

# TOWN OF SOUTHWEST PROCUREMENT MANUAL



*Pursuant to Ordinance  
2022-005*

*Passed First Reading - 1/27/2022  
Adopted Second Reading 2/10/2022*

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## **ARTICLE IX. PROCUREMENT CODE<sup>1</sup>**

### **Sec. 2-198. Short title.**

This article may be cited as the "Town of Southwest Ranches Procurement Code."

(Ord. No. 2022-005, § 1, 2-10-2022)

### **Sec. 2-199. Purpose.**

The purpose of this procurement code ("code") is to establish specific directions and guidelines for employees and agents of the Town of Southwest Ranches ("town") to use in purchasing commodities and services. All request for commodities and/or services, and all purchases shall be for a public purpose and in accordance with this code. This code provides the policies and procedures that frame the purchasing of contractual services and commodities starting with defining the procurement and proceeding through award of the contract or purchase order. The town is committed to a system that provides quality, integrity and competition in a professional manner. Generally, purchasing procedures provide a mechanism to allow commodities and services to be purchased at the lowest possible cost, and consistent with the quality needed to meet the requirements of the town. In addition to the procedures set forth in this code, the town shall also adhere to the requirements of recently enacted 2 CFR 200 Federal Regulations, where applicable and state statutes, to the extent applicable to the town. All forms contained within the code may be amended in the best interest of the town by the town administrator from time to time.

(Ord. No. 2022-005, § 2, 2-10-2022)

### **Sec. 2-200. Authorization for the use of electronic transmissions.**

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with state applicable statutory regulatory or other guidance for use of such media, so long as such guidance provides for:

- (1) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
- (2) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

(Ord. No. 2022-005, § 3, 2-10-2022)

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<sup>1</sup>Editor's note(s)—Ord. No. 2022-005, adopted February 10, 2022, amended article IX in its entirety to read as herein set out. Former article IX, §§ 2-200—2-226, pertained to similar subject matter, and derived from Ord. No. 2011-015, adopted September 22, 2011.

The exhibits referenced within this article are not codified herein but can be inspected upon request at the town clerk's office.

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## **Sec. 2-201. Overview and background.**

The purpose of this purchasing manual ("manual") is to establish specific directions and guidelines for employees and agents of the Town of Southwest Ranches ("town") to use in purchasing goods and services. All requests for goods and/or services, and all purchases shall be for a public purpose and in accordance with this policy unless otherwise exempt under this policy. This article provides the policies and procedures that frame the purchasing of contractual services and commodities starting with the purchasing policy and proceeding through writing the contract document or purchase order. The scope of this introduction is limited to outlining the organization of the operating procedures along with a brief overview of the content of each section. In addition to the procedures set forth in this article, the town shall also adhere to the requirements of state statutes and federal regulations, to the extent applicable to the town.

The town is committed to a system that provides quality, integrity, and competition in a sound and professional manner. Procurement guidelines allow for the necessary commodities and services to be purchased at the lowest possible cost, consistent with the quality needed to meet the requirements of a government.

In accordance with section 9.03 of the Town's Charter, the June 6, 2000, version of the Broward County Procurement Code had served as the town's procurement code since the town's incorporation. Subsequently, the town adopted Ordinance No. 2011-015 on September 22, 2011, as its initial procurement code and further revised its procurement code with Ordinance 2012-08 on July 12, 2012. In the future, all requests for commodities and/or services, and all purchases shall be for a public purpose and in accordance with this new procurement code once adopted. This new code provides the policies and procedures that frame the purchasing of contractual services and commodities starting with defining the procurement and proceeding through award of the contract or purchase order. Additionally, this new code allows the town to continue its commitment of a system that provides quality, integrity, and competition in a sound and professional manner. Generally, purchasing procedures provide a mechanism to allow commodities and services to be purchased at the lowest possible cost, and consistent with the quality needed to meet the requirements of the town. Procurement continues to be a dynamic process that is continually evolving and that requires revision of procurement methods as experience and requirements change

Commencing in 2017 (FY 2018) and then lastly through late 2021 this article, with sample exhibits and flowcharts, was developed and prepared by the finance and budget department. It also was revised to incorporate new and required federal and state pronouncements, including 2 CFR 200 regulations.

Subsequently, it has been reviewed and vetted by staff, appointed by the town administrator consisting of Russell Muniz, assistant town administrator/town clerk; Rod Ley, public works director/town engineer; Emily Aceti, community services manager; December Lauretano-Haines, parks, recreation and open space manager; and Sandy Luongo, general services manager. The town legal department has also evaluated and reviewed for a thorough compliance.

(Ord. No. 2022-005, Exh. A(1.0), 2-10-2022)

## **Sec. 2-202. General guidelines.**

- (a) All contracts and all purchases will be authorized through and by the town administrator or designee. All duly authorized contracts shall be executed by the mayor or designee, and the town attorney as to form, in accordance with the Town's Charter.
- (b) It is unlawful for a town officer or employee to order the purchase of any materials, supplies, equipment, or contractual services, or make any contract other than through the town administrator or designee. Any purchase order or contract made contrary to the provisions hereof shall be deemed an unauthorized purchase and deemed null and void.
- (c) The policies and procedures in this article do not preempt the procedures used for the town's accounting.

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- (d) Except as provided in the code, purchases in excess of level 3 require town council approval and shall be made utilizing an advertised sealed bid, proposal or qualifications process.
  - (e) No contract, purchase, field purchase orders, or group of requisitions shall be subdivided to avoid the bid solicitation or quotation process.
  - (f) All correspondence with suppliers shall be through the town administrator or designee, except in special cases where technical details involved make it advisable to delegate authority to others. In such cases, the town administrator or designee must receive copies of all correspondence.
  - (g) All contracts exceeding the town administrator's authorization level shall be reviewed and approved by the department director, town attorney, and town administrator prior to execution. Once executed, the original contract shall be retained by the town clerk's office.
  - (h) Deviations from the policies and procedures prescribed herein shall not be made without prior approval of the town administrator.
  - (i) A town employee including its council members, officers, and employees shall comply with the standards of conduct for public officers, employees and agents in accordance with F.S. ch. 112 to the extent applicable to the town.
  - (j) Additionally, to the extent not inconsistent with applicable law, the terms and conditions of any federal, state or local grant may be incorporated into the solicitation terms for the subject project.
  - (k) *Authorization for the use of electronic transmissions.* The use of electronic media, including acceptance of electronic signatures, is authorized consistent with state applicable statutory regulatory or other guidance for use of such media, so long as such guidance provides for:
    - (1) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
    - (2) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

(Ord. No. 2022-005, Exh. A(2.0), 2-10-2022)

### **Sec. 2-203. Purchasing authorization.**

- (a) The acquisition of supplies, equipment, and services necessary for the daily operations of the town shall be the ultimate responsibility of the town administrator. Individual departments are responsible for requesting supplies, equipment, and services as necessary for their departmental operations. The town administrator is responsible for administering this code. The town administrator is authorized and responsible for establishing and administering purchasing policies and procedures consistent with this code. Such administrative policies shall also include guidelines and requirements for the use of purchasing cards and for claims vouchers or check requests.
- (b) The town council, having the power to acquire commodities and/or services as well as personal and real property, delegate that responsibility to the town administrator to the extent provided in the code. Town council approval is required for all purchases of goods and services, including all commodities, contractual services, and award of construction projects when the cost is in excess of level 3, as defined below. Unless an exemption applies pursuant to the terms of state law or this code, competitive procurement shall be conducted for purchases more than level 3.
- (c) The town administrator may exempt a transaction(s) from the standard processes of this code if the transaction presents an emergency or if otherwise exempt in accordance with state law or this code. In the event of an emergency (as defined in subsection 2-215(b)), the town administrator shall provide for

competition to the extent practicable. The town administrator shall also have discretion to suspend or terminate any solicitation or pending procurement when deemed in the best interest of the town.

- (d) *Specific approval authority levels.* Authority to approve purchases shall be in accordance with the thresholds, applicable to both individual transactions and aggregate amounts spent with a single vendor for a specific commodity or service, as set forth in the table A, below.

Table A: Approved Thresholds

Amount	Authority
<b>Level 1:</b> Less than \$1,000.00	<b>Department head</b> No quotations are required.
<b>Level 2:</b> Equal to or greater than \$1,000.00 But less than \$2,500.00	Purchasing card, when applicable, or claim voucher by department head and written approval by town administrator 2 written or verbal quotes to the extent practicable.
<b>Level 3:</b> Equal to or greater than \$2,500.00 But less than \$25,000.00	<b>Town administrator</b> 3 written quotes are required.
<b>Level 4:</b> Equal to or greater than \$25,000.00	<b>Town council</b> Competitive procurement

- (e) In accordance with the approved thresholds, the town administrator has the following authority:
- (1) Award contracts for the purchase of commodities and contractual services, which are exempt from the requirements of formal competitive procurement when the total cost does not exceed level 3.
  - (2) Renewal of all contracts at or below level 3 for commodities and contractual services provided that the following criteria are all satisfied:
    - a. The terms and conditions of the original contract expressly provide for the town's right to renew the contract at the same prices as originally awarded by the town council or within price adjustment clause parameters as defined in the solicitation documents or agreement.
    - b. The town administrator has performed a market survey and/or contract quality review to determine if renewal of the contract is in the best interest of the town. For commodities and contractual services originally procured through the request for proposals or letter of interest processes, a market survey shall be performed only if the town administrator determines that, due to a significant change in the industry or profession providing the services, an evaluation of current market conditions would be effective.
    - c. The town administrator has evaluated the performance of the contractor under the existing contract term and has determined in writing that such performance meets established criteria regarding service, responsiveness, and quality levels.
- (f) To sell, trade or otherwise dispose of surplus and obsolete personal property belonging to the town either by sale, barter, or exchange, by sealed bid, public auction, trade in or any other means of disposal as may be appropriate and in the best interests of the town. Disposal of surplus or obsolete personal property more than an aggregate value of one thousand dollars (\$1,000.00) or two hundred fifty dollars (\$250.00) per item, per quarter, shall be made only after approval by the town council. (Also per Resolution 2013-051.)
- (g) Leases of real property must be authorized and approved by the town council. Any lease agreements for the use of Town Hall whether exclusive or non-exclusive, shall not exceed one (1) year.
- (h) The town administrator shall have no authority to purchase, lease or sell real property without prior town council authorization and approval.

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(Ord. No. 2022-005, Exh. A(3.0), 2-10-2022)

**Sec. 2-204. Department responsibility.**

- (a) *Purchasing.* The town administrator or designee shall adhere to a high standard of ethics, and promote the town's reputation for courtesy, transparency, fairness and impartiality. The responsibility for achieving this goal rests with each individual who participates in the purchasing process.

Staff involved with the purchasing process is responsible for administering purchasing policies and shall be charged with the responsibility of ensuring that all purchases are made legally and responsibly in compliance with this article and any adopted policies, as well as applicable federal, state, and local laws.

- (b) *User departments.* User departments shall allow ample time for the town administrator or designee to place the order and for the vendor to deliver; provide clear and accurate descriptions of goods and services to be purchased; provide technical specifications; not subdivide any purchase or contract solely to avoid competitive procurement/solicitation or approval requirements as prescribed in this article; and verify receipt of commodities or completion of services in accordance with initial purchase request.

- (c) *Requestor.*

- (1) Complete the purchase requisition form (exhibit 16).
- (2) Follow the town's purchasing policies and procedures outlined in the purchasing manual.
- (3) Prepare clear and unrestrictive technical specifications when needed for products or services.
- (4) Send complete and proper specifications for bid solicitation, or proper documentation when exercising an option to "piggyback" or declaring sole/single/emergency source procurement in lieu of performing our own competitive bid process.

(Ord. No. 2022-005, Exh. A(4.0), 2-10-2022)

**Sec. 2-205. Contract administration.**

- (a) A contract is the legal document that spells out the responsibilities of the supplier of commodities or services and the town. Clarity is essential so that disputes can be avoided. Contract types vary according to form, and according to the distribution of risk and responsibility between the supplier/contractor and the town. There are three (3) major elements or stages of the purchasing process, each of which is equally important:

- (1) *Planning and scheduling purchasing and purchasing activities to meet program and budgetary objectives:* Planning is necessary in order to consolidate purchases and achieve economies of scale. Scheduling takes advantage of market cycles by anticipating the best time to buy. Departments that budget effectively estimate their need for commodities and services in advance. From these estimates, a purchasing schedule can be created that takes into account and consolidates department needs.
- (2) *Source selection:* This is the process through which solicitations are issued, advertisements run, vendors selected, and commodities or services received. Staff in both user departments and working with the finance and budget department must work closely to define what is to be purchased. Together, they develop specifications and scopes of work reflecting the department's knowledge of its needs in obtaining commodities or services and the town administrator or designee's knowledge of the market. The town administrator will determine the appropriate purchase method and type of contract, and the appropriate staff shall issue the solicitation and receive bids/offers in response to the competitive process or as otherwise provided in this code. The appropriate staff shall obtain the executed contracts and the commodities/services shall be delivered in accordance with the solicitation.

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- (3) *Contract monitoring and administration:* Lead responsibility for contract administration primarily falls on department personnel with advice and support from the finance and budget department. All new contracts in excess of five hundred thousand dollars (\$500,000.00) (cumulative throughout the term of the agreement and pursuant to an end date) will include a debrief meeting utilizing (exhibit 14) which will include procurement, town legal staff, the responsible department, and finance and budget staff. The town's procurement and budget officer will be charged with scheduling these occurrences which will be documented through the contract debrief form (see exhibit 14).
- (b) *Contract administration.* This element ensures that the terms of the purchase order/agreement are enforced and that invoices comply with the terms of the purchase order or contract and are timely paid. Invoices are approved and submitted for payment through the finance and budget department, and the quality of commodities and services are monitored and evaluated by the user department. If the department wishes to change the specifications or scope of services, it consults with the town administrator or designee to negotiate a change order. If the department is dissatisfied with its purchase, then the department or designated employee forces corrective action by the vendor. When the contract is completed, the department staff "closes out" the solicitation with the assistance of the procurement and budget officer or designee if needed (for example, recovering equipment from the vendor, completing, and evaluating the purchase, making sure all bills are paid and the purchase file is complete, and forwarding suggestions for improvements to the town administrator or designee). The appropriate staff may notify the vendor of applicable suggestions and comments. This is the final phase of the purchasing cycle and begins at the point a contract or purchase order is executed. The objective of contract administration (user department and town administrator or designee) is to ensure that the vendor complies with the contract. Only then can the public be sure that it received what it paid for.

The common types of contract types are as follows:

- (1) *Multi-term contracts.* A contract for commodities or services may be entered into for any specified period of time deemed to be in the best interests of the town, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting.
  - (2) *Multiple source contracting.* A multiple source award is an award of an indefinite quantity contract for one (1) or more similar supplies or services to more than one (1) bidder or offeror. The town shall not be held responsible for any invoice, change or claim of whatever charge or nature unless the purchase of goods or services is approved in accordance with procurement code.
  - (3) *Open-end contracts.* The town administrator or designee shall issue open-end contracts as necessary and reasonable, based on competitive pricing. Except as otherwise required by state law, the estimated annual usage shall govern the proper authority for awards of these contracts.
  - (4) *Contract terms.* Contracts shall contain such terms and conditions necessary to protect the interests of the town, and as may be required by law, including, but not limited to, insurance, indemnification, liquidated damages, bonding and termination, with and without cause.
- (c) *Renewal of contract.* Unless otherwise provided by law, a contract for commodities or services may be entered into for any period of time deemed to be in the best interest of the town, provided the term of the contract and conditions for renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the renewal. (See exhibit 3, contract renewal form.)
- (d) *Extension of contract.* Extension of a non-chartered official contract shall be in writing for a period not to exceed a cumulative total of two (2) years and shall be subject to the same terms and conditions set forth in the initial contract.
- (e) *Termination of contract.* Generally, a contract can only be terminated under conditions specified within it. Contracts can be terminated for non-performance (default) if, after being notified, the vendor fails to comply



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with the terms of the contract. Contracts may also be terminated for convenience by the town, to cover unforeseen circumstances, where commodities or services are no longer needed, as a result of budgetary constraints, or for any other reason(s) including defamation/slander deemed to be in the town's best interest, and in its sole discretion.

