

DIVISION 2. PURCHASING*

***State law references:** Consultants' Competitive Negotiation Act, F.S. § 287.055; bids required for certain road work, F.S. §§ 336.41, 336.44.

Subdivision I. In General

Sec. 2-156. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agencies means the departments or offices under the board of county commissioners and county departments or offices created by special act, including but not limited to the Pinellas Planning Council, the Pinellas County Construction Licensing Board, and the Management Information Services Department.

Bid criteria means the bases upon which the county will rely to determine acceptability of a bid or proposal, as stated in the bid, the proposal, or this division, including, but not limited to, inspection, testing, quality, workmanship, delivery, price, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

Bidders list means the list of vendors, suppliers or contractors for an individual commodity or trade compiled through the contracting experience of the county or at the request of the vendors, suppliers or contractors.

Constitutional officer means one or more of the following: Clerk of circuit court, property appraiser, sheriff, supervisor of elections, and county tax collector, collectively referred to in this division as the constitutional officers.

County means the board of county commissioners, the constitutional officers and the agencies of the county.

Evaluation criteria shall have the same meaning as the term bid criteria.

Lowest and best bid/price means the apparent lowest bidder or proposer whose bid or proposal best meets the needs of the county as stated in the invitation to bid, the request for proposal, or this division.

Public notice means the required notification or advertisement of an invitation to bid, request for proposal, or other competitive solicitation provided for in this division, to be given to prospective vendors for a reasonable period of time as determined by the director of purchasing, which shall, at a minimum, include: (i) direct notice to prospective vendors on an applicable bidders list maintained by the purchasing department; (ii) posting public notice on the purchasing department website; and (iii) notice in a newspaper of general circulation when required by applicable law. The public notice shall describe the goods or services sought, and state the date, time and place of the bid/proposal/solicitation opening.

Purchase/procurement means the acquisition of goods and/or services.

Qualified bidder shall have the same meaning as the term responsible bidder.

Responsible bidder means a bidder who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

Responsible proposer means a proposer who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

Responsive bid means a bid submitted by a responsive and responsible bidder which conforms in all material respects to the invitation for bids.

Responsive bidder means a bidder who has submitted a bid which conforms in all material respects to the invitation for bids.

Responsive proposal means a proposal submitted by a responsive and responsible proposer which conforms in all material respects to the request for proposal.

Responsive proposer means a proposer who has submitted a proposal which at a minimum conforms in all material respects to the request for proposal.

(Ord. No. 94-51, § 1(a), 6-7-94; Ord. No. 06-19, § 1, 2-21-06; Ord. No. 08-49, § 1, 10-7-08)

Cross references: Definitions generally, § 1-2.

Sec. 2-157. Purpose.

The purpose of this division is to provide for the fair and equitable treatment of all persons involved in public purchasing by the county, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

(Ord. No. 94-51, § 1(b), 6-7-94)

Sec. 2-158. Applicability.

(a) This division applies to contracts for the procurement of goods and services entered into by the county after the effective date of the ordinance from which this division derives. This division shall apply to every expenditure of public funds by the board of county commissioners for public purchasing, irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance of contract funds, the procurement shall be conducted in accordance with applicable federal law and regulations. Nothing in this division shall prevent the county from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

(b) Notwithstanding the general principles of application of this division expressed in this section, the clerk of circuit court, property appraiser, sheriff, supervisor of elections and tax collector (the "constitutional officers") may participate in all or part of the county's purchasing process without the obligation of complying with the full procedures outlined in this division. Authorized partial compliance includes, but is not limited to, the following:

(1) No contract to be entered into by any of the constitutional officers needs approval by the board of county commissioners for the constitutional officer's portion of the contract except as otherwise specifically required by state law;

(2) A constitutional officer, either during or after the bidding or award procedures, may deviate from the strict criteria of this division and may award on the bid or proposal criteria, and as otherwise permitted by state law, or may reject all bids for the constitutional officer's portion of the contract;

(3) No constitutional officer needs the authority from the board of county commissioners to exempt any bid, proposal or contract from the requirements of this division.

(Ord. No. 94-51, § 1(c), (d), 6-7-94)

Sec. 2-159. Principal public purchasing official.

(a) Except as otherwise provided in this division, the director of purchasing, and the assistant director of purchasing when authorized by the director in writing, shall serve as the principal public purchasing official for the county and shall be responsible to the board of county commissioners and shall be responsible for the procurement of supplies, services and construction in accordance with this division. Additionally, the purchasing department shall serve as a servicing agency for the constitutional officers and other nonboard county agencies, and the director of purchasing shall provide such assistance and service as possible to the constitutional officers and other nonboard county agencies for the procurement of goods and services.

(b) In accordance with this division and any other applicable laws, the director, and the assistant director when authorized by the director in writing, shall:

- (1) Procure or supervise the procurement of all goods and services needed by the county;
- (2) Approve all purchase orders, regardless of amount, for all goods and services procured as authorized in this division;
- (3) Sell, trade, or otherwise dispose of surplus supplies and tangible personal property belonging to the county, pursuant to F.S. ch. 274;
- (4) With the exception of contract review policies approved by the board of county commissioners, have the authority and responsibility to establish and maintain written administrative procedures governing procurement of goods and services, in accordance with this division and purchasing policies adopted by resolution of the board of county commissioners. These procedures shall include, but are not limited to, procedures for complaints against vendors, inspection and acceptance of delivered goods, prequalification of contractors, change orders, and consideration of single bids. Once developed, and as amended, the administrative procedures implementing this division and purchasing policies adopted by the board of county commissioners shall be approved by the county administrator.

(c) The director of purchasing may not delegate procurement authority to other county officials, except as authorized herein, or pursuant to rules and regulations adopted by the board of county commissioners. Notwithstanding the general principles of application of this division expressed herein, any of the constitutional officers may utilize all or part of the county's purchasing process without the obligation of complying with the full procedure and without the obligation to obtain the lowest and best bid or price.

(Ord. No. 94-51, § 2, 6-7-94; Ord. No. 06-19, § 2, 2-21-06; Ord. No. 07-42, § 1, 9-18-07; Ord. No. 08-49, § 1, 10-7-08)

Sec. 2-160. Waiver of provisions.

The board of county commissioners may waive any provision of this division by resolution.

(Ord. No. 94-51, § 9, 6-7-94)

Sec. 2-161. Bidder qualifications and prequalifications; debarment.

(a) *Qualifications.*

(1) *Responsible and responsive bidder who submits the lowest responsive bid.* In determining the responsible and responsive bidder who submits the lowest responsive bid, in addition to price, the board of county commissioners or the constitutional officer, as applicable, shall consider, as a minimum:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

- c. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- d. The quality of performance of previous contracts or services;
- e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- g. The quality, availability and adaptability of the goods or services to the particular use required;
- h. The ability of the bidder to provide future maintenance and service;
- i. The number and scope of conditions attached to the bid.

(2) *Prequalification of general contractors.* General contractors wishing to bid on the board's construction projects in excess of \$100,000.00 are required to be prequalified with the county administrator or his/her designee prior to bid opening. Types of construction requiring prequalification include but are not limited to road and street, building, water and sewer, marine, bridge, and major well drilling. The establishment, deletion and modification of the prequalification categories for specific types of construction and the dollar amounts of the subcategories may be accomplished by resolution of the board. The primary criteria considered in determining qualification are financial capability and previous job experience and performance.

a. Prequalification is recommended to the county administrator or his/her designee for final approval by a prequalification committee consisting of representatives from each of the following professional associations:

Associated General Contractors.

