

ORDINANCE 24-11

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH TO TRANSFER PURCHASING TO THE TOWN MANAGER OR DESIGNEE FROM THE FINANCE DEPARTMENT, TO INCREASE THE AUTHORITY OF THE TOWN MANAGER FOR PURCHASES OF GOODS AND SERVICES, TO CLARIFY EXISTING REGULATIONS, AND TO IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT AND ABATEMENT PLAN PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, for purposes of greater efficiency, the responsibilities of the Finance Department Director have been transferred to the Town Manager or designee; and

WHEREAS, the increase in the cost of goods and services justifies an increase in the Town Manager's authority for purchases of goods and services without further review by the Town Council; and

WHEREAS, as part of its response to implementation of an Abatement Plan to improve upon disaster readiness and compliance with requirements mandated by the Federal Emergency Management Agency (FEMA), the town desires to further clarify and emphasize certain existing procurement policies; and

WHEREAS, on April 15, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to recommendations of staff and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the 18th day of April, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was

published in the Fort Myers News-Press on the 18th day of April, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 6th day of May, 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to update and amend the Town's procurement ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines that adoption of the following changes to Division 1 Purchasing of Goods and Services Policies and Procedures of Article V Finance are in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors, and shall read as amended in attached Exhibit A.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted Town Code provision or ordinance, this Ordinance shall apply.

Section 4. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. Absent extension of this Ordinance in accordance with State law, Executive Order 22-218, and the Town Code, this Ordinance shall terminate within 30 days from its effective date and shall be of no further force or effect after such date.

Section 7. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Vice Mayor Atterholt and seconded by Mayor Allers, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor

Aye

Jim Atterholt, Vice Mayor Aye
John R. King, Council Member Aye
Scott Safford, Council Member Aye
Karen Woodson, Council Member Aye

ADOPTED this 6th day of May 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (May 14, 2024 14:48 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Becky Vose
Becky Vose (May 14, 2024 23:40 EDT)

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 14th day of May 2024.

EXHIBIT A

DIVISION 1. - PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES

Sec. 2-476. - Purpose.

The purpose of the ordinance codified in this division is to provide for a fair and equitable method of administering purchases of goods and services in order to maximize the purchasing value of public funds and to provide procedures and guidelines governing said purchases. The ordinance is intended to supplement the provisions pertaining to procurement of goods and services set forth in Florida Statutes.

Sec. 2-477. - Applicability.

This division applies to all purchases of supplies and services and construction by the Town of Fort Myers Beach as of the effective date. In the event of a conflict between the provisions of this division and any applicable state or federal law or the town Charter, the most restrictive provisions will prevail, unless the Town is otherwise pre-empted from regulation.

Sec. 2-478. - Responsibilities for procurement of goods and services.

The Town Manager or designee finance department is authorized to promulgate procedures for the requisition of supplies, goods and services; and, all purchases of goods and services must be processed through this department. The procedures shall include a requirement for the completion of an analysis of whether it is in the Town's best interest to purchase or lease needed equipment.

For purchases of \$500.00 or more, the finance department will certify to the Town Manager or designee that the purchase request has sufficient unencumbered funds to cover the purchase, or a transfer is in process for approval by the town council, manager or designee, and the proper purchasing procedures have been followed. The Town Manager or designee shall remain responsible for insuring that proper purchasing procedures have been followed.

Sec. 2-479. - Definitions.

"Brand name or equal specification" means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the town's requirements, and which provides for the submission of equivalent products.

"Brand name specification" means a specification limited to one or more items by manufacturers' names or catalog numbers.

"Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Change order" means a written change to a contract after the contract has been awarded.

"Confidential information" means any information that is available to any employee only because of the employee's status as an employee of the town and is not a matter of public knowledge or available to the public on request.

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

"Contract" means all types of town agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

"Equipment" means all property, including but not limited to, town capitalized equipment.

"Firm" or "vendor" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity, currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Indirect" or "indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the employee or town official.

"Invitation to bid" (ITB) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting sealed bids.

"Invitation to negotiate" (ITN) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting proposals.

"Material interest" means direct or indirect ownership of more than five percent of the total assets or capital stock of any business or firm.

"Request for proposals" (RFP) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting proposals.

"Request for qualifications" (RFQ) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting statements of qualifications under the Consultants Competitive Negotiations Act or otherwise.

"Responsible offeror" means 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 that will assure good faith performance of the contract.

"Responsive bidder" means a person or firm who has submitted a bid that confronts in all material respects to the requirements set forth in the invitation to bid.

"Selection advisory committee" means a committee of staff members, town members with expert knowledge and contracted professionals of the town, not in conflict with the commodity being bid, who evaluate professional service contract submittals to the town manager and/or council for approval.

"Sole source" means only one available source for supply, equipment, service or construction items.

"Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

"Supplies" means property, including but not limited to materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

"Town official" means any town council member, the mayor any other person who is elected to fill a position with the Town of Fort Myers Beach.

Sec. 2-480. - Purchasing procedures.

(a) *Competitive sealed bidding.*

- (1) *Applicability.* Except as otherwise authorized herein, all contracts for the purchase of goods or contractual services in excess of ~~\$25,000.00~~ \$75,000 within a fiscal year shall be awarded by competitive sealed bid.
- (2) *Invitation to bid.* For all purchases subject to competitive bidding, the Town Manager or designee ~~finance department~~, with assistance from the affected departments, will issue an invitation to bid that includes specifications, and all contractual terms and conditions applicable to the anticipated purchase. In the event of any conflict between the invitation to bid and this division, the provisions of this division will prevail.
- (3) *Addendum.* After an invitation to bid is issued and before the bid opening, the affected department may request that the Town Manager or designee ~~and/or the finance department may~~ issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the bid. ~~The finance department is solely responsible to issue all addenda.~~

- (4) *Public notice.* All invitations to bids must be published at least once in a newspaper of general circulation in the town for a minimum of 30 calendar days preceding the last day set for the opening of bids. The public notice must state the place, date, and time of the bid opening; a general description of the subject matter of the bid, and where bid forms and specifications may be obtained.
- (5) *Bid bond.* The invitation to bids may specify that a form of bid security, as a guarantee that all provisions of the specifications will be met, is required. The bid bond must provide that if the bid is: (a) rejected by the town; or (b) accepted and the bidder executes the contract and furnishes an appropriate bond, then the bid bond is void; otherwise it remains in full force and effect. As an alternative to a bid bond, the required bid security may be provided in the form of a certified check, a cashier's check, treasurer's check or bank draft of any national or state bank made payable solely to the Town of Fort Myers Beach. No third-party endorsed payments are acceptable for this purpose. If the town permits a bidder to withdraw its bid, no action shall be taken against the bidder or the bid security.
- (6) *Bid opening.*
 - a. Bids will be opened publicly at the time and place designated in the invitation to bid. The amount of each bid, and such other relevant information as the Town Manager or designee ~~finance department director~~ deems appropriate, together with the name of each bidder will be recorded and made available for public inspection. (see Exhibit A).
 - b. Bid openings must be scheduled a minimum of 30 calendar days after the date that the invitation to bid is advertised.
- (7) *Bid acceptance.* Bids will be unconditionally accepted without alteration or correction, except as may be authorized in this division. All bids will be deemed to be held open and irrevocable for the time period set forth in the invitation to bid.
- (8) *Bid evaluation.* Bids will be evaluated based on a bidder's ability to satisfy the requirements set forth in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered as part of the evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation to bid.
- (9) *Bid mistakes.* Mistakes discovered before the bids are opened may be modified by the bidder via written notice from the bidder specifically identifying the modification and the reason the modification is necessary. In lieu of modification, the bidder may also withdraw the bid submittal. The written notice as to modification or withdrawal must be received in the office designated in the invitation to bid prior to the time set for bid opening.
- (10) *Bid withdrawal.* After bids are opened, corrections or modification to bids are not permitted, but a bidder may be permitted to withdraw an erroneous bid, prior to the bid award by the town if the following is established to the satisfaction of the town manager. In the town's sole judgment:
 - a. The bidder acted in good faith in submitting the bid;
 - b. In preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;
 - c. The error was not the result of gross negligence or willful inattention on the part of the bidder;
 - d. The error was discovered and communicated to the town ~~finance department~~ manager or designee within eight business hours of bid opening, along with a written request for permission to withdraw the bid; and
 - e. The bidder submits documentation acceptable to the town and an explanation of how the bidding error was made.

- (11) *Cancellation of invitation to bid.* An invitation to bid may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, with or without cause. The following are considered good cause for rejection of all bids:
- a. All bids exceed the estimated or budgeted amount.
 - b. The specifications contain an error which causes confusion and misunderstanding among bidders.
 - c. The item(s) or services are no longer needed.
 - d. Lack of adequate competition.
 - e. Notice of cancellation will be sent to all businesses solicited or submitting bids.
- (12) *Bid award.*
- a. All bids will be awarded by town as soon as practical after the bids are opened. Bids shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The town reserves the right to reject any and all bids and to waive minor irregularities in an otherwise valid bid. A minor irregularity is a variation from the bid invitation that does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by the other bidders, or does not adversely impact the interests of the town.
 - b. In the event the lowest responsive and responsible bid for a construction project exceeds available funds, as certified by the finance department director, and such bid does not exceed such funds by more than ten percent, the town manager is authorized, when time or economic considerations preclude re-solicitation of work of reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment may be obtained only by eliminating independent deductive items specified in the invitation to bid.
- (13) *Tie bids.* In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order:
- a. The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
 - b. The bidder who has its principal place of business in Lee County, Florida.
 - c. The bidder who has its principal place of business in the State of Florida.
- (14) *Selection advisory committee.*
- a. A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: ~~a town department directors or their designees~~ and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
 - b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.
 - c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
 - d. The selection advisory committee will review the ~~submittal bid and response materials provided by the finance department~~ submittal bid and response materials prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding

of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.

- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(15) *Recommendation.*

- a. The town council will carefully consider the recommendations of the town manager and selection advisory committee, review the qualifications of the firms, and vote to accept or reject the ranking of the firms as proposed by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(16) *Negotiation.*

- a. The town manager will negotiate a contract with the most qualified firm for compensation the town manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the products and/or professional services required in addition to considering the scope and complexity of the project.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to exclude increases in the contract price demonstrably related to inaccurate or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.
- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated; and, the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking and continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for qualifications.

(17) *Town council approval.* The town manager will seek town attorney review of the negotiated contract prior to forwarding the contract to the town council for approval.

(b) *Small purchases.*

- (1) *Applicability.* Any purchase of ~~\$25,000.00~~ \$75,000 or less may be made in accordance with the small purchase procedures authorized in this section. Contract requirements may not be artificially divided so as to constitute a small purchase under this section. Any purchase in excess of ~~\$25,000.00~~ \$75,000.00 must be approved by town council. All small purchases shall be accompanied by a quote sheet. (see Exhibit B). Change orders to existing contracts may be made in accordance with the small purchase procedures authorized in this section up to \$75,000. Any subsequent change orders shall require approval by the town council.
- (2) *Purchases over ~~\$4,000.00~~ \$10,000 and not greater than ~~\$25,000.00~~ \$75,000.* For smaller purchases of ~~\$4,000.00~~ \$10,000 and over, no less than three written quotations must be obtained, if available (e.g., not a sole source situation or change order). The award will be made by the department director and town manager, with review by the finance department director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, must be recorded and maintained in the town's records. For items purchased on an ongoing basis, contracts may not be for a term in excess of two years without obtaining new quotations to determine if the price is still the lowest.
- (3) *Purchases over ~~\$500.00~~ \$5,000 and not greater than ~~\$4,000.00~~ \$10,000.* For purchases greater than ~~\$500.00~~ \$5,000 but less than ~~\$4,000.00~~ \$10,000 a minimum of three verbal, telephone, facsimile or electronic quotations may be obtained, if available. The award may be made by the department director, with review by the finance department director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained in the town's records.
- (4) *Purchases for ~~\$500.00~~ \$5,000 and under.* For purchases of ~~\$500.00~~ \$5,000 and under, one verbal quotation is required, provided the quotation is fair and reasonable as determined by the department director and documented on the quote sheet.
- (5) *Tie bids.* In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order:
 - a. The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
 - b. The bidder who has its principal place of business in Lee County, Florida
 - c. The bidder who has its principal place of business in the State of Florida.

(c) *Sole source purchases.*

- (1) *Basis for sole source purchase.*
 - a. A contract may be awarded without competition when the town manager with the recommendation of the finance department director and ~~, in conjunction with the department director~~ determines, in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, equipment, service, or construction item. The requisitioning department must submit to the town manager ~~finance department~~ written justification as to why there is only one source (see Exhibit C).
 - b. The town manager or designee will conduct negotiations, as appropriate, as to price, delivery, and terms. The contract must be approved by the town manager. A record of sole source contracts must be maintained by the town clerk ~~finance department~~. Sole source contracts may not be automatically renewed.
 - c. At the beginning of each fiscal year, the town manager or designee ~~finance department director~~, in conjunction with the department director, will determine whether the item is still only available from a sole source. If additional sources are discovered, then bids or quotations must be obtained before the item is purchased under a new contract.
- (2) *Town council approval.* The town manager will submit all sole source purchases of \$20,000.00 or more to the town attorney for review, and submit the contract to the town council for approval.

(d) *Emergency purchases.*

- (1) *Basis for emergency purchase.* Notwithstanding any other provisions of this division, the town manager or designee may make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances. The director of the affected department will notify the town manager, who will certify the threat to public health, welfare or safety in writing and authorize the purchase of the needed items(s). The director will send a purchase order request to the finance department, together with a written explanation of the basis for the emergency purchase (see Exhibit D). The town manager or designee must approve all emergency requisitions.
- (2) *Town council approval.* The town manager will submit any emergency purchase in excess of ~~\$25,000.00~~ \$75,000.00 to the town attorney for review and submit the contract to the town council for approval, as soon as practicable after the purchase.

