

LEE COUNTY ORDINANCE NO. 22-06

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AMENDING ORDINANCE 18-22 RELATING TO THE PROCUREMENT OF GOODS AND SERVICES; PROVIDING FOR THE REPEAL OF LEE COUNTY ORDINANCE 00-10, AS AMENDED BY ORDINANCE 08-26, AS AMENDED BY ORDINANCE 17-16, RELATING TO LOCAL VENDOR PREFERENCE; ESTABLISHING SOLICITATION AND APPROVAL THRESHOLDS; ENHANCING THE COUNTY'S LOCAL VENDOR PREFERENCE PROVISIONS; PROVIDING FOR CERTAIN EXEMPTIONS; INCORPORATING APPLICABLE FEDERAL PROCUREMENT STANDARDS; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING, AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (the "Board") is the governing body in and for Lee County, a political subdivision and Charter County of the State of Florida ("County"); and

WHEREAS, the Board is authorized pursuant to Chapter 125, Florida Statutes, to enact Ordinances necessary in the exercise of its powers; and

WHEREAS, the Board adopted Ordinance No. 18-22 on September 18, 2018, establishing the County Procurement Ordinance and rescinding certain prior Lee County Ordinances and Administrative Codes related to the procurement of goods and services; and,

WHEREAS, the Board has directed staff to update the County Procurement Ordinance in order to provide for additional clarity in the procurement process, and to enhance the County's existing Local Vendor Preference provisions; and

WHEREAS, the Board has determined that it is in the County's best interests to amend and restate the County Procurement Ordinance as follows.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA THAT:

SECTION ONE: REPEALER

Upon adoption of this Ordinance, Lee County Ordinance 00-10, as amended by Ordinance 08-26, as amended by Ordinance 17-16, is hereby repealed in its entirety.

SECTION TWO: AMENDED COUNTY PROCUREMENT ORDINANCE

Upon adoption of this Ordinance, Lee County Ordinance 18-22 is hereby amended as follows:

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[The TABLE OF CONTENTS is hereby deleted.]

SECTION 1. DEFINITIONS

For the purposes of this Ordinance and any documents pertaining to the use of this Ordinance (e.g., Contracts, Purchase Orders, etc.), the following terms, phrases, words and their derivations shall have the meaning given herein, unless otherwise specifically defined in any specific document:

Addendum. A written document used to modify the terms of a Solicitation. An Addendum is not to be confused with a Contract "Amendment."

Advertisement. A public announcement, as required by local law, announcing a Competitive Procurement and seeking Responses from interested Vendors.

Amendment. Any modification to the provisions of any executed Contract accomplished by mutual written agreement of the parties to the Contract.

Appropriation. Legal authorization granted by a legislative body to make expenditures and to incur obligations for specific purposes. An Appropriation is usually limited in amount and also to the time when it may be expended.

Award. The acceptance, by the County, of the successful Offeror's Bid, Proposal or Quotation.

Bid. A formal written price offer by a Bidder offering to furnish specific Commodities or Services or Construction to the County in Response to an Invitation to Bid.

Bid Bond. An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Bidder will not withdraw the Bid. The Bidder shall furnish a Bid Bond in the amount required by the Solicitation, and if the Bidder is Awarded, the Bidder must accept the County's Purchase at the price Bid and under the terms described by the Solicitation, including the County's Contract terms, if required by the County, or else the surety must pay the County the sum provided for in the Solicitation.

Bidder. Any entity submitting a Bid in Response to an Invitation to Bid issued by the County.

Board. The Board of County Commissioners, the legislative body of the County of Lee, Florida.

Brand Name or Approved Alternate. A Specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet the County requirements and that provide for the submission of equivalent Commodities.

Business. Any corporation, partnership, individual, sole proprietorship, joint venture, joint stock company, or any other private legal entity engaged in the commercial provision of Commodities, or Services or Construction.

CCNA Thresholds. The monetary threshold in Section 287.017, Florida Statutes, category five, for basic Construction cost, and in Section 287.017, Florida Statutes, category two, for planning or study activities.

Change Order. A written order amending the scope, price, time of, or correcting errors, omissions, or discrepancies in, a Contract or Purchase Order, which is signed by the Vendor and approved in accordance with this Ordinance, but does not include a Field Directive Change Order. This term includes County Project Modification (CPM).

Commodity. Anything that can be Purchased other than Services or Real Property, including Equipment. Objects that can satisfy people's wants; goods.

Competitive Procurement. An open and competitive process for the Procurement of Commodities and/or Services, including, but not limited to, Invitations to Bid, Invitations to Negotiate and Requests for Proposal, as provided in Section 5 of this Ordinance.

Cone of Silence. The prohibition of any communication between a Vendor and a County officer, employee, or agent regarding a pending Competitive Procurement, except for such communications with the County's designated representative noted in the Competitive Procurement documents, or at a duly noticed Pre-Proposal Conference or oral presentation.

Construction. The process of building, altering, repairing, improving, or demolishing any structure or building, or other public improvements of any kind to any Real Property including roadways, utilities, and facility site work. Electrical projects is not considered Construction.

Construction Manager at Risk. A managing general contractor who is Procured to provide advice on various design and Construction alternatives and scheduling during the design phase of a public Construction project, and then takes on the financial obligation for Construction of the project for a Guaranteed Maximum Price.

Consultants' Competitive Negotiation Act (CCNA) Professional Services. Services performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper and any other professions covered by Section 287.055, Florida Statutes, in connection with his or her professional employment or practice.

Continuing Contract. For CCNA Professional Services, a Contract defined in Section 287.055(2)(g), Florida Statutes.

Contract. An agreement for the Purchase or disposal of Commodities, Services, or Real Property, which is signed by the Vendor and approved and executed by the County in accordance with this Ordinance.

Cooperative Procurement. Competitive Procurement conducted by, or on behalf of, more than one public entity.

County. The County of Lee, Florida.

County Manager. The chief executive of the County or that person's Designee.

Debarment. Action by the County to prohibit a Vendor from submitting Bids, Proposals, Quotations, or Responses to any Competitive Procurement, or otherwise conducting business with the County until such time as the Vendor is reinstated by the County.

Department. Any of the various operating departments and divisions of the County under the control of the County Manager.

Department Director. The County employee in charge of a Department, or that person's Designee.

Design-Build Contract. A single Contract with a design-build Vendor for the design and Construction of a public Construction project.

Design Criteria Package. Concise, performance-orientated drawings or Specifications for a public Construction project, the purpose of which is to provide sufficient information to permit design-build Vendors to prepare a Response to a Competitive Procurement for design-build Services.

Designee. The duly authorized representative of a person.

Direct Voucher. A document used by the County department authorizing a payment to be processed without the requirement of a Contract or Purchase Order being in place.

Emergency. Any occurrence or threat thereof whether natural, manmade, or technological, in war or in peace, which results or may result in substantial injury or harm to public health, safety, or welfare; substantial damage to or loss of property; or those situations where the operation of an essential Department would be seriously impaired if immediate action was not taken.

Emergency Procurement. An expeditious Purchase of Commodities, ~~or~~ Services or Construction to address an Emergency.

Equipment. Tools, machinery, devices, and other major items that are not expendable except through depreciation or wear and tear and which, although they may be fixed or positioned in prescribed places, do not lose their identity or become integral parts of other items or installations.

Field Directive Change Order. A written order making a minor modification to a Contract or Purchase Order, which is signed by the Vendor and approved in accordance with this Ordinance. A modification is minor if it does not change (i) the scope of the project, (ii) the amount of the Purchase or compensation, or (iii) the time for execution or completion of the Contract.

Guaranteed Maximum Price (GMP). The total maximum price of a public Construction project provided by a Construction Manager at Risk at the conclusion of the design and planning phase of the project. The Guaranteed Maximum Price shall include all direct Construction costs, management Services, the Construction Manager at Risk's fee, owner allowances, and contingencies.

Immediate Family. Any parent, spouse, child, sibling, father- or mother-in-law, or son- or daughter-in-law of an individual.