Pinellas Chapter of the Florida Engineering Society.

Florida Central Chapter of American Institute of Architects.

West Coast Chapter of the Florida Institute of C.P.A.'s.

Contractors' and Builders' Association of Pinellas County.

Suncoast Utility Contractors Association.

b. Prequalification is not a conclusive determination of responsibility, and a prequalified bidder may be rejected as nonresponsible on the basis of subsequently discovered information.

(b) *Debarment.*

(1) *Purpose.* The county shall solicit offers from, award contracts to and consent to subcontracts with responsible contractors only. To effectuate this policy the debarment of contractors from county work may be undertaken. The serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the county's protection, and not for the purposes of punishment. Debarment shall be imposed in accordance with the procedures contained in this section. Debarment is intended as a remedy in addition to, and not in substitution of, the evaluation of the responsibility of county bidders and contractors, and the rejection or termination of county bidders and contractors based on findings of non-responsibility on a case-by-case basis.

(2) *Definitions.*

a. *Civil judgment* means a judgment or finding of a civil offense by any court of competent jurisdiction.

b. *Contractor* means any individual or other legal entity that:

- 1. Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a county contract for construction or for procurement of goods or services, including professional services; or
- 2. Conducts business, or reasonably may be expected to conduct business, with the county as an agent, surety, representative or subcontractor of another contractor.

3. For the purposes of this section, the terms "vendor" and "consultant" have the same meaning as "contractor." "sub consultant" has the same meaning as "subcontractor."
- c. *Conviction* means a judgment or conviction of a criminal offense, be it a felony or misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- d. *Debarment* means action taken by the debarment committee to exclude a contractor from county contracting and county-approved subcontracting for a reasonable, specified period as provided below; a contractor so excluded is debarred.
- e. *Debarment committee* means a group of at least three members but no more than five members composed of county employees of which one member shall be the purchasing director or his/her designee and assistant county administrator affected by the contract or his/her designee. At the discretion of the committee, a member from private industry with specialization in a particular field of expertise may be asked to join the committee. This member shall not be a direct or indirect competitor of the firm in question. All debarment committee members appointed to a specific debarment committee are prohibited from having any communication with any of the parties involved in the specific debarment, or their representatives. Violation of this policy could lead to termination.
- f. *Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.
- g. *Legal proceeding* means any civil judicial proceeding to which the county is a party or any criminal proceeding. The term includes appeals from such proceedings.
- h. *List of debarred contractors* means a list compiled, maintained and distributed by the purchasing department, containing the names of contractors debarred under the procedures of this section.
- i. *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- (3) *List of debarred contractors.*
- a. The county's purchasing department shall:
1. Compile and maintain a current, consolidated list of all contractors debarred by county departments. Such list shall be public record and available for public inspection and dissemination;
 2. Periodically reuse and distribute the list and issue supplements, if necessary or upon request, to all departments, to the office of the county administrator, and to the board of county commissioners;
 3. In accordance with internal retention policies and procedures, maintain records relating to each debarment;
 4. Establish procedures to provide for the effective use of the list, including internal distribution thereof, to ensure that departments do not solicit bids/proposals from, award contracts to, or subcontract with contractors on the list;
 5. Respond to inquiries concerning listed contractors and coordinate such responses with the department that recommended the action.
- b. The list shall include:
1. The names and addresses of all contractors debarred; in alphabetical order;
 2. The name of the department recommending initiation of the debarment action;
 3. The cause for the debarment action;
 4. The effect of the debarment action;
 5. The termination date for each listing;
 6. The name and telephone number of the point of contact in the department recommending the debarment action.

(4) *Effects of debarment.* Debarred contractors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the county administrator or his/her designee determines that an emergency exists justifying such action and grants approval for such action. Debarred contractors are also excluded from conducting business with the county as agents, representatives, subcontractors or partners of other contractors.

(5) *Continuation of current contracts.*

a. Commencing on the effective date of the ordinance from which this section derives, all proposed county contracts for construction, or for procurement of goods and services, including professional services, shall incorporate this section and specify that debarment may constitute grounds for termination of any existing county contract.

b. The debarment shall take effect in accordance with the notice provided by the county administrator pursuant to subsection below, except that if a department continues contracts or subcontracts in existence at the time the contractor was debarred, the debarment period shall commence upon the conclusion of the contract, and in the interim the debarred contractor shall not enter into any county contracts.

c. Departments may not renew or otherwise extend the duration of current contracts, or consent to subcontracts with debarred contractors, unless the county administrator or his/her designee determines that an emergency exists justifying the renewal or extension or for an approved extension due to delay or time extension for reasons beyond the contractors control. Completion of current contracts should be permissible unless otherwise prohibited by the County Administrator.

(6) *Restrictions on subcontracting.*

a. When a debarred contractor is proposed as a subcontractor for any subcontract subject to county approval, the department shall not consent to subcontracts with such contractors unless the county administrator or his/her designee determines that an emergency exists justifying such consent and approves such decision.

b. The county shall not be responsible for any increases in project costs or other expenses incurred by a contractor as a result of rejection of proposed subcontractors pursuant to subsection (6)a. above, provided the subcontractor was debarred prior to bid opening or opening of proposals.

(7) *Debarment.*

a. The debarment committee may, in the public interest, debar a contractor for any of the causes listed in this section, using the procedures outlined below. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

b. Debarment constitutes debarment of all officers, principals, directors, partners, qualifiers, divisions, or other organizational elements of the debarred contractor, unless the debarred decision is limited by its terms to specific divisions, organizational elements or commodities. The debarment committee's decision includes any existing affiliates of the contractor, if they are:

1. Specifically named; and
2. Given written notice of the proposed debarment and an opportunity to respond. Future affiliates of the contractor are subject to the pre-existing debarment committee's decision.

(8) *Causes for debarment.*

a. The debarment committee may debar a contractor for a conviction or civil judgment:

1. For commission of a fraud or a criminal offense in connection with detaining, attempting to detain, performing, or making a claim upon a public contract or subcontract, or a contract or subcontract funded in whole or in part with public funds;
2. For violation of federal or state antitrust statutes relating to the submission of offers;

3. For commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and
 4. For commission of any other payment or performance related offenses that seriously and directly affect the completion of one or more contracts or the performance of the completed building, project, or goods or services.
- b. The committee may debar a contractor based upon any of the following:
1. Violation of the terms of a county contract or subcontract, or a contract or subcontract funded in whole or in part by county funds, such as willful failure to perform in accordance with the terms of one or more contracts; or the failure to perform, or unsatisfactory performance of one or more contracts;
 2. Violation of a county ordinance or administrative order which lists debarment as a potential penalty; and
 3. Any other cause of so serious or compelling a nature that it affects the responsibility of a county contractor or subcontractor in performing county work.

