Take all reasonable steps to ensure that the specifications for an item to be procured are developed to permit competition among businesses whenever practicable.
 - (7) Oversee the procedures for the disposal of county property which becomes surplus to the county's needs.
 - (8) Maintain a system of accountability and numbering of all contracts for purchase of goods and services under the jurisdiction of the board of county commissioners whether exempt from the procurement system or not.
 - (9) Reject all bids or responses as may be in the best interest of the county where a competitive solicitation is required for the procurement of goods and services.
 - (10) Recommend and execute renewals of existing contracts that contain provisions authorizing the term of the contract to be extended.
 - (11) Recommend and execute periodic increases of existing contracts that contain provisions authorizing the periodic increase of the contract.

(Ord. No. 07-52, § 10, 11-6-07; Ord. No. 11-01, § 1, 1-4-11; Ord. No. 13-08, § 2(Exh. 1), 3-5-13; Ord. No. 18-04, § 6, 3-20-18; Ord. No. 20-03, § 5, 2-19-19; Ord. No. 22-36, § 1, 9-20-22; Ord. No. 22-44, § 2(Exh.), 10-4-22)

Sec. 2-111. Delegation of authority.

Subject to the approval of the county manager, the chief procurement officer may delegate in writing, his or her authority in whole or in part to designees within his or her department or other county departments.

(Ord. No. 07-52, § 11, 11-6-07; Ord. No. 22-44, § 2(Exh.), 10-4-22)

Sec. 2-112. Procurement manual.

- (a) After adoption of this division, the chief procurement officer shall prepare the Bay County procurement manual ("procurement manual") which shall be administratively adopted and which may be administratively changed as circumstances require, in order to implement this division.
- (b) The guidelines for the procurement of goods and services contained in the procurement manual shall be consistent with the procedures established under this division. Such guidelines may establish the designation of the responsibility of administration of contracts, pre-qualification of respondents, bidding procedures, administration of bid procedures and conferences, bid opening procedures, procedures for the correction or withdrawal of bid, procedures for sealed proposal solicitation, proposal procedures, contract award procedures, protest procedures, administration of contract awards, small procurement procedures, contract execution procedures, bonding requirements, insurance requirements, purchase order procedures, payment

procedures, multi-step solicitation criteria and procedures, and such other matters as may be required to establish a sound procedure for the procurement of goods and services under this division and applicable Florida law.

- (c) The procedure for the recording and accounting of inventory and disposal of tangible personal property shall be addressed in and governed by the fixed asset manual.
- (d) The procedure for grant related projects shall be addressed in the grants manual which shall be administratively adopted and which may be administratively changed as circumstances require.
- (e) The procedure for capital improvement projects over \$250,000.00 shall be addressed in the Capital Improvement Management System (CIPMS) adopted by the board in April 2000 and which may be administratively changed as circumstances require.

(Ord. No. 07-52, § 12, 11-6-07; Ord. No. 18-04, § 7, 3-20-18; Ord. No. 22-44 , § 2(Exh.), 10-4-22)

Sec. 2-113. Competitive solicitation procedure.

- (a) Competitive solicitations shall be issued and shall include procurement specifications, license requirements, permit requirements, evaluation criteria, and all principal terms and conditions applicable to the procurement. Such evaluation may include, but is not limited to, conformance to specifications, discounts, transportation costs, and total or life cycle costs. No criteria may be used in the evaluation that are not set forth in the bid package document or any subsequent addendum. The procurement procedures shall identify the relative importance of price and other evaluation criteria. Requests for proposal may include a provision for best and final offers and may be in the form of a single-step or multi-step process, including a pre-qualification process.
- (b) Notices inviting responses to a competitive solicitation shall be published at least once on a public notice website and in a newspaper of general circulation in the county, and in the form of electronic notification through a third party notification vendor. Electronic notification is based on the recipient's specific request and application to the county's approved notification vendor. There shall be an interval of at least five calendar days between the date of the public notice and the response opening. The notice shall include the procurement description, and the place where solicitation documents containing procurement specifications are available, and specify the date, time and location at which responses will be opened.
- (c) A pre-submittal meeting may be held where the procurement procedure shall be publicly discussed with all attending respondents. Discussions shall include questions from respondents on any issues considered germane to the requirements or project. The date and time of the pre-submittal meeting shall be included in the advertised notice of the procurement procedure.
- (d) Responses must be received not later than the call for any such response, at a formal opening, to be considered for award. Responses must be sealed, and responses shall be opened publicly in the presence of the county manager or his or her designee, and other interested parties at the time and place designated in the public notice.
- (e) At the public opening of the sealed price proposal in response to an invitation to bid, the amount of each bid, together with the name of each bidder, shall be read aloud and maintained in the purchasing department's bid file, which shall be open to public inspection upon award or 30 days after opening, whichever is earlier. The receipt and opening of bids, and award of contract, shall be in accordance with the procurement manual, pursuant to section 2-112 of this division.
- (f) Information in a response which concerns the responsibility of the respondent shall not necessarily be considered conclusive at the time of response opening, except when the solicitation unequivocally states that the response shall not be considered responsive unless the particular information is provided by a