Informal Procurement. The process of obtaining Commodities and Services through petty cash, Purchasing Cards, or written Quotations from Vendors without formal Advertising and receipt of competitive Responses, as provided in Section 4 of this Ordinance.

Invitation to Bid (ITB). A written Solicitation used for Competitive Procurement of Commodities, ~~or Services~~ or Construction when Specifications are available and the selection will be based upon the lowest Responsive Bid submitted by a Responsible Vendor.

Invitation to Negotiate. A written Solicitation used for the Competitive Procurement of Commodities, ~~or Services~~ or Construction when the County is seeking to select one or more Businesses with which to commence negotiations.

Lease. A contract by which the County (lessee) enters into a contract with a second party (lessor) for possession and use of property (equipment) for a specified period of time at a predetermined cost. There are two primary lease categories: Operating and Financial.

Local Vendor. ~~(a) Any Vendor whose principal place of business in the sole opinion of the County, is located within the boundaries of Lee County, Florida; or (b) Vendor that has provided Commodities or Services to Lee County on a regular basis for the preceding consecutive three (3) years, and that has the personnel, equipment and materials located within the boundaries of Lee County sufficient to constitute a present ability to perform the service or provide the Commodities; or (c) any Vendor that qualifies as a "Local Business" under the terms of the Collier County Local Vendor Preference Program on or after the date Lee and Collier County enter an agreement extending reciprocity under their respective Local Vendor preference programs to the Vendors eligible for those programs in the adjoining County; or (d) any Vendor that qualifies as a "Local Vendor" or similar term under the Local Vendor preference program of any County adjoining Lee County on or after the date Lee County and the adjoining County enter a reciprocity agreement that is substantially similar to any such agreement between Lee and Collier County.~~ Any Vendor whose physical business address, in the sole opinion of the County, is located within the boundaries of Lee County, Florida; at least two (2) fulltime employees in Lee County; and a Local Business Tax Receipt issued by Lee County at least one year prior to solicitation opening.

Material Deviation. Any non-conformity or variance from the Procurement requirements or a mistake in a Bid or Proposal that gives one Offeror a substantial competitive advantage over other Offerors in a Competitive Procurement.

Minor Irregularity. A minor defect or variation in a Bid or Proposal from the exact requirements of the Solicitation that does not affect price or other mandatory requirements and does not give one Offeror a substantial competitive advantage. A defect that is easily correctable. Generally a matter of form rather than substance.

Minority Business Enterprise. A Business as defined and certified in accordance with Section 287.0943, Florida Statutes.

Negotiation Team. A group of individuals established by the County for the purpose of conducting negotiations as part of a Competitive Procurement.

Notice of Intended Decision. The written notice by the Procurement Management Department to notify Vendors of the County's intent to Award.

Notice of Intent to Protest. The written notice by a Vendor of its intent to protest the Notice of Intended Decision to a Competitive Procurement pursuant to Section 5.7 of this Ordinance.

Notice to Proceed. When required in the terms of a Contract, a written notice given by the Procurement Management Department establishing the original date on which the Contract times will commence. The Vendor shall begin to perform his/her obligation according to the Contract documents on the date(s) provided in the Notice to Proceed. At the County's discretion, issuance of a Purchase Order may serve as the Notice to Proceed.

Offeror. A person or entity who submits an offer in Response to a County Solicitation, including Bidders and Proposers.

Payment Bond. The approved form of security furnished by a Vendor and its surety that assures payments, as required by law, to all persons supplying Commodities, ~~or~~ Services or Construction for the completion of work under the Vendor's Contract.

Performance Bond. The approved form of security furnished by a Vendor and its surety as a guaranty that the Vendor will fully perform in accordance with the terms of the Vendor's Contract.

Personal Property. Property consisting of movable articles that are either tangible, such as furniture or computers, or intangible, such as stocks, bonds, licenses.

Piggybacking. The use of another federal, State or local government Procured Contract.

Posting. An act whereby the County places a listing that indicates the County's public Procurement-related meetings, recommendations for Awards, and Solicitations for Procurements through a computer system or on a bulletin board in a designated location, and/or on the County website.

Pre-Proposal Conference/Pre-Bid Conference. A meeting held with prospective Vendors prior to solicitation of, or the date of receipt of, Bids or Proposals to recognize state of the art limits, technical aspects, Specifications, and standards relative to the subject, and to elicit expertise and Vendors' interest in pursuing the task.

Procurement Protest. A formal, written document submitted by an interested party to challenge the Notice of Intended Decision to a Competitive Procurement pursuant to Section 5.7 of this Ordinance.

Professional Services. The technical, and/or unique functions performed by independent Vendors whose Business is the rendering of such Services. This includes accountants, appraisers, attorneys, auditors, medicine and the medical arts, management and systems consultants, research, the arts and other professionals as designated by the Procurement Management Department, but does not include CCNA Professional Services.

Proposal. An executed formal document submitted by a Proposer to the County stating the Commodities and/or Services offered to satisfy the need as requested in the Solicitation documents.

Proposer. A person or entity who submits a Proposal in response to a Request for Proposal.

Purchase/Procurement. Buying, procuring, ~~renting, leasing,~~ or otherwise acquiring any Commodities, Services or Real Property required by the County for public purposes.

Purchase Order. A document generated by the County documenting a written sales agreement between the County and a Vendor detailing the exact Commodities, CCNA Professional Services, Professional Services, and/or Services rendered from a single Vendor.

Purchasing Cards. County issued credit cards, also referred to as “P-Cards.”

Qualifying Project. For purposes of the Public-Private Partnership process in Section 5.6, this means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
3. A water, wastewater, or surface water management facility or other related infrastructure; or
4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the County, only those projects that the Board designates as Qualifying Projects pursuant to this section.

Quotation. Any written informal offer by a Vendor to the County to furnish specific Commodities, ~~or Services~~ or Construction at a stated price.

Real Property. Property consisting of land and all rights, privileges, or improvements belonging to and passing to lands, including, but not limited to buildings, crops, or mineral rights.

Request for Proposal (RFP). A written Solicitation used for Competitive Procurement of Proposals for Commodities and/or Services for which the scope of work, Specifications, or contractual terms and conditions cannot always be well defined. Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price, prior to Award.

Request for Quotation. A written request used for Informal Procurement to solicit prices for specific, defined Commodities, ~~or Services~~ or Construction that may or may not require public advertisement.

Response. An offer, Bid, Proposal or Quotation submitted to the County in ~~a~~ Response to a Competitive Procurement or an Informal Procurement.

Responsible Vendor. A Vendor submitting a Response who has the capability in all respects to perform fully the Contract requirements and the experience, integrity, reliability, capacity, facilities, equipment, credit, sufficient qualified personnel, and a record of timely and acceptable past performance to assure good faith performance.

Responsive Bid/Proposal. A Response that substantially conforms in all material respects to the requirements and criteria set forth in the Competitive Procurement.

Revenue-Generating Contract. A contract whose primary purpose is to generate revenue or to create a business opportunity for the County.

Services. The furnishing of labor, time, or effort by a Vendor, not involving the delivery of a specific end product other than that which is not defined as supplies, and which is merely incidental to the required performance. This term includes CCNA Professional Services, Professional Services, and Construction Services, but does not include employment agreements or collective bargaining agreements.

Single Source. A Procurement decision whereby purchases are directed to one source because of standardization, warranty considerations, economic feasibility, or other factors, even though other competitive sources may be available.

Sole Source. A Procurement decision whereby purchases are directed to one source because the Commodity or Service that can be legally procured from only one Vendor. This is usually due to the Vendor owning patents and/or copyrights. A requirement for a particular proprietary Commodity does not justify a Sole Source Procurement if there is more than one potential Vendor for that Commodity. Use of Brand Names or Approved Alternate does not constitute a Sole Source.

Solicitation. An Invitation to Bid, Request for Proposal, Invitation to Negotiate, Request for Quotation or any document issued by the County for the purpose of obtaining Bids, Proposals, or other offers from Businesses for the purposes of Procurement.