(9) *Debarment procedures.*

a. Investigation and referral. Departments shall promptly investigate and prepare written reports concerning a proposed debarment and prepare written requests for the purchasing department for the debarment of contractors the department believes is subject to any of the causes listed above. The purchasing director or his or her designee may investigate, prepare written reports on, and prepare written requests for debarment of contractors or subcontractors.

b. Upon receipt of a request for debarment, the purchasing department shall create a debarment committee from the standing pool of committee members appointed by the county administrator or his/her designed, none of whose members shall include a representative from the department making the debarment request. The purchasing department shall act as staff to the debarment committee. The department requesting debarment shall present evidence and argument to the debarment committee.

c. Notice of proposal to debar. The purchasing department, on behalf of the debarment committee, shall issue a notice of proposed debarment advising the contractor and any specifically named affiliates, by certified mail, return receipt requested, or personal service that:

1. Debarment is being considered;
2. The reasons and causes for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based; and
3. The notice shall also describe the effect of the issuance of the notice of proposed debarment and of the potential effect of an actual debarment.

d. In actions based upon a conviction or judgment, or in which there is not genuine dispute over material facts, the debarment committee shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submissions made by the contractor. Where actions are based on disputed evidence, the debarment committee shall decide what weight to attach to evidence of record, judge the credibility of witnesses, and base its decision on the preponderance of the evidence standard. In the event that the contractor fails to appear at the debarment hearing or to present competent proof under affirmation or oath through persons with direct knowledge of the contractor's performance, the contractor shall be presumed to be not responsible and subject to debarment. The debarment committee's decision shall be based on a majority of the members of the committee. The debarment committee shall be the sole trier of fact. The committee's decision shall be made within 20 working days after conclusion of the hearing, unless the debarment committee extends this period for good cause.

e. The committee's decision shall be in writing and shall include the committee's factual findings, the principal causes of debarment as enumerated in this section, identification of the

contractor and all affiliates affected by the decision, and the specific term, including duration of the debarment imposed.

f. Notice of debarment committee's decision. If the debarment committee decides to impose debarment, the purchasing director or his/her designee shall give the contractor and any affiliates involved written notice specifying the reasons for debarment and include a copy of the committee's written decision stating the period of debarment, including effective dates, and advise that the debarment is effective throughout the county departments. The contractor then has 72 hours upon receiving written notice to appeal the decision of the debarment committee to the county administrator.

g. If no notice is received by the purchasing department within the 72-hour window then all decisions of the debarment committee shall be final and shall be effective on the date the notice is signed by the purchasing director or his/her designee unless overridden by the county administrator through the debarment appeal process. If the county administrator overrides the decision of the debarment committee, through the appeal process, the county administrator or his/her designee shall state in writing the reasons for its override of the debarment committee's decision.

(10) *Period of debarment.*

a. The period of debarment imposed shall be within the sole discretion of the debarment committee. Debarment shall be for a period commensurate with the seriousness of the cause(s), and, where applicable, within the guidelines set forth below, but in no event shall such period exceed five years.

b. The following guidelines in the period of debarment shall apply except:

1. For commission of an offense as described in subsection (8)a.1.: five years;
2. For commission of an offense as described in subsection (8)a.2.: five years;
3. For commission of an offense as described in subsection (8)a.3.; five years;
4. For commission of an offense as described in subsection (8)a.4.; three to five years;
5. For commission of an offense as described in subsections (8)a.1. or 2.; three to five years;
6. For commission of an offense as described in subsection (8)b.3.; three to five years.

c. The debarment committee may, in its sole discretion, reduce the period of debarment, upon the contractor's written request, for reasons such as:

1. Newly discovered material evidence;
2. Reversal of the conviction or civil judgment upon which the debarment was based;
3. Bona fide change in ownership or management;
4. Elimination of other causes for which the debarment was imposed; or
5. Other reasons the debarment committee deems appropriate.

d. The debarred contractor's written request shall contain the reasons for requesting a reduction in the debarment period. The purchasing department, with the assistance of the affected department, shall submit a written response thereto. The decision of the debarment committee regarding a request made under this subsection is final and non-appealable.

(11) *Debarment by constitutional officers.* In addition to the above-described debarment procedure for contracts with the board, any constitutional officer may debar a bidder for cause from the board's bidder list for that constitutional officer's contracts, based upon the causes and pursuant to the terms and conditions stated by the constitutional officer. The constitutional officer may still participate in the bid, considering only those bids, proposals or quotes from the constitutional officer's amended list.

(Ord. No. 94-51, § 4, 6-7-94; Ord. No. 02-19, § 1, 3-19-02; Ord. No. 04-6, § 1, 1-20-04)

Sec. 2-162. Protest procedure.

(a) *Bid/proposal protests.* Any actual or prospective bidder, proposer, who is allegedly aggrieved in connection with the issuance of a bid/proposal package or pending award of a contract may protest to the director of purchasing.

(b) *Posting.* The purchasing department shall post the formal award on the departmental website. The formal award shall be publicly posted on the purchasing department's website no less than three full business days after the decision to recommend the award to the bidder/proposer is made.

(c) *Requirements to protest.*

(1) If the protest relates to the content of the bid/proposal package, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after issuance of the bid/proposal package.

(2) If the protest relates to the award of a contract, a formal written protest must be filed no later than 5:00 p.m., on the fifth full business day after posting of either the contract award recommendation or the contract award itself. The formal written protest shall identify the protesting party and the solicitation involved; include a clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances or other legal authorities which the protesting party deems applicable to such grounds; and specifically request the relief to which the protesting party deems itself entitled by application of such authorities to such grounds.

(3) A formal written protest is considered filed with the county when the purchasing department, county administrator, or county commission receives it. Accordingly, a protest is not timely filed unless it is received within the time specified above. Failure to file a formal written protest within the time period specified shall constitute a waiver of the right to protest and result in relinquishment of all rights to protest by the bidder/proposer.

(d) *Sole remedy.* These procedures shall be the sole remedy for challenging an award of bid. Bidder/proposers are prohibited from attempts to influence, persuade, or promote a bid protest through any other channels or means. Such attempts shall be cause for suspension in accordance with subsection 2-161(b) of this article.

(e) *Time limits.* The time limits in which protests must be filed as specified herein may be altered by specific provisions in the bid/request for proposal.

(f) *Authority to resolve.* The director of purchasing shall resolve the protest in a fair and equitable manner and shall render a written decision to the protestant no later than 5:00 p.m. on the fifth full business day after the filing thereof.

(g) *Review of purchasing director's decision.*

(1) The protesting party may request a review of the purchasing director's decision to the county administrator by delivering written request for review of the decision to the director of purchasing by 5:00 p.m. On the fifth full business day after the date of the written decision. The written notice shall include any written or physical materials, objects, statements, and arguments, which the bidder/proposer deems relevant to the issues raised in the request for review.

(2) If it is determined that the solicitation or award is in violation of law or the regulations and internal procedures of the purchasing department, the county administrator shall immediately cancel or revise the solicitation or award as deemed appropriate.

(3) If it is determined that the solicitation or award should be upheld, the county administrator shall issue a decision in writing stating the reason for the action with a copy furnished to the protesting party and all substantially affected persons or businesses no later than 5:00 p.m., on the fifth full business day. The decision shall be final and conclusive as to the county unless any further action is taken or a party commences action in court.

(h) *Stay of procurement during protests.* There shall be no stay of procurement during protests.

(Ord. No. 94-51, § 5, 6-7-94; Ord. No. 04-87, § 1, 12-7-04)

Sec. 2-163. Bid and contract security.

(a) *Bid security.*

(1) *Requirement for bid security.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the director of purchasing to exceed \$100,000.00. Bid security shall be in a form satisfactory to the county attorney.

Nothing herein shall prevent the requirement of such security on other contracts when the circumstances warrant.

(2) *Amount of bid security.* Bid security for all other competitive sealed bids and proposals shall be in an amount equal to at least five percent of the amount of the bid, unless the director of purchasing determines that the nature of the industry is such that the bid security requirement would work a hardship on most potential bidders.

(3) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires bid security, a bid shall be rejected in the event of noncompliance unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirements.

