

ORDINANCE NO. 2011 – 015

AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ADOPTING A PROCUREMENT CODE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town currently utilizes a prior version of the Broward County Procurement Code to provide standards and procedures for the purchase of goods, supplies and services; and

WHEREAS, the Town desires to adopt a new and updated procurement code to provide standards and procedures to comport with the size, administration and policy goals of the Town; and

WHEREAS, adoption of a procurement code is within the broad home rule powers granted to the Town by the Florida Constitution, Chapter 166, Florida Statutes, and applicable law; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1: SHORT TITLE

This Ordinance shall be known, and may be cited as the "Town of Southwest Ranches Procurement Code".

Section 2: 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 requests 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 Florida Statutes, to the extent applicable to the Town.

SECTION 3: DEFINITIONS

1. As used in this Ordinance, the following terms shall have the meanings ascribed, unless the context otherwise requires.

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

Amendment – A method of changing the terms and conditions or requirements of a contract. Amendments must be approved in the same manner or as provided in the original contract and signed by authorized representatives of the parties to the contract.

Award – The acceptance of a bid, offer or proposal by the proper authority as set forth in this Code.

Brand Name or Equal Specification – A specification limited to one 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 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 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 commodities or services ordered; or to direct changes in contract execution to meet unforeseen regulatory or market conditions.

Commodity – Any of the various supplies, materials, 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 may be short-listed and ranked by an appropriately appointed evaluation committee. The committee may also be responsible for negotiation of a contract, subject to approval by the awarding authority as set forth in this Code and the solicitation.

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

Consultants’ Competitive Negotiations Act (CCNA) – The common name for Section 287.055, Florida Statutes concerning the purchasing of professional architectural, engineering, landscape architecture, and registered land surveying services. Where applicable, these services will be procured by requests for letters 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 or performance based 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 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 and as provided by the terms of 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 in addition to the furnishing of specific commodities, materials, 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 public agency.

Contract Renewal – Contracting with the same contractor for an additional contract period, and as may be provided in the original contract.

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 Code, and a fee or profit, if applicable.

Designee – Means a duly authorized representative of the person holding a superior position.

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.

Governmental Agency – Means any agency of the Federal, State, or any local government.

Invitation for Bids 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 may 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 contractor or 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.

Mandatory Bid Amount – The dollar threshold at which the formal bid process is required. The mandatory bid amount is any purchase estimated to be equal to or greater than \$25,000. The current known requirement of any commodity or service will not be divided to circumvent the requirement of the mandatory bid amount.

Master or Continuing Contract – An agreement which may be for a multiple years and that provides for the use of Work Authorizations to authorize specific scopes of work as the need arises and as defined by the solicitation. For purchases subject of the CCNA, "continuing contract" shall have the meaning set forth in the Act.

Negotiations for Professional Services – The act of determining terms, condition, and prices for the performance of professional services. An appropriately appointed negotiation committee or designee 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 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 conditions precedent to the contract within the time specified, the Town will sign and deliver the contract.

Open-end Contract – A contract providing for an indefinite quantity of supplies, services, or construction that are to be provided over an identified time span, and on an as needed basis.

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.

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.

Professional Services – Any services where the Town is obtaining advice, instruction, or specialized work from a firm, entity, or 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 and technical ability. The purchasing of professional services does not lend itself to normal competitive bidding and price competition alone. These services may be procured by letter of interest or requests 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, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape

architect, or registered land surveyor in connection with his professional employment or practice will be procured in accordance with the CCNA, where applicable, and this Code.

Purchase Order – 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, and may 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.

Purchasing Negotiator – Is a Town employee designated to conduct negotiations with a vendor as authorized by this Code or as set forth in a solicitation.

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 Letters of Interest – A method whereby vendors are invited to submit a summary of their qualifications, and state their interest in performing a specific job or service.

Request For Proposals – A written solicitation for competitive sealed proposals with the title, date, and hour of the submittal deadline, and public opening designated. The RFP may be 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. Price of the goods or services may not be the primary criteria for the evaluation and award.