(e) *Purchases from other governmental entities.*

- (1) *Basis for purchase.* Purchases of goods from the federal government, any state or political subdivision thereof, or any municipality are exempt from the competitive bid requirements of this division. There must be proof of proper procedural documentation to support the other governmental agencies purchasing policy provides for competitive bidding similar to the town's competitive bid process and in cases of piggybacking contracts, certification that the other governmental entity's contract allows for this conduct (see Exhibit E).
- (2) *Town council approval.* The town manager will submit any individual purchases in an amount in excess of ~~\$25,000.00~~ \$75,000.00 to the town attorney for review and submit the contract to the town council for approval.

(f) *Purchases of goods from contracts awarded by other governmental entities by competitive bid (aka: "piggybacking").*

- (1) *Basis for purchase.* The purchase of goods under a contract awarded by another governmental entity or cooperative purchasing entity is authorized provided the town manager or designee ~~finance department director~~ makes a written determination that time and expense factors make it financially advantageous for the town to do so. In making this determination, the town manager or designee ~~finance department director~~ will consider the number of bids so solicited by the other governmental entity or cooperative purchasing entity. There must be proof of proper procedural documentation to support the other governmental agencies entity's ~~governmental~~ purchasing policy and, in cases of piggybacking contracts, certification that the other ~~governmental~~ entity's contract allows for this conduct (see Exhibit E).
- (2) *Town council approval.* The town manager will submit any contract(s) awarded by the town based upon another governmental entity's procurement process in an amount in excess of ~~\$25,000.00~~ \$75,000.00 to the town attorney for review and submit the contract to the town council for approval.

(g) *Cooperative purchasing.*

- (1) *Basis for purchase.* The town ~~finance department~~ may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any goods, services or construction with one or more other governmental units or cooperative purchasing entities.
- (2) *Town council approval.* Cooperative purchasing agreements must be authorized pursuant to an interlocal agreement with a governmental entity or other agreement approved by town council and executed by all participating governmental units. The town manager will forward the proposed interlocal agreement to the town attorney for review and submit the interlocal agreement to the town council for approval.
- (3) The town manager may purchase goods or services through cooperative purchasing in lieu of a competitive bid as provided in this Division.

(h) *Competitive negotiation for professional services.*

- (1) *Applicability.* Contracts for professional services consisting of architecture, professional engineering, landscape architecture, or registered land surveying must be competitively negotiated in accordance with the requirements of F.S. § 287.055 (the "Consultant's Competitive Negotiation Act" or "CCNA") and within statutory thresholds.
- (2) *Request for qualification.* The department director will prepare, with the assistance of the town manager or designee ~~finance department director, and review by the town manager or designee,~~ a request for qualification for the particular project. The request will include:
 - a. A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
 - b. A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when and where the proposal must be submitted.
 - c. A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing envelope may not be opened unless the proposer is selected by the town to engage in negotiations.
- (3) *Addenda.*
 - a. After a request for qualifications (RFQ) is issued and before the submission deadline, town manager or designee ~~finance department director~~ , with assistance from the affected department, may issue one or more written addendum for the purpose of clarifying specifications or providing further information or other matters relating to the RFQ.
 - b. Any firm or individual desiring to provide professional services to the town must first be certified by the town as qualified pursuant to law and the regulations of the town. The town will make a finding that the firms or individuals to be employed is fully qualified to render the required service. The factors to be considered include but are not limited to the capabilities, adequacy of personnel, past record, and experience of the firm or individual.
- (4) *Public notice and qualification procedures.* The town clerk must publish, in a newspaper of general circulation, as such is defined in the Florida Statutes, a notice on each occasion when professional services are required to be purchased for a project whose projected basic construction cost is estimated by the town to be in excess of statutory thresholds \$250,000.00, or for planning or study activities when the fee for professional services is in excess of statutory thresholds \$25,000.00, other than as permitted by the CCNA. The notice must include a general description of the project, shall indicate how interested parties may apply for consideration, and the closing date for receipt of proposals, and contain such other information as the town deems pertinent. Publications of statewide and national distribution may be utilized for notices when the magnitude of the project so merits in the town's discretion. The submission deadline must be a minimum of 30 calendar days after the date the RFQ is first published.
- (5) *Selection advisory committee.*
 - a. A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: ~~a town department directors or their designees~~ and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
 - b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.

- c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
- d. The selection advisory committee will review the submittal bid and response materials provided by the finance department prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.
- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(6) *Recommendation.*

- a. The town council will carefully consider the recommendation of the town manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(7) *Negotiation.*

- a. The town manager will negotiate a contract with the most qualified firm for professional services for compensation the town manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to increases due to inaccurate, or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.
- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second-ranked firm, negotiations with the third ranked firm will be undertaken.
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking; and, thereafter

continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for qualifications.