(b) *Contract security.* When a construction contract is awarded in excess of \$100,000.00, security shall be provided in conformance with the minimum requirements of F.S. § 255.05, and shall become binding upon the execution of the contract.

(1) A performance bond satisfactory to the county attorney, executed by a surety insurer authorized to do business in the state as a surety, in an amount equal to 100 percent of the price specified in the contract, conditioned that the contractor perform the contract in the time and manner prescribed in the contract; and

(2) A payment bond satisfactory to the county attorney, executed by a surety insurer authorized to do business in the state as a surety, in an amount equal to 100 percent of the price specified in the contract, conditioned that the contractor promptly make payments to all persons supplying labor, materials or supplies used directly or indirectly in the performance of the work provided for in the contract, and who are claimants as defined in F.S. § 255.05(1).

(c) *Authority to require additional security.* Nothing in this section shall be construed to limit the authority of the county to require a performance bond or other security in addition to those bonds, or in circumstances other than, as specified in subsection (b) of this section.

(Ord. No. 94-51, § 6, 6-7-94)

Sec. 2-164. Intergovernmental relations.

(a) *Approval authority for contracts of \$250,000.00 or less.* Approval of contracts for cooperative purchasing and acquisition or use of supplies under this section which are \$100,000.00 or less in a fiscal or calendar year shall be granted to the director of purchasing, and which are more than \$100,000.00 and do not exceed \$250,000.00 in a fiscal or calendar year shall be granted to the county administrator or his/her designee.

(b) *Cooperative purchasing authorized.* The county's purchasing department may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one or more public procurement units. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended state or federal public procurement unit contracts which are made available to local public procurement units.

(c) *Acquisition or use of supplies by a public procurement unit.* The county's purchasing department may acquire from, or use any supplies belonging to, another public procurement

unit independent of the requirements of subdivision II of this division, pertaining to source selection and contract formation, unless prohibited by law.

(Ord. No. 94-51, § 7, 6-7-94; Ord. No. 02-19, § 1, 3-19-02; Ord. No. 06-19, § 3, 2-21-06)

Sec. 2-165. Affirmative assistance to small and disadvantaged businesses.

The board of county commissioners recognizes that the county's growth and prosperity depends on the full participation of all its citizens, and is firmly committed to the principles of equal opportunity, recognizes the need and is desirous of improving the opportunities and participation of minority and female-owned businesses. The county endorses the utilization of minority and female-owned businesses in the purchasing of goods and services for the county whenever possible and shall establish, through an affirmative program, procedures fostering utilization.

(Ord. No. 94-51, § 8, 6-7-94)

Secs. 2-166--2-175. Reserved.

Subdivision II. Source Selection and Contract Formulation

Sec. 2-176. Competitive sealed bidding.

(a) *Conditions for use.* All contracts of the county for the purchase of goods and services valued in excess of \$100,000.00 shall be awarded by competitive bidding, except as otherwise provided in section 2-177, pertaining to competitive sealed proposals, section 2-178, pertaining to contracting for designated professional services, section 2-180, pertaining to noncompetitive procurement, section 2-181, pertaining to emergency procurement, section 2-182, pertaining to used equipment/supplies procurement or purchases made pursuant to section 2-185 allowing for purchases under F.S. §§ 413.032--413.037 (1999), pertaining to qualified nonprofit agencies for the blind or the severely handicapped, or state bid or negotiated contracts.

(b) *Invitation to bid.* An invitation to bid shall be issued and shall include specifications and conditions applicable to the procurement and shall set forth the time for preparation of bids prior to the date set forth in the public notice for the opening of bids.

(c) *Bidders list.* Bids shall be invited from all responsible prospective vendors who have requested their names to be added to a bidders list, which the director of purchasing shall maintain, by sending them a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase. Vendor invitations to bid shall be limited to goods and services that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

(d) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation to bid. The name of each bidder and other relevant information deemed appropriate to properly identify each bid shall be recorded.

(e) *Bid receipt and bid evaluation.* Bids shall be received without alteration or correction, except as authorized in this division. Bids shall be evaluated based on the criteria set forth in the invitation for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(f) *Award.* The contract shall be awarded with reasonable promptness by appropriate written notice to the responsible and responsive bidder who submits the lowest and best responsive bid. The bid must meet the requirements and criteria set forth in the invitation for bids. Any board contract, which has a value of \$100,000.00 or less in a fiscal or calendar year may be awarded and subsequently extended by the director of purchasing, or if the director is unavailable, his/her designee; a bid to be awarded which is more than \$100,000.00 and does not exceed \$250,000.00 in a fiscal or calendar year may be awarded

and subsequently extended by the county administrator or his/her designee; a bid to be awarded which exceeds \$250,000.00 in a fiscal or calendar year may be awarded only by the board of county commissioners. Awards made by the board of county commissioners will include authority for all subsequent contract extension. The aforementioned contract extension shall be approved at the option of the county administrator if, after review of past performance under the contract, the county administrator determines in his/her sole discretion that contract extension is in the best interests of the county. The county administrator shall thereafter place a receipt and file a report that the contract has been extended on the consent agenda of the board of county commissioners at least quarterly.

(g) *Rejection of bids.* The respective constitutional officer, board of county commissioners, county administrator or director of purchasing shall have the authority, when the public interest will be served thereby, to reject all bids or parts of bids within their respective delegated financial approval authority.

(h) *Multi-step sealed bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, or information relating to the experience and capabilities of the prospective bidders, to be followed by an invitation for bids limited to those bidders whose offers or experience and capabilities have been determined to be acceptable under the criteria set forth in the first solicitation.

(i) *Tie bids.* If two or more bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded by drawing lots in public.

(j) *Right to audit.* This division establishes the authority to audit contract and pricing documents of vendors and contractors. The right to audit would apply to those agreements which the board of county commissioners determines to be of a nature to justify this provision. All vendors and contractors may be required to retain contract and pricing documents for audit purposes for a minimum time period specified in the invitation for bids, request for proposals, request for quotations, contract, or other agreement with the county, which time period shall be computed beginning after the completion or termination of the purchase, contract or agreement.

(Ord. No. 94-51, § 3(a), 6-7-94; Ord. No. 98-16, § 1, 1-27-98; Ord. No. 99-4, § 1, 1-5-99; Ord. No. 00-92, § 1, 11-7-00; Ord. No. 02-19, § 1, 3-19-02; Ord. No. 02-68, 8-20-02; Ord. No. 04-64, § 1, 9-21-04; Ord. No. 06-19, § 4, 2-21-06; Ord. No. 08-49, § 3, 10-7-08)

State law references: Bids required for certain road work, F.S. §§ 336.41, 336.45.

Sec. 2-177. Competitive sealed proposals.

(a) *Conditions for use.* When the goods or services to be acquired dictate that the use of competitive sealed bidding is not practicable, reasonable or advantageous to the county, a contract may be entered into by use of the competitive sealed proposals method.

(b) *Request for proposals.* Proposals shall be solicited through a request for proposals (RFP), and public notice of the RFP shall be given.

(c) *Receipt of proposals.* No proposals shall be opened until the time designated in the public notice of the request for proposals. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered.

(d) *Evaluation factors.* The request for proposals shall state the evaluation factors, including, but not limited to, price, vendor approach and methodology, capability and experience.

(e) *Discussion with responsible offerors and revisions to proposals.* Discussions may be conducted with responsible proposers who submit proposals for the purpose of clarification to assure full understanding of the solicitation requirements. Proposers shall be accorded fair

and equal treatment and notice with respect to any opportunity for discussion and correction of proposals and such corrections may be permitted prior to award.