vendor in his response. When such information has not been so declared as a determinant of responsiveness of the response, the county manager or his or her designee may, within reason after opening, request additional information of the respondent concerning his responsibility to perform.

- (g) To maintain the integrity of the competitive solicitation process, to assure fairness, and to avoid delays or poor contract performance, the following provisions shall govern the correction of information submitted in a bid when that information is a determinant of the responsiveness of the bid:
 - (1) No bidder shall be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid, except for the correction of errors in extension of unit prices in the bids (multiplication, division, addition, or subtraction). In such cases, the unit price bid shall not be changed.
 - (2) Notwithstanding the foregoing, the board of county commissioners reserves the right to cancel any awards or contracts based on bid mistakes, after a written determination of the mistake by the county manager or his or her designee.
- (h) A respondent may withdraw his response at any time prior to the opening date and time set forth in the public notice referred to in subsection (b) hereof. Responses may not be withdrawn after said time except when the request for withdrawal has been submitted in writing to the county manager or his or her designee, said request clearly states the reasons for withdrawal, and the county manager or his designee approves the withdrawal.
- (i) Award may be made to the responsible respondent whose proposal is determined to be the best value and most advantageous to the county taking into consideration price and the other evaluation criteria set forth in the procurement procedure. A summary of the basis on which the award is to be made shall be included in the official contract file and presented to the board of county commissioners.
- (j) Contracts resulting from the competitive solicitation process shall be awarded with reasonable promptness by the purchasing authority by written notice. In the award process, the board of county commissioners reserves the right to reject, in whole or in part, any and all responses for any reason including, but not limited to, non-responsiveness of response(s), unavailability of adequate funding, unreasonable price in bid(s), non-responsibility of respondent(s), or a change in the requirements since the issuance of a solicitation, or where the board of county commissioners determines the public interest requires such rejection.
- (k) In cases of tie bids or responses (monetary as well as all award criteria identified) preference shall be given to the respondent with a drug-free workplace program. If none or all of the tied firms have a drug-free workplace program, award will be made based on a lot drawn by the county manager or his or her designee before at least three witnesses.
- (l) In the event all bids for a project exceed available budgeted funds, the board of county commissioners may authorize negotiation of the bid price with the lowest responsive and responsible bidder in order to bring the bid within the amount of available funds, or reject all bids and authorize re-advertisement, as the board deems appropriate.
- (m) In the event the lowest responsible and responsive bidder or first ranked respondent fails to execute the contract awarded through the competitive solicitation process within a reasonable time, the board of county commissioners may award the contract to the next lowest responsible and responsive bidder or second ranked respondent, and in a like manner to the next, if necessary. When awarding a contract to the next lowest bidder or next ranked respondent due to default of the lowest respondent or highest ranked respondent, the board of county commissioners shall reserve the right to seize the bid bond of the lowest bidder or highest ranked respondent for failure to faithfully perform under the terms of the specifications.
- (n) When bonding is required, bonding requirements shall be stated in the solicitation documents. For construction projects which are estimated at \$200,000.00 or above, a bid bond in the amount of five percent shall be required of the vendor. Upon award of a contract for construction projects that are \$200,000.00 or

above, a public construction bond, in an amount equal to the total price will be required of the vendor. This requirement shall not preclude a user department from requesting bonds for projects under \$200,000.00.

- (o) When only one bid or proposal is received under a competitive solicitation process, or the purchase is deemed to be proprietary, negotiation is permitted in order to obtain a fair and reasonable price. If the low responsive bid or proposal received is considered by the chief procurement officer to be high, they shall have the authority to negotiate a lower price with the low responsive bidder or first ranked respondent.