- (8) *Town council approval.* The town manager will submit the negotiated contract to the town attorney for review and the contract to the town council for approval.
 - (9) *Prohibition against contingent fees.* Each contract entered into by the town for professional services must contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer as applicable) warrants that he/she has not employed, or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) nor offered any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the town has the right to terminate the agreement without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
 - (10) *Reuse of existing plans.* There is no public notice requirement or utilization of the selection process for projects in which the town is able to reuse existing plans from a prior project. However, with plans that the town intends to reuse at some future time, the original public notice must contain a statement that the plans are subject to reuse in accordance with F.S. § 287.055(11).
 - (11) *Exception to CCNA process—Emergencies.* Under emergencies as defined by F.S. § 287.055, as amended, the procedure set forth in the statute must be followed and supersedes anything to the contrary set forth in this subsection (h).
 - (12) *Exception to CCNA process—Continuing contracts.* In the event that the continuing contract provisions of F.S. § 287.055 apply to acquisition of professional services, the procedure set forth in the statute will be followed and supersedes anything to contrary set forth in this subsection (h).
- (i) *Request for proposal.*
- (1) *Applicability.* Contracts for goods and/or services, which are not subject to the Consultant's Competitive Negotiation Act and for which uniform detailed specifications cannot be provided, may be obtained in accordance with this section. At the option of the town manager, said contracts may be negotiated by utilizing the selection advisory committee as specified in subsection (h)(3) above.
 - (2) *Request for proposal.* The department director will prepare, with the assistance of the ~~finance department director, and review by~~ the town manager or designee, a request for qualification for the particular project. The request shall include:
 - a. A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
 - b. A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when, and where the proposal must be submitted.
 - c. A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing envelope may not be opened unless the proposer is selected by the town to engage in negotiations.
 - (3) *Addenda.* After a request for proposals is issued and before the submission deadline, the town manager or designee ~~the finance department~~ may issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the RFP/RFQ.
 - (4) *Statement of qualifications.* Persons and firms interested in providing goods and/or services to the town in response to an RFP issued pursuant to this section may submit statements of qualification and expressions of interest in providing such goods and/or services.
 - (5) *Public notice.* The town will provide reasonable notice of the need for such goods and/or services through a request for proposals (RFP). The RFP must describe the goods and/or services

required, list the types of information and data required of each offeror, and state the relative importance of particular specifications or qualifications.

(6) *Selection advisory committee.*

- a. A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: ~~a~~—town department directors or their designees and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
- b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.
- c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
- d. The selection advisory committee will review the ~~submitted~~ bid and response materials provided by the finance department prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.
- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(7) *Recommendation.*

- a. The town council will carefully consider the recommendation of the town manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(8) *Negotiation.*

- a. The town manager shall negotiate a contract with the most qualified firm for compensation the town manager determines is fair, competitive, reasonable and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the services required in addition to considering their scope and complexity.

- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price and any additions thereto may be adjusted to exclude increases due to inaccurate, incomplete billing information, or based upon wage rates and unit costs not agreed to as part of the contract.
 - c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
 - d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for proposals.
- (9) *Discussions.* The town manager or the selection advisory committee may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. These discussions must be conducted at a duly notice meeting and be open to the public.
- (10) *Award.*
- a. Proposed awards above ~~\$25,000.00~~ \$75,000.00 must be formally approved by the town council. The award should be made to the offeror determined to be best qualified based on the evaluation factors set forth in the RFP and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
 - b. Nothing in this division may be construed to prevent the hiring of expert witnesses and other professionals necessary to assist the town manager or town attorney in representing the town, but such hiring may be subject to council approval.
- (11) *Town council approval.* The town manager will submit the request for proposal of ~~\$25,000.00~~ \$75,000.00 or more to the town attorney for review and then submit the contract to the town council for approval.
- (12) *Cancellation of request for proposals.* A request for proposal, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part with or without cause. The following is considered good cause for rejection of all proposals:
- a. All bids exceed the estimated or budgeted amount.
 - b. The specifications contain an error which causes confusion and misunderstanding among bidders.
 - c. The items or services are no longer needed.
 - d. Lack of adequate competition.
 - e. Notice of cancellation will be sent to all businesses solicited or submitting bids.

Sec. 2-481. - Vendor list.

Vendor list. The finance department does not maintain a "vendor list" of vendors who desire to receive invitations of bids and/or requests for proposals by mail.

Sec. 2-482. - Specifications for all solicitations.