Specifications. A description of the physical or functional characteristics of the nature of Commodity or Service needed. It may include a description of any requirement for inspection, testing, recycled or degradable material content, or preparing the delivery of a Commodity, or completion of a necessary Service.

Splitting. The illegal act of dividing a single Procurement into two or more Purchases to the same Vendor, or multiple Vendors, within a specific period of time in order to acquire Commodities, ~~or~~ Services or Construction over the limitations and requirements set forth herein, and/or to avoid compliance with/adherence to the requirements set forth herein.

Suspension. A Vendor under Suspension is prohibited from submitting Bids, Proposals, Quotations, or other Responses to any Informal Procurement or Competitive Procurement, or otherwise conducting business with the County for a definite period of time.

Tie. When two or more Responses are equal with respect to price and it appears the quality and Service offered by the Vendors are otherwise comparable or are equal with respect to final points, as applicable.

Unsolicited Proposal. A plan for a Qualifying Project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined and which is received from a private entity without being solicited by a County Competitive Procurement.

Vendor. A person or entity that provides, or desires to provide, Commodities and/or Services to the County, as the context of this Ordinance may require.

Work Order. A written order authorizing and directing the performance of a certain task and issued to the person who is to direct the work. Among the items of information shown on the order are the nature and location of the job, Specifications or the work to be performed, and a job number which is referred to in reporting the amount of labor, materials and equipment used. This term includes Supplemental Task Authorization (STA), County Project Authorization (CPA), and Task Orders.

SECTION 2. PURPOSE AND ETHICS.

2.1. Purpose.

- A. The purpose of this Procurement Ordinance is to maximize the value received for public funds through Procurement; to provide safeguards for maintaining a Procurement system of quality and integrity; and to provide for fair and equitable treatment of all persons involved in public procurement; and to encourage the growth of small and minority-owned Businesses through the promotion of an atmosphere conducive to the development and maintenance of small and minority-owned Business participation in the County's Procurement system. It is the goal of the Board to develop a comprehensive Procurement system. This system will provide greater cost-effectiveness and public accountability in the Procurement process.
- B. Since rules and regulations are necessary for the proper operation of the Procurement function and since it is essential that all who are involved in the Procurement operations be well informed, this Ordinance has been developed to aid all employees directly or indirectly associated with the function of Procurement.
- C. The Board recognizes Competitive Procurement for like-type Commodities and large dollar Purchases as a necessary function of effective government, which promotes economy and efficiency by facilitating accounting and finance control and by enabling quantity purchasing and the standardization of frequently used items. The Board, therefore, declares that it is the responsibility of the County Manager or Designee to competitively procure these types of Commodities and Services for the Departments and divisions of the County, the basic objective of which is to obtain the best total value consistent with operational needs, while maintaining fair and open competition.
- D. This Ordinance, set by the Board, governs all of the Procurements made by the County. No Contract or Purchase shall be subdivided to avoid the requirements of this Ordinance.
- E. It is the responsibility of the County Manager or Designee, to interpret, implement and enforce this Procurement Ordinance. To this end, the County Manager or Designee shall have the following specific duties:

1. The Procurement of all Commodities and Services in accordance with this Ordinance.
2. In cooperation with other Departments and governmental agencies, establishing and maintaining programs to administer Contracts and for the inspection and acceptance of Commodities and Services.
3. The authority to cancel Contracts for non-performance, default, and/or for convenience when it is in the County's best interest.
4. Approval or disapproval of all Requisitions.
5. Develop and implement all necessary procedures, forms and documents for the respective Departments to carry out the expressed purposes and intent of this Ordinance, including but not limited to procedures governing Solicitations, Contracts, Purchase Orders and Purchasing Cards.
6. Apply the provisions of this Ordinance to Informal Procurement as it may be defined from time to time, and as facts and circumstances may warrant. Adoption of internal procedures to implement or supplement this Ordinance.
7. Performance of other related duties as assigned by the Board of County Commissioners or other supervising officials.
8. In addition to the decision-making authority specifically set forth herein or otherwise implied by this Ordinance, the County Manager or Designee is authorized to make the following decisions:
 - a. Accept, reject, and cancel Bids and Proposals.
 - b. Determine the Responsible Bidder with the lowest Responsive Bid.
 - c. Determine if a Procurement is exempt from this Ordinance.
 - d. Require, on a case-by-case basis, Competitive Procurement for Commodities and Services costing less than \$50,000.00.
 - e. Determine when Bond requirements may be waived.
 - f. Determine when Bids or Proposals may be corrected or withdrawn.
 - g. Determine whether to issue an Invitation to Bid, a Request for Proposal, Invitation to Negotiate, or another type of Solicitation.

2.2. Concepts.

The purpose of the Procurement function is to ensure that Procurement laws, rules and regulations are enforced and carried out under the highest ethical standards, to encourage full and open competition, and, to the extent possible, achieve the best value for the County. Strict adherence to specific ethical considerations by all County officers, employees, agents and by the Vendors and contractors is required to maintain the confidence of the public, the County, and the Business community in the expenditures of County funds. To this end, the County strives:

- A. To procure for the County the highest quality in Commodities and Services at the least expense and/or the best value to enable the greatest cost effectiveness in performance to the County.
- B. To encourage uniform Procurement standards and to endeavor to obtain full and open competition on all Purchases and sales.
- C. To keep informed of current developments in the field of Procurement to secure for the County the benefits of such research, including: 1) the monitoring of prices, market conditions, and new Commodities; and 2) investigating work done in the field of purchasing by other governmental jurisdictions, national technical societies, nationally recognized trade associations, private Businesses, and organizations.
- D. To deal fairly and equitably with all Vendors wishing to do business with Lee County. This is accomplished by maintaining strong and enduring relationships with Vendors of proven ability by conducting Procurement activities to ensure Vendors will value County business and make an effort to meet stated requirements on the basis of quality, service and price.
- E. To maximize competition for Procurement by ensuring that interested Vendors are afforded an equal opportunity to furnish Proposals and are able to compete on equal terms.
- F. To Purchase Commodities and Services at the best total value, consistent with quality performance and delivery specifications, from Vendors who meet the County's requirements and are capable of performing.

2.3. Procurement Ethics.

The County shall conduct its Procurement business with integrity and honor. The County shall abide by the following ethical guidelines at all levels of the Procurement function:

- A. The County believes in the dignity and worth of the service it renders, and the societal responsibilities assumed by its Board and employees as trusted public servants.
- B. Elected officials, employees, and agents of the County are governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the public it serves.
- C. The elected officials, employees, and agents of the County acknowledge that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.

- D. The County shall identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved.
- E. No elected official, employee, or agent of the County shall, at any time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from Vendors that might influence or appear to influence purchasing decisions.
- F. The Department of Procurement Management shall keep the Board and County departments informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.
- G. The elected officials, employees, and agents of the County shall neither seek nor dispense personal favors. Each administrative problem shall be handled objectively and empathetically, without discrimination.
- H. Acceptance of gifts at any time, other than advertising novelties, is prohibited. Acceptance of entertainment is also prohibited. Elected officials, employees, and agents of the County must not become obligated to any Vendors and shall not participate in any County transaction from which they, or their Immediate Family, may personally benefit.
- I. No elected official, employee or agent of the County shall participate in a County Solicitation, enter into, or be in any manner interested in any Contract for County Purchases nor shall any officer or employee seek to influence the Purchase of a Commodity or Service from any Offeror; except this restriction shall not be construed to restrict persons from evaluating and appraising the quality and value of the Commodity to be Purchased or Service to be rendered where the person's scope of employment contemplates advice and counsel with respect to the Purchase.
- J. No elected official, employee, or agent of the County shall participate in the selection or in the Award or administration of a Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the elected official, employee, or agent, or his or her Immediate Family has a financial or other interest in the firm selected or considered for Award or any other circumstance concerning the selection, Award or administration of any Contract that would violate the standards of conduct in Section 112.313, Florida Statutes. A violation of Section 112.313, Florida Statutes, pertaining to purchasing or contractual relationships shall also be deemed a violation of this Ordinance.
- K. ~~The provisions of Section 112.313, Florida Statutes, pertaining to standards of conduct for public officers, employees of agencies, and local government attorneys expressly apply to the Lee County Procurement Ordinance. A violation of Section 112.313, Florida Statutes, pertaining to purchasing or contractual relationships shall also be deemed a violation of this Ordinance. Specific statutory provisions pertaining to purchasing and contracting include but are not limited to: Section 112.313 (Standards of conduct), Section 218.70 (the Florida Prompt Payment Act), Section 255.05 (Performance and Payment Bonds for Public Works), Section 255.0525 (Advertising for Competitive Procurements), Section 255.101 (Minority Business), Section 287.055 (Consultants' Competitive Negotiation Act), Section 287.087 (Preference to Businesses with Drug Free Workplace), and Sections 336.41 and 336.44 (county roadwork). A Vendor that assisted in preparing and/or writing a scope of work and/or~~

specifications may not submit a bid or proposal for County consideration on that project.