Requisition or Purchasing Request Form – Form used to request the purchase of commodities or services which serves to inform Purchasing, the Finance Administrator and Town Administrator of the needs of the user Department and to correctly define the material requested.

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 Bidder/Proposer/Offeror – A person or firm who has submitted a bid/proposal which conforms in all material respects to the Invitation to Bid/Request for Proposal.

Selection and Negotiation Committee – A group of persons appointed to rank in preferential order those persons, firms or entities interested in providing services on a particular project and to negotiate a contract with the highest ranked firm, and for final approval by the awarding authority.

Single/Sole Source Purchase – The purchase of commodities and/or services from the only available source which is exempt from quotation or bid/proposal requirements.

Sole Brand – The only known brand or only brand which is reasonably capable of fulfilling the needs of the Town.

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.

Surplus Property – Any supplies, vehicles, equipment, or other personal property which is no longer having any use to the Town. This includes obsolete supplies or equipment, scrap materials, and non-expendable supplies that have completed their useful life cycle.

Two-Step Contracting – A two step method of contracting whereby vendors are asked to respond to a Request for Letters of Interest, and bids or proposals are then requested from vendors found to be qualified or short-listed in accordance with the solicitation.

Town – Means the Town of Southwest Ranches, a Florida municipal corporation, including its officers, employees and departments.

Vendor – Means an actual or potential supplier of commodities or services.

Section 4: GENERAL REQUIREMENTS

1. All contracts and purchases will be authorized by and through the Town Administrator and in accordance with this Code. All duly authorized contracts shall be executed by the Mayor in accordance with the Town's Charter.
2. 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. Any purchase, order or contract

made contrary to the provisions thereof shall be deemed an unauthorized purchase.

3. The policies and procedures in this Code do not preempt the procedures used for the Town's Accounting.
4. No contract, purchase, field purchase orders, or group of requisitions shall be subdivided to avoid the bid solicitation or quotation process.
5. All correspondence with suppliers shall be through the Town Administrator, except in special cases where technical details involved make it advisable to delegate authority to others. In such cases, the Town Administrator must receive copies of all correspondence.
6. All contracts should be reviewed and approved by the Department Head, Town Attorney, and Town Administrator prior to execution. Once executed, the original contract shall be retained by the Town Clerk's Office.
7. Deviations from the policies and procedures prescribed herein shall not be made without prior approval of the Town Administrator.
8. The Town, including its council members, officers, and employees shall comply with the standards of conduct for public officers, employees and agents in accordance with Florida Statutes, Chapter 112, and the Broward County Code of Ordinances to the extent applicable to the Town.
9. Warranty terms which are expected or required should be specified in the advertisement.
10. The bid specifications should include all license fees, permit fees, impact fees, or inspection fees which will be payable by the Contractor to the Town.
11. 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.

Section 5: PURCHASING AUTHORIZATION

1. 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.
2. 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 this 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 2, as defined below. Unless an exemption applies pursuant to the terms of this Code, competitive procurement shall be conducted for purchases in excess of Level 3.
3. 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 this Code. In the event of an emergency, 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.
4. *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**

Amount	Authority
LEVEL 0: Less than \$250	Department Head <i>No quotations are required.</i>
LEVEL 1: Equal to or greater than \$250 but less than \$1,000	Purchasing Card or Claim Voucher by Department Head <i>2 written quotes are required.</i>
LEVEL 2: Equal to or greater than \$1,000 But less than \$10,000	Town Administrator <i>3 written quotes are required.</i>
LEVEL 3: Equal to or greater than \$10,000.00 and less than \$25,000	Town Council <i>3 written quotes are required.</i>
LEVEL 4: Equal to or greater than \$25,000	Town Council <i>Competitive Procurement</i>

5. In accordance with the Approved Thresholds, the Town Administrator has the following authority:

a. 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 2.

b. Renew all contracts at or below Level 2 for commodities and contractual services provided that the following criteria are all satisfied.

1. 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.

2. 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.

3. 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.

6. 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 in excess of Approval Level 1 per item shall be made only after approval by the Town Council.
7. 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.
8. The Town Administrator shall have no authority to purchase, lease or sell real property without prior Town Council authorization and approval.