(f) *Award.* Award of the contract shall be made by the board of county commissioners, constitutional officer, county administrator or director of purchasing, as applicable, to the responsible and responsive proposer who submits the lowest responsive proposal which best meets the evaluation criteria described in the RFP. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. For any board contract, a proposal to be awarded which is \$100,000.00 or less in a fiscal or calendar year may be awarded by the director of purchasing; a proposal to be awarded which is \$250,000.00 or less in a fiscal or calendar year may be awarded by the county administrator or his/her designee; a proposal to be awarded which exceeds \$250,000.00 in a fiscal or calendar year may be awarded only by the board of county commissioners.

(Ord. No. 94-51, § 3(b), 6-7-94; Ord. No. 98-16, § 2, 1-27-98; Ord. No. 02-19, § 1, 3-19-02; Ord. No. 04-64, § 2, 9-21-04)

Sec. 2-178. Contracting for designated professional services.

(a) *Contracts for architectural, engineering and land surveying services.* Contracts for architectural, engineering and land surveying services shall be procured in accordance with F.S. § 287.055, referred to as the Consultant's Competitive Negotiation Act (CCNA), as amended. Additional requirements may be imposed.

(b) *Contracts for professional services.* Notwithstanding the foregoing provision of this section, the noncompetitive procurement of contracts for legal, medical, independent certified public accounting, or other professional services is hereby authorized by negotiation with organizations or persons on the basis of experience, skill, and financial capacity to perform and shall be approved as provided in subsection (d) herein. Notwithstanding the foregoing, selection of an independent financial auditor to perform a "financial audit" as defined by F.S. § 11.45(1)(c) and other audit functions as may be requested shall be by the following described procedure, as permitted by the Pinellas County Home Rule Charter and F.S. § 218.391. A selection committee shall be established consisting of a designee of the board of county commissioners, the clerk of the circuit court or his/her designee, the director of the office of management and budget or his/her designee, the supervisor of elections or his/her designee, the tax collector or his/her designee, the property appraiser or his/her designee, and the sheriff or his/her designee. The selection committee shall prepare or cause to be prepared a request for proposal for independent financial auditor services, and the auditor shall be selected by competitive sealed proposal pursuant to section 2-177.

(c) *Contracts for expert witnesses.* Expert witnesses are exempt from the purview of this division.

(d) *Award of professional service contracts.*

(1) Contracts for services of a value greater than \$250,000.00 in a fiscal or calendar year shall be authorized by the board of county commissioners or the constitutional officer, as applicable.

(2) Contracts for services of a value greater than \$100,000.00 and less than or equal to \$250,000.00 in a fiscal or calendar year shall be authorized by the constitutional officer, or by the county administrator or his/her designee, as applicable.

(3) Contracts for services of a value less than or equal to \$100,000.00 in a fiscal or calendar year shall be authorized by the constitutional officer or the director of purchasing, as applicable.

(Ord. No. 94-51, § 3(c), 6-7-94; Ord. No. 98-16, § 3, 1-27-98; Ord. No. 99-4, § 2, 1-5-99; Ord. No. 02-19, § 1, 3-19-02; Ord. No. 04-64, § 3, 9-21-04; Ord. No. 06-44, § 1, 6-6-06)

Sec. 2-179. Small purchases.

(a) *Generally.* Any contract for \$100,000.00 in a fiscal or calendar year or less may be made in accordance with the small purchase procedures authorized in this section. A purchase shall not be artificially divided so as to constitute a small purchase under this section.

(b) *Small purchases of \$5,000.00 or more.* Insofar as it is practical for small purchases of \$5,000.00 or more, no less than two quotations shall be solicited. Award shall be made on the basis of lowest and best quotation. The names of the vendors submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

(c) *Small purchases under \$5,000.00.* The director of purchasing shall adopt operational procedures for making small purchases of less than \$5,000.00. Such procedures may provide for obtaining adequate and reasonable competition when deemed to be in the best interest of the county for the goods or services being purchased and shall require the maintenance of adequate written records to document the purchasing decision. Purchases below \$5,000.00 are not subject to competitive quotation.

(d) *Award.*

(1) Small purchases of a value up to \$100,000.00 in a fiscal or calendar year may be authorized by the purchasing director or his/her designee responsible for the administrative oversight of the purchasing department, or the constitutional officer, as applicable.

(2) Small purchases of a value determined by the county administrator to be reasonable may be purchased by an operating department through the use of field purchase orders or procurement cards.

(Ord. No. 94-51, § 3(d), 6-7-94; Ord. No. 99-4, §§ 3, 4, 1-5-99; Ord. No. 02-19, § 1, 3-19-02; Ord. No. 03-25, § 1, 5-6-03; Ord. No. 04-64, § 4, 9-21-04; Ord. No. 06-19, § 5, 2-21-06; Ord. No. 08-49, § 4, 10-7-08)

Sec. 2-180. Sole source/noncompetitive procurement.

(a) *Definitions:*

(1) *"Sole source" purchase.* A sole source purchase exists when research has determined there is only one potential provider for an item.

(2) *Noncompetitive purchase.* A noncompetitive purchase exists when it is advantageous to the county to declare a purchase noncompetitive because it will result in verifiable financial savings to the county, is a trial program, or utilizing a competitive process will be detrimental to timely securing the goods or services. More than one potential supplier may exist for a good or service; however, written documentation must be forwarded to the director of purchasing, clearly documenting the advantages of declaring the purchase noncompetitive on the basis that only one reasonable and practicable source exists to supply a particular good or service. Such advantages may be based upon, but not be limited to, uniqueness, vendor qualifications, and timeliness of the purchase.

(b) Sole source and noncompetitive purchases may be used as a procurement method for purchases of products or services when available from a sole source or when it is determined by the director of purchasing that there is only one practicable and reasonable source wherein competitive bidding is not feasible or not advantageous to the county justifying a noncompetitive purchase. A request for proprietary item does not justify a sole source purchase if there is more than one potential bidder for the item. However, a noncompetitive purchase may be justified if there is more than one potential bidder for an item.

(c) *Award.*

(1) Sole source/noncompetitive procurements of a value greater than \$250,000.00 in a fiscal or calendar year shall be authorized by the board of county commissioners or the constitutional officer, as applicable.

(2) Sole Source/noncompetitive procurements of a value greater than \$100,000.00 in a fiscal or calendar year and less than or equal to \$250,000.00 in a fiscal or calendar year shall be authorized by the constitutional officer, or by the county administrator or his/her designee, as applicable.

(3) Sole source/noncompetitive procurements of a value less than or equal to \$100,000.00 in a fiscal or calendar year shall be authorized by the constitutional officer or the director of purchasing, as applicable.

(Ord. No. 94-51, § 3(e), 6-7-94; Ord. No. 98-16, § 4, 1-27-98; Ord. No. 02-19, § 1, 3-19-02; Ord. No. 04-64, § 5, 9-21-04; Ord. No. 06-19, § 6, 2-21-06)

Sec. 2-181. Emergency procurements.