- L. A violation of any of the policies and procedures in this article may be grounds for disciplinary action and may result in the eCounty's refusal to pay for any improperly procured commodities or services.

SECTION 3. GENERAL GUIDELINES.

3.1. Procurement Solicitation Thresholds.

Unless otherwise authorized in this Ordinance, all Purchases for Commodities and Services, when the estimated cost thereof reaches or exceeds one hundred thousand dollars (\$100,000.00), shall be purchased through Competitive Procurement in the manners specified herein or as required by local, state or federal guidelines. All Purchases of \$99,999.99 or less shall be Purchased ~~as an~~ through Informal Procurement in the manners specified herein, which are designed to maximize competition and ensure the County ~~is receiving~~ receives a fair price pricing ~~while balanced~~ balancing that against the need for an by efficient use of staff resources. At the discretion of the County Manager or Designee or the Board, in accordance with the authority granted herein, the requirements for Competitive Procurement or Informal Procurement may be waived when deemed in the best interest of the County.

3.2. Procurement Categories: ~~Summary and Approval Authority~~ Thresholds.

- A. The Procurement method and approval authority varies based upon the amount of the Purchase. Unless otherwise authorized in this Ordinance, the following Procurement thresholds and procedures are hereby established to govern the Procurement of Commodities, ~~and Services and Revenue Generating contracts~~. Additionally, the authority for approving Purchases within the established thresholds set forth below is hereby assigned and delegated to the persons and entities with designated approval authority.

PROCUREMENT THRESHOLDS				
TIERS	PROCUREMENT REQUIREMENTS	THRESHOLD AMOUNTS	PROCURING ENTITY	APPROVAL AUTHORITY
Tier 1	Petty Cash*	Not to exceed \$200	Department	Department Director
Tier 1	P-Card*	Not to exceed \$5000 or unless authorized in accordance with Sec. 4.1(C).	Department	Department Director
Tier 2	Quotation/Written Work Orders, Change Orders, Amendments	Not to exceed \$49,999.99	Department	Department Director
Tier 3	Three (3) Written Quotations Work Orders, Change Orders, Amendments	\$50,000.00 to \$99,999.99	Department or Procurement	County Manager, or Designee County Attorney, or Designee
Tier 4	Competitive Procurement	\$100,000.00 and up	Procurement	Board
Tier 5	Competitive Procurement	Up to \$150,000.00 for the Purchase of Real Property, new Construction, or rehabilitation of existing homes for the purposes described in Section 3.2(E) of this Ordinance.	Housing Only	County Manager, or Designee
Tier 6	Competitive Procurement	Over \$150,000.00 for the Purchase of Real Property, new Construction, or rehabilitation of existing homes for the purposes described in Section 3.2(E) of this Ordinance.	Housing Only	Board
PROCUREMENT METHOD/APPROVAL AUTHORITY THRESHOLDS				
TIERS	PROCUREMENT REQUIREMENTS	THRESHOLD AMOUNTS	PROCURING ENTITY	APPROVAL AUTHORITY
Tier 1	Petty Cash*	Not to exceed \$200	Department	Department Director
Tier 1	P-Card*	Not to exceed \$5000 or unless authorized in accordance with Sec. 4.1(C).	Department	Department Director
Tier 2	Quotation/Written Work Orders, Change Orders, Amendments	Not to Exceed \$49,999.99	Department	Department Director

<u>Tier 3</u>	<u>Three (3) Written Quotations Work Orders, Change Orders, Amendments</u>	<u>Not to Exceed \$99,999.99</u>	<u>Department or Procurement</u>	<u>County Manager, or Designee</u> <u>County Attorney, or Designee</u>
<u>Tier 4</u>	<u>Competitive Procurement</u> <u>Electrical work</u>	<u>\$100,000.00 and up</u> <u>\$75,000 and up</u>	<u>Procurement</u>	<u>Board for \$100,000 and up</u>
<u>Tier 5</u>	<u>Commodities and Services - Competitive Procurement</u>	<u>Up to \$150,000.00 for the Purchase of Real Property, new Construction, or rehabilitation of existing homes for the purposes described in Section 3.2(E) of this Ordinance.</u>	<u>Housing Only</u>	<u>County Manager, or Designee</u>
<u>Tier 6</u>	<u>Competitive Procurement</u>	<u>Over \$150,000.00 for the Purchase of Real Property, new Construction, or rehabilitation of existing homes for the purposes described in Section 3.2(E) of this Ordinance.</u>	<u>Housing Only</u>	<u>Board</u>
<u>Tier 7</u>	<u>Construction – Competitive Procurement</u>	<u>\$.01 to \$49,999.99 one written quote.</u> <u>\$50,000 -\$299,999.99 three written quotes.</u> <u>\$300,000 and over formal solicitation.</u>	<u>Procurement</u>	<u>Board approval over \$100,000, County Manager, or Designee</u> <u>\$50,000</u> <u>\$99,999.99, and Director under \$50,000</u>

*See Requirements in Section 4.1.

- B. The calculation of the threshold amount for procurement method and approval authority purposes is based on the total anticipated cost for like services countywide, the original period of the Award, and all optional renewals or extensions. The determination of like services will be made at the discretion of the Procurement Management Department.
- C. Supplemental Task Authorizations (STA's) and County Project Authorizations (CPAs) are approved by the approval authority based on the threshold amount per project.
- D. An Amendment, County Project Modification (CPM) or a Change Order must be approved by the approval authority for the total threshold amounts for the project.
- E. Purchasing by Lee County Department of Human Services – Housing.

1. For the purposes of new Construction, the acquisition of vacant land and/or rehabilitation of existing houses that does not exceed \$150,000.00, the County Manager, or Designee is authorized to approve. Any Purchase over \$150,000.00 will require Board approval. Such Purchases are solely for rehabilitation, Construction or replacement of affordable and/or supportive housing for use by the elderly, disabled, low income families and hurricane survivors for revitalization in targeted neighborhoods.
 2. For all other Purchases made by the Department of Human Services, the County Manager's signature is required for purchases from \$50,000.00 to \$100,000.00. Purchases under \$100,000.00 require three (3) quotes and Purchases over \$100,000.00 require a Competitive Procurement to be issued, as provided in Procurement Threshold Tier 4.
- F. ~~The County Attorney is authorized to Purchase services and commodities up to \$99,999.00. Splitting Purchases to avoid obtaining Quotations or Competitive Procurement is prohibited.~~
- G. ~~Splitting Purchases to avoid obtaining Quotations or Competitive Procurement is prohibited.~~

3.3. Budget and Authority.

- A. It is the responsibility of each Department Director to ensure sufficient and proper funding is available prior to obligation and/or expenditure.
- B. No County employee, except in cases of Emergency as defined in this Ordinance, or as provided by Chapter 252, Florida Statutes, and as instructed by the County Manager, shall issue any order for delivery on a Contract or open market Procurement until there is, to the credit of the using Department concerned, a sufficient unencumbered Appropriation balance, in excess of all unpaid obligations, to defray the amount of such order and the order is for a budgeted Commodity or Service.
- C. All Procurement requirements as set forth in this Ordinance must be met or waived for expenditures made by the County.