(Ord. No. 07-52, § 13, 11-6-07; Ord. No. 13-08, § 2(Exh. 1), 3-5-13; Ord. No. 15-19, § 1, 5-19-15 ; Ord. No. 18-04, § 8, 3-20-18; Ord. No. 22-44 , § 2(Exh.), 10-4-22)

Sec. 2-114. Protested solicitations and awards.

In any competitive solicitation context, no later than the business day following the day approval is granted the purchasing department will electronically notify a representative of each respondent of the award decision. Approval by the awarding authority does not constitute formation of a contract.

After notification of the award decision, any party with standing may challenge the decision by initiating an action in the Circuit Court of the Fourteenth Judicial Circuit in Bay County against the board of county commissioners. If a party intends to initiate such an action, it must electronically notify the chief procurement officer and the county attorney no later than one business day after notice of the awarding authority's decision. The notice shall contain at a minimum: the name of the protestor; the protestor's address and phone number; the name of the protestor's representative; the name and bid number of the solicitation; and a brief factual summary of the basis of the challenge.

If no such notice is received by the county, the county may proceed to execute a contract to formalize the award decision. If the county does receive notice of intent to challenge the decision, the county will stay the contracting process, unless the county manager determines that the contract must proceed without delay to protect substantial interests of the county. If a party notifies the county of its intent to challenge a decision under this subsection, it must file its challenge within 14 business days after providing its notice. If the party fails to file its action within this period, the county may proceed with the contracting process. If the party files its action, the court will uphold the county's decision unless the court determines that the awarding authority did not act in good faith and the challenger demonstrates illegality, fraud, oppression or misconduct by the county or anyone acting on the county's behalf.

No action other than an award decision can be protested, including (i) requests for quotations or requests for qualifications; (ii) rejection of some, all or parts of bids or proposals; (iii) disqualification of bidders as non-responsive or nonresponsible; or (iv) recommended awards less than the mandatory bid or proposal amount. Challenges to specifications and scope of work must be submitted prior to the solicitation submission due date or that challenge shall be waived.

This challenge must be accompanied by a protest bond of an amount equal to one percent of the value of the solicitation, but in no case less than \$500.00 nor greater than \$5,000.00. This bond shall be in cash or by a U.S. postal service money order, certified cashier's or bank check payable to Bay County Board of County Commissioners. Failure to post such bond within two business days after the notification of intent to challenge shall result in the challenge being dismissed.

The bond required by this section shall be conditioned upon the payment of all costs and charges which may be adjudged against the person filing the request for a formal hearing. If the person challenging the award prevails, the bond shall be returned to the protestor; however, if, after completion of a formal hearing in which the county prevails, the bond shall be forfeited, and the county shall be entitled to recover the costs and charges, excluding attorney's fees, of such hearing. The entire amount of the bond also shall be forfeited if the court determines that

a protest was filed for frivolous or improper purpose, including, but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost for the county or other parties.

Litigation and Arbitration.

The county staff shall not issue any purchase orders or contracts to any vendors currently involved in litigation or arbitration with Bay County until such time as a satisfactory resolution is reached with such vendors; however, the board may, in its sole discretion, award purchase orders or contracts to such vendors.

(Ord. No. 17-03, § 1, 2-7-17; Ord. No. 18-04, § 9, 3-20-18; Ord. No. 22-44 , § 2(Exh.), 10-4-22)

Editor's note(s)—Ord. No. 17-03, § 1, adopted February 7, 2017, repealed § 2-114 and enacted a new § 2-114 as set out herein. Former § 2-114 pertained to similar subject matter and derived from Ord. No. 07-52, November 6, 2007; Ord. No. 13-08, March 5, 2013; and Ord. No. 14-29, November 18, 2014.

Sec. 2-115. Approval.

- (a) *Purchasing authority.* Purchasing authority identifies who must approve the purchase of goods and services up to a dollar threshold amount and when a purchase must be brought before the board of county commissioners for approval and award.