(Ord. No. 2022-005, Exh. A(5.0), 2-10-2022)

### **Sec. 2-206. Change orders.**

Any change in the contract price, scope of work or time for completion of any project following the award of a contract by the town council shall be by a written change order, approved by the town administrator or designee. Change orders must be executed by the town administrator. change orders must be executed by the town with the same formalities of the initial contract. Town council approval is required for change orders equal to or greater than twenty-five thousand dollars (\$25,000.00). A reduction in dollar value/rates or minor changes in specifications, terms or conditions that do not increase the cost, time for completion or scope of the project may be approved in writing by the town administrator without formal council approval. The requesting department shall create a purchase order for the change order amount after the change order is approved.

(Ord. No. 2022-005, Exh. A(6.0), 2-10-2022)

### **Sec. 2-207. Competitive bidding and other procurement methods.**

- (a) When a one-time purchase or an accumulation of multiple purchases for a specific commodity or service (whether over a period of one (1) year or over a period that spans the fiscal year) is more than level 3, user departments are expected to consult with the town administrator or designee for competitive bidding or alternative options.
- (1) Purchases of materials, supplies, equipment, and contracted services within level 4 will normally be acquired through competitive bidding.
  - (2) The only exceptions permitted to this policy are those authorized in the procurement code. Typical purchasing methods include the following:
    - a. *Request for quotation (RFQ)*: A solicitation process not publicly advertised which commonly involves standard well-defined commodities or services for costs below level 4. A response to an RFQ by a prospective vendor is not considered intent to award and does not form a binding contract.

Department head will ensure vendor completes, if applicable, and returns the following forms and is approved by procurement before authorizing purchase.

      1. Current W-9 IRS form.
      2. Vendor application.
      3. Sunbiz incorporation information (Florida Department of State Division of Corporations, [www.sunbiz.org](http://www.sunbiz.org)).
      4. E-Verify memorandum of understanding registration certificate.
      5. General terms and conditions.
      6. 2 CFR 200 checklist if required for purchase.
    - b. *Request for information (RFI)*: Made typically during the project planning phase where town staff cannot clearly identify product requirements, specifications, and purchase options. RFIs clearly

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indicate that award of a contract will not automatically follow. Information gathered through an RFI is commonly used to create a solicitation document.

- c. *Invitation for bid (IFB)*: A sealed bid process which means a written solicitation for competitive sealed bids with the title, date and time of the public bid opening designated and specifically defining the commodity, group of commodities, or services for bids that are sought.
- d. *Request for proposal (RFP)*: Structured competitive sealed proposals provide for full competition among offerors. The competitive sealed proposals method allows evaluation of other important and complex factors as well as price, such as experience, past performance, approach to the problem posed by the town, etc. Price need not be the most important evaluation criterion in the evaluation, and award is not necessarily determined by the lowest price offered. The evaluation criteria must be weighted and included in the terms of the solicitation.
- e. *Consultants' competitive negotiation act (CCNA)*: Request for letters of interest (RLI). Where applicable, the town adheres to the procedures established by F.S. § 287.055 "Consultants' Competitive Negotiation Act" (CCNA). It is utilized specifically to select "professional" services, including architect, engineer, landscape architect, or land surveying or mapping services, and using an RLI.

It is a two-step method with selection of a vendor made by merit or qualifications first without consideration of price, followed by negotiation of a contract with the firm determined by the town to be the most qualified.

Firm(s) desiring to provide professional services for a project with the town shall timely submit letters of interest containing evidence of current professional status, capabilities, adequacy of personnel, past record and related experience, list of sub-consultants, financial strength and other information required by the RLI necessary for evaluation.

In cases where the CCNA is not applicable based on monetary thresholds, or the type of the service to be provided, procurement of professional services will be made in accordance with the procurement code and may utilize an RLI process where separately sealed price proposals are submitted. In such cases, a selection committee shall short list no fewer than three (3) vendors based upon qualifications and rank the vendors based upon merit, qualifications, and the price proposals which shall be opened after the short listing. In the event that the town receives fewer than three (3) proposals, the committee shall evaluate and rank the responsive proposals received. Negotiation of price is not required. Nothing herein shall be construed as precluding the town from using a two-step contracting method, and where not otherwise prohibited by applicable law.

- f. *Construction services*: The procurement of construction services shall be in accordance with the procurement code and where applicable, the town shall also adhere to the requirements established by F.S. §§ 255.0525 and 255.20.
- g. *Design-build professional services*: Where the town desires one (1) firm to be responsible for both design and construction services, the firm shall be selected and contracted pursuant to F.S. § 287.055.
- h. *Construction management at risk*: This is a method used to procure a construction manager, and which may result in a guaranteed maximum price for construction and time for completion. Such procurements shall be in accordance with the procurement code and in any manner permitted by the F.S. §§ 255.103 and 287.055 or F.S. § 255.20.
- i. *Value engineering*: Contractor may request substitution of materials, articles, pieces of equipment, or any changes that reduce the contract price by making such request in writing. Town will be the sole judge of the acceptability of any proposed substitute, and no substitute will

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be ordered, installed, used, or initiated without town's prior written acceptance by a change order or an approved shop drawing. In no event will any substitution accepted by town result in an increase in the contract price or contract time. By making a request for substitution, contractor agrees to pay directly to town all town's fees and charges related to town's review of the request for substitution, regardless of whether the request for substitution is accepted by town. Any substitution submitted by contractor must meet the form, fit, function, and life cycle criteria of the item proposed to be replaced, and there must be a reduction in contract price including town review fees and charges. If a substitution is approved, the net dollar savings shall be shared equally between contractor and town and shall be processed as a deductive change order. Town may require contractor to furnish, at contractor's expense, a special performance guarantee or other surety with respect to any substitute approved after award of this contract.

(Ord. No. 2022-005, Exh. A(7.0), 2-10-2022)

## **Sec. 2-208. Competitive bid procedure.**

(a) *General guidelines.*

(1) *General requirements.* The following procedures shall be used for purchases within level 4. The town administrator shall be responsible for determining the procurement method (IFB, RFP or RLI) to be used for a particular procurement. The solicitation document should include, at a minimum, the purchase requisition form (exhibit 16):

- a. The purchase description; and
- b. Specifications covering the item(s) needed; and
- c. Terms and conditions of the proposed contract; and
- d. General and special instructions to bidders, including the manner in which bids are to be submitted and the criteria for evaluating them; and
- e. Price sheets for the vendors to submit prices for the items requested and price increases for renewal years; and
- f. An offer and acceptance sheet for the vendor to sign its bid; and
- g. The date, time, and location where bids or proposals will be accepted; and
- h. All responsive/deemed responsible bids are to be valid for a minimum of one hundred twenty (120) days after bid opening.

(2) *Selection and negotiation committees.*

- a. Where a selection committee (SC) or selection and negotiation committee (SNC) is required, the town administrator shall appoint the committee members. Town council members shall not serve on either a SC or a SNC. Selection committees shall have a minimum of three (3) and a maximum of five (5) members and be comprised by an odd number of members. For three (3) member committees, at least one (1) member shall be a town employee, and for five (5) member committees, at least two (2) members shall be town employees. Except as provided in this subsection, no person other than town employees may serve on a SC or SNC. Persons from the private sector may be appointed as members of committees when contractual arrangements require the participation of the private sector. Persons who are experts in certain areas may also be appointed to serve on committees. Additionally, representatives of the Broward County Chapter of the Florida Engineering Society and the AIA Fort Lauderdale may be appointed as members of committees for projects in which such local construction knowledge and experience

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is applicable. All committee members shall be free of conflicts of interest as provided in F.S. pt. III, ch. 112, as amended to the extent made applicable to the town.

- b. Department staff involved in the purchase and the procurement and budget officer, or designee shall assist the SC or SNC with respect to background and reference checks, confirmation of responsiveness, coordination of meetings and other administrative tasks as may be necessary. The office of the town attorney shall provide advisory legal assistance to the committee. A majority of the members of the committee shall constitute a quorum, except in no event shall a quorum be less than three (3) members. Once a quorum is established, a committee meeting may start without regard to the absence of any other committee member. Appearance by telephone or conference call, as may otherwise be provided in this code shall be permitted to achieve a quorum. Physical presence of committee members is required during any meetings wherein presentations or question and answer sessions are conducted with vendors and for ranking decisions. A committee member who is not present during a majority of the presentations or question and answer sessions shall not vote on the ranking itself. Portions of meetings of the SC or SNC shall be exempt from the Sunshine Law in accordance with F.S. § 286.0113.
- c. If no contract negotiation is required, the town administrator may proceed to present the ranking and award recommendation to the town council. If negotiation is required with the top ranked firm, the committee shall proceed to meet with the top ranked firm as soon as practicable in accordance with the standard procedures set forth in this subsection. Alternatively, if negotiation by a committee is not required, and as may be provided in the solicitation, the town may designate a purchasing negotiator, who assisted by town staff, will attempt to negotiate a contract with the first-ranked/highest-evaluated vendor. The negotiated contract will be forwarded by the purchasing negotiator to the town administrator for final consideration by the awarding authority.

(3) *Cone of silence.*

- a. *Defined.* "Cone of silence", as used herein, means a prohibition on any communication regarding a particular request for proposal ("RFP"), request for letters of interest ("RLI") or invitation for bid ("IFB"), between:
  - 1. A potential vendor, service provider, proposer, bidder, lobbyist, or consultant;
  - 2. The town council members, town's professional staff including, but not limited to, the town administrator and his or her staff, or any member of the town's selection or evaluation committees.
- b. *Restriction; notice.* A cone of silence shall be imposed upon each IFB, RFP and RLI, from the time of the advertisement or during such other procurement activities as declared by the town council. At the time of imposition of the cone of silence (exhibit 19), the town administrator shall provide for public notice of the cone of silence by posting a notice at the Town Hall. The town administrator or designee shall issue a written notice thereof to the affected departments, file a copy of such notice with the official procurement file, with a copy thereof to each town council member, and shall include in any public solicitation for goods or services a statement disclosing the requirements of this subsection. Except as set forth in subsection d. during the course of a sealed competitive solicitation, a cone of silence shall be in effect between:
  - 1. Any person or entity that seeks a contract, contract amendment, award, recommendation, or approval related to a sealed competitive solicitation or that is subject to being evaluated or having its response evaluated in connection with a sealed competitive solicitation, including a person or entity's representative; and

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2. The town administrator or any person or group of persons appointed or designated by the town council or the town administrator to evaluate, select, or make a recommendation to the town council or the town administrator regarding a sealed competitive solicitation, including any member of the selection/evaluation committee.
- c. *Termination of cone of silence.* The cone of silence shall terminate at the time the town council takes final action or gives final approval of a contract, or in the event the town administrator rejects all bids or responses, to the sealed competitive solicitation, or takes other action which ends the sealed competitive solicitation process. However, if the town council refers the solicitation back to the administrator, staff or committee for further review, the cone of silence shall be reimposed until such time as the administrator makes a subsequent written recommendation and commencement of the subsequent council meeting.
  - d. *Exceptions to applicability.* The provisions of this section shall not apply to:
    1. Oral communications at pre-bid conferences;
    2. Oral presentations before selection or evaluation committees;
    3. Public presentations or comments made to the town council when the solicitation is on a duly noticed agenda;
    4. Communications in writing with the town employee designated by the solicitation. The bidder or proposer shall file a copy of any written communication with the procurement and budget officer or designee. The procurement and budget officer or designee shall make copies available to any person upon request;
    5. Communications regarding a particular RFP, RLI or IFB between a potential vendor, service provider, proposer, bidder, lobbyist or consultant and the town employee designated responsible for administering the procurement process for such RFP, RLI or IFB, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
    6. Communications with the town attorney and his or her staff;
    7. Duly noticed site visits to determine the competency of bidders or proposers regarding a particular solicitation during the time period between the opening of bids or proposals and the time the town administrator makes his or her written recommendation;
    8. Any emergency procurement of goods or services pursuant to Town Code;
    9. Responses to the town's request for clarification or additional information;
    10. Contract negotiations during any duly noticed public meeting;
    11. Communications to enable town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the town's professional staff including, but not limited to, the town administrator and his or her staff are in writing or are made at a duly noticed public meeting.
  - e. *Penalties.* Prior to an award, violation of this section shall result in the disqualification of the bidder or proposer from further consideration. After an award, discovery of a violation by a particular bidder or proposer shall render any RFP award, RLI award or bid award to said bidder or proposer voidable by the town, and in the town's sole discretion.
- (4) *Public notice.* Unless pre-authorized by the town administrator, public notice of formal competitive solicitations shall be given adequate time prior to the date set forth in the notice for the opening of

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bids and proposals. Such notice shall be given by posting on-line, and by advertising service or publication in a newspaper of general circulation in the town. The notice shall state the place, date and time of the bid or proposal opening. The notice requirements may be altered when required by applicable state statutes.

- a. *Bid and proposal submission.* Bids, proposals and responses to competitive solicitations shall be submitted online via the EBidding platform as per the town's website. Bids, proposals, or responses submitted by fax or email shall not be accepted. Additionally, bids, proposals, or responses which are in pencil shall not be accepted.
1. When required by the solicitation, a pre-bid or pre-proposal meeting may be held after the issuance of the solicitation and before the bid or proposal due date, and in accordance with the solicitation.
  2. Bids and proposals shall be opened publicly by the town administrator or designee and shall be witnessed by any person duly authorized by the town administrator at the time and place designated in the public notice of the solicitation. Persons in attendance at all bid meetings shall be documented by sign-in sheet.
  3. For all proposals, a register of proposals shall be prepared and maintained by the procurement and budget officer or designee containing the name of each offeror.
  4. No late bids shall be accepted or opened if received after the date and time specified in the public bid notice. All late bids shall be returned, unopened to the bidder or offeror.
  5. Where applicable, selection committee meetings must be publicly noticed, convened and recorded within reasonable time from the opening and in accordance with the solicitation and F.S. §§ 286.011 and 286.0113. Notwithstanding anything herein which may be construed to the contrary, information which is exempt from public inspection or copying pursuant to F.S. § 119.071, shall not be disclosed during bid or proposal opening, and shall be maintained as exempt unless and until disclosure is required or permitted by law.

(Ord. No. 2022-005, Exh. A(8.0), 2-10-2022)

## **Sec. 2-209. Receipt and control of bids and proposals.**

(a) *Guidelines.*

- (1) All sealed bids/proposals and responses to RLIs shall be submitted online using the E-Bidding platform as per the town's website. Late bids/proposals will not be accepted. The town may choose to use in-person submission if necessary.
- (2) The modification or withdrawal of bids/proposals is permitted at any time before opening, but only upon written request by an authorized representative of the bidder/proposer. The designated purchasing staff shall conduct the bid/proposal opening as follows:
  - a. Identify the transaction being conducted.
  - b. Open bids/proposals and read in any order.
  - c. Announce and read aloud by title or reference number of the solicitation and the name of each bidder/proposer.
  - d. Bids or proposals received shall be tabulated as soon as practicable. The tabulation shall contain the name of each offeror and may include any other information necessary to determine responsiveness.