3.4. Emergency Procurement.

- A. Emergencies under this section are defined in Section 1.0 Definitions, or as otherwise provided by applicable law.
- B. In the case of emergencies that require the immediate Purchase of Commodities, ~~or Services~~ or Construction, the County Manager or Designee, is empowered to secure such Commodities, ~~or Services~~ or Construction without Competitive Procurement. In this event, all measures as are reasonably possible under the circumstances, shall be taken to assure the maximum cost benefit to the County of the Commodities, ~~or Services~~ or Construction procured. Written quotes should be obtained to ensure competition for Tier 3 and above, if time permits.
- C. As soon as possible following all Purchases under this Emergency Procurement section, an emergency form shall be prepared by the Department that initiated the

Procurement. The report must include complete documentation clearly stating justification for exception from normal Procurement procedures, an itemization of all individual transactions relating to the Emergency Procurement, an itemization of any additional work hours above and beyond the affected employees usual work schedule, and documentation of communication with other governmental entities (FEMA, SERT, etc.) that have taken place. This report must be submitted to the Procurement Management Department, and, if required, to the Board of County Commissioners in concurrence with any ratification.

- D. All Emergency Purchases at Tier 4 and 6 Z level shall be submitted to the Board for ratification at the next regularly scheduled Board meeting.
- E. In the event of a State of Local Emergency where the County is no longer operational, all Emergency Procurement shall be handled in accordance with this Ordinance.
- F. In the event a State of Emergency is declared by the State of Florida, all Emergency Procurement shall be handled in accordance with this Ordinance and all applicable State requirements.
- G. In the event a State of Emergency is declared by a National Declaration, all Emergency Procurement shall be handled in accordance with this Ordinance and 2CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

3.5. Local Preference.

~~The Procurement Management Department will adhere to the Lee County Ordinance No. 00-10, as amended by Ordinance Nos. 08-26 and 17-16, and as may be amended from time to time (the County's "Local Vendor Preference"). It shall be at the discretion of the County Manager or Designee whether to apply Local Vendor Preference to any particular Solicitation.~~

~~A. The County's Local Vendor Preference, as it relates to Bidding preferences for local Vendors, is not applicable to Solicitations or Contracts when Commodities and/or Services may be provided in the event of an Emergency.~~

~~B. The County's Local Vendor Preference shall not apply in any procurement for Commodities or Services if the use of the Local Vendor Preference is prohibited by the terms of a grant or funding agreement or other prevailing law or policy.~~

It is the policy of the County to apply a preference to local vendors in the purchase of goods and services that are competitively procured pursuant to this Ordinance as follows:

- A. For purposes of this Ordinance, a "Local Vendor" must satisfy each of the following requirements:
 - 1. A physical business address in Lee County;
 - 2. At least two (2) full-time employees in Lee County; and

3. A Local Business Tax Receipt issued by Lee County at least one year prior to solicitation opening.
- B. A vendor must be able to demonstrate its qualification for the local preference at the time a bid or proposal is submitted, including any supporting documentation needed to verify the above requirements.
- C. Qualified Local Vendors will be awarded a preference as follows:
 1. For an Invitation to Bid, if an award would otherwise go to a non-local bidder, but a qualified Local Vendor is within three percent (3%) of the lowest non-local bid, the qualified Local Vendor will be awarded the solicitation.
 2. For a Request for Proposal, all qualified local vendors will be awarded five (5) points out of a possible one-hundred (100) point score.
- D. The County's Local Vendor Preference, as it relates to Bidding preferences for local Vendors, is not applicable to Solicitations or Contracts when Commodities and/or Services may be provided in the event of an Emergency.
- E. The County's Local Vendor Preference shall not apply in any procurement for Commodities, Services or Construction if the use of the Local Vendor Preference is prohibited by the terms of a grant or funding agreement or other prevailing law or policy.
- F. The County Manager and designee(s) may apply the provisions of this Section to County procurements below the formal bid or formal quote level, as they may be defined from time to time, and as facts and circumstances may warrant.
- G. Nothing in this Section shall prevent the County from comparing, contrasting, and otherwise evaluating the qualifications, character, responsibility and fitness of all persons and entities submitting bids or quotes in any procurement for goods or services when making an award in the best interests of the County.

3.6. Cooperative Procurement and Piggybacking.

- A. The County shall have the authority to Purchase from and join with other units of governments in Cooperative Procurement ventures when the best interest of the County would be served thereby. It is standard policy of the County to cooperate with other government agencies in the Purchase of Commodities and Services required by the County.
- B. In the event the County participates in a Cooperative Procurement and is not the lead agency, the applicable policies and procedures of the lead agency shall govern the solicitation and Award process unless otherwise in conflict with State or federal law. The term "lead agency" shall mean the member entity responsible for issuance of the cooperative Solicitation.
- C. Where the public purchasing unit administering a cooperative Purchase complies with the requirements of their applicable policies and procedures when participating in such a Purchase, they are deemed to have complied with the provisions of this Ordinance.

Such Purchases may be made without additional County Competitive Procurement provided that funding has been appropriated and approved by the Board and the Purchase has been authorized by the entity granted approval authority in Section 3.2.

- D. Unless a Piggyback is prohibited by State or federal law, the County may Piggyback when any other government agency or cooperative (e.g., National Joint Powers Alliance (NJPA)) has competitively procured and Awarded a Contract for any Commodity or Service. The County may Purchase that Commodity or Service from the Awarded Vendor if the originating agency's solicitation and/or award includes language that allows it.
- E. The County may solicit and Award the Purchase of any Commodities, ~~or Services~~ or Construction with the stipulation that any other government agency may also Purchase the Awarded Commodity or Service at the same Awarded price.

3.7. Contracts and Purchase Orders.

- A. All Procurements will be formalized by entering into either a Contract with the successful Vendor or issuing a Purchase Order to the successful Vendor in accordance with the County's policies and procedures.
- B. For Competitive Procurements, the Award of a Procurement and approval of a Contract with the Vendor may be brought to the Board at the same time and approved with a single majority vote of the Board members who are present and eligible to vote.
- C. Contracts and Purchase Orders must be approved and executed by the entity with approval authority as provided in Section 3.2.
 - 1. County Manager or designee can execute revenue-generating agreements up to Tier 3.
 - 2. Tier 4 revenue-generating contracts that are solicited through the Competitive Procurement process per Section 5 of this Ordinance will require Board approval.
- D. STAs and CPAs must be approved and executed by the approval authority as provided in Section 3.2.
- E. For Contracts, STAs or CPAs that were originally executed below the Board approval threshold set forth in Section 3.2, Change Order and Amendment documents shall be executed by the person authorized by Section 3.2 based on the entire value of the Contract, STA, or CPA, including the proposed change. Therefore, any Contract, STA, or CPA that meets or exceeds a total of \$100,000.00 as a result of changes must be approved by the Board. Subsequent to Board approval, the approval thresholds for Change Orders and Amendments shall be based on the cumulative amount of all changes made after the Board's approval. If a proposed change will result in the total changes reaching \$100,000.00 or more, the change must be approved by the Board. Any further increases to the Contract, STA, or CPA price, regardless of the cost, will require Board approval.

- F. For Contracts, STAs, and CPAs that were originally executed by the Board, the approval thresholds for Change Orders and Amendments shall be based on the cumulative amount of all changes made after the Board's approval. If a proposed change will result in the total changes reaching \$100,000.00 or more above the original Board-approved amount, the change must be approved by the Board. Any further increases to the price, regardless of the cost, will require Board approval. Any contingency amount approved by the Board for a particular project shall not be included in the calculation of the cumulative value of changes for the purpose of determining the applicable approval threshold.
- G. Zero cost changes or changes that result in a lower Contract amount may be approved and executed by the County Manager or Designee.
- H. The County Manager or designee can authorize extensions of a contract for up to six months if it is in the best interest of Lee County.