Division manager/superintendent/section chief/buyer (purchasing department)	Not to exceed \$10,000.00
Department director/Chief Officer Purchasing Administrator/Contract Administrator (Purchasing Department)	Not to exceed \$20,000.00
Chief procurement officer	Not to exceed \$50,000.00
Deputy county manager	Not to exceed \$100,000.00
Deputy County Attorney/County attorney	Not to exceed \$150,000.00
County manager	Not to exceed \$150,000.00
Board of county commissioners	Over \$150,000.00

Each individual representing a level of purchasing authority must have a completed signature authorization form on file with the purchasing department and the clerk's finance office.

- (b) *Contract signature authority.* Contract signature authority identifies who must sign the contract, lease, or agreement and when a contract, lease, or agreement must be brought before the board of county commissioners for approval and execution.

Chief procurement officer	Agreements up to \$50,000.00
Deputy county manager	Agreements up to \$100,000.00
County attorney	Agreements up to \$150,000.00
County manager	Agreements up to \$150,000.00
Board of county commissioners	Agreements over \$150,000.00

- (c) *Exceptions.*

- (1) In an emergency, as determined by the county manager, authorization to contract in excess of \$150,000.00 is granted to the county manager, with consent from the chairman, with the provision that it be ratified by the board of county commissioners at their next regularly scheduled meeting.

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- (2) Items approved by the board of county commissioners as a budget line item do not require further approval if purchased from a state term contract or other authorized cooperative agreement that has been competitively procured.
 - (3) Capital improvement projects not exceeding \$250,000.00 and approved by the board of county commissioners as a budget line item do not require further approval if purchased from a competitive solicitation, state term contract or other authorized cooperative agreement that has been competitively procured.
 - (4) To the extent that purchases of insurance coverages for the county do not exceed the total yearly budget approved by the board of county commissioners for such purchases in such budgetary year, authorization to purchase coverage in excess of \$150,000.00 is granted to the county manager or designee and signature authority may be delegated to the county ~~risk manager~~ chief risk officer.
 - (5) Authorization to purchase utility services, as described in section 2-105, in excess of \$150,000.00 is granted to the county manager.

(Ord. No. 07-52, § 15, 11-6-07; Ord. No. 08-26, § 3, 5-27-08; Ord. No. 13-08, § 2(Exh. 1), 3-5-13; Ord. No. 15-19, § 1, 5-19-15 ; Ord. No. 20-03 , § 6, 2-19-19; Ord. No. 22-44 , § 2(Exh.), 10-4-22)

Ord. No. 15-19, § 1, adopted May 19, 2015, changed the title of § 2-115 from "Small procurements" to read as set out herein.

Sec. 2-116. Procurement under federal or state procedures.

- (a) When a procurement involves the expenditure of federal or state assistance or contract funds, federal or state laws and regulations which are mandatory and applicable shall be complied with, the provisions of this division notwithstanding. The county manager or his designee shall include contract provisions giving the contractor notice of these requirements and, where appropriate, include in those contract provisions the requirements that the contractor give a similar notice to all his subcontractors.
- (b) In accordance with 2 CFR 200.113, the county manager shall disclose, in a timely manner, in writing to the federal awarding agency or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting federal awards. Any employee, officer, or agent of the county who has knowledge or suspicion of a violation potentially affecting federal awards will report this to their immediate supervisor who will then report the instance to the county manager for him or her to further evaluate. In the case that the violation involves the employee, officer, or agent's immediate supervisor, the employee may report the instance to the next person in the county's hierarchy. If the county manager has determined that a violation has occurred, the violation will be reported to the appropriate authority.

(Ord. No. 07-52, § 16, 11-6-07; Ord. No. 16-26, § 1, 7-19-16)

Sec. 2-117. Suspension and debarment.

- (a) *Suspension.* After consultation with the county attorney, the chief procurement officer is authorized to suspend a vendor from consideration for award of contracts if there is probable cause to believe that the vendor has engaged in any activity which might lead to debarment pursuant to subsection (c) below. The suspension shall be for a period not to exceed three months, and the chief procurement officer shall immediately inform the board at the next available regular session and provide notice to the affected vendor.