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- e. To the extent required by F.S. § 255.0518, bid openings for construction or repairs on a public building or public work will be opened at a public meeting, and the name of each bidder and the price submitted shall be announced.
- (3) The town administrator shall have the authority to reject any bid, proposal or response as non-responsive, and to waive minor irregularities.
- (4) The town may accept a voluntary reduction from a low bidder/offeror after bid opening, if such reduction is not conditioned on, nor results in, the modification or deletion of any condition contained in the invitation for bids. A voluntary reduction may not be used to ascertain the lowest responsive/responsible bid. In the event that all bids for a construction project exceed available funds, as determined by the town administrator, the town administrator is authorized, where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate, or to designate a person to negotiate for the town, an adjustment of the bid price, including changes in the bid requirements of the low, responsive and responsible bidder, in order to bring the bid within the amount of available funds.
- (5) Errors in extension of unit prices or in mathematical calculations in bids may be corrected by the town prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed. A bidder may be permitted to correct clerical errors, in the sole discretion of the town, where the error is a minor technicality or irregularity, and when the intended bid amount is ascertainable from the bid document itself. The terms of the solicitation may prescribe that the total bid amount shall control, notwithstanding inclusion of unit prices.
- (b) *Modification and withdrawal of bids.* Bids may be modified or withdrawn by an appropriate document duly executed and delivered to the office of the procurement and budget officer or designee at any time prior to the deadline for submitting bids. A request for withdrawal and modification must be in writing and signed by a person duly authorized to do so, and in a case where signed by deputy or subordinate, the principal's proper written authority to such deputy or subordinate must accompany the request for withdrawal or modification. After expiration of the period for receipt of bids, no bid may be withdrawn or modified. If, prior to acceptance of a bid or proposal, a bidder claims a mistake in pricing and requests to withdraw its bid or proposal, the decision as to whether to permit withdrawal will be made by the town administrator, and in the town's sole discretion. In determining whether to permit a bidder to withdraw its bid or proposal, the bidder shall provide such information, including but not limited to, sworn statements which may be requested by the town.
- (c) *Modification to solicitation documents.* Any modification of the invitation to bid, request for proposals, or request for letters of interest made prior to the submittal deadline to those solicitation documents shall be by addenda provided in writing to the same businesses to which the original solicitation documents were mailed or otherwise provided.
- (d) *Bid documents become property of the town.* All bids and accompanying documentation received from bidders in response to the invitation to bid shall become the property of the town and will not be returned to the bidders. In the event of contract award, all documentation produced as part of the contract shall become the exclusive property of the town. The costs of bid preparation shall be borne solely by the vendor.
- (e) *Authority to award to second low bidder.* If within one hundred twenty (120) days after bids are opened, or any period bids are required to remain open for acceptance pursuant to the solicitation, the contract with the initial awardee is canceled, the awarding authority may elect to award the contract to the next low responsive and responsible bidder.
- (f) *Retention and storage of procurement files.* Any and all procurement determinations relating to the solicitation, award or performance evaluation of bids or proposals shall be maintained by the town in accordance with state records retention guidelines.

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All procurement records shall be retained and disposed of by the town in accordance with records retention guidelines and schedules approved by the division of archives of the state. If a contract is funded, in part or in whole, by another agency, then all procurement records pertaining to that contract shall be maintained for the time specified in the funding contract.

(Ord. No. 2022-005, Exh. A(9.0), 2-10-2022)

## **Sec. 2-210. Bid security and performance bonds.**

- (a) Bid security/bond or other forms of bid or proposal security shall be required on all competitive sealed bidding or requests for proposals for construction, design build, or other solicited project contracts when the price for the project is estimated to exceed one hundred thousand dollars (\$100,000.00). The bid security shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, certified check, cashier's check, irrevocable letter of credit or an alternate form of security for the same purpose subject to the same conditions and in a form acceptable to the town as bid security. Nothing herein shall prevent the requirement of such bonds on construction contracts under two hundred thousand dollars (\$200,000.00) and in the sole discretion of the town. The amount of the bid security shall be determined by the town administrator or designee and set forth in the solicitation.
- (b) The bid or proposal security of unsuccessful bidders or offerors will be returned within a reasonable time after the bid or proposal opening (but not before recommendation of award). The bid or proposal security of the successful or offerors and those bidders or proposers who may be reasonably susceptible of an award, will be retained until such successful bidder or offeror has executed the contract and furnished the required certificate(s) of insurance and payment and performance bonds.
- (c) If the successful bidder or offeror fails to furnish the required certificate(s) of insurance and payment and performance bonds or fails to execute and deliver the contract to the designated town employee, within the time specified in the instructions to bidders or offerors, the town will annul the notice of award and the entire sum of the bid or proposal security shall be forfeited.
- (d) Early withdrawal of any bid or proposal by offeror without approval by the town shall result in proposal security being forfeited. Unless otherwise specified in the IFB or RFP, bids and proposals may not be withdrawn for a period of one hundred twenty (120) days from the opening.
- (e) Payment and performance bonds are mandatory for all construction contracts in excess of two hundred thousand dollars (\$200,000.00). The following bond or security shall be delivered to the town and shall become binding on the parties upon the execution of the contract:
  - (1) A payment and performance bonds each in an amount equal to one hundred ten (110) percent of the price specified in the contract and conditioned that:
    - a. The contractor shall promptly make payments: to all persons (as defined in F.S. § 713.01) who furnish labor, materials, supplies, equipment, or commodities used directly or indirectly in the performance of the work provided for in the contract; and
    - b. The contractor shall perform the contract in the time and manner prescribed in the contract; or
    - c. In lieu of payment and performance bonds, the town, in its sole discretion, may accept cash, money order, certified check, cashier's check, irrevocable letter of credit, or alternative form of security, in the amount of one hundred ten (110) percent of the contract price. Such alternate form of security shall be for the same purpose and shall be subject to the same conditions as a performance bond and payment bond. All bonds shall be in conformance with F.S. §§ 255.05 and 287.0935.



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- (f) *Reduction of payment and performance bond amounts.* Except where required by F.S. § 255.05, and after notice to the town council, the town administrator or designee is authorized to reduce the amount of performance and payment bonds to fifty (50) percent of the contract price for each bond when a written determination is made by the town administrator or designee and that it is in the best interests of the town to do so. Nothing in this section shall be construed to limit the authority of the town to require a performance bond, payment bond, or other security in addition to those bonds referenced in this code.
  - (g) *Insurance.* For construction and other services contracts, the solicitation should specify the amount of insurance and coverage requirements.
  - (h) *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the town to require a performance bond, payment bond, or other security in addition to those bonds, or in circumstances other than specified in piggybacks, cooperatives, or in this article.

(Ord. No. 2022-005, Exh. A(10.0), 2-10-2022)

### **Sec. 2-211. Cancellation and rejection of bids and proposals.**

- (a) An invitation for bid, a request for proposal or other solicitation may be cancelled or any or all bids/proposals may be rejected in whole or in part when it is in the best interest of the town. Each solicitation shall generally contain a notice of the foregoing. Notice of cancellation shall include posting in the Town Hall and/or posting to the town website.

The town may reject any bid or proposal for any of the following reasons:

- (1) If the evidence submitted by the bidder or offeror or if the investigation of such bidder or offeror fails to satisfy the town that such bidder or offeror is properly qualified or responsible to carry out the obligations and to complete the work contemplated therein. In determining whether a bidder or offeror is responsible, the town shall have the authority, in its sole discretion, to consider matters such as past performance, references, litigation history, criminal records, prior and pending claims and disputes with the town or other public agencies, including relevant information as to the bidder or offeror's affiliated entities and principals, and such other matters as may be deemed relevant in determining responsibility.
  - (2) If there is reason to believe collusion exists among bidders or offerors.
  - (3) If the bid or proposal is not responsive, not properly delivered, not properly signed or is unsigned, shows serious omissions, alterations in form, additions not called for, conditions or unauthorized alterations, or irregularities of any kind. The town reserves the right to waive such technical errors as may be deemed in the best interest of the town.
- (b) *Reserved rights.* The town council reserves the right to reject any and all bids, proposals or other offers to furnish professional or contractual services. The town shall indicate this reservation in all solicitations for contractual or professional services. If the town finds it necessary to reject all bids, proposals or offers, a written statement to this effect shall be placed in the bid/proposal file, and the bidders/proposers shall be notified. The town may then republish the notice seeking goods, services or professional services, with any appropriate modifications at the direction of the town council.

(Ord. No. 2022-005, Exh. A(11.0), 2-10-2022)

### **Sec. 2-212. Evaluation and selection.**

- (a) The evaluation and selection process shall be in accordance with the solicitation document and will focus on the criteria for contract award: the general criteria (established in statute, ordinance or rule, if applicable)

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and the specific criteria enumerated in the solicitation that are applicable to the particular purchasing involved.

- (b) For selection committee or selection and negotiation committee meetings that do not involve any type of presentation by the proposers or ranking decisions, and in cases of hardship, committee members may participate by telephone, provided that a quorum is otherwise achieved by the physical presence of other committee members. Except where provided by F.S. § 286.0113, committee meetings are to be open to the public and shall be posted as such in Town Hall and/or on the town website. Meetings shall be recorded by the procurement and budget officer or designee. Committee meetings shall not be construed as public hearings; such that public comment is not required.
- (c) A scoring system will be used to document individual evaluations and as set forth in the solicitation. Discussions or presentations may be conducted with responsive and responsible offerors whose submitted proposal is determined to be reasonably susceptible of being accepted for award, for purposes of clarification and to assure full understanding of the proposal, and as may otherwise be provided in the solicitation. Such discussions or presentations may be limited to those proposers who have been short-listed or otherwise qualified. Where applicable, committees may also conduct negotiation strategy sessions and negotiation sessions with the top ranked firm in accordance with the solicitation document and F.S. § 286.0113.
- (d) For IFBs, contract awards shall be made to the lowest, responsive and responsible bidder whose bid is determined in writing to be the most advantageous and best value to the town.
- (e) For RFPs or RLLs, the selection committee will recommend the proposed award of contract to the town administrator for his review and concurrence prior to submission to the town council for approval. The town council shall have final decision-making authority to award a contract, or to reject all bids or proposals, and as may be in the best interest of the town.
- (f) *Competitive selection for services subject to CCNA; design-build projects.*
  - (1) Where applicable, all contracts for professional services as that term is defined in the Consultants Competitive Negotiations Act, F.S. 287.055, as amended, from time to time, shall be awarded in accordance with the procedures set forth in that Act, this article, and any town procurement procedures adopted in furtherance of that Act.
  - (2) The town will appoint a SNC to evaluate each letter of interest submitted regarding qualifications and performance ability. The SNC shall conduct discussions with, and may require public presentations by, no fewer than three (3) firms, (unless fewer than three (3) letters of interest/proposals are submitted then all firms may be required to provide presentations) regarding their qualifications, approach to the project, and ability to furnish the required services. The SNC will thereafter rank the firms.
  - (3) *Design-build projects.*
    - a. The town administrator or in consultation with the town council, shall evaluate and determine whether to utilize the design-build procurement method for a particular project. If this method is selected, the town will prepare a design criteria package or procure a design criterion professional to prepare the design criteria package in accordance with F.S. § 287.055. The town administrator or designee shall also determine whether the selection procedure will be a qualifications-based selection process as specified by F.S. § 287.055, or a competitive proposal-based process utilizing a RFP. The solicitation document shall provide the specific terms and procedures to be utilized for the particular project.
    - b. *Qualifications-based selection.* If the town utilizes a qualifications-based process, an appropriately licensed design professional shall be employed or retained by the town to serve as the town's representative during the selection process. Further, the top-ranked firm which enters

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into a contract will be, subsequent to competitive negotiations, required to establish a guaranteed maximum price and guaranteed completion date.

- c. *Competitive proposal selection.* If the town utilizes a competitive proposal selection process for the procurement of a design-build firm, in addition to the other applicable terms, and conditions and procedures set forth in this article, the process and the advertised RFP shall include:
1. The preparation of a design criteria package for the design and construction of the public construction project, and which shall be prepared prior to the RFP.
  2. The qualification and selection (short listing) of no fewer than three (3) design-build firms as the most qualified, based upon qualifications, availability, and past work of the firms, including the partners or members thereof.
  3. The criteria, procedures, and standards for the evaluation of design-build contract proposals or bids, based on price, technical, and design aspects of the public construction project, weighted for the project.
  4. The solicitation of the competitive proposals, pursuant to the design criteria package, from these qualified design-build firms and the evaluation of the responses or bids submitted by those firms shall be based on the evaluation criteria and procedures established and incorporated within the RFP.
  5. For consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the town of the detailed working drawings of the project; and evaluation of the compliance of the project construction with the design criteria package by the design criteria professional. The design criteria professional shall attend the meetings of the selection committee in order to provide assistance with the evaluation of the responses.
  6. In the case of public emergencies, the town administrator may declare an emergency and authorize negotiations with the best qualified design-build firm available at that time, and in accordance with the procurement code.

- (g) The town administrator shall have the authority to remove and replace a selection committee member for cause, such as failure to attend scheduled meetings or inability to serve on the committee, or for other unforeseen circumstances.

(Ord. No. 2022-005, Exh. A(12.0), 2-10-2022)

### **Sec. 2-213. Bid protests.**

- (a) Prospective bidder(s) or offeror(s) may file an administrative protest in writing to the town clerk's office challenging specifications within three (3) days (excluding weekends and legal holidays) after the public posting or advertising, whichever is later, of the IFB, RFP or RLI by the town clerk's office.

A bidder or offeror, in connection with and prior to awarding of any contract, shall file an administrative protest in writing with the town clerk's office within five (5) days (excluding weekends, and legal holidays) after posting of the recommended award, for public viewing at the town clerk's office. It is the responsibility of all bidders, proposers, offerors, or contractors affected by the proposed award of contract to review public postings on the town website and publicly located in Town Hall. There may be additional means utilized for posting both advertisements and awards. In order to maintain a protest, a protestor must have standing as established by applicable state statutes and interpretive Florida case law. Protests filed by a bidder or offeror which does not have standing may be summarily denied without a formal decision.

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- (b) A written protest may not challenge the relative weight of evaluation criteria or a formula for assigning points.
  - (c) Protestors shall file their written protests with the town clerk's office between the hours of 9:00 a.m. and 5:00 p.m. Written protests shall contain, at a minimum:
    - (1) The name of the petitioner;
    - (2) The petitioner's address and phone number, and fax number;
    - (3) The name of the petitioner's representative, if applicable;
    - (4) The name and bid number of the solicitation;
    - (5) A plain and clear statement of the facts and grounds upon which the protest is based; and
    - (6) A specific request for the relief to which the petitioner deems itself entitled, or the remedy requested.
  - (d) An administrative written protest is deemed filed with the town when it is delivered to and received by the town clerk's office. Delivery to and receipt by any other town staff member or officer is not valid.
  - (e) Failure to file a timely formal written protest within the time period specified shall constitute a conclusive waiver by the vendor of all rights of protest under this protest procedure and shall thereafter prevent any judicial review. Additionally, grounds not raised in any administrative protest shall be deemed waived in any town protest procedure and/or in any subsequent judicial review.
  - (f) In the event of a timely administrative protest, the town shall not proceed further with the solicitation or award of the bid/contract until all administrative remedies have been exhausted or until the town administrator determines to award the bid contract without delay in order to protect the public health, welfare or safety.
  - (g) Within seven (7) days (excluding weekends, and legal holidays) of receipt of the formal written protest, the town administrator or designee shall attempt to settle or resolve the dispute. If the administrative protest is not resolved by mutual agreement, the town administrator shall render a written decision. A copy of the decision shall be sent by certified mail, return receipt requested, or otherwise furnished, to the protestor.
  - (h) Failure to follow the protest procedures or failure to meet any deadline set forth herein shall automatically nullify any protest or claim brought by an aggrieved bidder, offeror, or contractor. Failure to file an administrative protest as set forth herein shall also be deemed a failure to exhaust administrative remedies.
  - (i) In order to help defray a portion of the administrative costs associated with a protest, all protests shall be accompanied by a filing fee as set forth below. Failure to pay the filing fee upon filing the protest shall result in an automatic denial of the protest. In the event that a fee is timely paid, and the protest is denied, the town shall retain the filing fee. In the event that the protest is granted, then one half (½) of the filing fee shall be refunded to the protestor.