3.8. Exemptions.

- A. ~~The requirement for Competitive Procurement and written Quotations for Informal Procurements~~ is waived for the following Purchases unless the Procurement Management Department determines that a Competitive Procurement or written Quotation is warranted in the best interest of the County for a specific Purchase: The procurement thresholds established in Section 3.2 of this ordinance will determine approval authority.
 - 1. All books, periodicals, software, printed materials, photographs, film, disk or similar materials in either physical or electronic format;
 - 2. All Purchases of used Equipment having a value of \$49,999.99 or less; however, each such Purchase shall be supported by one independent estimate of value;
 - 3. Cooperative Procurement (ref: Section 3.6);
 - 4. The purchase, lease, or rental of real property, except to the extent required by State law; All purchases related to the sale, lease, or other use of real property, including appraisals and title insurance, except as required by other applicable law;
 - 5. Real estate brokering, appraisals, abstracts of titles for real property and title insurance; Single and Sole Source Purchases (ref: Section 3.9);
 - 6. Sole Source Purchases (ref: Section 3.9); Health and Social Services, including but not limited to substance abuse and mental health treatment, medical examiner services, burials and indigent patient Services, and medications for the treatment of humans or animals;
 - 7. Public utility services whose rates are determined and controlled by the Public Service Commission or other governmental authority, including but not limited to electricity, water, sewer, telephone and cable television Services; Dues and memberships in trade or professional organizations;

8. ~~Social services (e.g., burials and indigent patient services); Fees and costs of job-related seminars and training;~~
 9. ~~Advertisements; Travel;~~
 10. ~~Postage; Artists, music ensembles (bands) and other entertainment providers;~~
 11. ~~Dues and memberships in trade or professional organizations; Emergency Procurement (ref: Section 3.4);~~
 12. ~~Fees and costs of job-related seminars and training; Procurements where another process is required by statute;~~
 13. ~~Travel; Interlocal governmental Contracts;~~
 14. ~~Artists, music ensembles (bands) and other entertainment providers; Other Commodities, Services or Construction, as determined by the Board;~~
 15. ~~Emergency Procurement (ref: Section 3.4);~~
 16. ~~Statutorily dictated or exempt procurements (such as medical examiners, forestry fire assessments, etc.);~~
 17. ~~Interlocal governmental contracts;~~
 18. ~~Other Commodities or Services, as determined by the Board; and~~
 19. ~~Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration. The term also includes, but is not limited to, substance abuse and mental health services involving examination, diagnosis, treatment, prevention, or medical consultation if such services are offered to eligible individuals participating in a specific program that qualifies multiple Vendors and uses a standard payment methodology.~~
- B. ~~Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services are not subject to the competitive solicitation requirements of this Ordinance. The County Manager, or designee, is authorized to approve the following Procurements, without respect to the Solicitation or Approval Thresholds in Sections 3.1 and 3.2:~~
1. ~~Postage;~~
 2. ~~Public utilities services whose rates are determined and controlled by the Public Service Commission or other governmental authority, including but not limited to electricity, water, sewer telephone and cable television services;~~
 3. ~~Housing and utility assistance payments and related documents;~~
 4. ~~Payment for hospital care under the Health Care Responsibility Act;~~
 5. ~~Payment for the County's portion of hospital and nursing home care for Medicaid eligible recipients pursuant to Section 409.915, Florida Statutes;~~

6. Payment for costs of medical examinations, x-rays and medical treatment of abused, abandoned or neglected children pursuant to Section 39.304, Florida Statutes;
 7. Court ordered payments;
 8. The County's annual membership in the Florida Association of Counties.
- C. ~~Purchases made through Florida State Contracts or from Federal General Services Administration Schedules are exempt from Competitive Procurement and written Quotations for Informal Procurements. Should the purchase meet or exceed the Tier 4 threshold, Board approval is required. The County Attorney is authorized to approve the purchase of legal services, including but not limited to attorney, paralegal, expert witness, appraisal, or mediator services, in any amount, without respect to the Solicitation and Approval Thresholds in Sections 3.1 and 3.2.~~
- D. ~~The following are exempt from Competitive Procurement, written Quotations for Informal Procurements, and Board approval, and may be Purchased using a Purchase Order:~~
1. ~~Purchases made from agencies employing the blind and other severely handicapped individuals such as RESPECT of Florida, pursuant to Chapter 413, Florida Statutes.~~
 2. ~~Purchases made from the corporation operating the correction work plan programs (PRIDE of Florida) per Section 287.042(2)(a), Florida Statutes.~~
 3. ~~Purchases made from the State of Florida, Department of Management Services, Surplus Federal Bureau of Properties, pursuant to Section 287.056, Florida Statutes.~~
 4. ~~Direct Material Purchases exempt as long as authorized by the Board on agenda item as part of original Construction Contract Award.~~
- E. ~~The following are exempt from competitive quoting requirements and Board approval and may be Purchased through the Direct Voucher process:~~
1. ~~Internal service charges on governmental purchase of Commodities and Services such as ITG (Communications and ITG).~~
 2. ~~Any payments made to another governmental entity (local, State or federal) unless there is a specific interlocal agreement with a Contract number and Board date.~~
 3. ~~The purchase of utilities, such as water, electric, telephone, natural gas, etc. to include: impact fees, permit fees, relocation fees, repairs, etc., relating to the purchase of utilities (e.g. cable cuts or telephone line repairs must be paid by Purchase Order). Maintenance Contracts are not exempt.~~
 4. ~~Newspapers, radio stations, and television stations; advertising for all Departments and divisions.~~

- ~~5. Purchase of titles and related title media formats, in either physical or electronic formats, for the Lee County Library System.~~
 - ~~6. Computerized and published legal material.~~
 - ~~7. Court ordered payments.~~
 - ~~8. Housing and utility assistance payments and related Amendments and documents.~~
 - ~~9. Payment for hospital care under the Health Care Responsibility Act pursuant to Section 154.306, Florida Statutes.~~
 - ~~10. Payment for the County's portion of hospital and nursing home care for Medicaid eligible recipients pursuant to Section 409.915, Florida Statutes.~~
 - ~~11. Payment for initial costs of medical examinations, x-rays, and medical treatment of abused, abandoned, or neglected children pursuant to Section 39.304, Florida Statutes.~~
 - ~~12. Purchases made from Florida Bar, which is a branch of the Supreme Court of Florida.~~
 - ~~13. Funds disbursed under the Attractions Co-op Marketing Program and Event Marketing Program up to Tier 3.~~
 - ~~14. The County's annual membership in the Florida Association of Counties.~~
- ~~F. At the discretion of the County Manager or Designee, or the Board, the requirement for Competitive Procurement may be waived for the Purchase of:~~
- ~~1. Single or Sole Source Purchases (ref. Sections 3.9 and 3.10);~~
 - ~~2. Professional Services, other than CCNA Professional Services;~~
 - ~~3. Other Commodities or Services.~~

3.9. Sole Source.

- A. Except as otherwise provided under State law, Purchases of Commodities, ~~or Services~~ or Construction may be Awarded without Competitive Procurement or obtaining written Quotations when the Procurement Department certifies in writing, after conducting a good faith review of available Vendors, that there is only one Sole Source for the required Commodities, ~~or Services~~ or Construction.
- B. Prior to the Sole Source certification, the Solicitation for the Commodities, ~~or Services~~ or Construction shall be Posted on the County website for ~~a minimum of seven (7) at least fifteen (15)~~ business days to verify that a Sole Source certification is warranted.