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- (b) *Debarment.* After reasonable notice and an opportunity for the suspended vendor to be heard, the board shall either debar such vendor or terminate the suspension. The debarment should be for a period of not more than three years.
- (c) *Grounds for debarment include:*
- (1) Entry of a plea of guilty, or no contest, or nolo contendere to or conviction of a criminal offense as an incident to obtaining or attempting to obtain public or private contract or subcontract, or in the performance of such contract or subcontract; or
 - (2) Entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty; or
 - (3) Entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal antitrust statutes arising out of the submission of bids or proposals; or
 - (4) Violation of contract provisions, as set forth below, the character which is regarded by the board to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A past record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;
 - (5) Having been adjudicated guilty of any violation of the Bay County Building Department Licensing Division or the State of Florida Construction Industry Licensing Board within the past 12-month period prior to the time of bid submittal; or
 - (6) Having been adjudicated guilty by the Bay County Code Enforcement Board or the Department of Environmental Protection of any violation of an environmental ordinance within the past six-month period at the time of bid submittal; or
 - (7) Having been disqualified or found nonresponsive, based on the vendor's fraud or disqualification; or
 - (8) Having been adjudicated insolvent, having proceedings in bankruptcy instituted against it, or having a receiver or trustee appointed over its property; or
 - (9) Being in a proceeding (i.e., court proceeding, arbitration, or administrative proceeding) adverse to the county or having unresolved financial claims pending by or against the county for a period of more than 60 days; or
 - (10) Having been suspended or debarred by any other government entity; or
 - (11) Any other cause the board of county commissioners determines to be so serious and compelling as to affect responsibility as a county vendor, including debarment by another governmental entity.
- (d) *Notice of decision.* The county manager or board chairman shall issue a written notice to the vendor of the decision to debar or suspend. The final decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial review by certiorari appeal to the Fourteenth Judicial Circuit Court. The written decision shall be mailed or otherwise furnished immediately to the debarred or suspended vendor.
- (e) *Public entity crime.* Notwithstanding any other provision herein, any vendor who has been convicted of a public entity crime as defined in F.S. § 287.133 shall not be able to transact business with the county to the extent as specified in the statute.

(Ord. No. 07-52, § 17, 11-6-07; Ord. No. 18-04, § 10, 3-20-18; Ord. No. 22-44 , § 2(Exh.), 10-4-22)

Sec. 2-118. Miscellaneous provisions.

- (a) In all cases of procurement brought before the board of county commissioners, whether by bids, sealed proposals, competitive negotiations or otherwise, the board of county commissioners reserves the right to reject, in whole or in part, any and all bids, sealed proposals or negotiations, and cancel the procurement as they may deem in the best interest of the county.
- (b) In all procurements or procurement contracts, including those to be executed by the chairman of the board of county commissioners, such contracts shall include a provision that payments by the county shall be made under the county's established procedure for payment following receipt of invoice and otherwise provided by Florida law.
- (c) In all procurements in which there is a requirement for insurance and/or surety bond, the vendor shall provide such insurance requirements and bond requirements in the form and in the amount acceptable to the county, prior to the effective date of the procurement contract, or sooner if so stated in the bid specifications. All insurance and surety requirements shall be approved by the county's risk management department.

(Ord. No. 07-52, § 18, 11-6-07; Ord. No. 13-08, § 2(Exh. 1), 3-5-13; Ord. No. 18-04, § 11, 3-20-18)

Sec. 2-119. Change orders.

If it is found that a change order is required to correct errors, omissions, or discrepancies, or to direct other changes to meet unforeseen field, emergency, climatic, regulatory, or market conditions, the following shall apply:

Change orders to purchases.

- (1) If the change order is an increase that exceeds a cumulative total of ten percent of the contract price or a cumulative cost exceeding \$100,000.00, or there is a materially significant change in the scope of services, the change shall be approved by the appropriate signatory authority based on the dollar value of the contract.
- (2) All change orders must be in writing and include the additional scope of work, the amount of the change order, any additional days added to the contract and the new total of the contract.
- (3) If direct purchasing is being utilized in connection to a construction project, a deduct change order to the contractor in the amount of the direct purchase, shall be made in writing.
- (4) If the project is unable to proceed without the approval of a change order that requires board approval, the county manager has the authority to approve the change order and bring it before the board for ratification at the next regularly scheduled meeting with documented explanation of the condition.
- (5) Resolution 3623, adopted by the Bay County Board of County Commissioners on September 4, 2019, and which authorizes the chairman of the board of county commissioners to execute certain modifications of construction contracts under certain circumstances, is hereby incorporated by this reference.

Contract amendments. Contract amendments, other than change orders, which provide for the alteration of specifications, delivery point, time, payments, quantity, or similar provisions of a contract without materially changing the scope of the project, may be approved by the appropriate signatory authority based on the dollar amount of the amendment.