(a) *Generally.* Notwithstanding any other provisions of this division, emergency purchases of goods or services may be made in the event of a disruption of essential operations, or when there exists a threat to public health, welfare or safety, or when the protection or preservation of public property would not be possible through normal purchasing procedures; provided that such emergency purchases shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(b) *Award.*

(1) Emergency purchases in excess of \$100,000.00 shall be authorized by the constitutional officer, or the county administrator, as applicable. The county administrator shall place a receipt and file a report as to those emergency purchases in excess of \$100,000.00 and which do not exceed \$250,000.00 to the board of county commissioners at the end of each fiscal quarter, and a written explanation of the circumstances of an emergency purchase in excess of \$250,000.00 shall be filed by the county administrator and entered in the minutes of the board of county commissioners and shall be open to public inspection.

(2) Emergency purchases of a value less than or equal to \$100,000.00 shall be authorized by the constitutional officer or the director of purchasing, as applicable.

(Ord. No. 94-51, § 3(f), 6-7-94; Ord. No. 98-16, § 5, 1-27-98; Ord. No. 02-19, § 1, 3-19-02; Ord. No. 04-64, § 6, 9-21-04; Ord. No. 06-19, § 7, 2-21-06)

Sec. 2-182. Used equipment/supplies procurement.

(a) *Generally.* Notwithstanding any other provisions of this division and any other applicable laws, the purchase of used equipment or supplies shall be made with such competition as is practicable under the circumstances.

(b) *Award.*

(1) The purchase of used equipment or supplies of a value less than or equal to \$250,000.00 in a fiscal or calendar year shall be authorized by the constitutional officer or the county administrator, as applicable. The purchase of used equipment or supplies of a value in excess of \$250,000.00 shall be approved by the board of county commissioners.

(2) Purchases of used equipment or supplies of a value less than or equal to \$100,000.00 in a fiscal or calendar year shall be authorized by the constitutional officer or the director of purchasing, as applicable.

(Ord. No. 94-51, § 3(g), 6-7-94; Ord. No. 98-16, § 6, 1-27-98; Ord. No. 02-19, § 1, 3-19-02; Ord. No. 04-64, § 7, 9-21-04; Ord. No. 06-19, § 8, 2-21-06)

Sec. 2-183. Procurement of construction management services.

If the county administrator determines that it is in the best interest of the county to proceed with a board of county commissioners' construction project using the services of a construction manager, who will hold all contracts of the general contractor and subcontractors, then those services may be procured by means other than the procedures

specified above in this subdivision. The director of purchasing is authorized to prepare the alternate procedures, which shall be included in the purchasing procedures which are approved by the board of county commissioners by resolution from time to time. (Ord. No. 94-51, § 3(h), 6-7-94)

Sec. 2-184. Master purchase orders.

(a) *Annual requirement purchases of goods and/or services.* When exclusively used for the procurement of annual requirements of goods and/or services of any kind, and upon award of a contract for the purchase of such goods and/or services by the entity required pursuant to sections 2-176(f), 2-179, or 2-180(b) the director of purchasing may issue a master purchase order for the full amount approved for the contract.

(b) *Increases to the master purchase order.* The county administrator (for any previously approved board contract), or the director of purchasing within the limits of his/her delegated financial approval authority, or the appropriate constitutional officer, as applicable, shall be authorized to increase master purchase orders. The increases to master purchase orders beyond the amounts previously approved may be authorized in accordance with the best interests of the county. Before any increase may be made by the county administrator, director of purchasing, or a constitutional officer whose budget is approved by the board of county commissioners, compliance with the provisions of F.S. ch. 129, relating to the county budget shall be verified. The county administrator will place a receipt and file a report as to all increases to master purchase orders in excess of \$250,000.00 to the board of county commissioners, at the end of each fiscal quarter.

(Ord. No. 00-92, § 2, 11-7-00; Ord. No. 04-64, § 8, 9-21-04; Ord. No. 06-19, § 9, 2-21-06; Ord. No. 08-49, § 5, 10-7-08)

Sec. 2-185. State bid or negotiated contracts and required purchases.

(a) *State bid or negotiated agreements.* The county administrator is authorized to award contracts for purchases of goods or services in any amount within the budget of the using department under state bid or negotiated agreements and the director of purchasing is authorized to award contracts for purchase of goods or services of \$100,000.00 or less under state bid or negotiated agreements.

(b) *Purchases of goods required to be made from qualified nonprofit agencies for the blind or severely disabled.* Purchases of goods required to be made from qualified nonprofit agencies for the blind or severely disabled pursuant to state law may be authorized by the county administrator in any amount within the budget of the using department.

(c) *Reports to the board.* For purchases in excess of \$250,000.00 made pursuant to this section, the county administrator shall place a receipt and file a report to the board of county commissioners at the end of each fiscal quarter.

(Ord. No. 00-92, § 3, 11-7-00; Ord. No. 06-19, § 10, 2-21-06)

Sec. 2-186. Retail golf merchandise purchases for county-operated retail golf course shops.

The provisions of this division regarding competitive bidding shall not apply to the purchase of retail golf accessories, apparel, equipment, and/or any other golf-related merchandise (hereinafter referred to as "retail golf merchandise") for resale by any county-operated golf course retail shop(s). All retail golf merchandise, other than merchandise purchased within 30 days of the initial opening of the golf course, shall be purchased from vendors listed on the county's qualified retail golf merchandise vendor list. The qualified retail golf merchandise vendor list shall be comprised of vendors and subcontractors approved by the purchasing director and manager of golf operations or their designees in accordance with established purchasing procedures and criteria. Said list shall be updated by those persons designated

under this section as prospective qualified vendors become available. Purchases of retail golf merchandise shall be made pursuant to policies and procedures specifically adopted for such purchases, from the qualified retail golf merchandise vendor list in order to ensure competition among the vendors regarding competitive pricing, quality of merchandise and brand recognition for products sold by each vendor.

(Ord. No. 01-84, § 1, 12-18-01)

Sec. 2-187. Reserved.

Editor's note: Ord. No. 08-49, § 6, adopted Oct. 7, 2008, deleted § 2-187, which pertained to contract amendments/vendor name changes and derived from Ord. No. 02-19, § 1, adopted Mar. 19, 2002; Ord. No. 04-64, § 9, adopted Sept. 21, 2004; and Ord. No. 06-19, § 11, adopted Feb. 21, 2006.

Sec. 2-188. Approval authority.

The county administrator or his/her designee and the director of purchasing, or his/her designee, shall have authority to approve procurement related documents and instruments articulated in section 2-62 in accordance with the specified delegated financial authority limits under this division.

(Ord. No. 02-19, § 1, 3-19-02; Ord. No. 02-68, 8-20-02; Ord. No. 04-64, § 11, 9-21-04; Ord. No. 06-19, § 12, 2-21-06; Ord. No. 08-49, § 7, 10-7-08)

Editor's note: Ord. No. 04-64, § 10, adopted Sept. 21, 2004, repealed the former § 2-188, which pertained to vendor name changes and derived from Ord. No. 02-19, § 1, adopted Mar. 19, 2002. See § 2-187 for similar provisions. Additionally, Ord. No. 04-64, § 11, renumbered the former § 2-189 as § 2-188.

Sec. 2-189. Lobbying.

Lobbying of evaluation committee members, county government employees, or elected officials regarding requests for proposals, requests for qualifications, bids, or contracts, or during the pendency of bid protest, by the bidder/proposer/protestor or any member of the bidder's/proposer's/protestor's staff, an agent of the bidder/proposer/protestor, or any person employed by any legal entity affiliated with or representing an organization that is responding to the requests for proposal, requests for qualification, bid or contract, or has a pending bid protest is strictly prohibited either upon advertisement or on a date established by the board of county commissioners and shall be prohibited until either an award is final or the protest is finally resolved by the county administrator or purchasing director; provided, however, nothing herein shall prohibit a prospective bidder/proposer from contacting the purchasing department to address situations such as clarification and/or questions related to the procurement process. For purposes of this provision lobbying activities shall include but not be limited to, influencing or attempting to influence action or non-action in connection with any requests for proposal, requests for qualification, bid or contract through direct or indirect oral or written communication or an attempt to obtain goodwill of persons and/or entities specified in this provision. Such actions may cause any requests for proposal, requests for qualification, bid or contract to be rejected.