- C. Such Awards will be made within the authorized Procurement limits identified in Section 3.2 of this Ordinance. When a Purchase exceeds the threshold amount for Tier 3 approval, the item and certification that the Vendor has been determined to be a Sole Source will be placed on an agenda for Board approval.
- D. ~~The Procurement Management Department is authorized, after initial Sole Source certification, to make additional purchases from the Sole Source Vendor for one year, or until contrary evidence is presented regarding Sole Source eligibility, whichever period is less. The Sole Source certification shall remain in effect for one year or for the term specified in the Sole Source contract. Purchases made under the Sole Source must not exceed the amount approved on the justification form. Any additional purchases will be subject to Sole Source eligibility requirements and procurement thresholds.~~

3.10. Single Source.

- A. Except as otherwise provided under State law, Purchases of Commodities, ~~or~~ Services or Construction from a Single Source may be exempted from the Competitive Procurement and written Quotation requirements when the Procurement Management Department certifies in writing that: (1) the use is justified based on costs or interchangeability of parts, standardization, or compatibility factors; and (2) the use is recommended by the project architect, engineer, or affected Department Director.
- B. Prior to the Single Source determination, the Solicitation for the Commodities, ~~or~~ Services or Construction shall be posted on the County website for ~~a minimum of seven (7)~~ at least fifteen (15) business days to verify that a Single Source determination is warranted.
- C. Such Awards will be made within the authorized Procurement limits identified in Section 3.2 of this Ordinance. When a Purchase exceeds the threshold amount for Tier 3, the item will be placed on the agenda for Board approval and certification that the Vendor has been determined to be a Single Source.
- D. ~~The Procurement Management Department is authorized, after initial Single Source certification, to make additional Purchases from the Single Source Vendor for one year, or until contrary evidence is presented regarding Single Source eligibility, whichever period is less. The Single Source certification shall remain in effect for one year or for the term specified in the Single Source contract. Purchases made under the Single Source must not exceed the amount approved on the justification form. Any additional purchases will be subject to Single Source eligibility requirements and procurement thresholds.~~

SECTION 4. INFORMAL PROCUREMENT.

4.1. Tier 1: Petty Cash/P-Card (not to exceed \$5,000).

- A. Commodities and Services with an estimated cost within the thresholds authorized in Section 3.2 for Tier 1 ~~shall~~ may be procured through purchase order, petty cash or by Purchasing Card.

- B. Petty cash transactions are limited (maximum of \$200.00) to the immediate need of making change for citizen's Purchases or small cash Purchases necessary to continue productivity, such as tools, supplies and repair parts that do not individually exceed \$200.00. Purchases at this level do not require Quotations, except when required by the Procurement Management Department. Employees who are authorized cardholders in the County's Purchasing Card Program, are required to use the Purchasing Card whenever possible to reduce administrative time and costs.
- C. ~~Purchases by Purchasing Card (P-Card) are limited to a single item Purchase limit of \$999.99, for fixed asset only and a travel expense Purchase limit of \$5,000.00 unless otherwise approved by the Procurement Management Department in advance. Purchases at this level do not require Quotations, except when required by the Procurement Management Department.~~ Purchases by Purchasing Card (P-Card) are limited to a single item Purchase limit of \$4,999.99, for fixed asset. Purchases at this level do not require Quotations, except when required by the Procurement Management Department. The Lee County Purchasing Card Program is designed to improve efficiency in processing low dollar purchases in accordance with this Ordinance.
- D. Purchasing Cards will be issued to individual employees who frequently Purchase Commodities and Services for the County. Non County employees and Contract employees may be issued Purchasing Cards if the County Manager or Designee deems it beneficial to the County in accordance with the County's policies and procedures. The County Manager or Designee, in conjunction with the Department Director, is authorized to increase spending limits for certain designated Purchasing cardholders. The purpose of the increased spending limits is to allow properly approved Purchases or payments, otherwise meeting County standards and protocols, to occur using the Purchasing Card.

4.2. Tiers 2 and 3: Written Quotations (not to exceed \$100,000).

- A. Commodities, or Services or Construction with an estimated cost within the thresholds for Tiers 2 and 3 in Section 3.2 shall be procured by competitive, written Quotations. In the Solicitation for the written Quotations, the requested Commodities, or Services or Construction must be adequately described on a consistent basis to assure a like-to-like comparison among Vendors.
 - 1. For Purchases within the threshold for Tier 2, only one (1) written Quotation must be obtained for each Purchase unless the Procurement Management Department determines that additional Quotations are warranted to ensure the County is receiving a fair and competitive price for the Commodities, or Services or Construction.
 - 2. For Purchases within the threshold for Tier 3, at least three (3) written Quotations must be obtained for each Purchase. In those instances where the securing of three (3) Quotations is not practicable, the Department Director shall provide written justification to the Procurement Management Department that they attempted to obtain written qualifications from at least five (5) qualified Vendors, and then the County Manager or Designee may waive the requirement for three (3) written Quotations.

- B. Quotations must be provided through email, hand delivered, or faxed on a County approved Quotation form, or in a similar format. The Quotation must include a date and be submitted by an authorized representative of the Vendor.
- C. All Vendors providing Quotations must have the required expertise and capability to perform the work or supply the Services and/or Commodities. In determining if a Vendor has the capability to perform the work or supply the Commodities, or Services or Construction, consideration may be given to the Vendor's geographic proximity to the County for future ease of delivery, mobilization, or customer support after a Purchase. The Responsible Vendor with the lowest Responsive Bid, who is capable of performing the Services or supplying the Commodities shall be Awarded the Contract or Purchase Order, as applicable.
- D. Noticing of Requests for Quotation shall not require a newspaper ad.

4.3 Tier 7: Written Quotations (not to exceed \$300,000).

- A. Construction with an estimated cost within the threshold for Tier 7 in Section 3.2 shall be procured by competitive, written Quotations. In the Solicitation for the written Quotations, the requested Construction must be adequately described on a consistent basis to assure a like-to-like comparison among Vendors.
 - 1. For Construction projects within the threshold for Tier 7, at least three (3) written Quotations must be obtained for each project under \$200,000. In those instances where the securing of three (3) Quotations is not practicable, the Department Director or designee shall provide written justification to the Procurement Management Department that they attempted to obtain written Quotations from at least five (5) qualified Vendors, and then the County Manager or Designee may waive the requirement for three (3) written Quotations.
 - 2. For Construction projects within the threshold for Tier 7, over \$200,000 a Request for Quotation must be publicly advertised in general circulation within the County where the project is located at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference.
- B. Quotations must be provided through email, hand delivered, or faxed on a County approved Quotation form, or in a similar format unless stated otherwise in the Request for Quotation. The Quotation must include a date and be submitted by an authorized representative of the Vendor.
- C. All Vendors providing Quotations must have the required expertise and capability to perform the work or supply the Services, Commodities and/or Construction. In determining if a Vendor has the capability to perform the work or supply the Services, Commodities, and/or Construction, consideration may be given to the Vendor's geographic proximity to the County for future ease of delivery, mobilization, or customer support after a Purchase. The Responsible Vendor with the lowest Responsive Bid, who is capable of performing the Services or supplying the Commodities, and/or Construction shall be awarded the Contract or Purchase Order, as applicable.

- D. Noticing of Requests for Quotation for Construction with a projected cost of more than \$200,00 requires a newspaper ad in accordance with Section 255.0525, Florida Statutes.

SECTION 5. COMPETITIVE PROCUREMENT.

5.1. Tier 4 and 7: Competitive Procurement Methods.

Commodities and Services with an estimated cost within the threshold for Tier 4 and Construction for Tier 7 (and Tier 6 for Housing only) shall be procured competitively through one of the following methods:

A. Invitation to Bid

1. The Invitation to Bid is used when the County is capable of establishing precise Specifications or defining, with specificity, a scope of Services for the Commodities~~, or Services~~ or Construction sought. Through this process, Vendors are able to compete on a cost basis for like Commodities~~, or Services~~ or Construction.
2. Invitations to Bid shall include Specifications, required qualifications, and all principal terms and conditions applicable to the Procurement.
3. The Award will be made to the Responsible Vendor with the lowest Responsive Bid.
4. In an Invitation to Bid process, the County may consider the following factors in addition to price when determining whether a Vendor is Responsible and a Bid is Responsive:
 - a. Ability, capacity and skill of the Vendor to perform the Contract.
 - b. Whether the Vendor can perform the Contract within the time specified, without delay, interference, or conflict with current workload.
 - c. Character, integrity, reputation, judgment, experience and efficiency of the Vendor.
 - d. Quality of performance of previous engagements.
 - e. Previous and existing compliance by the Vendor with laws and regulations relating to the Contract.
 - f. Sufficiency of the financial resources and ability of the Vendor to perform the Contract or provide the Commodity~~, or Service~~ or Construction.
 - g. Quality, availability and adaptability of the Commodities~~, or Services~~ or Construction to the particular use required.