- (a) *General.* All specifications must be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the town's needs and may not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the town by architects, engineers, designers, and draftsmen.
- (b) *Brand name or equal specification.*
- (1) *Use.* Brand name or equal specifications may be used when the department director and town manager or designee ~~finance department director~~ determines in writing that:
 - a. No other design or performance specification or qualified products list is available;
 - b. Title does not permit the preparation of another form of purchase description, not including a brand name specification;
 - c. The nature of the product or nature of the town's requirements makes use of a brand name or equal specification suitable; or
 - d. Use of a brand name or equal specification is in the town's best interest.
 - (2) *Designation of several brand names.* Brand name or equal specifications will seek to designate three, or as many different brands as practicable, as "or equal" references and further state that substantially equivalent products to those designated will be considered for award.
 - (3) *Required characteristics.* Unless the town manager or designee ~~finance department director~~ and the affected department director determine 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 must include a description of the particular design, functional, or performance characteristics which are required.
 - (4) *Nonrestrictive use of brand name or equal specifications.* When a brand name or equal specification is used in a solicitation, the solicitation should 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.
- (c) *Brand name specification.* Since use of a brand name specification is restrictive of product competition, it may be used only when the ~~finance department director~~ town manager or designee makes a written determination that only the identified brand name items will satisfy the town's needs.
- (d) *Competition.* The town manager or designee ~~finance department director~~, in conjunction with the department director, will seek to identify sources from which the designated brand name items can be obtained and solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the purchase will be made in accordance with subsection 2-480(c) (Sole source purchases).

Sec. 2-483. - Performance bond and insurance requirements.

The town manager or designee ~~finance department director~~ will require a public construction bond for all contracts listed in subsection 2-480(c) (Sole source purchases) and may require a performance bond and/or evidence of sufficient insurance for other contracts when necessary to protect the town.

Sec. 2-484. - Construction contracts and supporting documents.

- (a) *Construction contracts.* All construction contracts will be reviewed by the town attorney and be executed by the mayor and town clerk and by either the president or vice-president of the contractor. Other signatories may sign on behalf of the contractor provided there is an attached certified copy of a corporation resolution authorizing that person to sign. The corporate seal of the contractor must be affixed to the contract.

- (b) *Insurance.* All construction contracts must be accompanied by a certificate of insurance indicating coverage in the amounts required by the bid specifications and name the Town of Fort Myers Beach as an additional insured, not just a certificate of holder.
- (c) *Public construction bond.* Any person entering into a contract for the construction of a public building or public work, or for repairs upon a public building or a public work must, before commencing work, execute, deliver to the town, and record in the public records of Lee County, Florida, a public construction bond issued by a surety authorized to do business in the State of Florida.
 - (1) *Form.* The bond must be in substantially the following form:

PUBLIC CONSTRUCTION BOND

BY THIS BOND, We, _____, as Principal and _____, a corporation, as Surety, are bound to the Town of Fort Myers Beach, herein called Owner, in the sum of \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

Performs the contract dated _____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and promptly makes payments to all claimants, as defined in F.S. § 255.05(1), supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract: and Pays Moller al losses, damages, expenses, costs and attorney's fees, including appellate proceedings that owner sustains because of default by Principal under the contract; and

Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or non-compliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

- (2) *Waiver of bond.* Town council may waive the public construction bond requirement for project with a total contract amount of \$200,000.00 or less.
- (3) *Alternative form of security.*
 - a. In lieu of a public construction bond, a contractor may file with the town an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in F.S. ch. 652, pt. II.
 - b. Any such alternative form of security must be for the same purpose and be subject to the same conditions as those applicable to the public construction bond. The determination of the value of an alternative form of security will be made by the town.
- (d) *Change orders.*
 - (1) No work outside the scope of the original contract may be performed prior to approval of a change order by the town council; provided, however, that town council may delegate this authority, up to a specified amount, for contracts where council approval of all change orders would hinder or delay work progress.
 - (2) This does not include contingency changes with a contract which fall within the contingency amount of that contract. These are approved by the department director and town manager.
 - (3) All change orders must be in writing and have town manager approval.

Sec. 2-485. - Disqualification of vendors and bidders.

- (a) *Procedure for disqualification.* After reasonable notice to the person or firm involved and a reasonable opportunity for the person or firm to respond, the town manager is authorized to disqualify that person or firm for cause from consideration for award of contracts. The disqualification may be for a period of not more than four years.
- (b) *Grounds for disqualification.* Grounds for disqualification include, but are not limited to:
 - (1) Conviction for commission of a criminal offense as an incident to obtaining;
 - (2) Attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (3) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects the person or firm's ability to perform work for the town;
 - (4) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 - (5) Deliberate failure without good cause to perform in accordance with contract specifications or within the time limit provided in a contract;
 - (6) Financial irresponsibility;
 - (7) Unethical conduct; disciplinary action against the person or firm's professional or contractors;
 - (8) License; or
 - (9) Findings under bid protest that the firm acted fraudulently or in bad faith.
- (c) *Notice of decision.* A copy of a decision to disqualify must be mailed to the affected person or firm by certified mail, return receipt requested.
- (d) *Appeal.* Any person or firm who is disqualified may appeal the decision to the town council, provided a notice of appeal is filed within 30 calendar days of the date the decision to disqualify is rendered.