Section 6: DEPARTMENT RESPONSIBILITY

1. *Purchasing*

The Town Administrator 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 which 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.

2. *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.

Section 7: CONTRACT ADMINISTRATION

1. A contract is the legal document delineates the responsibilities of the contractor 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 contractor and the Town. There are three major elements or stages of the purchasing and purchasing process, each of which is equally important:
 - a) *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.
 - b) *Source selection:* This is the process through which solicitations are issued, advertisements run, vendors selected, and commodities or services received. Staff in user Departments and working with the purchasing process should 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 delivering services and the Town Administrator'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 confirm that the commodities/services are delivered in accordance with the solicitation.
 - c) *Contract monitoring and administration:* This element ensures that the terms of the purchase order or contract are enforced, that invoices comply with the terms of the purchase order or contract, and are timely paid. Lead responsibility for contract administration falls on Department personnel with advice and support from the appropriate staff. Invoices are approved and submitted for payment through the Finance 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 Finance Department to negotiate a change order. If the Department is dissatisfied with its purchase, then the Finance Department or designated employee pursues corrective action by the contractor. When the contract is completed, the Department staff "closes out" the solicitation by, 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. The appropriate staff shall notify the vendor of applicable suggestions and comments in writing.

d) *Typical Contract Forms*: The common types of contracts include:

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.

Multiple Source Contracting – A multiple source contract is an award of an indefinite quantity for one or more similar supplies or services to more than one 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 commodities or services is approved in writing and accordance with this Code.

Open-end Contracts – The Town Administrator shall procure open-ended or continuing 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.

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.

2. *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.

3. *EXTENSION OF CONTRACT*

Extension of a contract shall be in writing for a period not to exceed six (6) months or as may be permitted in the underlying solicitation and shall be subject to the same terms and conditions set forth in the initial contract.

4. *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 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 or as a result of budgetary constraints, and in the Town's sole discretion.

Section 8: 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 shall be by a written change order, approved by the Town Administrator. Change orders must be executed by the Town with the formalities of the contract. Town Council approval is required for change orders equal to or greater than Level 3. 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. 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 a construction project require only the signature of the Town Administrator.

Section 9: COMPETITIVE BIDDING AND OTHER PURCHASING METHODS

1. When a one-time purchase or an accumulation of multiple purchases for a specific commodity or service (whether over a period of one year or over a period that spans the fiscal year) is in excess of Level 3, user departments are expected to consult with the Town Administrator for competitive bidding or alternative options.

Purchases of materials, supplies, equipment and contracted services within Level 4 will normally be acquired through competitive bidding through designated staff. The only exceptions permitted to this policy are those authorized in this 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 an intent to award or form a binding contract.

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

c) *Invitation for Bids (IFB)*: A sealed bid process which typically includes a description of the product or service to be acquired, instructions for preparing a bid, the conditions for purchase, packaging, delivery, shipping and payment, contract clauses to be included and the deadline for submitting bids.

d) *Request for Proposals (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, and approach to the problem posed by the Town. Price need not be the most important evaluation criterion in the evaluation. 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., Section 287.055, the "Consultants' Competitive Negotiation Act" ("CCNA"). It is utilized specifically to select professional services, including architect, engineer, landscape architect or land surveying services, and using an RLI.

It is a two step method with selection of a vendor made by merit or qualifications, 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 this 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 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.

2. *Construction Services:* The procurement of construction services shall be in accordance with this Code and where applicable, the Town shall also adhere to the requirements established by F.S., Sections 255.0525 and 255.20.
3. *Design-Build Professional Services:* Where independent consulting services are required, the design criteria professional shall be selected and contracted pursuant to F.S., Section 287.055.
4. *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 this Code and in any manner permitted by Florida Statutes, including Sections 255.103 and 287.055, or Section 255.20.

Section 10: COMPETITIVE BID PROCEDURE

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:

- a) The purchase description;
- b) Specifications covering the item(s) needed;
- c) Terms and conditions of the proposed contract;
- d) General and special instructions to bidders, including the manner in which bids are to be submitted and the criteria for evaluating them;
- e) Price sheets for the vendors to submit prices for the items requested and price increases for renewal years;
- 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.

