

ORDINANCE NO. 2012 – 08

AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING SECTIONS 5, 10 AND 11 OF THE TOWN OF SOUTHWEST RANCHES' PROCUREMENT CODE, CODIFIED IN THE TOWN'S CODE OF ORDINANCES, TO MODIFY THE PURCHASING THRESHOLDS; BRINGING THE PROCUREMENT CODE INTO CONFORMITY WITH RECENTLY ENACTED STATE STATUTES AND BROWARD COUNTY CODE RELATIVE TO PUBLIC RECORDS AND SELECTION COMMITTEE COMPOSITION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN'S CODE OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 22, 2011, pursuant to Ordinance No. 2011-15, the Town adopted a new Procurement Code; and

WHEREAS, the Town desires to amend Section 5 of the Procurement Code to provide for more efficient procurement of goods and services where competitive procurement is not required; and

WHEREAS, the Town desires to amend Section 10 of the Procurement Code to be consistent with the Broward County Code of Ethics for Elected Officials relative to Selection Committees; and

WHEREAS, the Town desires to amend Section 11 of the Procurement Code to be consistent with recently enacted Florida Statutes, Section 255.0518 relative to bid openings for construction projects.

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

Section 1. Section 5 of the Procurement Code, of the Town's Code of Ordinances is hereby amended to read as follows:

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	Authority
LEVEL 0: Less than <u>\$500</u>	Department Head <i>No quotations are required.</i>
LEVEL 1: Equal to or greater than <u>\$500</u> but less than <u>\$1,500</u>	Purchasing Card or Claim Voucher by Department Head and written approval by Town Administrator <i>2 written or verbal quotes to the extent practicable.</i>

<p>LEVEL 2: Equal to or greater than <u>\$1,500</u> But less than \$10,000</p>	<p>Town Administrator <i>3 written quotes are required.</i></p>
<p>LEVEL 3: Equal to or greater than \$10,000.00 and less than \$25,000</p>	<p>Town Council <i>3 written quotes are required.</i></p>
<p>LEVEL 4: Equal to or greater than \$25,000</p>	<p>Town Council <i>Competitive Procurement</i></p>

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 2. Section 10 of the Procurement Code, of the Town's Code of Ordinances is hereby amended to read as follows:

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. Notwithstanding the above, nothing herein shall be construed to prohibit members of the Town Council from serving on an SC or SNC where otherwise permitted by the applicable Broward County Code of Ordinances.
- 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 3. Section 11 of the Procurement Code, of the Town's Code of Ordinances is hereby amended to read as follows:

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.

5) To the extent required by Florida Statutes, Section 255.0518, bid openings for construction or repairs on a public building or public work will be opened at a public meeting, and the name of each bidder and the price submitted shall be announced.

- 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 4. Conflicts. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflicts herewith, be and the same are hereby repealed to the extent of such conflict.

Section 5. Severability. If any portion of this Ordinance is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot be legally applied to any individual(s), group(s), entities(ies), property(ies), or circumstance(s), such determination shall not affect the applicability hereof to any other individual, group, entity, property or circumstance.

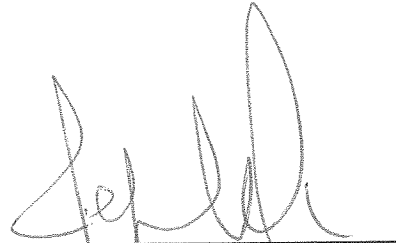
Section 6. Inclusion in Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and be made a part of the Town of Southwest Ranches Code of Ordinances; and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 7. Effective Date. This Ordinance shall be effective immediately upon its adoption.

PASSED ON FIRST READING this 14th day of June, 2012 on a motion made by Council Member Breitreuz and seconded by Vice Mayor McKay.

PASSED AND ADOPTED ON SECOND READING this 12th day of July, 2012 on a motion made by Council Member Breitreuz and seconded by Council Member Jablonski.

Nelson	<u>ABSENT</u>	Ayes	<u>4</u>
McKay	<u>YES</u>	Nays	<u>0</u>
Breitreuz	<u>YES</u>	Absent	<u>1</u>
Fisikelli	<u>YES</u>	Abstaining	<u>0</u>
Jablonski	<u>YES</u>		



Jeff Nelson, Mayor

Attest:



Erika Gonzalez-Santamaria, CMC, Town Clerk

Approved as to Form and Correctness:



Keith M. Poliakoff, J.D., Town Attorney
ACTIVE: 3878502