Sec. 2-486. - Appeals and remedies.

- (a) *Bid protests.*
 - (1) *Right to protest.* Any person or firm who is affected adversely by the town's decision may protest to the town council.
 - (2) *Time limits and form of protest.*
 - a. A protest with respect to an invitation to bids or request for proposals must be submitted in writing to the town clerk prior to the opening of bids or the closing date of proposals.
 - b. Written notice of intent to a protest a bid be filed with the town clerk within 72 hours (excluding Saturday, Sundays, and legal holidays) after the posting of the bid tabulation or after receipt of the notice of award or notice of intent to award the contract, whichever is later.
 - c. A formal written protest must be filed within ten calendar days after the filing of the initial written notice of intent to protest. The formal written protest must state with particularity the fact and law upon which the protest is based.
 - d. Failure to file a notice of intent to protest or failure to file a formal written protest within the time limits proscribed herein will constitute a waiver of the right to protest.
 - e. The protestor must post a bond, payable to the Town of Fort Myers Beach in an amount equal to five percent of the total bid or \$20,000.00, whichever is greater, but not to exceed the value of the bid.

- f. The protest bond will be designated and held for payment of any costs that may be levied against the protesting entity by the Town of Fort Myers Beach as a result of a frivolous protest.

(3) *Hearing.*

- a. If the subject of a protest is not resolved by mutual agreement within 14 calendar days after receipt of a formal written protest, the matter may, at the option of the town council, be referred to a hearing officer who will conduct a hearing within 15 calendar days of receipt of the referred formal written protest.
 - b. The hearing officer will render a written recommended order within 30 calendar days after the hearing. The recommended order will be scheduled on the next council agenda for final action.
 - c. If council so elects, the protest may be heard directly by the town council.
- (b) *Stay of action.* Upon receipt of a formal written protest that has been timely filed, the town will stop the bid solicitation process or the contract award process until the subject of the protest is resolved either informally or by town council action, unless the town manager sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety or welfare.
- (c) *Appeal of decision.* If a protest is denied, the protestor will have 30 calendar days to file for relief in Circuit Court in Lee County, Florida.

Sec. 2-487. - Remedies for solicitations or awards in violation of law.

- (a) *Closing date for receipt of proposals.* If prior to the bid opening or closing date for receipt of proposals, the town manager or designee ~~finance department director~~ and the affected department director, after consultation with the ~~town manager and town~~ attorney, determines that a solicitation is in violation of federal, state or municipal law, then the solicitation may be cancelled or revised to comply with applicable law.
- (b) *Prior to award.* If after bid opening or the closing date for receipt of proposals, the town manager or designee ~~finance department director~~ and the affected department director, after consultation with the ~~town manager and town~~ attorney, determines that a solicitation or proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award will be cancelled.
- (c) *After award.* If, after an award the town manager or designee ~~finance department director~~ and the affected department director, after consultation with the ~~town manager and town~~ attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:
 - (1) If the person or firm awarded the contract has not acted fraudulently or in bad faith;
 - (2) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the town; or
 - (3) The contract may be terminated, and the person awarded the contract will be compensated for any costs reasonably incurred under the contract, plus a reasonable amount for overhead, prior to the termination; or
 - (4) If the person or firm awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interest of the town.

Sec. 2-488. - Standard of conduct for town officials and employees.

All town officials and employees shall adhere to the Code of Ethics for Public Officers and Employees, adopted by the Florida Legislature as Part III of Chapter 112, Florida Statutes, as amended from time to

time ("Ethics Code"). In the event of a conflict between any term, condition or requirement in this Section and the Ethics Code, the Ethics Code shall be followed.