In the case of construction solicitations, the initiating department shall be responsible for ensuring plans and specifications are reviewed and approved by the building department and that the design professional has obtained all necessary approvals prior to advertising bid documents.

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 an SC or an 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 member committees, at least one member shall be a Town employee, and for five member committees, at least 2 members shall be Town employees. Except as provided in this subsection, no person other than Town employees may serve on an 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 from the public sector 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 is applicable. All committee members shall be free of conflicts of interest as provided in Part III, Chapter 112, Florida Statutes, as amended, and the Broward County Code of Ordinances, to the extent made applicable to the Town.

- b) Department staff involved in the purchase and the Town Clerk 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 not 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 all 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 Florida Statutes, Section 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; and
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 committee.

b) *Restriction; notice.*

A cone of silence shall be imposed upon each IFB, RFP and RLI, from the time of the advertisement. At the time of imposition of the cone of silence, the Town Administrator shall provide for public notice of the cone of silence by posting a notice at the Town Hall. The Town Administrator shall issue a written notice thereof to the affected departments, file a copy of such notice with the Town Clerk, 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.

c) *Termination of cone of silence.*

The cone of silence shall terminate at the beginning of the Town Council meeting at which the Town Administrator makes his or her written recommendation to the Town Council. However, if the Town Council refers the solicitation back to the Administrator, staff or committee for further review, the cone of silence shall be re-imposed until such time as the Administrator makes a subsequent written recommendation and commencement of the Council meeting. The cone of silence shall also terminate in the event that the Town Administrator cancels the solicitation.

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 Town Clerk. The Town Clerk 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. Discovery of a violation after an award 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 not less than fourteen (14) calendar days prior to the date set forth in the notice for the opening of bids and proposals. Such notice shall be given by posting on-line, 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 Florida Statutes.

a) *Bid and proposal submission*

Bids, proposals and responses to competitive solicitations shall be submitted in a sealed envelope which shall be clearly identified as a bid, proposal, or response and the applicable solicitation name and number shall also be identified on the exterior of the envelope and delivered to the office of the Town Clerk's Office. 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 requests for proposals, a register of proposals shall be prepared and maintained by the responsible staff 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 Florida Statutes, Sections 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 Florida Statutes, Section 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.

Section 11: RECEIPT AND CONTROL OF BIDS AND PROPOSALS

1. *Guidelines*

- a) All sealed bids/proposals and responses to RLIs shall be delivered to the Town Clerk's Office, be dated and time stamped, remain sealed, and kept in a secure place until the time of bid/proposal opening. Late bids/proposals will not be accepted.
- b) 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:
 - 1) Identify the transaction being conducted.
 - 2) Open bids/proposals and read in any order.
 - 3) Announce and read aloud by title or reference number of the solicitation and the name of each bidder/proposer.
 - 4) 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.
- c) The Town Administrator shall have the authority to reject any bid, proposal or response as non-responsive, and to waive minor irregularities.
- d) 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,

and the lowest responsive and responsible bid does not exceed such funds by more than 5%, 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.

- e) 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, and 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.

2. *Modification and withdrawal of bids*

Bids may be modified or withdrawn by an appropriate document duly executed and delivered to the office of the Town Clerk or other staff designated by the solicitation 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.

3. *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.

4. *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 in be borne by the vendor.

5. *Authority to Award to Second Low Bidder*

If within 90 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

Section 12: BID SECURITY AND PERFORMANCE BONDS

1. *Bid Bonds/Bid Security*

Bid Bonds 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 fifty thousand dollars (\$50,000.00). The bid security shall be a bond provided by a surety company authorized to do business in this State, or the equivalent by 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 fifty thousand dollars (\$50,000) and in the discretion of the Town. The amount of the bid security shall be determined by the Town Administrator and set forth in the solicitation.

2. 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 offeror, 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.

3. 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 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.

4. Early withdrawal of any bid or proposal by offeror without approval by the Town shall result in forfeiture of the proposal security. Unless otherwise specified in the solicitation, bids and proposals may not be withdrawn for a period of (90) days from the opening.