Estimated Contract Amount	Filing Fee
Up to \$250,000.00	\$2,000.00
\$250,001.00—\$500,000.00	\$4,000.00
\$500,001.00—\$5,000,000.00	\$6,000.00
Over \$5,000,000.00	\$10,000.00

(Ord. No. 2022-005, Exh. A(13.0), 2-10-2022)

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## Sec. 2-214. Award of contract.

- (a) *Award of contract.* The contract shall be awarded with reasonable promptness in accordance with the requirements and criteria set forth in the solicitation or invitation for bid except as otherwise provided herein.
- (1) Town administrator shall approve/sign off on selection committee's recommendation prior to notice of intent to award.
  - (2) The intended award of contract and the date that the contract will be presented to the town council shall be publicly noticed in the Town Hall and/or on the website; it is the responsibility of the bidders/proposers to review this information.
  - (3) An agenda item will be prepared by the requesting department in coordination with the town clerk's office, and procurement and budget officer. Any contracts shall be signed by the recommended awardee and included in the agenda item, prior to the item being brought to the town council.
  - (4) Upon award, a fully executed contract, purchase order, notice to proceed, and, if applicable, a final notice of award are sent to vendor.
- (b) *Tie bids.* If two (2) or more bidders or proposers are tied, the tie may be broken and the successful bidder or proposer selected by the following criteria presented in order of importance and consideration. The following criteria shall not apply in instances where federal or state grant requirements, or other applicable law, provide for an alternative method to break such a tie.
- (1) Quality of the items or services bid or proposed if such quality is ascertainable.
  - (2) Location of the vendor with the following award preferences:
    - a. A local bidder with a primary business location within the Southwest Ranches.
    - b. A local bidder with a primary business location within Broward.
    - c. A bidder with a primary business location within the state.

If the above criteria are impossible to determine with any reasonableness or do not resolve the tie, the award will be given to that bidder or proposer whose bid or proposal was received earliest in time by the town as indicated by the time clock stamp impressed upon the bid/proposal envelope of each bidder or proposer. In the event that preference for location of the vendor is utilized, the town may require an affidavit or other documentation, in the town's sole discretion, to confirm the vendor's location.

The town may suspend agreements or awards of contract for a period not to exceed sixty (60) days following a determination by the town administrator that there has been a material deviation by the most responsible bidder from the requirements of the solicitation. Any suspension of contract shall be provided in writing to the affected vendor within five (5) working days of such determination. The town reserves the right to obtain the goods or services which are the subject of the agreement or contract from alternate sources during the suspension period. All contracts approved by the town council shall be canceled or revoked only after specific town council action.

- (c) *Request for proposals procedure and request for letters of interest procedure.* The award shall be made to the responsible offeror whose proposal is determined in writing, to be the most advantageous to the town taking into consideration, price and the evaluation factors and criteria set forth in the request for proposals or request for letters of interest. The town's contract files shall contain the basis on which the award is made. The writing may be a general summary of the solicitation process and include minutes of the selection committee meetings, if applicable.

(Ord. No. 2022-005, Exh. A(14.0), 2-10-2022)

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## Sec. 2-215. Types of purchases and exemptions.

- (a) *Petty cash.* The town financial administrator may promulgate rules and regulations governing petty cash purchases as appropriate.
- (b) *Emergency purchases.* Purchasing requirements can be waived in an emergency situation, when the need is the result of a serious and unexpected occurrence and demands immediate action.

An *emergency* is defined as:

- (1) *Operational.* a situation that presents a threat to public health, welfare or safety; or
- (2) *Natural disaster.* a situation where the normal operation or major portions of the town would cease or be seriously impaired if immediate corrective action was not taken.

An "*exigency*" is something that is necessary in a particular situation that requires or demands immediate aid or action. An emergency will typically involve a threat to life, public health or safety, improved property, and/or some other form of dangerous situation, whereas an exigency is not necessarily so limited. (See exhibit 17.)

*Note:* If there is not sufficient time to process paperwork to effectuate the purchase, then documentation may be done after the fact. However, it is the responsibility of the town administrator or designee to execute and submit to the procurement and budget officer or designee's office all necessary documentation within one (1) working day of the declaration of emergency. All emergency purchases must follow federal requirements for reimbursement. (See exhibit 15.)

- (c) *Piggyback purchasing.* The term "piggyback" refers to purchases of commodities and services from vendors under contract with any state or local government agency. All purchases of this nature are exempt from the town competitive purchasing requirements, provided that the following criteria are satisfied:

- (1) The existing contract was awarded through a competitive process substantially equivalent to the requirements of this code; and
- (2) The terms and conditions of the contract with the town, including price and scope, are substantially the same as the existing contract.

This method of purchasing should be considered prior to using other methods set forth in this code regardless of quantity or monetary value of the procurement. Nothing herein shall exempt town council approval of anything equal to or above level 4.

"Piggybacking" shall not be used in the event that the town is required to directly provide for competition for a particular project by applicable federal or state law, or the terms of any grant.

- (3) *Documentation requirements:* The following documentation is the minimum requirements to use another governmental entity's awarded contract. Provide the required information to the purchasing division:
  - a. Florida State Contract—Provide the current Florida State Contract Number. If the contract has fixed unit prices, no additional information is needed. If the contract is a percent discount from list, a copy of the original manufacturer's list price is also required. This will usually be in the form of a published price list. If requesting only to utilize some of the items on the contract, only the pages with those prices are required.
  - b. Pride and Respect—Pride (inmate labor and correctional work programs) and Respect (purchase from the blind or other severely handicapped non-profit) have published unit prices.
  - c. Contracts from other governmental entities provide the following:
    - 1. Complete copy of the original solicitation.

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2. Tabulation of all solicitation responses.
  3. Copy of the award letter/memo/agenda item by the political entity to the awarded vendor.
  4. Complete copy of the vendor's proposal.
  5. Executed contract.
- (d) *Government contracts.* All purchases of commodities or contractual services under the provisions of state and federal government contracts shall be exempt from the competitive procurement requirements of this article or the Code, provided that the following criteria are all satisfied:
- (1) The terms and conditions of the original contract by the federal, or state agency are satisfactory to the town and such terms and conditions are expressly extended to municipalities pursuant to the bid documents.
  - (2) The original contract by the federal or state agency is current and in effect at the time of the proposed purchase of commodities or services by the town.
  - (3) The town council must authorize such procurement when the cost of the commodities or contractual services exceeds level 2.
- (e) *Cooperative purchasing.* The term "cooperative purchasing" (sometimes known as "pooling") is used when two (2) or more government agencies combine their purchasing requirements and enter into a contract that meets the needs of everyone in the group. Pooling can reduce the administrative costs of procurement, save time, and result in lower product costs due to economies of scale when placing large orders. Usually, one (1) participant will handle most or all purchasing activities on behalf of the others. Such cooperative purchases are exempt from the requirements of formal competitive procurement hereunder, and the town administrator may authorize membership in government cooperative organizations.
- (f) *Specialized services exemptions.* Except as otherwise provided, the following are exempt from competitive procurement hereunder:
- (1) Services involving special skill, ability, training or expertise which are in their nature, unique, original or creative.
  - (2) Legal services including paralegals, expert witnesses, appraisal services, investigative services and court reporters.
  - (3) Actuarial services.
  - (4) Auditing services, except as may be required by applicable state statutes or federal law or regulation.
  - (5) Academic program reviews or lectures or seminars by individuals.
  - (6) Health services involving examination, diagnosis, treatment, prevention, medical consultation or administration.
  - (7) Artistic services which are original and creative in character and skill in a recognized field of artistic endeavor such as music, dance, drama, painting and sculpture, photography, culinary arts, fashion design and the like, provided however, that contracts for artistic instructors, coaches, teachers, aides and assistants are deemed contractual services subject to the requirements of competitive procurement.
  - (8) Performing artists and entertainers hired to provide entertainment or instructional programs for the benefit of the town residents and the general public at any town facility.
  - (9) *Maintenance service of equipment.* When considered to be in the best interest of the town and recommended by the using department, and the services to be performed are by the equipment manufacturer, manufacturer's service representative, a distributor of the manufacturer's equipment,

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or when at least three (3) responsible services have been evaluated, the services may be obtained without competitive procurement.

- (10) Advertising.
  - (11) Utilities including but not limited to electric, water and telephone.
  - (12) Commodities and services provided by other governmental entities.
  - (13) Copyrighted materials (books, videotapes, etc.) except computer software.
  - (14) Food, clothing and other promotional items purchased for resale or distribution to the public.
  - (15) Competitive bidding shall not be required on contracting for professional services of accountants, lawyers, or other such occupation which, by reason of specialized training and expertise, is generally recognized as a profession. The town will at all times comply with applicable state statutes regarding consultants' competitive negotiations for services, as defined by F.S. § 287.055.
  - (16) Postage.
- (g) *Sole source/single source purchases:*
- (1) The requirements of competitive procurement may not apply when the legitimate needs of the town require the purchase of a product or service that is available only from a single vendor or a sole source. This may be because of the uniqueness of a product or service, existence of patents, involvement of original equipment parts or services and warranties, legal restrictions or a monopoly situation. Sole source and single source purchases are generally less cost-effective than competitive purchases and should, therefore, be used only when no alternative exists.
  - (2) The town prefers using competitive procurement by requesting quotations and bids for purchases of goods and services. However, if competition cannot be so stimulated and a sole or single vendor must be used, justification for declaring a purchase sole or single source must be clearly documented. If there is any doubt whenever a purchase is designated sole or single source, quotes or bids will be solicited.
  - (3) Requesting departments must submit the sole source/single source form (exhibit 6) to the purchasing officer documenting a sole or single source selection. Such documentation is valid for one (1) fiscal year and should answer the following questions:
    - a. *Sole source purchases:* How many individuals, companies and/or manufacturers were contacted for this purchase? What is the justification for purchasing this item? Note: The selection of a local vendor as sole source when the vendor is the only local vendor of an item or service is not considered justification for designating a vendor as sole source when there are vendors of the same item located out of the South Florida area.
    - b. *Single source purchases:* Which characteristic(s) of the product or service limits competitive bidding? The requesting department must include the sole/single source form (exhibit 6) and a letter on company letterhead and signed by the vendor from the sole or single source vendor declaring that they are indeed a sole or single source for the item being purchased.
  - (4) Purchases available only from a single source may be exempted from competitive procurement requirements. For all single source purchases, evidence substantiating commodities or services being fulfilled only through a single vendor/business must be documented.

A contract may be awarded without competition when the town administrator or designee makes a written determination that after conducting a good faith review of available sources, there is only one (1) source for the required commodity or contractual service. The town administrator or designee shall conduct negotiations as appropriate as to price, delivery and terms. A record of sole source procurement shall be maintained as a public



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record and shall list each contractor's name, amount and type of each contract, a list of the commodity or contractual service procured under each contract, and the identification number of each contract file.

All sole source procurements where the cost of the commodities or contractual services exceeds level 3 shall be authorized by the town council.

(h) *Local vendor preference:*

*Local Southwest Ranches (SWR) vendor.* A "local SWR vendor" shall mean a person or business entity which has maintained a permanent place of business with full-time employees within the town limits for a minimum of six (6) months prior to the date of issuance of a bid or proposal solicitation; or a business whose principal owner has been a Southwest Ranches resident for the past six (6) months. The permanent place of business may not be a post office box. In addition, the business must have a Town of Southwest Ranches certificate of use (COU) valid for a minimum of six (6) months and a business tax receipt from Broward County.

*Local Broward County vendor.* A "local Broward County vendor" shall mean a person or business entity which has maintained a permanent place of business with full-time employees within the Broward County limits for a minimum of six (6) months prior to the date of issuance of a bid or proposal solicitation. The permanent place of business may not be a post office box or a residence. The business location must actually distribute goods or services from that location. In addition, the business must have a current business tax receipt from Broward County or the city within Broward County where the business resides and have an address that the U.S. Postal Service recognizes as being a Broward County address to be eligible.

- (1) *Competitive bid.* For bid evaluation purposes, vendors that meet the definition of "local SWR vendor" as detailed above shall be given a five (5) percent evaluation credit. This shall mean that if a "local SWR vendor" submits a bid/quote that is within five (5) percent of the lowest price submitted by any vendor, the "local SWR vendor" shall have an option to submit another bid which is at least one (1) percent lower than the lowest responsive bid/quote. If the "local SWR vendor" submits a bid which is at least one (1) percent lower than that lowest responsive bid/quote, then the award will go to the "local SWR vendor". If not, the award will be made to the vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is a "local SWR vendor", the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein. For bid evaluation purposes, vendors that meet the definition of "local Broward County vendor" as detailed above shall be given a two and one-half (2.5) percent evaluation credit. This shall mean that if a "local Broward County vendor" submits a bid/quote that is within two and one-half (2.5) percent of the lowest price submitted by any vendor, the "local Broward County vendor" shall have an option to submit another bid which is at least one (1) percent lower than the lowest responsive bid/quote. If the "local Broward County vendor" submits a bid which is at least one (1) percent lower than that lowest responsive bid/quote, then the award will go to the "local Broward County vendor". If not, the award will be made to the vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is a "local SWR vendor", the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.

If there is a "local SWR vendor" and a "local Broward County vendor" participating in the same bid solicitation and both vendors qualify to submit a second bid as detailed above, the "local SWR vendor" will be given first option. If the "local SWR vendor" cannot beat the lowest bid received by at least one (1) percent, an opportunity will be given to the "local Broward County vendor". If the "local Broward County vendor" cannot beat the lowest bid by at least one (1) percent, then the bid will be awarded to the lowest bidder regardless of geographic location of the business.

If multiple "local SWR vendors" submit bids/quotes which are within five (5) percent of the lowest bid/quote, then all SWR vendors will be asked to submit a "best and final offer (BAFO)". The award will

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be made to the "local SWR vendor" submitting the lowest BAFO providing that that BAFO is at least one (1) percent lower than the lowest bid/quote received in the original solicitation. If no "local SWR vendor" can beat the lowest bid/quote by at least one (1) percent, then the process will be repeated with all "local Broward County vendors" who have submitted a bid/quote which is within two and one-half (2.5) percent of the lowest bid/quote. If no "local SWR vendor" and no "local Broward County vendor" can submit a BAFO that is at least one (1) percent lower than the lowest bid/quote submitted in the original solicitation, the award will be made to the lowest responsive bidder regardless of geographic location of the business. If the lowest responsive and responsible bidder is a "local SWR vendor," the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.

- (2) *Competitive proposal.* For evaluation purposes, "local SWR vendor" and "local Broward County vendor" shall be a criterion for award in any request for proposal unless specifically exempted by the town administrator or the town council.
- (3) *Exceptions.*
  - a. No "local vendor" preference will be included in any competitive solicitation where the town is the lead agency for the Southeast Florida Cooperative Purchasing Group.
  - b. Utilization of a state or other agency contract.
  - c. State or federal law prohibits the use of local preference.
  - d. The work is funded in whole or in part by a governmental entity where the laws, rules, regulations or policies prohibit the use of local preferences.
  - e. Sole source or single source purchases.
  - f. The "local vendor" is either non-responsive or non-responsible.
  - g. All bids submitted exceed the budget amount for the project.
  - h. Emergency purchases.
  - i. The town administrator and/or the town council may exempt any competitive solicitation from the local vendor preference.