(Ord. No. 07-52, § 19, 11-6-07; Ord. No. 13-08, § 2(Exh. 1), 3-5-13; Ord. No. 18-04, § 12, 3-20-18; Ord. No. 20-03, § 7, 2-19-19)

Sec. 2-120. Direct purchases.

The county may elect to purchase materials and equipment included in any contractor's bid for a portion of the work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to herein as "direct purchase materials." The contractor shall submit to the county a list, of materials and equipment appropriate for consideration by owner as direct purchase materials.

If the county elects to purchase any direct purchase materials, the contractor shall promptly furnish to the county, at least seven days prior to the date such direct purchase materials must be ordered, a written cost estimate to purchase the approved direct purchase materials.

Upon the county's receipt of the estimate and supporting materials, the county will review the same and, if approved, issue a certificate of entitlement to the contractor along with a purchase order directly to the supplier of the applicable direct purchase material, with delivery F.O.B. project site.

(Ord. No. 07-52, § 20, 11-6-07; Ord. No. 13-08, § 2(Exh. 1), 3-5-13)

Sec. 2-121. County employees.

The procurement system shall not be utilized by county employees to purchase goods or services for personal use.

(Ord. No. 07-52, § 20, 11-6-07)

Sec. 2-122. Design-build contracts.

The county manager may determine that entering into a design-build contract is in the best interest of the county. In making such decision, the county manager will consider the following factors:

- (1) The potential for cost savings and/or cost reduction.
- (2) The need or potential for reducing the time to complete the project.
- (3) The need or potential for enhancing revenue production by expediting completion, activation and operational use of the project.
- (4) The need or potential to expedite the completion, activation and operation of the project due to public service considerations or user division operational needs and requirements.
- (5) The potential for collaboration to develop designs and construction methodology that could provide a project with enhanced qualities of aesthetics, innovative use of materials, economy of construction, operational efficiency, and/or functional effectiveness.
- (6) The need or potential for protecting, preserving and enhancing the health, safety and welfare of the public.

(Ord. No. 13-08, § 2(Exh. 1), 3-5-13)

Sec. 2-123. Reserved.

Editor's note(s)—Ord. No. 21-07, § 2, adopted April 20, 2021, repealed § 2-123, which pertained to local preference in purchasing and derived from Ord. No. 14-04, § 2, adopted Feb. 18, 2014; Ord. No. 16-26, § 1, adopted July 19, 2016; and Ord. No. 18-04, § 13, adopted March 20, 2018.

Sec. 2-124. Prohibited communication.

- (a) Any form of communication shall be prohibited regarding a particular request for proposal, request for qualification, bid, competitive solicitation, or other procurement between:
 - (1) Any person or person's representative seeking an award from such procurement; and
 - (2) Any county commissioner or any county employee authorized to act on behalf of the commission on such procurement.
- (b) A person's representative shall include, but not be limited to, the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.
- (c) The prohibited communication period shall commence on the advertisement of the proposal, bid, or other procurement, and shall terminate at the time the county awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the procurement process. The prohibited communication period shall include any period in which a protest has been submitted and until final disposition of the protest, provided that the protestor may communicate with the county's chief procurement officer and the county attorney's office regarding the protest.
- (d) The provisions of this section shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection or evaluation committees, contract negotiations during any public meetings, presentations made to the board, and protest hearings. Further, the provisions of this section shall not apply to contract negotiations between any employee and the intended awardee, communications with the county attorney, or communications with the chief procurement officer.
- (e) The provisions of this section shall not apply to any procurement in an amount less than \$150,000.00.
- (f) Prohibited communications may result in disqualification from the particular request for proposal, request for qualification, bid, or other competitive solicitation and shall be grounds for suspension from doing business with the county.

(Ord. No. 14-29, § 1, 11-18-14; Ord. No. 18-04, § 14, 3-20-18; Ord. No. 22-44 , § 2(Exh.), 10-4-22)

Editor's note(s)—Ord. No. 14-29, § 1, adopted Nov. 18, 2014, supplied provisions to be added to this Code as § 2-123. Inasmuch as there are already provisions designated as such, at the discretion of the editor, these provisions have been redesignated as § 2-124.

Secs. 2-125—2-130. Reserved.