5. *Payment and Performance Bonds*

Payment and Performance Bonds are mandatory for all construction contracts in excess of fifty thousand dollars (\$50,000.00). The following bond or security shall be delivered to the Town of Southwest Ranches and shall become binding on the parties upon the execution of the contract:

A payment and performance bond in an amount equal to one hundred (100) percent of the price specified in the contract and conditioned that:

- a) The contractor shall promptly make payments: to all persons who supply labor, materials or commodities used directly or indirectly in the performance of the work provided for in the contract; and
- b) Contractor shall perform the contract in the time and manner prescribed in the contract; or
- c) In lieu of a performance bond and payment bond the Town may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit in the amount of one hundred (100) 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 Florida Statutes 255.05 and 287.0935

6. Reduction of Bond Amounts – Except where required by Florida Statutes, Section 255.05, and after notice to the Town Council, the Town Administrator is authorized to reduce the amount of performance and payment bonds to 50% of the contract price for each bond when a written determination is made by the Town Administrator 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 or other security in addition to those bonds referenced in this Code.

7. *Insurance*

For construction and other services contracts, the solicitation should specify the amount of insurance and coverage requirements.

Section 13: CANCELLATION AND REJECTION OF BIDS AND PROPOSALS

1. 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:

- a) 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.
- b) If there is reason to believe collusion exists among bidders or offerors.
- c) 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, unauthorized conditions, or irregularities of any kind. The Town reserves the right to waive such technical errors and minor irregularities as may be deemed in the best interest of the Town.

2. *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 should 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 then may republish the notice seeking goods, services or professional services, with any appropriate modifications at the direction of the Town Council.

Section 14: EVALUATION AND SELECTION

1. 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) and the specific criteria enumerated in the solicitation that are applicable to the particular purchasing involved.
2. For Selection Committee or Selection and Negotiation Committee meetings that do not involve any type of presentation by the proposers or ranking decisions, and 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 Florida Statutes, Section 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 Town Clerk or designee. Committee meetings shall not be construed as public hearings, such that public comment is not required.
3. A scoring system will be used to facilitate 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 Florida Statutes, Section 286.0113.
4. 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 to the Town.
5. For RFPs or RLIs, 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.

6. Competitive Selection for Services Subject to CCNA; Design-Build Projects

- a. Where applicable, all contracts for professional services as that term is defined in the Consultants' Competitive Negotiations Act, F.S. 287.055, shall be awarded in accordance with the procedures set forth in that Act, this Code, and any Town purchasing procedures adopted in furtherance of that Act.
- b. The Town will appoint an 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 letters of interest/proposals are submitted then all firms may be required to provide presentations) regarding their qualification, approach to the project, and ability to furnish the required services. The SNC will thereafter rank the firms, and attempt to negotiate a contract with the highest ranked firm.
- c. Design-Build Projects

The Town Administrator, 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 criteria professional to prepare the design criteria package in accordance with F.S., Section 287.055. The Town Administrator shall also determine whether the selection procedure will be a qualifications based selection as specified by F.S., Section 287.055, or a competitive proposal process utilizing an RFP. The solicitation document shall provide the specific terms and procedure to be utilized for the particular project.

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

2. **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,

conditions and procedures set forth in this Code, the process and the advertised RFP shall include:

- i. 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.
 - ii. The qualification and selection of no fewer than (3) design-build firms as the most qualified, based upon qualifications, availability, and past work of the firms, including the partners or members thereof.
 - iii. 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.
 - iv. The solicitation of the competitive proposals, pursuant to the design criteria package, from those 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.
 - v. 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 for 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.
 - vi. 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 this Code.
6. 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.

Section 15: BID PROTESTS

1. A prospective bidder or offeror may file a protest in writing with the Town Clerk's Office challenging the terms, conditions, or 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 to and prior to awarding of any contract may file a 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 pursuant to established Florida case law. Protests filed by a bidder or offeror which does not have standing may be summarily denied without a formal decision.