- (a) *Failure to follow proper purchasing procedures.* It is a violation of this division for any employee to order, contract for, or purchase any materials, supplies, or services except in strict compliance with all purchasing procedures as provided herein or as established by the the town manager or designee finance department director.
- (b) *Solicitation or acceptance of gifts.* No town official or employee may solicit or accept anything of value from any vendor or bidder, including gift, loan, reward promise of future employment, favor, or service, based upon any understanding that the actions of said official or employee would be influenced thereby.
- (c) *Doing business with the town.*
 - (1) No employee or public official acting in his/her official capacity may either directly or indirectly purchase, rent, or lease any realty, goods, or services for the town from any business entity or which he/she or his/her spouse or child is an officer, partner, director, or proprietor or in which such official or employee or his/her spouse or child, or any combination of them, has a material interest.
 - (2) No town official or employee, acting in a private capacity, may rent, lease, or sell any realty, goods, or services to the town.
- (d) *Unauthorized compensation.* No town official or employee or his/her spouse or minor child may, at any time, accept any compensation payment, or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his/her official capacity.
- (e) *Conflicting employment or contractual relationship.* No town official or employee may have or hold any employment or contractual relationship with any business entity that is doing business with the town; provided however, that this section may not be construed to prevent any officer or employee from accepting any other employment or following any pursuit that does not interfere with the full and faithful discharge of the officer or employee's duties in his/her employment with the town.
- (f) *Contingent fees.* No town official or employee may be retained, or retain a person, to solicit or secure a town contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- (g) *Confidential information.* No town official or employee may disclose or use any information not available to members of the general public and gained by reason of his/her official position for his/her personal gain or benefit of any other person or business entity.
- (h) *Penalties.* Violation of any provision of this section may subject the officer or employee to discipline in the form of one or more of the following:
 - (1) *In the case of a town official:*
 - a. Forfeiture of office as provided in the town Charter.
 - b. Restitution of any pecuniary benefit received because of the violation committed.
 - (2) *In the case of a town employee:*
 - a. Dismissal from employment, provided that if the employee is found guilty of willful violation, then dismissal from employment is mandatory.
 - b. Suspension from employment for not more than 90 days without pay.
 - c. Demotion.
 - d. Reduction in salary level.
 - e. Oral or written reprimands or warnings.

f. Any discipline imposed shall be subject to the town's personnel rules.

- (i) *Contracts voidable.* If a violation of any of the prohibitions contained in this section occurs, then the contract involved may, at the option of the town, be declared null and void or voidable.

I have read, understand and acknowledge the Town's purchasing policy and my responsibilities under this policy as a Town Employee. I acknowledge that if I have questions I will contact the ~~Finance Director~~ or Town Manager.

_____	_____
Name	Date

Sec. 2-489. - Cone of silence.

- (a) *Purpose and intent.* The requirements of section, "cone of silence", as amended, are applicable to the town. It is the intent of this division to prevent potential bidders, offerors or service providers from communicating with town department heads, their staff, town council or selection and evaluation committee members during the period of time in which the cone of silence is imposed.

(1) *Meaning.* "Cone of silence" is defined to mean a prohibition on:

- a. Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and the town's professional staff including, but not limited to, the town manager and his or her staff;
- b. Any communication regarding a particular RFP, RFQ or IFB between the mayor, town council or their respective staffs and any member of the town's professional staff including, but not limited to, the town manager and his or her staff;
- c. Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and any member of the selection committee or evaluation committee;
- d. Any communication regarding a particular RFP, RFQ or IFB between the mayor, town council or their respective staffs and any member of the selection committee or evaluation committee;
- e. Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and the mayor, town council and their respective staffs; and
- f. The town manager and the chairperson of the selection committee may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the town manager and, provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding changes must be described in writing and filed by the town manager.

(2) *Allowed communications.* Notwithstanding the foregoing, the cone of silence does not apply to:

- a. Communications with the town attorney and his or her staff;
- b. Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the town manager makes a written recommendation;
- c. Communications regarding a particular RFP, RFQ or IFB between any person and the the finance department director or designee, provided the communication is limited strictly to

matters of process or procedure already contained in the corresponding solicitation document; and

- d. Communications regarding a particular proposal, quotation or bid between the the town manager or designee ~~finance department director or designee~~ and a member of the selection committee or evaluation committee provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

(b) *Procedure.*

- (1) A cone of silence will be imposed upon each RFP, RFQ and IFB after the advertisement of the RFP, RFQ or IFB. At the time of imposition of the cone of silence, the town manager or designee ~~finance department director or designee~~ will provide for public notice of the cone of silence. The the town manager or designee ~~finance department director~~ will issue a written notice thereof to the affected departments, file a copy of such notice with the town clerk, with an email copy thereof to each town council member, and include in any public solicitation for supplies or services a statement disclosing the requirements of this division. Notwithstanding any other provision of this section, the imposition of a cone of silence on a particular RFP, RFQ or IFB will not preclude procurement staff from obtaining industry comment or performing market research provided all communications related thereto with a potential offeror, service provider, bidder, lobbyist, or consultant are in writing or are made at a duly noticed public meeting.
- (2) The cone of silence terminates at the time town council votes to award the contract.
- (3) If the town manager rejects all bids or proposals submitted in response to an RFP or IFB and concurrently requests the re-issuance of an RFP or IFB, the rejected bids or proposals will remain under the cone of silence until such time the town manager issues a written recommendation of award or until the town manager withdraws the re-issued RFP or IFB.

Sec. 2-490. - Exhibits.

All exhibits referenced in this division including:

Exhibit A Bid Tally Sheet

Exhibit B Quote Sheet

Exhibit C Sole Source Purchase

Exhibit D Emergency Purchase; and

Exhibit E Cooperative Purchase Justification,

are on file with the town.

Secs. 2-491—2-505. - Reserved. 8