(Ord. No. 02-35, 5-7-02; Ord. No. 04-64, § 12, 9-21-04; Ord. No. 04-87, § 1, 12-7-04)

Editor's note: Ord. No. 04-64, § 12, adopted Sept. 21, 2004, renumbered the former § 2-190 as § 2-189.

Sec. 2-190. Sponsorships.

(a) As used in this section, the following terms shall have the meaning ascribed to them herein, except where the context clearly indicates a different meaning:

Naming rights means a sponsorship in which a third party purchases the exclusive right to name a whole asset or venue.

Sponsorship means a mutually beneficial business arrangement between the county and a third party, wherein the third party provides cash and/or in-kind services to the county in return for access to the commercial and/or marketing potential associated with the county and includes naming rights. Sponsorships may include sponsorship of one or more of the county's services, projects, events, facilities or activities.

(b) The provisions of this division regarding competitive bidding shall not apply to sponsorships. The board of county commissioners may establish policies, procedures and criteria for securing and approving sponsorships by resolution. The county administrator, his/her designees and/or department heads shall have the authority to approve and execute agreements relating to sponsorships as provided in any resolution approved by the board of county commissioners relating to sponsorships.

(Ord. No. 05-52, § 1, 7-26-05)

Sec. 2-191. Marina sales and services.

The provisions of this division regarding competitive bidding shall not apply to the acquisition of any goods or services for resale to the public at public marinas as defined in section 90-2 of this Code.

(Ord. No. 07-32, § 1, 7-24-07)

Sec. 2-192. Catering services.

(a) As used in this subsection, the following words, terms, and phrases shall have the meaning ascribed to them therein, except where the context clearly indicates a different meaning:

Caterer shall mean public food service establishments licensed by the State of Florida Department of Business Regulation where food or drink is prepared for service elsewhere.

County facilities shall mean any land, buildings or structures owned or controlled by the county.

Catering services shall mean any food service for which a guarantee in the number of meals or persons to be served has been made by caterer's customer at an established price per person or meal, whereby the caterer agrees to provide these services in such a manner as to serve sufficient quantities of food and beverages, including alcohol or alcohol-related beverages, mixers and setups, and to meet its obligation established by the guarantee as previously described.

(b) The provisions of this division regarding competitive bidding shall not apply to catering services provided to private parties renting county facilities. The county administrator shall establish procedures and criteria for qualifying caterers to provide catering services to private parties at county facilities.

(Ord. No. 07-32, § 2, 7-24-07)

Secs. 2-193--2-195. Reserved.

DIVISION 3. PROCEDURES FOR AWARD OF DESIGN-BUILD CONTRACTS

Sec. 2-196. Authority.

The county is authorized by F.S. § 287.055(10)(c) to adopt an ordinance governing the award of design-build contracts.

(Ord. No. 90-82, § 1, 10-16-90)

Sec. 2-197. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator means the county administrator or his designee.

Design-build contract means a single contract with a design-build firm for the design and construction of a public construction project.

Design-build firm means a partnership, corporation, or other legal entity which is qualified to engage in the design and construction of a design-build project.

Design criteria package means concise, performance-oriented drawings or specifications of the public construction project. This package may define quality levels of materials, equipment and workmanship. The purpose of the design criteria package is to furnish sufficient information so as to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-built contract. The design criteria package shall specify such performance-based criteria for the public construction project, including, but not limited to, the criteria designated in section 2-199. The design criteria may include graphics indicating the site plan, survey dimensions, contours, access roads, setbacks, and preferred massing of the building elements.

Design criteria professional means an individual or firm holding a current certificate of registration or authorization under:

- (1) The provisions of F.S. ch. 481, to practice architecture or landscape architecture; or
- (2) The provisions of F.S. ch. 471, to practice engineering;

and who is employed by, or under contract to, the county for the provision of professional architectural services, landscape architectural services, or engineering services in connection with the preparation of a design criteria package.

Project means that fixed capital outlay project described in the public announcement, including, but not limited to:

- (1) Individual facilities;
- (2) Grouping of facilities;
- (3) Construction, rehabilitation, and renovation activities;
- (4) Resurfacing of roads; bridge rehabilitation or replacement; new bridge construction; and new construction or reconstruction of roads.

Qualification statement means a statement submitted by prospective design-build firms containing information required by the selection advisory committee as indicated in section 2-200(a).

Request for proposal means solicitation of responses from prequalified firms in which the firm provides a complete description of work to be performed pursuant to the technical requirements and initial specifications of the project. Such descriptive data may include, but not be limited to, drawings, specifications, material descriptions, work schedule, and an estimate of proposed design and construction costs.

Selection advisory committee means a committee appointed by the county administrator composed of at least three persons, two of whom are professional engineers. Other members of the committee may include, but not be limited to, a representative from the

construction contracting community, the director of public works for the county, or the director of the user department for the project.

(Ord. No. 90-82, § 2, 10-16-90)

Cross references: Definitions generally, § 1-2.

Sec. 2-198. Selection of design criteria professional.

(a) When the county administrator determines that a project shall be constructed pursuant to this division, the administrator shall arrange for preparation of a design criteria package for the project. The design criteria package shall be prepared and sealed by a design criteria professional employed by, or retained by, the county. If the county elects to enter into a professional services contract for the preparation of the design criteria package, then the design criteria professional shall be selected and contracted with in accordance with the requirements of F.S. §§ 287.055(3), 287.055(4) and 287.055(5).

(b) The design criteria professional will be selected with special consideration for specific experience and ability relating to the type of facility required and the preparation of design-build criteria. In determining whether a design criteria professional is qualified, the selection advisory committee shall also 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 design criteria professionals; the volume of work previously awarded to each design-build professional by the board of county commissioners, with the object of effecting an equitable distribution of contracts among qualified design criteria professionals, provided such distribution does not violate the principle of selection of the most highly qualified design criteria professionals; and whether a design criteria professional is a certified minority business enterprise in accordance with the requirements under F.S. § 287.055(3). In addition to these considerations, the selection advisory committee may require any other qualifications deemed appropriate to the project.

(c) Acceptable individuals or entities who may act as the design criteria professional include:

(1) Licensed registered professional engineers, architects and landscape architects employed or retained by the county.

(2) Licensed engineering, architectural or landscape architectural firms providing services to the county where such firms have been selected pursuant to F.S. § 287.055 and this division.

(d) A design criteria professional who has been selected to render services in connection with a specific design criteria package shall not be eligible to render services under the design-build contract for that project.

(Ord. No. 90-82, § 3, 10-16-90; Ord. No. 02-35, 5-7-02)

Sec. 2-199. Development of design criteria package.

(a) The selected design criteria professional shall develop a design criteria package consisting of performance-oriented drawings and/or specifications with sufficient information to permit design-build firms to prepare bids for construction and to permit the county to enter into a design-build contract based upon the criteria in the design criteria package.