(Ord. No. 2022-005, Exh. A(15.0), 2-10-2022)

## **Sec. 2-216. Public lands and property—Public construction.**

- (a) *Acquisition or sale of real property, both improved and unimproved.*
  - (1) The following land acquisition procedures shall be employed whenever the town seeks to acquire, by purchase, any real property:
    - a. Procedures shall follow F.S. § 166.045, as amended from time to time.
    - b. Upon commencement of negotiations, the town shall inform the property owner, in writing, that all agreements for the purchase of real property are subject to approval by the town council.
    - c. Any agreement by town to purchase real property shall be submitted to the town council for approval at a public meeting after thirty (30) days public notice. Notice of the proposed purchase of real property shall be published once a week for at least two (2) weeks in a newspaper of general circulation in the town.

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- d. Evidence of marketable title in the form of title insurance or an abstract of title with title opinion shall be provided to the town, by the property owner at the property owner's expense, not later than ten (10) calendar days prior to the public hearing.
  - e. The purchase price of a property shall not exceed the appraised or average appraised value, if more than one (1) appraisal is obtained, by more than ten (10) percent, unless subject to a right of first approval provision.
- (2) The following procedures shall be employed whenever the town seeks to sell and convey any real property belonging to the town to a non-governmental agency.
- a. Prior to advertising for bids for the purchase of town-owned real property, the town shall obtain three (3) written appraisals performed by state certified real estate appraisers. Appraisers selected to appraise real property pursuant to this section shall, prior to contracting with the town for appraisal services, submit an affidavit substantiating that the appraiser has no vested or fiduciary interest in the property which is the subject of the appraisal.
  - b. Public notice of the invitation to bid calling for bids for the purchase of the subject real property shall be published once a week for at least two (2) weeks in a newspaper of general circulation.
  - c. The contract for purchase shall be awarded to the highest bidder whose bid meets the requirements and criteria set forth in the invitation to bid and instructions to bidders unless the town council rejects all bids because they are too low, or if such rejection is otherwise deemed to be in the best interest of the town.
  - d. Bid security shall be required for all bids for the purchase of town-owned real property in an amount equal to ten (10) percent of the highest appraisal value of the property.
- (3) The following procedures shall be employed whenever the town seeks to sell and convey any real property owned by the town to a governmental agency (agency) as defined in F.S. § 112.312(2), as amended from time to time, and in accordance with Town Charter section 4.10:
- a. Prior to the town council authorizing the sale of town-owned real property, the town shall obtain two (2) written appraisals performed by state certified real estate appraisers. Appraisers selected to appraise real property pursuant to this section shall, prior to contracting with the town for appraisal services, submit an affidavit substantiating that the appraiser has no vested or fiduciary interest in the property which is the subject of the appraisal.
  - b. The town may agree to the sale of its real property upon approval by a unanimous vote of the all five (5) members of the town council, at a regular or special public meeting after public notice. Upon approval by unanimous vote the sale of property must first be approved by a referendum of the electorate. These provisions do not apply to right-of-way, property less than the minimum of lot size requirement, property that was acquired through foreclosure, and property, not located within or adjacent to a town park, that was specifically acquired for lease or re-sale purposes.
  - c. If the sale of any of the town's real property is to another agency, a bid shall not be required.

(Ord. No. 2022-005, Exh. A(16.0), 2-10-2022)

### **Sec. 2-217. Minority, disadvantaged and veteran business participation.**

- (a) All contractors are encouraged to assist disadvantaged business enterprises (DBE), minority business enterprises (MBE), women-owned business enterprises (WBE), small business enterprises (SBE) in doing

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business with the town. Each contractor in assisting DBE, MBE, WBE, SBE will help to expand and develop the DBE, MBE, WBE, SBE and minority business sector of town.

(b) *Town selection procedures.*

- (1) The town shall make a good faith effort to provide interested minority business enterprises or minority persons with adequate information about the plans, specifications and requirements of contracts or the availability of jobs.
- (2) The town shall make a good faith effort to effectively use services and resources of available minority community organizations, minority contractors' groups, local, state, and federal minority business assistance officers, and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons; and
- (3) The town shall make a good faith effort to provide written notice to a reasonable number of minority business enterprises that their interest in contracting with the town is being solicited in sufficient time to allow the minority business enterprises to participate effectively.

(c) The town shall take all necessary affirmative steps to assure that DBE, MBE, WBE, SBE, and labor surplus area firms are used when possible including but not limited to:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the small business administration and the minority business development agency of the department of commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (e) of this section.

(Ord. No. 2022-005, Exh. A(17.0), 2-10-2022)

**Sec. 2-218. Receiving of goods and supplies.**

- (a) It shall be the responsibility of each department to have an individual, immediately upon receipt of a product or service, to inspect that product or service to ensure that it meets the specifications as set forth in the PO and contract. The person should inspect for proper quantities, proper quality, no damage and prompt delivery. The receiving person should have available a copy of the PO and contract for verification purposes. Any deviations should be immediately documented and sent to the supplier and to purchasing.
- (b) Signing a delivery slip does not necessarily constitute acceptance of an order. Any problems with an order should be documented and reported to Purchasing as soon as possible. The requesting department will contact the vendor to resolve any and all issues. Time is of the essence when dealing with problems on an order. Failure to timely advise the vendor and/or freight carrier may limit remedies. Also if an item is delivered damaged, the receiving party has the responsibility to protect it and all packing materials from any further damage, and to make it available to the vendor and/or freight carrier for inspection.
- (c) Materials, equipment or supplies shall be inspected upon receipt and, if possible, in the presence of the vendor or shipper and shall include the following:

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- (1) Verification of the correct quantities and units of issue;
  - (2) Verification of PO number;
  - (3) Verification of pricing;
  - (4) Inspection for damage or defects;
  - (5) Verification that all items meet the specifications or description defined in the PO and contract;
  - (6) Verification of correct vendor;
  - (7) All packages shall be checked against the Bill of Lading;
  - (8) Make note of any damage on the Bill of Lading and on the receiving copy of PO; and
  - (9) The signature shall be that of the person actually receiving and inspecting the materials.
  - (10) If unable to perform the above, the notation "Subject to Inspection" shall be written on Bill of Lading.
- (d) When goods, materials, or supplies either fail the inspection criteria or are damaged upon receipt, the receiving or requesting department shall immediately refuse the order. If the vendor or shipper is not on site, the receiving or requesting department shall contact the vendor to arrange shipment return and replacement. When a vendor has two (2) deliveries refused, the department will coordinate corrective action with purchasing.
- (Ord. No. 2022-005, Exh. A(18.0), 2-10-2022)

### **Sec. 2-219. Payment and sales tax.**

- (a) *Prompt Payment Act.* In accordance with F.S. ch. 218, local governments are required to pay vendors for goods and services in a timely fashion. Invoices are required to be date stamped by the receptionist at the front desk upon receipt and payment shall be made promptly.
  - (b) *Goods and services/construction.* Any invoice or payment request for goods, service or construction must be reviewed and approved for payment by the appropriate project manager and the department head or designee. After required approvals are obtained, the invoice or payment request should be forwarded to accounts payable for processing. Requests for payment (invoices, packing slips, etc.) should be forwarded directly to accounts payable.
  - (c) *Sales tax.* The town is exempt from tax on all sales that it makes directly, except machines, equipment, parts and accessories used in the generation, transmission or distribution of electricity.
  - (d) *Purchasing card (PCARD) acceptance.* The town may choose to compensate vendors for goods and/or services via a town PCARD. No other costs or services shall be billed to the town, and without limiting the generality of the foregoing, vendor shall not impose any service charge or fee, penalty, or other exaction of any kind against payments rendered by the PCARD. Payments made by PCARD shall be accepted on a "same as cash" basis.
- (Ord. No. 2022-005, Exh. A(19.0), 2-10-2022)

### **Sec. 2-220. Fixed assets inventory.**

- (a) Tangible personal property owned by the town including property under the custodianship of the departments shall be deemed a fixed asset. The town financial administrator pursuant to F.S. § 274.022 will determine the level for recording fixed assets. "Controllable/attractive items" per FAC 69i-72 and 69i-73 under the threshold must be tagged and tracked for inventory purposes. "Controllable/attractive items"

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means tangible personal property used in operations that has a cost less than an established capitalization threshold and that requires special attention to ensure legal compliance, protect public safety, and avoid potential liability, or to compensate for a heightened risk of theft. The department and/or custodian shall be responsible for notifying the finance and budget department when purchasing a fixed asset so that the item may be affixed with a town asset tag.

- (b) *Annual inventory.* Each department head or custodian shall work with finance and budget staff to account for all fixed assets on an annual basis.
- (c) *Disposal.* When a fixed asset is no longer needed or not working, a fixed asset disposition occurs. Technology related items such as computers, printers and peripherals must be authorized for disposal by the town administrator or designee per Resolution 2013-051 (section 5).
  - (1) Fixed assets shall not be discarded by the department head or custodian without permission from the finance and budget department. A police report shall be filed for all lost, stolen or missing fixed assets.
  - (2) Purchasing shall dispose of the surplus property in the following order of precedence below:
    - a. If the property has no value or the value does not exceed handling, storage and selling costs, the item may be sold, donated, recycled or discarded, as appropriate.
    - b. If value of the property exceeds handling, storage and selling costs, advertise the availability of the property first to the town, then for sale, competitively through the most appropriate medium.
    - c. If the property is offered for sale and no acceptable bids are received, the town may donate the item to a private, non-profit agency as defined in F.S. § 273.01.
    - d. The department head may choose to use the item as a "trade-in" when purchasing new equipment if doing so is in the best interest of the town.
    - e. Town of Southwest Ranches employees may participate from directly or indirectly purchasing town property through the surplus auction process open to the general public.
- (d) *Disposal of property purchased with grant funds.* Proceeds from property purchased with grant funds shall be deposited in accordance with the requirements of the original grant agreement.
- (e) *Transfer.* Fixed assets may be transferred from department to department with approval of both the transferring and receiving department heads.

(Ord. No. 2022-005, Exh. A(20.0), 2-10-2022)

## **Sec. 2-221. Public entity crimes.**

- (a) The Public Entity Crimes Act, F.S. § 287.133, as amended from time to time, serves to deny to persons convicted of a public entity crime the opportunity to bid on public entity contracts or to supply goods and services to public entities or to otherwise transact business with public entities. A "public entity crime" is a violation of law related to the transaction of business with any public entity involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
- (b) Invitations for bids and requests for proposals shall contain an appendix informing persons of the provisions of F.S. § 287.133 (2)(a).
- (c) The town cannot accept a bid, award a contract, or transact any business in excess of the threshold amount provided in F.S. § 287.017 for category two with any person or affiliate on the convicted vendor list for a period of thirty-six (36) months from the date the person or affiliate was placed on the convicted vendor list, unless the vendor has been removed from the list.

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(Ord. No. 2022-005, Exh. A(21.0), 2-10-2022)

**Sec. 2-222. Code of ethics and conduct.**

- (a) To the extent that violations of the ethical standards of conduct set forth in the procurement code constitute violations of the State Criminal Code they shall be punishable by law or disciplinary actions prescribed in the Town of Southwest Ranches Personnel Manual. The town employees and officers shall refer to F.S. § 112.313 and applicable Broward County Code for clear definition.
- (b) No town officer or employee shall bid for, enter into, or be in any manner interested in any contract for town purchases, nor shall any officer or employee seek to influence the purchase of a product or service from any bidder/offeror; provided however, that this restriction shall not be construed to restrict persons from evaluating and appraising the quality and value of the product to be purchased or service to be rendered where the person's scope of employment contemplates advice and counsel with respect to the purchase. In order to avoid the possibility of any misunderstandings regarding compliance with the law and regarding any appearance of impropriety, town employees or public officers are prohibited from accepting anything of value or any money from vendors.
- (c) *Purchasing.* The town administrator shall adhere to a high standard of ethics; promote the town's reputation for courtesy, transparency, fairness, and impartiality. The responsibility for achieving this goal rests with each individual who participates in the purchasing process. Staff may be involved with the purchasing process are responsible for administering purchasing policies and shall be charged with the responsibility of ensuring that all purchases are made legally and responsibly in compliance with this code and any adopted policies and applicable federal, state, and local laws.
- (d) *User departments.* Shall allow ample time for the town administrator to place the order and for the vendor to deliver; providing clear and accurate descriptions of goods and services to be purchased; providing technical specifications; not subdividing any purchase or contract solely to avoid competitive procurement/solicitation or approval requirements as prescribed in this code; and verifying receipt of commodities or completion of services in accordance with initial purchase request.

(Ord. No. 2022-005, Exh. A(22.0), 2-10-2022)

**Sec. 2-223. Conflict of interest.**

- (a) The following standards of conduct apply generally to all transactions and specifically to all federally supported grant projects. Violations of these standards of conduct may result in disciplinary action as set forth in F.S. § 112.371 provided that such disciplinary action does not conflict with the jurisdiction of the state commission on ethics.
- (b) No elected official, employee, or agent of the town shall participate in the selection, nor in the award, nor administration of a contract, nor the procurement of goods or services, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the elected official, employee, or agent, any member of his/her immediate family, his/her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected or considered for award. The town's elected official, employees, or agents shall neither solicit nor accept gratuities, favors, or anything regardless of value from contractors, potential contractors, or parties to subagreements.
- (c) All selection committee members shall sign a conflict of interest form (exhibit 21).
- (d) Vendors must disclose with their solicitations, the name of any officer, director, partner, associate, agent, advisory board member or client/customer who is also an officer, former officer, or employee of the town or its agencies.

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- (e) Vendors shall not allow town employees or former town employees to work on town projects or provide services to the town under agreements or sub-agreements without express written consent from the town.
  - (f) F.S. § 112.313 prohibits contracts with companies owned in full or part by a town employee, officer or advisory board member.
  - (g) An organizational conflict of interest occurs when any of the following circumstances arise:
    - (1) *A lack of impartiality or impaired objectivity.* When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
    - (2) *Unequal access to information.* The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
    - (3) *Biased ground rules.* During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
  - (h) The town shall analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

(Ord. No. 2022-005, Exh. A(23.0), 2-10-2022)

## **Sec. 2-224. Debarment.**

- (a) The town administrator, after consulting with the town attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years. After consultation with the town attorney, the town administrator is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment.
- (b) Causes for debarment:
  - (1) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a contractor with the town.
  - (2) Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contractor, subcontract or incident to performance of such contract or subcontract.
  - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
  - (4) Violation of contract provisions, as set forth below, of a character which is regarded by the town administrator or designee 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.
    - b. Recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
    - c. Any other cause/material factor the town administrator or designee determines to be so serious and compelling as to affect responsibility as a town contractor, including debarment by another



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governmental entity for any of the causes listed in this section or violation listed in the procurement code.

(Ord. No. 2022-005, Exh. A(24.0), 2-10-2022)

**Sec. 2-225. Risk management.**

- (a) Acquisition of insurance policies may be on a competitive basis through sealed bid/proposal. The bids/proposals are to be obtained by the town in accordance with the procedures outlined in the procurement code. The town will approve the solicitation document. A comparative spreadsheet tabulation analysis of all bids/quotes received and carrier responses shall be provided to the town no later than ten (10) days prior to the renewal date(s). A presentation of responses received shall be made to the town, along with a recommendation and rationale. Subsequent to the presentation, a decision will be made for placement of the coverage(s). An award shall be made by the town administrator.
- (b) Insurance acquired by the town relative to its ordinary governmental and operational functions, such as property, casualty, and worker's compensation, does not require competitive procurement.
- (c) All insurance policies shall name and endorse the following as additional named insureds:

Town of Southwest Ranches  
Attn: Town Administrator  
13400 Griffin Road  
Southwest Ranches, FL 33330

All insurance shall be issued by companies rated "A-" or better per A.M. Best's Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. It shall be the responsibility of the vendor and insurer to notify the town administrator of cancellation, lapse, or material modification of any insurance policies insuring the vendor, which relate to the activities of such vendor and the town. Any exclusion or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in the solicitation shall be deemed unacceptable, and shall be considered a breach of contract.