2. 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:
 - the name of the petitioner;
 - the petitioner's address and phone number, and fax number;
 - the name of the petitioner's representative, if applicable;
 - the name and number of the solicitation;
 - a plain and clear statement of the facts and grounds on which the protest is based; and
 - a specific request for the relief to which the petitioner deems itself entitled, or the remedy requested.
3. A written protest is received by 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.
4. Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the vendor of all rights of protest under this protest procedure. Additionally, grounds not raised in any protest shall be deemed waived.

5. In the event of a timely 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.
6. Within seven (7) days (excluding weekends, and legal holidays) of receipt of the formal written protest, the Town Administrator shall attempt to settle or resolve the dispute. If the protest is not resolved by mutual agreement, the Town Administrator shall render a written decision. A copy of the decision shall be mailed to the protestor by certified mail, return receipt requested, to the protestor.
7. 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, or offeror. Failure to file an administrative protest as set forth herein shall also be deemed a failure to exhaust administrative remedies.
8. In order to 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 shall result in a denial of the protest. In the event that the protest is denied, the Town shall retain the filing fee. In the event that the protest is granted, then one half (50%) of the filing fee shall be refunded to the protestor.

<u>Estimated Contract Amount</u>	<u>Filing Fee</u>
Up to \$250,000	\$2,000
\$250,001 - \$500,000	\$4,000
\$500,001 - \$5 million	\$6,000
Over \$5 million	\$10,000

Section 16: AWARD OF CONTRACT

1. *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 to bid except as otherwise provided herein.
 - a) Town Administrator shall approve the Selection Committee's recommendation prior to issuing notice of intent to award.
 - b) 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.

- c) An agenda item will be prepared by the requesting department in coordination with the Town Clerk's Office. Contracts should be signed by the recommended awardee and included in the agenda item, prior to the item being brought to the Town Council.
- d) Upon award of contract, a Purchase Order, if applicable, and Final Notice of Award are mailed to vendor.

2. *Tie Bids or Proposals*

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 proposal if such quality is ascertainable.
- 2. Delivery time if provided in the bid or proposal by the bidders.
- 3. Certification of a "Drug-Free Workplace Program" which meets criteria established in F.S., Section 287.087.
- 4. Location of the vendor with the following award preferences:
 - i. A Southwest Ranches vendor.
 - ii. A Broward County vendor.
 - iii. A Florida vendor.

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

The Town may suspend agreements or awards of contract for a period not to exceed thirty (30) days following a determination by the Town Administrator that there has been a material deviation by the most responsible bidder from the requirements of this solicitation. Any suspension of contract shall be provided in writing to the affected vendor within three (3) 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.

3. *Request for proposals request for letters of interest award decisions.*

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. 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.

Section 17: TYPES OF PURCHASES AND EXEMPTIONS

1. *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: operational – a situation that presents a threat to public health, welfare or safety; or natural disaster – a situation where the normal operation or major portions thereof of the Town would cease or be seriously impaired if immediate corrective action was not taken.

If there is not time to process standard purchase orders or other documents typically required of such purchase, then documentation may be done after the fact. However, it is the responsibility of the Town Administrator to execute and submit to the Town Clerk's office all necessary documentation.

2. *Piggyback Purchasing*

The term "piggyback" refers to purchases of commodities and services from vendors under contract with any State or local government agency within the State of Florida. All purchases of this nature are exempt from the competitive purchasing requirements, provided that the following criteria are satisfied:

- a) The existing contract was awarded through a competitive process substantially equivalent to the requirements of this Code; and
- b) 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 3.

"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. *Cooperative Purchasing*

The term "cooperative purchasing" (sometimes known as "pooling") is used when two or more governments 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 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, and the Town Council may authorize membership in government cooperative organizations.

4. *Specialized Services Exemptions*

- a. Services involving special skill, ability, training or expertise which are in their nature, unique, original or creative.
- b. Legal services including paralegals, expert witnesses, appraisal services, investigative services and court reporters.
- c. Actuarial services.
- d. Auditing services, except as may be required by applicable Florida Statutes or Federal law or regulation.
- e. Academic program reviews or lectures or seminars by individuals.
- f. Health services involving examination, diagnosis, treatment, prevention, medical consultation or administration.
- g. Performing artists, entertainers or educators hired to provide entertainment or instructional programs for the benefit of the Town residents and the general public at any Town facility.
- h. 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 or when at least three (3) responsible services have been evaluated, the services may be procured without bid.
- i. Advertising.
- j. Utilities including but not limited to electric, water and telephone.