(b) The design criteria package may define the quality level required for the project, and shall include criteria and data including, but not limited to, the legal description of the site, site survey information, interior space requirements, material quality standards, schematic layouts and conceptual designs, budget estimates and requirements, construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, parking requirements, land development permitting requirements, building permitting requirements and environmental permitting requirements. Special consideration will be given to minimizing long-term lifestyle, operating and maintenance requirements, as well as energy consumption and water consumption. (Ord. No. 90-82, § 4, 10-16-90)

Sec. 2-200. Solicitation of qualified firms.

(a) *Prequalification by the selection advisory committee.* The county administrator shall appoint a selection advisory committee as defined in section 2-197. This committee shall establish the qualifications required for the design-build project, and then solicit qualifications statements from interested design-build firms. From these qualification statements, the selection advisory committee shall establish a short list of at least three qualified design-build firms to whom a request for proposal shall be issued pursuant to subsection (c) of this section. Numerous factors are considered in determining if a company is qualified to submit proposals for county design-build projects, including but not limited to the following:

(1) *Financial condition.* Financial capability is of primary concern in determining whether a design-build firm is qualified. The minimum standard for determining financial capability is expressed in the following formula:

Ten times Net Quick Assets = Ten times Total Assets minus Total Liabilities

When:

Total Assets = All tangible and intangible assets (excluding bank credit) minus questionable items minus one-half the net value of real estate.

Total Liabilities = All liabilities excluding encumbrances on real estate.

For tangible assets, the allowable value of equipment is book value or 50 percent of appraised value, if provided, whichever is greater.

The amount derived from this formula must be equal to or greater than the contract amount of the construction project. Assessment of financial capability may be more stringent depending on the magnitude of the project.

(2) *Job performance.* Previous job experience and performance, especially previous design-build experience, is a primary criteria considered in determining qualification. A firm must show evidence of having performed satisfactory construction of similar work within the past three years. Inclusive in this evidence shall be a list of projects completed, including nature and size of project, the firm's complete address and zip code, and a listing of owners and/or architects or engineers where applicable.

(3) *Equipment.* A list of owned or leased equipment, acceptable to the selection advisory committee, shall be submitted at time of submission of the qualification statement.

(4) *Personnel.* A list of all supervisory personnel to be engaged on county projects shall be submitted, listing name, education and experience. The design-build contract may require certain key personnel to be available to the project on a full-time basis.

(5) *Licensing.* Proof of compliance with proper certification and license requirements shall be a prerequisite to qualification.

(6) *Out-of-state corporations.* Corporations incorporated in any state other than Florida, and nonFlorida limited partnerships, shall first obtain a license or permit to do business in Florida before entering a design-build contract. Foreign corporations shall qualify to do business in Florida according to applicable law.

(7) *Change of ownership.* If a significant change in the structure of a firm occurs, such as a change of ownership or incorporation of a nonincorporated firm, a new qualification statement will be required. Also, a new qualification statement may be required whenever the selection advisory committee has reason to believe that the condition of a firm is less favorable than at the time of the last qualification statement. A new statement is not necessary when a change in the officers or the name of a corporation occurs, nevertheless, such information shall be submitted to the selection advisory committee at the time of such change.

(8) *Wholly-owned subsidiaries.* If the design-build firm is a wholly-owned subsidiary, the board of directors of the parent company shall provide a resolution properly adopted and executed by such board stating:

- a. The power of such corporation to enter into contracts of surety and guaranty;
- b. The legal relationship between the two corporations;
- c. The corporate board's statement that the parent company will indemnify the county from and against any liability and expense which may be incurred due to any failure of subsidiary to perform; and
- d. The authorization to the appropriate corporate officers to execute the appropriate indemnity agreement.

(9) *Joint ventures.* Evidence of financial capability will be required of each party involved in formation of a joint venture for a design-build project. Design-build firms must be legally qualified to engage in contracting and engineering, architecture or landscape architecture. Joint ventures between firms qualified in contracting and firms qualified in engineering, architecture or landscape architecture will be acceptable. Proposals will be solicited from recommended and accepted design-build firms.

(b) *Public announcement procedures.* Except in emergency situations declared in accordance with section 2-203, the purchasing department or its designee shall publish in a newspaper of general circulation in the county, and any other publication deemed appropriate, a public announcement providing a general description of the design-build project requiring design-build services, and defining the procedures by which interested design-build firms may apply for consideration. The public announcement shall include the qualification criteria for the project which has been prepared by the selection advisory committee as required in subsection (a) of this section.

(c) *Request for proposals.* After the selection advisory committee has set forth criteria for prequalification for the design-build project pursuant to subsection (a) of this section, and such criteria has been formally announced pursuant to subsection (b) of this section, the selection advisory committee shall review the submitted qualifications statements and shall establish a short list of at least three of the most qualified design-build firms. The selection advisory committee shall then issue requests for proposals to the firms on the short list. When the proposals are received, the selection advisory committee shall review the proposals and recommend the three most qualified design-build firms to the board of county commissioners, who shall select the most qualified and award the design-build contract. The committee may request that the firms submit both a technical proposal and a price proposal. These proposals may be reviewed in separate stages.

(Ord. No. 90-82, § 5, 10-16-90)

Cross references: Boards, commissions, councils and authorities, § 2-226 et seq.

Sec. 2-201. Selection of most suitable proposals.

(a) The county administrator or his designee shall implement a selection procedure for evaluating the proposals received from the approved design-build firms. This procedure may include, but not be limited to, consideration of any special requirements, oral presentations by design-build firms, a scoring and ranking process, consideration of the firms' experience and qualifications with special emphasis on design-build projects and projects of the general nature of the subject project, and a value analysis of the proposal price. Evaluation of the criteria shall include whether a firm is a certified minority business enterprise. Other criteria for evaluating the proposal may include:

- (1) The ability, capacity and skill of the firm to perform the contract or provide the service required;
- (2) Whether the firm can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the firm;
- (4) The quality of performance of previous contracts or services;

- (5) The previous and existing compliance by the firm with laws and ordinances relating to the contract or services;
 - (6) The sufficiency of the financial resources and ability of the firm to perform the contract or provide the service;
 - (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required;
 - (8) The ability of the firm to provide future maintenance and service;
 - (9) The number and scope of nonconforming conditions attached to the proposal.
- (b) The design criteria professional shall be involved in the selection and evaluation procedure so as to ensure proposal compliance with the design criteria package. The county administrator shall also provide a procedure by which the contract with the retained design criteria professional may be terminated prior to this solicitation/evaluation stage if termination is deemed in the best interest of the county.
- (Ord. No. 90-82, § 6, 10-16-90; Ord. No. 02-35, 5-7-02)

Sec. 2-202. Construction and supervision.

After award of the contract to the selected design build firm, the design criteria professional will provide evaluation of compliance with the design criteria package during the construction of the project. This will be in addition to any inspection procedures deemed necessary by the county administrator. The county administrator shall provide a procedure by which the contract with the retained design criteria professional may be terminated with or without cause prior to the evaluation stage if termination is deemed to be in the best interest of the county.

(Ord. No. 90-82, § 7, 10-16-90; Ord. No. 02-19, § 1, 3-19-02)

Sec. 2-203. Emergency measures.

In the event of a public emergency, the county administrator may declare an emergency and authorize negotiations with the best available design-build firm available at that time.

(Ord. No. 90-82, § 9, 10-16-90)

Sec. 2-204. Rule-making authority.

The county administrator shall have authority to establish rules and procedures to implement the provisions of this division.

(Ord. No. 90-82, § 10, 10-16-90)

Secs. 2-205--2-225. Reserved.