- (d) *Waiver of insurance requirements:* Insurance requirements incorporated in solicitations may only be waived or modified by the town council or town administrator.

(Ord. No. 2022-005, Exh. A(25.0), 2-10-2022)

**Sec. 2-226. Risk management compliance.**

- (a) The successful bidder shall be required to obtain, at its own expense, all minimum insurance coverages required under the terms of the bid documents and contract and to submit, at a minimum, copies of all insurance certificates and policy endorsements to the town for approval. No work under the contract may be commenced until the required insurance has been obtained and proof of such insurance has been approved.

The bid shall include certificate(s) of insurance or written proof of the ability to provide the required insurance by an insurance company authorized to do business in the state or otherwise secured in a manner satisfactory to the town in an amount equal to one hundred (100) percent of the requirements. Prior to award and in any event prior to commencing work, the successful bidder/proposer shall provide the town with certified copies of all insurance policies and endorsements that may be required as outlined below:

- (1) *Worker's compensation.* Worker's compensation insurance is to apply to all employees in compliance with the "Workers' Compensation Law" of the state and all applicable federal laws. Contractor shall carry worker's compensation insurance with the statutory limits, as required by F.S. ch. 440, as amended from time to time, which shall include employer's liability insurance with a limit of not less

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than five hundred thousand dollars (\$500,000.00)\* for each accident, and five hundred thousand dollars (\$500,000.00)\* for each disease. Policy(ies) must be endorsed with waiver of subrogation against the town.

- (2) *Business automobile liability insurance.* Contractor shall carry business automobile liability insurance with minimum limits of five hundred thousand dollars (\$500,000.00)\* per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive endorsements, as filed by the Insurance Services Office (ISO), and must include all owned vehicles and all hired or non-owned vehicles.
- (3) *Commercial general liability.* Contractor shall carry commercial general liability insurance with limits of not less than one million dollars (\$1,000,000.00)\* per occurrence combined single limit for bodily injury and property damage, and not less than two million dollars (\$2,000,000.00)\* in the aggregate. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements as filed by the Insurance Service Office (ISO), and the policy must include coverages for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. The ISO form of the policy must be acceptable to the town.
- (4) *Environmental pollution insurance.* The contractor shall carry an environmental pollution insurance for pollution-related incidents, including the cost of cleaning up a site after a pollution incident, with limits not less than five hundred thousand dollars (\$500,000.00)\* per occurrence with a deductible not greater than one hundred thousand dollars (\$100,000.00)\*. An additional Form or endorsement to the Commercial General Liability Insurance to include an environmental pollution insurance coverage providing the specified coverage, is acceptable.

\*Insurance limits and requirements are subject to change depending on the scope of work of each project/service.

- (b) All insurance policies shall name and endorse the following as additional named insureds:

Town of Southwest Ranches  
Attn: Town Administrator  
13400 Griffin Road  
Southwest Ranches, FL 33330

All insurance shall be issued by companies rated "A-" or better per A.M. Best's Key Rating Guide, latest edition and authorized to issue insurance in the state. It shall be the responsibility of the vendor and insurer to notify the town administrator of cancellation, lapse, or material modification of any insurance policies insuring the vendor, which relate to the activities of such vendor and the town. Any exclusion or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in the solicitation shall be deemed unacceptable and shall be considered a breach of contract.

Such notification shall be in writing and shall be submitted to the town administrator within thirty (30) days prior to cancellation of such policies. This requirement shall be reflected on the certificate of insurance.

(Ord. No. 2022-005, Exh. A(26.0), 2-10-2022)

## **Sec. 2-227. Brand name or equal specifications.**

- (a) *Use.* Brand name or equal specifications may be used when the town administrator determines in writing that:

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- (1) No other design or performance specification or qualified products list is available;
  - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
  - (3) The nature of the product or the nature of the town's requirement makes use of a brand name or equal specification suitable for the procurement; or
  - (4) Use of a brand name or equal specification is in the town's best interests.
- (b) *Designation of several brand names.* Brand name or equal specifications shall seek to designate at least three (3), or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) *Required characteristics.* Unless the procurement and budget officer or designee determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (d) *Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

(Ord. No. 2022-005, Exh. A(27.0), 2-10-2022)

### **Sec. 2-228. Brand name specifications.**

- (a) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the town administrator or designee makes a written determination that only the identified brand name item or items will satisfy the town's needs.
- (b) *Competition.* The town administrator or designee shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one (1) source can supply the requirement, the procurement shall be made under the sole source procurement provisions of the procurement code.

(Ord. No. 2022-005, Exh. A(28.0), 2-10-2022)

### **Sec. 2-229. Lease and installment purchase of assets.**

Responsibility for the financial and administrative review of all lease proposals shall be designated by the town administrator. The requesting department shall submit a requisition with detailed backup documentation consisting, at a minimum, of a comparative value/cost analysis between outright purchase and the proposed lease, and a written justification. The requesting department shall present the majority recommendation along with the minority viewpoint, if any, to the town administrator or designee for approval. If the town administrator or designee approves a recommendation to proceed with the proposal, then the recommendation shall be presented to the town council for approval. Town council approval is required due to the multi-fiscal year commitment required.

- (1) Vendors for lease, lease-purchase, or installment purchases shall be selected competitively as prescribed in the procurement code.
- (2) If the item procured would normally qualify as an asset, then it shall be tagged for inventory purposes upon receipt.

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(3) Rentals which are generally on a month-to-month basis or of short duration do not require the approval process of this section. Rentals require the prescribed competitive vendor selection based on the estimated dollar value for the total rental period.

(4) All leases or rental agreements shall be reviewed by the town attorney.

(Ord. No. 2022-005, Exh. A(30.0), 2-10-2022)

### **Sec. 2-230. Outsourcing.**

By town council and town administrator direction, the town operations will be performed at the most economical cost while maintaining desired service levels. As one (1) alternative to meet this goal, the town periodically will call for public and private sector proposals for purposes of evaluating the cost of performing selected municipal services.

(Ord. No. 2022-005, Exh. A(30.0), 2-10-2022)

### **Sec. 2-231. Contingency fees prohibited.**

(a) Solicitations, contracts, and purchases made under this code shall prohibit the payment of any compensation or other consideration to any person contingent upon or resulting from the award or making of a contract with the town or the town financial administrator other than a bona fide employee working solely for the vendor.

(b) The requirements of this procurement code may be waived by resolution of the town council, provided that such waiver is in the best interest of the health, safety, and welfare, of the town's residents.

(Ord. No. 2022-005, Exh. A(31.0), 2-10-2022)

### **Sec. 2-232. Federally funded procurements.**

(a) *General guidelines.*

(1) The town recognizes that certain procurement procedures for state or federally funded programs may conflict with standard town procedures. Pursuant to this section, these federally funded procurement procedures may enhance or supersede standard town procedures, when applicable. Additionally, the town administrator is authorized to modify town procurement procedures in order to comply with procurement procedures for state or federally funded programs.

(2) Purchases utilizing Federal Emergency Management Agency (FEMA), or other federal funds must conform to applicable federal law, including: 2 CFR Part 1201 incorporating 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" as amended from time to time.

(3) *Solicitation prohibitions.* Solicitation requirements may not contain features that unduly restrict competition including but not limited to:

a. Imposing unreasonable business requirements/qualifications for bidders or offerors.

b. Imposing unnecessary experience requirements for bidders and offerors.

c. Using prequalification procedures (except in the case of qualification-based procurement for architect/engineer services).

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(Supp. No. 12)

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- d. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
  - e. Excessive bonding shall not be permitted. Bid bonds and payment performance bonds shall be required for construction projects in excess of the federal small purchase threshold only.
  - f. Specifying only a "brand name" product without allowing offers of "an equal" product or allowing "an equal" product without listing the salient characteristics that the "equal" product must meet to be acceptable for award.
  - g. Specifying in-state or local geographical preferences or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations.
  - h. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies including acceptance of submission of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.
  - i. Taking any arbitrary action in the procurement process.
- (b) *Compliance with state and federal requirements.* In contracts which are financed in whole or in part by federal or state grant funds, all requirements set forth in the grant documents or in the law, rules, and regulations governing the grant, including federal or state cost principles, shall be satisfied. To the extent that they differ from those of the town, the cost principles of the grantor shall be used. The town will follow the procurement standards in 2 CFR §200.318 through 2 CFR §200.327 when procuring under a federal award.

<ul style="list-style-type: none"> <li>▼ Procurement Standards</li> <li>§ 200.317 Procurements by states.</li> <li>§ 200.318 General procurement standards.</li> <li>§ 200.319 Competition.</li> <li>§ 200.320 Methods of procurement to be followed.</li> <li>§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.</li> <li>§ 200.322 Domestic preferences for procurements.</li> <li>§ 200.323 Procurement of recovered materials.</li> <li>§ 200.324 Contract cost and price.</li> <li>§ 200.325 Federal awarding agency or pass-through entity review.</li> <li>§ 200.326 Bonding requirements.</li> <li>§ 200.327 Contract provisions.</li> </ul>	<p>200.317 – 200.327</p>
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The town will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach (§200.318(d)).

The town will endeavor to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project cost (§200.318(f)).

The town will endeavor to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost (§200.318(g)).

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The town may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the town is the sum of:

- (1) The actual cost of materials; and
- (2) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the town will assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls (§200.318(j)).

The town is an entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds ten thousand dollars (\$10,000.00) or the value of the quantity acquired during the preceding fiscal year exceeded ten thousand dollars (\$10,000.00); procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines (§200.323).

The town will not utilize the cost plus a percentage of cost and percentage of construction cost methods of contracting (§200.324(d)).

The town will make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-federal entity desires to have the review accomplished after a solicitation has been developed, the federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase (§200.325).

(c) *Pre-procurement.*

- (1) The procurement decision matrix (flowchart 1) shall be used to determine the most efficient and economic method of purchase.
- (2) An independent cost estimate (exhibit 4) is required prior to bidding for all level four (4) purchases and can be obtained by:
  - a. Design/engineering firm or in-house technical staff for construction work,
  - b. Published price lists or past pricing with inflation factors,
  - c. Independent third-party staff member not impacted by the final procurement.
- (3) The "piggybacking" checklist (exhibit 5) shall be completed for all piggyback purchases. Vendor shall be checked through the system for award management (SAM) website and for conflict of interest prior to piggyback purchase.
- (4) A sole source or single source purchase form (exhibit 6) is required for all sole or single source purchases. Sole or single sourcing shall be allowed if:
  - a. The item is available only from a sole or single source;

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- b. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity;
  - c. After solicitation of a number of sources, competition is determined inadequate.
- (5) To ensure proper regulation guidelines 2 CFR pt. 200 checklist (exhibit 15) should be completed and the applicable steps should be adhered to, if applicable.
- (6) *Contract administration.* All contracts shall include provisions adequate to form a sound and complete agreement which shall comply with federal laws and regulations and include all required federal contract provisions to ensure compliance with those laws and regulations.
- a. Contracts shall include all required federal contract clauses. See exhibit 10 to determine applicability and exhibit 11 for the relevant clause. Clauses include but are not limited to:
    - 1. Buy America requirements.
    - 2. Clean water requirements.
    - 3. Lobbying.
    - 4. Clean air.
    - 5. Recycled products.
    - 6. Davis-Bacon and Copeland Anti-Kickback Acts.
    - 7. Contract Work Hours and Safety Standards Act.
    - 8. Government-wide debarment and suspension (nonprocurement).
- (d) *Post-bidding.*
- (1) The town shall ensure that adequate competition exists by confirming that two (2) or more responsible bidders are willing and able to compete effectively for the business.
  - (2) A cost analysis (exhibit 8) or price analysis (exhibit 7) shall be completed prior to purchase as well as a procurement summary (exhibit 9). If procurement exceeds current threshold and have at least two (2) or more bidders. The town shall rely on FAR Part 31, Contract Cost Principles and Procedures when conducted analyses. Project costs must conform to applicable federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by federal law or regulation, and must comply with federal cost principles applicable to the recipient.
  - (3) The procurement officer and department head or designee must perform a completeness and verification checklist prior to the recommendation for award in order to consider whether the bidder meets the standards of qualification. Factors to be considered shall include whether a bidder has:
    - a. The appropriate financial, material, equipment, facility, and personnel resources and expertise, available or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
    - b. A satisfactory record of performance;
    - c. A satisfactory record of integrity;
    - d. Ability to get bonding and insurance;
    - e. The legal ability to contract with the town;
    - f. Supplied all necessary information in connection with the inquiry concerning responsibility including, but not limited to, any licenses, permits, or organization papers required;

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- g. Satisfactory status in the system for award management (SAM) system website; and
  - h. No conflict of interest. An organizational conflict of interest exists:
    - 1. Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice;
    - 2. If a contractor's objectivity in performing the contract work is or might be otherwise impaired; or
    - 3. If a contractor has an unfair competitive advantage.
  - i. The procurement history file checklist (exhibit 12) and the following items are completed by the procurement officer to ensure proper procurement compliance:
    - 1. The executed contract and notice of award;
    - 2. Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
    - 3. Contract-required insurance documentation.