- k. Commodities and services provided by other governmental entities.
- l. Copyrighted materials (books, videotapes, etc.) except computer software.
- m. Food, clothing and other promotional items purchased for resale or distribution to the public.
- n. 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 Florida Statute 287.055.
- o. Postage.

5. *Sole Source Purchases*

Purchases available only from a single source may be exempted from competitive procurement requirements. For all sole source purchases, evidence substantiating commodities or services being fulfilled only through a single vendor/business must be documented by the Town Administrator.

- a. A contract may be awarded without competition when the Town Administrator 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 shall conduct negotiations as appropriate as to price, delivery and terms. A record of sole source procurement shall be maintained as a public 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.
- b. All sole source procurements where the cost of the commodities or contractual services exceeds Level 2 shall be authorized by the Town Council.

6. *Government Contracts*

All purchases of commodities or contractual services under the provisions of State of Florida and federal government contracts shall be exempt from the competitive procurement requirements, provided that the following criteria are all satisfied:

- a. 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.
- b. 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.
- c. The Town Council must authorize such procurement when the cost of the commodities or contractual services exceeds Level 2.

Section 18: PUBLIC LANDS & PROPERTY

1. *Acquisition or sale of real property, both improved and unimproved*

The following land acquisition procedures shall be employed whenever the Town seeks to acquire, by purchase, any real property:

- a. Procedures shall follow Florida Statutes, Section 166.045.
- 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 the 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.
- 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 appraisal is obtained, by more than ten (10%) percent.

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 Section 112.312, Florida Statutes, as amended from time to time:

- a. Prior to the Town Council authorizing the sale 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. The Town may agree to the sale of its real property upon approval by the Town Council, by ordinary vote, at a regular or special public meeting after public notice.
- c. If the sale of any of the Town's real property is to another agency, bids shall not be required.

Section 19: PAYMENT AND SALES TAX

1. *CONSTRUCTION*

Any invoice or payment request for construction or other related engineering services must be reviewed and approved for payment by the appropriate project manager and the Department Head. 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.

2. *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. This exemption is not available for any taxable transaction when payment is made by an employee by use of personal funds, including cash, checks or credit cards, when the employee is subsequently reimbursed by the Town. Payment must be made directly to the dealer by the Town.

Section 20: PUBLIC ENTITY CRIMES

- 1. The Public Entity Crimes Act, Chapter 287.133 Florida Statutes as amended, 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.
- 2. Invitations for Bids and Requests for Proposals shall contain a statement informing persons of the provisions of F.S., Section 287.133 (2) (a).
- 3. The Town cannot accept a bid, award a contract, or transact any business in excess of the threshold amount provided in Section 287.017 for Category Two with any person or affiliate on the convicted vendor list for a period of

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.

Section 21: CODE OF ETHICS AND CONDUCT

1. To the extent that violations of the ethical standards of conduct set forth in this 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., Section 112.313 and applicable Broward County Code for clear definition.
2. 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; except 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 from vendors.

Section 22: DEBARMENT

1. 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.
2. Causes for Debarment:
 - a. 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.

- b. Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract, subcontract or incident to performance of such contract or subcontract.
- c. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
- d. Violation of contract provisions, as set forth below, of a character which is regarded by the Town Administrator to be so serious as to justify debarment action.
 - 1. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract.
 - 2. Recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one 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.
 - 3. Any other cause or material factor the Town Administrator determines to be so serious and compelling as to affect responsibility as a Town contractor, including debarment by another governmental entity for any of the causes listed in this section or violation which may be listed in this Code.