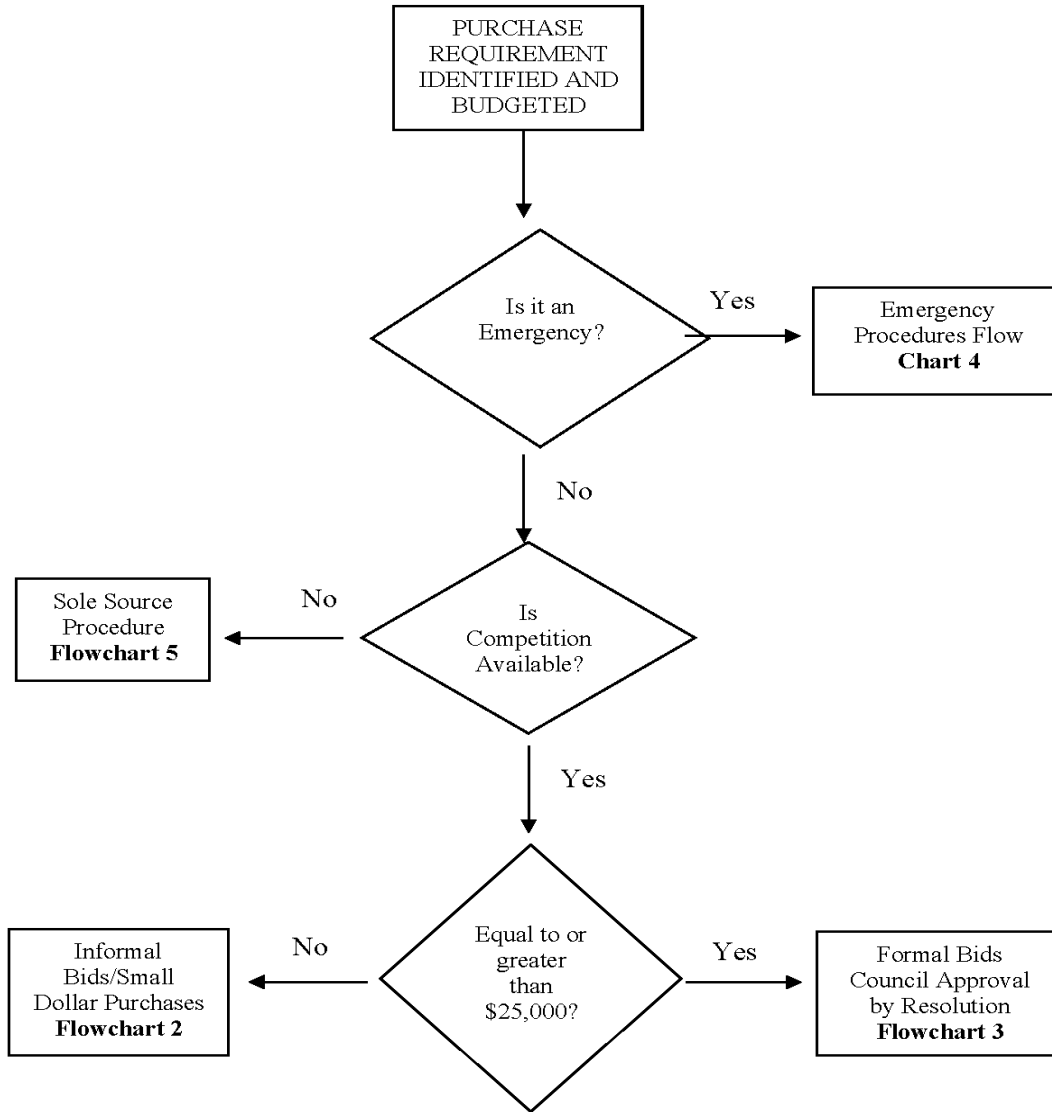
(Ord. No. 2022-005, Exh. A(36.0), 2-10-2022)

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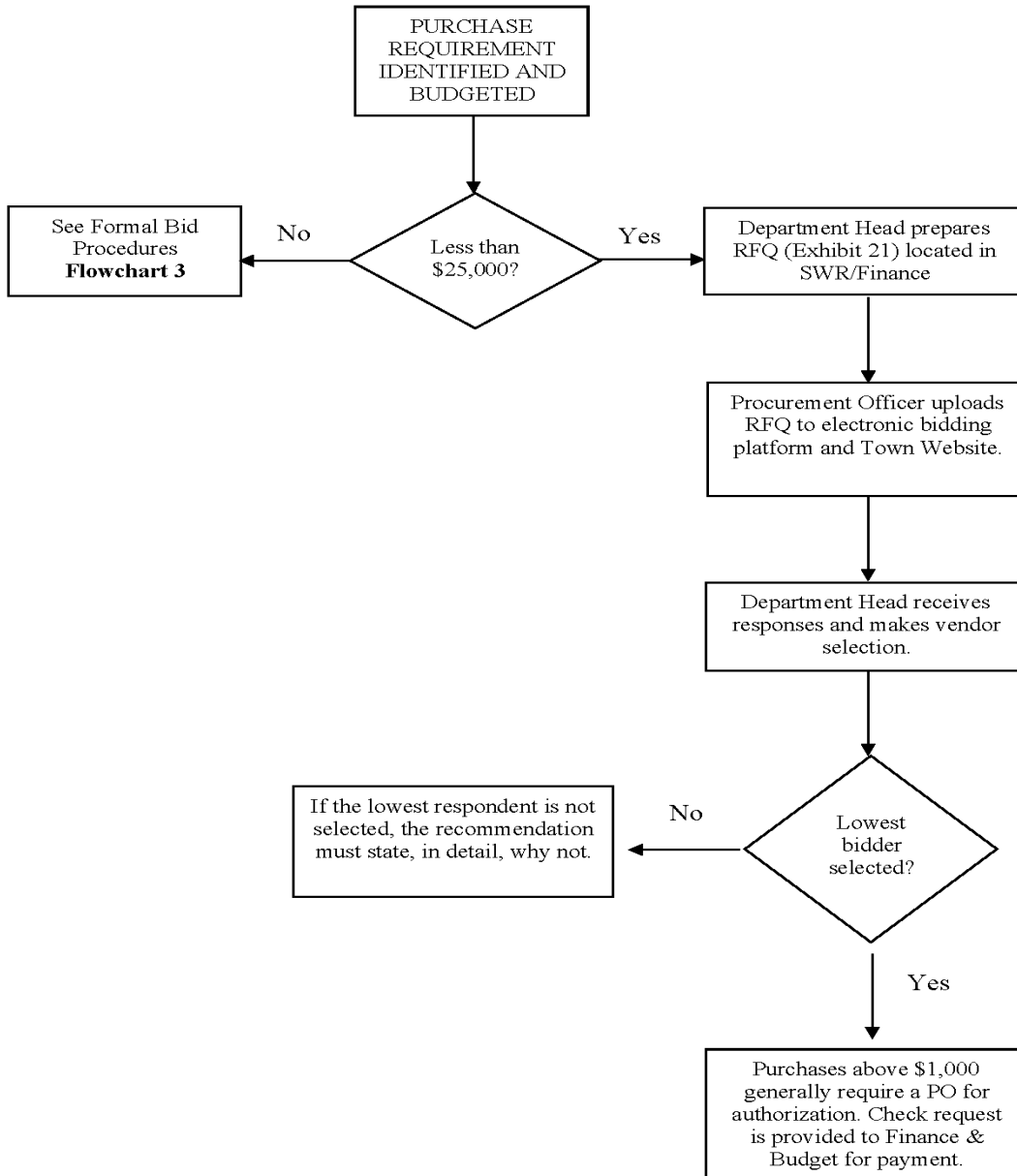
**Sec. 2-233. Flowcharts.**

Flowchart 1: Informal Bid Procedures



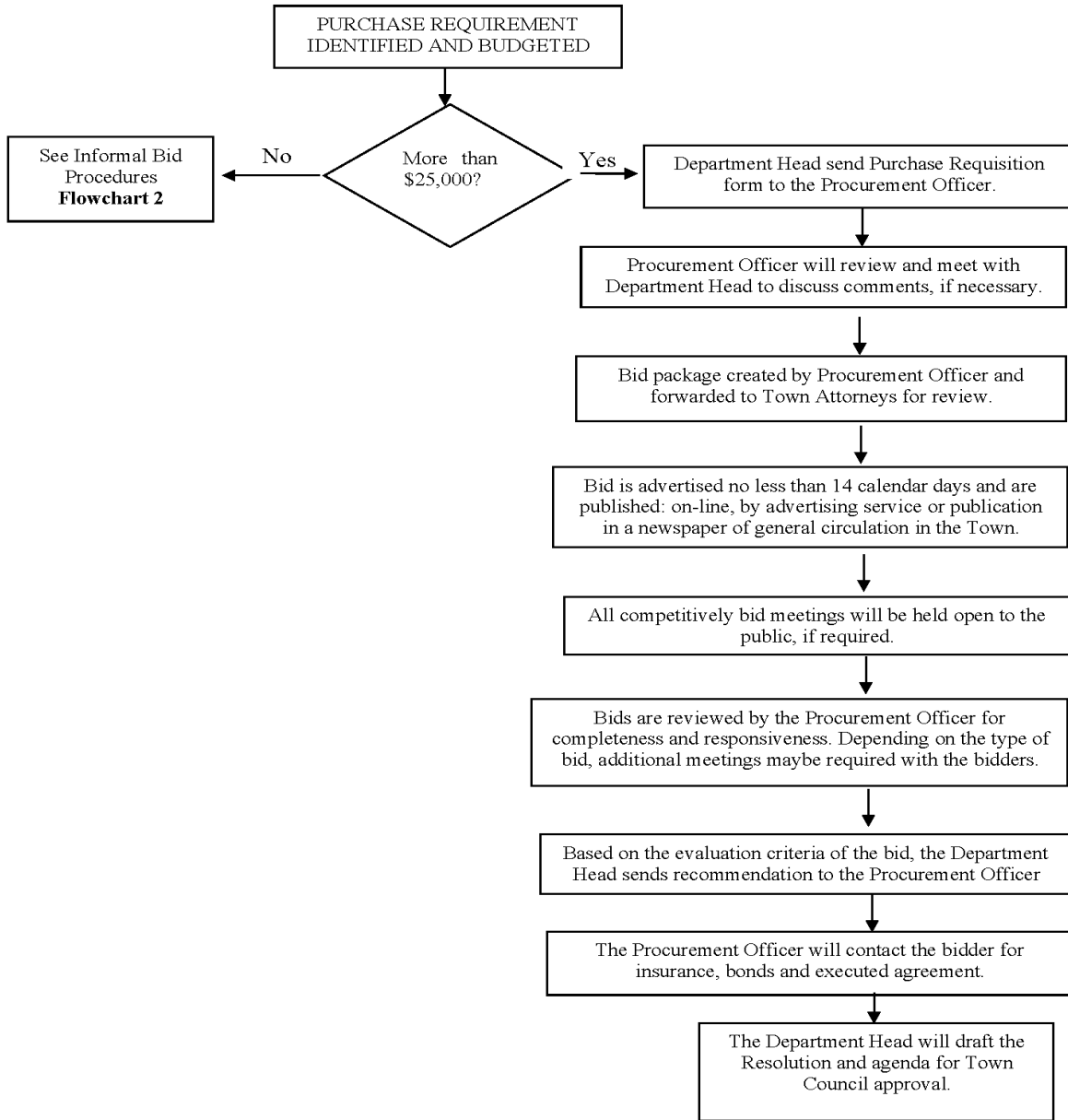
\* This and all future charts are for general reference only. Please refer to the purchasing manual for more detailed information.

Flowchart 2: Informal Bid Procedure



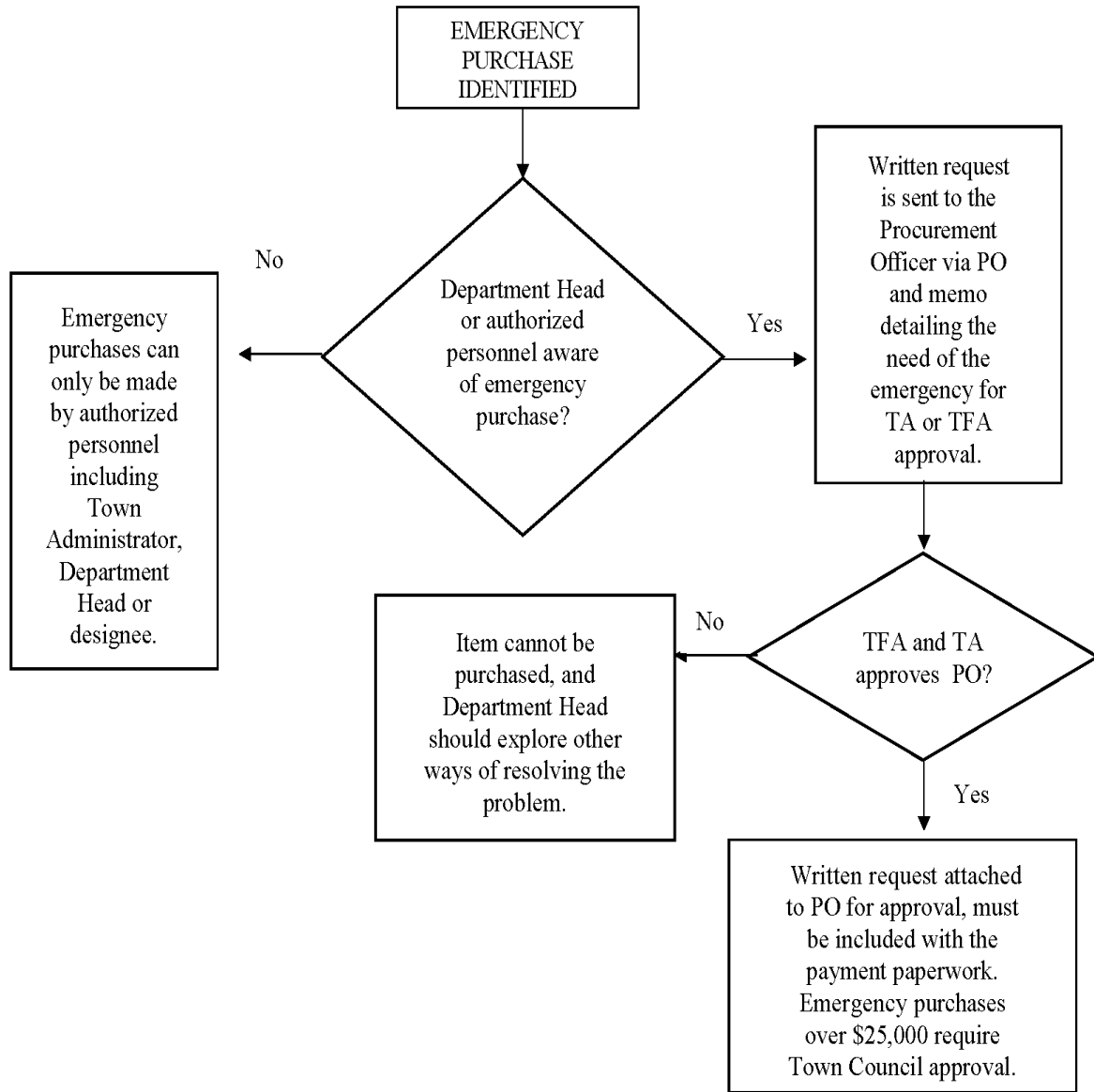
\* This and all future charts are for general reference only. Please refer to the purchasing manual for more detailed information.

Flowchart 3: Formal Bid Procedure



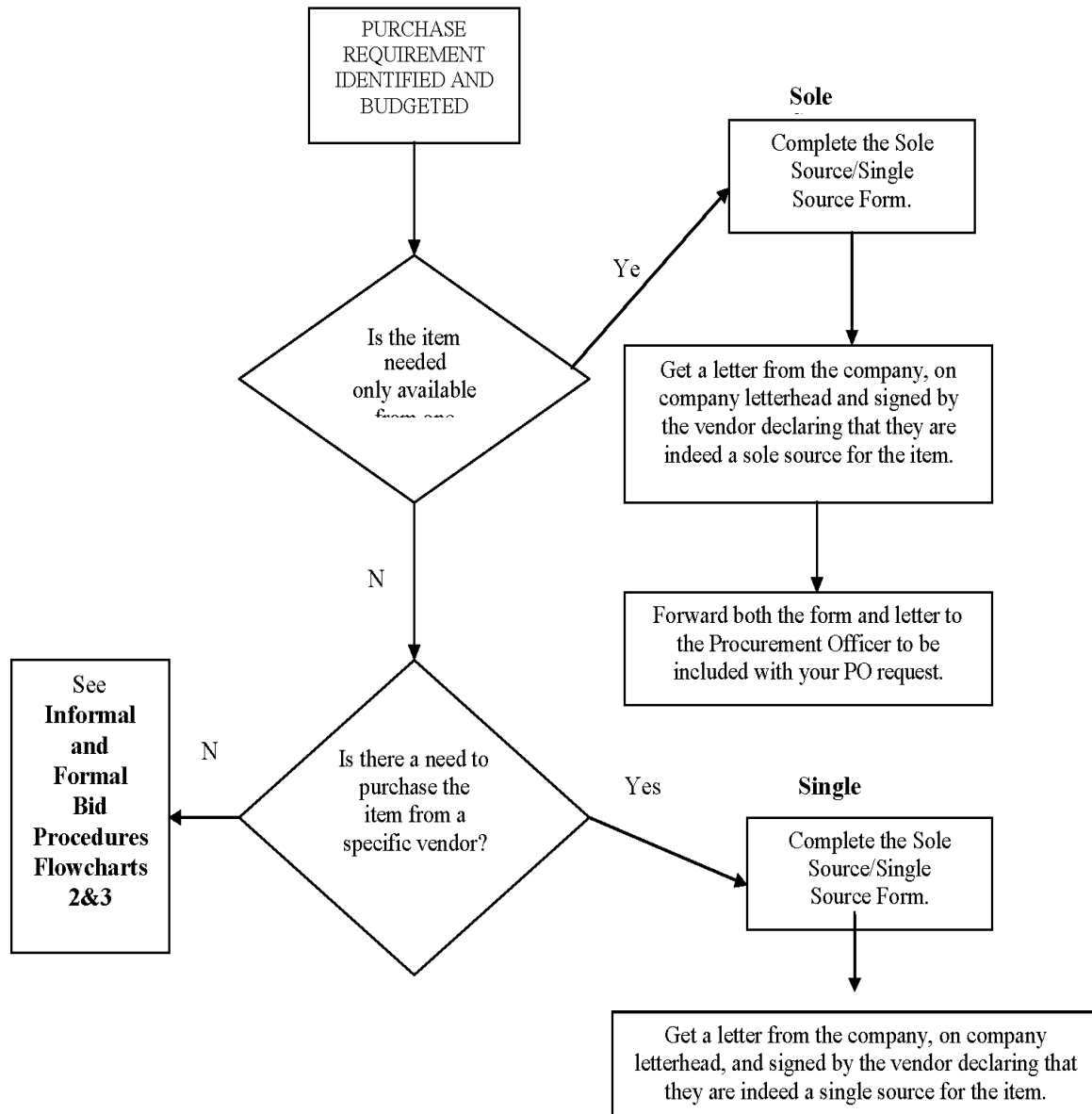
\* This and all future charts are for general reference only. Please refer to the purchasing manual for more detailed information.

Flowchart 4: Emergency Purchase



\* This and all future charts are for general reference only. Please refer to the purchasing manual for more detailed information. The exceptions to the competitive bidding procedures are professional services and government and co-operative bids.

Flowchart 5: Sole Source/Single Source Purchase



\* This and all future charts are for general reference only. Please refer to the purchasing manual for more detailed information. The exceptions to the competitive bidding procedures are professional services and government and co-operative bids.

(Ord. No. 2022-005, Exh. A(37.0), 2-10-2022)

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## **Sec. 2-234. Definitions.**

*Addenda.* Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or contracts.

*Actual costs.* All direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs only.

*Amendment.* A method of changing the terms and conditions or requirements of a contract beyond what is specifically allowed by contract. All amendments must be approved the same way as the original contract signed by the individuals holding the positions of the original signatories.

*Architect—Engineer and land surveying services.* Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of Florida.

*Award.* The acceptance of a bid, offer or proposal by the proper authority. The town council must award all contracts of level 4 limit with the exception of emergency purchases.

*Inverted purchase orders.* A purchase order issued for the acquisition of commodities or services over a certain period of time within the fiscal year for a specified dollar limitation. Shipments are made, as requested, against the inverted purchase order number for the term of the contract or inverted purchase order.

*Brand name or equal specification.* A specification limited to one (1) or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet town requirements, and which provides for the submission of equivalent products.

*Brand name specification.* A specification limited to one (1) or more items by manufacturers' names or catalogue numbers.

*Capital improvement project.* Any improvement which the town undertakes which includes the construction, reconstruction, renovation, repair, modification, or demolition of any facility, building, portion of a building, utility, park, parking lot, structure, road, highway, street improvement, plant, or other improvement to real property necessary in carrying out the functions of the town.

*Change order.* A request for revision in one (1) or more of the criteria on a purchase order or contract to correct errors, omissions, or discrepancies, to cover acceptable overruns or freight costs; incorporate requirements to expand or reduce the scope of goods or services ordered or the time for the provision of same; or to direct changes in contract execution to meet unforeseen regulatory or market conditions.

*Commodity.* Any of the various supplies, materials, goods, merchandise, equipment, and other personal property.

*Competitive bids or competitive offers.* The receipt of bids or offers submitted by responsive, responsible and qualified bidders or offerors.

*Competitive selection and negotiations.* A method of purchasing whereby qualified professional firms are invited to submit "letters of interest" and are short-listed by an appropriately appointed evaluation committee, following which prices and other terms for a final contract are negotiated with the highest ranked firm.

*Construction.* The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

*Consultant's Competitive Negotiations Act (CCNA).* The common name for F.S. § 287.055 concerning the purchasing of architectural, engineering (including testing), landscape architecture, and registered land surveying

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and mapping services. These services will be procured by a letter of interest and competitive selection and negotiation.

*Contract.* Any agreement, regardless of style or form, for the purchasing of commodities, services or construction. It includes contracts for a fixed price, cost, cost plus a fixed fee, or incentive contracts, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

*Contract extension.* An increase in the time allowed for the contract period due to circumstances which, without fault of either party, make timely performance impracticable or impossible, or which prevent a new contract from being executed, with or without proportional increase in the total dollar amount, with any increase to be based on the method and rate previously established in the contract.

*Contract modification.* Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract.

*Contractor.* Any person having a contract with the town to perform a service or sell a product.

*Contractual services.* The rendering by a contractor of its time and effort rather than the furnishing of specific commodities, materials, goods, equipment and other personal property. The term applies only to those services rendered by individuals and firms who are independent contractors.

*Cooperative purchasing.* Purchasing conducted by, or on behalf of, more than one (1) public purchasing unit.

*Contract renewal.* Contracting with the same contractor for an additional contract period, only if pursuant to contract terms specifically providing for such renewal.

*Cost-reimbursement contract.* A contract under which a contractor is reimbursed for costs which are allowable and applicable in accordance with the contract terms and the provisions of this article, and a fee or profit, if any.

*Department head.* The head of a department, section, or function area concerned.

*Designee.* A duly authorized representative of a person holding a superior position.

*Emergency purchase.* Purchase made due to the presence of an immediate danger to the public health, safety or welfare, or other substantial loss to the town.

*Employee.* An individual drawing a salary or wages from the town, whether elected or not; any non-compensated individual performing personal services for the town or for any department, agency, commission, council, board, or for any other entity established by the executive or legislative branch of the town; and any non-compensated individual serving as an elected official of the town. This definition specifically excludes all independent contractors and all other contractors with the town.

*Exigent purchase.* An exigent purchase is something that is necessary in a particular situation that requires or demands immediate aid or action to protect lives, public health or safety.

*Firm fixed-price contract.* A contract whereby the price is fixed, not variable, for the entire life of the contract or until a set quantity of goods or services is delivered.

*Franchise.* A special right or privilege conferred by the town on an individual or a corporation or other entity to do that which does not belong to citizens generally by common right.

*General services.* Support services performed by an independent contractor requiring specialized knowledge, experience or expertise. The service rendered does not consist primarily of acquisition of equipment or materials. Examples of general services are janitorial, pest control services, and maintenance of equipment. General services are normally procured through requests for proposals or invitations to bid. Purchasing of general services may include subjective evaluation factors of the submitting firms.

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*Governmental agency.* Any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch of any government in the United States of America.

*GSA contracts.* Contracts entered into by the General Services Administration of the federal government (also known as GSA schedules) and are multiple-award contracts containing prices to be utilized by all federal government agencies. GSA contracts also contain the most preferred customer clause, making the prices contained in the GSA contracts equivalent with those that are given to the most preferred customer of the vendor.

*Invitation for bid or notice 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. The invitation for bid will be used when the town is capable of specifically defining the scope of work for which a contractual service is required or when the town is capable of establishing precise specifications defining the actual commodities required. The invitation to bid will include instructions to bidders, plans, drawings and specifications, if any, bid form and other required forms and documents to be submitted with the bid.

*Invoice.* A document supplied by the providing vendor which itemizes charges for the purchase of supplies, materials, equipment or services which have been furnished. It is the means by which the supplier informs the town of its orders and should contain the same basic information as the purchase order.

*Letter of interest (request for).* A method of selecting a vendor whereby all vendors are invited to submit a summary of their qualifications and state their interest in performing a specific job or service.

*Mandatory bid amount.* The dollar threshold at which the formal bid process is required. The mandatory bid amount is any purchase equal to or greater than twenty-five thousand dollars (\$25,000.00). The current known requirement of any commodity or service will not be divided to circumvent the requirement of the mandatory bid amount.

*Master contract.* An agreement of several years' duration that provides for the use of work authorizations to authorize specific scopes of work as the need arises.

*Negotiations for professional services.* The act of determining terms, conditions, and prices for the performance of professional services. An appropriately appointed negotiation committee will negotiate with the top-ranked candidate from the competitive selection of professional service firms, in an attempt to reach agreement on a contract for the provision of professional services to the town.

*Notice of award.* The written notice by the town to the apparent, successful bidder or offeror stating that upon compliance by the successful bidder or offeror with the condition's precedent to the contract within the time specified, the town will sign and deliver the contract.

*Open-end contract.* A contract whereby an indefinite quantity of supplies, services, or construction is to be procured over an identified time span, as and when needed.

*Open-end purchase order.* A purchase order whereby a vendor provides supplies, services, or construction on demand or on a prescribed schedule not to exceed a period of twelve (12) months or the mandatory bid amount. An open-ended purchase order may be used as a release and encumbrance document to authorize an agency to order any predetermined amount from an open-ended contract on an as-needed basis.

*Payment and performance bonds.* Bonds of a contractor/vendor, respectively, in which a surety guarantees to the town that the work/services will be paid for by the contractor/vendor and will be performed in accordance with the contract documents and may, at the discretion of the town, include a letter of credit issued by a financial institution.

*Piggybacking.* The post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. ("FTA Dear Colleague" letter, October 1, 1998).



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*Purchasing.* The buying, purchasing, renting, leasing, or otherwise obtaining any commodities, services, construction or any other item(s). It also includes all functions that pertain to the obtaining of any supplies, services, construction, or any other item(s), including description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.

*Professional services.* Any services where the town is obtaining advice, instruction, or specialized work from an individual specifically qualified in a particular area. Professional services may include a report, or written advice which may be lengthy; however, the main thrust of the service is not considered labor, but the exercise of intellectual ability. The purchasing of professional services does not lend itself to normal competitive bidding and price competition alone. These services may be procured by a letter of interest or request for proposals and selected through competitive selection and negotiation. Those services within the scope of the practice of architecture, professional engineering, landscape architect, or registered land surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor or mapper in connection with his professional employment or practice.

*Project.* That fixed capital outlay, study, or planning activity described in the public notice requesting professional services. A project may constitute a grouping of minor construction, rehabilitation, or renovation activities or a project may constitute a grouping of substantially similar construction, rehabilitation, or renovation activities.

*Proposals (request for RFP).* A solicitation for offers to provide a solution to a problem. An RFP is characterized by description of the desired results and a scale of how the proposals to obtain the results will be evaluated. RFP's include a price proposal which is a part of the evaluations. Negotiation on any part of the RFP is permissible with the highest ranked proposer. The RFP includes all documents whether attached or incorporated by reference, utilized for soliciting proposals.

*Procurement code.* The purpose of this procurement code is to establish specific directions and guidelines for employees and agents of the town to use in purchasing commodities and services. All requests for commodities and/or services, and all purchases shall be for a public purpose and in accordance with this code.

*Purchase order.* Generally, required for purchases equal to or greater than one thousand dollars (\$1,000.00), authorizes the user department to seek the commodities or services requested through the appropriate means. It also authorizes the vendor to ship and invoice the materials and services as specified. Also, a purchaser's document to formalize a purchase transaction with a vendor, conveying acceptance of a vendor's proposal. The purchase order should contain statements as to quantity, description and price of the supplies, services, or construction ordered and applicable terms as to payment, discounts, date of performance, transportation, insurance and other factors or suitable references pertinent to the purchase and performance by the vendor.

*Qualified or responsible bidder/proposer.* A person who has the capability in all respects to perform fully the contract requirements and has the integrity and reliability which will assure good faith performance.

*Quotation.* An informal or formal notice by a vendor to the buyer stating the prices, terms and conditions under which they will furnish certain goods or services.

*Request for proposals.* A written solicitation for competitive sealed proposals with the title, date, and hour of the public bid opening designated. The RFP is used when the town is incapable of specifically defining the scope of work for which the commodity, group of commodities, or contractual service is required and when the town is requesting that a qualified offeror propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.

*Requisition or purchasing request form.* Form used to request the purchase of commodities or services which serves to inform purchasing, the finance and budget administrator and town administrator of the needs of the user department and to correctly define the material requested.

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*Responsible bidder/proposer/offeror.* A person or firm who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

*Responsive bid/proposal/offer.* A bid/proposal/offer submitted by a responsive, and responsible or qualified bidder/proposer, who conforms in all material aspects to the invitation for bid/request for proposal.

*Responsive bidder/proposer.* A person who has submitted a bid/proposal which conforms in all material respects to the invitation for bid/request for proposal.

*Single source.* Goods and/or services which may be available from more than one (1) source but for a justifiable reason, needs to be acquired from a particular vendor.

*Selection and negotiation committee.* A group of persons appointed to rank in preferential order those professional firms or individuals interested in providing services on a particular project and to negotiate a final contract with the highest ranked firm.

*Services.* The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term includes "professional services" except professional architectural, engineering, landscape architectural and land-surveying or mapping services, but does not include employment agreements or collective bargaining agreements.

*Sole brand.* The only known brand or only reasonable brand capable of fulfilling the needs of the town.

*Sole source.* Goods and/or services which are propriety, or available from only one (1) source, and for which there are no competitive alternate sources.

*Specification.* Any description of the physical or functional characteristics, or of the nature of a supply, or service item. It may include a description of any requirement for inspection, testing or preparing a supply or service item for delivery.

*Supplies.* All property, including but not limited to, equipment, material, printing and leases but specifically excluding the acquisition of leasehold interests in real property by the town.

*Surplus property.* Any supplies, vehicles, equipment, or other personal property no longer having any use to the town. This includes obsolete supplies or equipment, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

*Term contract.* An indefinite quantity contract wherein a party agrees to furnish commodities or contractual services during a prescribed period of time, the expiration of which concludes the contract.

*Town.* The Town of Southwest Ranches.

*Using department.* Any governmental body of the town which utilizes any supplies, services, or construction procured under this code.

(Ord. No. 2022-005, Exh. A, 2-10-2022)

## **Sec. 2-235. When to use exhibits.**

Exhibit Number	Exhibit Name	Federally Funded Procurement	All types of Procurement
Exhibit 1	Purchase Order Form		X
Exhibit 2	Check Request Form		X
Exhibit 3	Contract Renewal Election Form		X

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(Supp. No. 12)

Exhibit 4	Independent Cost Estimate	X	
Exhibit 5	Piggybacking Checklist	X	
Exhibit 6	Sole or Single Source Purchase Form		X
Exhibit 7	Price Analysis Form	X	
Exhibit 8	Cost Analysis Form	X	
Exhibit 9	Procurement Summary	X	
Exhibit 10	Applicability of third-party contract provisions	X	
Exhibit 11	Federally Required Contract Clauses	X	
Exhibit 12	Procurement History File Checklist		X
Exhibit 13	Verbal Quote Form		X
Exhibit 14	Contract Debrief	>\$500,000	>\$500,000
Exhibit 15	2 CFR pt. 200 Checklist	X	
Exhibit 16	Purchase Requisition		X
Exhibit 17	Emergency/Exigent Purchase		X
Exhibit 18	E-Verify		X
Exhibit 19	Cone of Silence Notice		X
Exhibit 20	Informal bid/Quote Form RFQ		X
Exhibit 21	Conflict of Interest Form		X
Exhibit 22	Appendix Y (2CFR 200 standards)	X	

(Ord. No. 2022-005, Exh. A, 2-10-2022)

Editor's note(s)—The exhibits referred to in section 2-235 are not codified herein but can be inspected upon request at the town clerk's office.