Section 23: RISK MANAGEMENT

1. 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 provided in this Code. The Town Administrator 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.
2. 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.
3. *WAIVER OF INSURANCE REQUIREMENTS:* Insurance requirements incorporated in solicitations may only be waived or modified by the Town Council.
4. *COMPLIANCE WITH INSURANCE REQUIREMENTS:*

The successful bidder shall be required to obtain, at its own expense, all minimum insurance coverage 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.

Section 24: BRAND NAME OR EQUAL SPECIFICATIONS

1. *Use*
Brand name or equal specifications may be used when the Town Administrator determines in writing that:
 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.
2. *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.
3. *Required characteristics.*
Unless the Town Administrator 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.
4. *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.

Section 25: BRAND NAME SPECIFICATIONS

1. *Use*
Since use of a brand name specification is restrictive of product competition, it may be used only when the Town Administrator makes a written determination that only the identified brand name item or items will satisfy the Town's needs.
2. *Competition*
The Town Administrator 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 this Code.

Section 26: LEASE AND INSTALLMENT PURCHASE OF ASSETS

1. 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 for approval. If the Town Administrator 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.
 - a. Vendors for lease, lease-purchase, or installment purchases shall be selected competitively as prescribed in this Code.
 - b. If the item procured would normally qualify as an asset, then it shall be tagged for inventory purposes upon receipt.
 - c. 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.
 - d. All leases or rental agreements shall be reviewed by the Town Attorney.

Section 27: OUTSOURCING

By Town Council and Town Administrator direction, Town operations will be performed at the most economical cost while maintaining desired service levels. As one 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.

Section 28: CONTINGENCY FEES PROHIBITED

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 other than a bona fide employee working solely for the vendor.

Section 29: Conflicts. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 30: Severability. If any word, phrase, clause, sentence or section of this Ordinance is, for any reason, held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

Section 31: Codification. The Town Clerk shall cause this Ordinance to be codified as part of the Town of Southwest Ranches, Code of Ordinances.

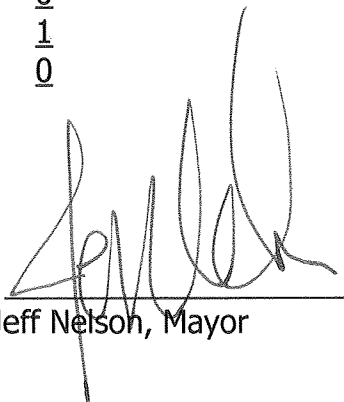
Section 32: Effective Date. This Ordinance shall take effect immediately upon adoption.

PASSED ON FIRST READING this 7th day of September, 2011 on a motion made by Council Member Breitkreuz and seconded by Vice Mayor Fisikelli.

PASSED AND ADOPTED ON SECOND READING this 22nd day of September, 2011 on a motion made by Council Member Breitkreuz and seconded by Council Member Jablonski.

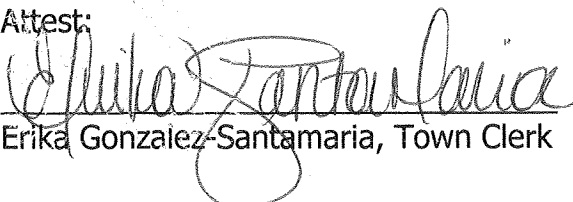
Nelson	<u>ABSENT</u>
Fisikelli	<u>YES</u>
Breitkreuz	<u>YES</u>
Jablonski	<u>YES</u>
McKay	<u>YES</u>

Ayes	<u>4</u>
Nays	<u>0</u>
Absent	<u>1</u>
Abstaining	<u>0</u>



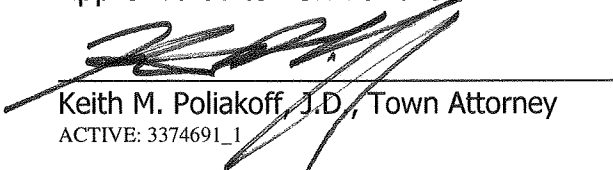
Jeff Nelson, Mayor

Attest:



Erika Gonzalez-Santamaria, Town Clerk

Approved as to Form and Correctness:



Keith M. Poliakoff, J.D., Town Attorney
ACTIVE: 3374691_1