- h. Ability of the Vendor to provide further maintenance and Service for the use of the subject of the Contract.
 - i. Number and scope of conditions attached to the Bid.
 - j. Qualifications of Vendor, licensing and corporate qualifications.
 - k. Evidence of negative litigation history.
 - l. Use of one or more subcontractors with a record of poor performance.
5. For the purposes of this Section, the County may consider evidence from the ten (10) year period preceding the subject Invitation to Bid.
 6. In the event the lowest, Responsive Bid submitted by a Responsible Vendor exceeds the architectural or engineering cost estimates, the County Manager or Designee is authorized, when time or economic considerations preclude re-bidding of work of a reduced scope, to negotiate an adjustment of the scope of work with the Responsible Vendor with the lowest, Responsive, Bid, in order to bring the Bid within the amount of available funds.

B. Request for Proposal

1. The Request for Proposal method of Procurement is used when it is not practicable for the County to specifically define the scope of work for which the Commodities, ~~or Services~~ or Construction are needed. Instead, the County can describe what it wants to accomplish but the methods or means to accomplish the desired outcome cannot be easily defined. There may be several methods available to accomplish a task and the County is considering all the available options.
2. Requests for Proposal shall include a description of desired outcome to be accomplished through the Procurement, evaluation criteria for the specific Procurement, which set forth the relative importance of price, if any, and the other evaluation criteria, and all principal terms and conditions applicable to the Procurement.
3. All Responses to a Request for Proposal that are deemed to meet the basic requirements of the Competitive Procurement and have not been rejected shall be distributed to ~~a selection~~ an evaluation committee for review in accordance with the established time frames outlined in the Competitive Procurement. Proposers shall be ranked by an evaluation committee designated by the Board or Procurement Management Department based upon the evaluation criteria included within the Request for Proposal. ~~Presentations/Interviews may be held by the evaluation committee for consideration. The evaluation committee may request presentations/interviews for further consideration.~~
4. The selection will be ~~A~~awarded to the highest ranked Proposer or as outlined in the Solicitation documents.

C. Invitation to Negotiate

1. The Invitation to Negotiate is used when the scope of the project is not clearly defined and the County has determined that negotiations may be necessary to receive the best value. The Invitation shall invite Vendor input on the scope, schedule, and process for initiating the project. This method of Procurement may be used in areas of Procurement experiencing constant change in the marketplace, when the County wants the opportunity to obtain current up-to-date Commodities, or Services or Construction at the time of Contracting, and/or if the County wishes to identify one or more Responsible Vendors with whom to negotiate.
2. Invitations to Negotiate shall include a description of the questions or issues being explored, the facts being sought, and the specific goals or problems that are the subject of the Procurement, along with evaluation criteria, and all principal terms and conditions applicable to the Procurement.
3. All Responses to an Invitation to Negotiate that are deemed to meet the basic requirements of the Competitive Procurement and have not been rejected shall be distributed to a selection an evaluation committee for review in accordance with the established time frames outlined in the competitive procurement. Proposers shall be ranked and analyzed by the evaluation committee designated by the Board or Procurement Management Department based upon the evaluation criteria included within the Invitation to Negotiate. Presentations may be made to the evaluation committee for consideration. The evaluation committee may request presentations/interviews for further consideration.
4. The selection will be Awarded to the highest ranked Proposer or as outlined in the Invitation to Negotiate. The evaluation committee will complete initial negotiations with all Proposers meeting the criteria outlined above.
5. The evaluation committee will provide recommendations to the Board. The listing will be provided in the order of Proposers providing the most benefit to Lee County.
6. Once the Board selects a proposal, award and negotiations will proceed as outlined in Section 5.4 of this Ordinance.

D. Procurement Methods

Other Procurement methods may be used as deemed necessary by the County Manager or Designee.

5.2. Advertisements for Competitive Procurement.

A. Adequate public notice of all Competitive Procurements shall be provided as follows:

1. Noticing of all Competitive Procurements (unless otherwise provided herein, by general law, grant funding requirements or waived by the Board) shall be done by publishing an Advertisement once in a newspaper of general

circulation in the County at least fifteen (15) calendar days prior to the date set for the receipt of Competitive Procurement Responses as follows:

Purchase Amount	Publishing Date of Advertisement
\$100,000.00 to \$200,000.00	15 calendar days
\$200,000.01 to \$500,000.00	21 calendar days
Over \$500,000.00	30 calendar days

2. Construction projects, projected to cost more than two hundred thousand dollars (\$200,000.00), shall be publicly advertised in accordance with Section 255.0525, Florida Statutes.
 3. All Procurements for CCNA Professional Services must be noticed by publishing an Advertisement once in a newspaper of general circulation at least thirty (30) calendar days prior to the date set for receipt of Responses.
 4. The Advertisement shall include a general description of the Commodities, ~~or~~ Services or Construction to be Purchased, the location where Specifications may be obtained, closing date, and the time and place for receipt of and the opening of the Competitive Procurement.
- B. All Advertisements shall be listed on the official County website.
- C. Any Addendums to a Competitive Procurement shall be listed on the official County website.
- D. Upon the Advertisement of a Competitive Procurement, the Cone of Silence shall apply. The Cone of Silence shall terminate upon the issuance of a Contract, the rejection of all Responses, or the termination of the Competitive Procurement, whichever occurs first. Violation of the Cone of Silence by a Vendor shall disqualify the Vendor from participation in the Competitive Procurement and may subject the Vendor to Suspension or Debarment in accordance with Section 8 of this Ordinance. The Cone of Silence shall not apply to:
1. Communications at any public proceeding or meeting, including Pre-Bid Conferences, ~~selection~~ evaluation committee presentations or pre-Award meetings.
 2. Communications during Contract negotiations between designated County employees and the intended Vendor.
 3. Communication with a Vendor by a Procurement Management Department employee following Competitive Procurement opening to clarify the Vendor's Response.
 4. Communication following the filing of a protest to a Competitive Procurement between the protesting Vendor or the selected Vendor and the Procurement Management Department, County Manager's Office, and County Attorney's Office concerning the protest.

5. Purchases exempt from Competitive Procurement pursuant to this Ordinance.

5.3. Competitive Procurement Responses.

- A. Responses to all Competitive Procurements must be submitted to the County no later than the date and time designated in the Solicitation. The Procurement Management Department shall date and time stamp each Response as it is received and file the Responses, unopened, in a secure file until the time designated for the Competitive Procurement opening. Responses received after the designated time will be returned unopened to the sender.
- B. All Competitive Procurement Responses shall be opened in public at the time and place stated in the public notice with at least one (1) witness present.
- C. The purpose of the opening is to record the Responses received and to ensure that the Responses are in compliance with the basic requirements of the Competitive Procurement. Responses are not analyzed for quality or substance at the opening. A recording of all Responses received shall be available for public inspection in accordance with Florida law.
- D. The Procurement Management Department shall have the authority to reject any and all Responses for any or no reason.
- E. The Procurement Management Department or Board may, after opening, request additional information or clarification by the Offeror.
- F. The Procurement Management Department may waive or accept Minor Irregularities in a Response and allow correction thereof when such actions are deemed to be in the best interest of the County and do not conflict with the basic principles of fair and open competition.
- G. The Board also retains the authority to reject any and all Responses, for any or no reason, to request additional information or clarifications by a Proposer, and to waive or accept Minor Irregularities and allow correction thereof when such actions are deemed to be in the best interest of the County and do not conflict with the basic principles of fair and open competition.
- H. The County shall not be responsible for any costs incurred by Offerors in the case of rejection or non-Award.
- I. Correction or withdrawal of inadvertently erroneous Responses before or after the Competitive Procurement opening, or cancellation of Awards or Contracts based on such mistakes, may be permitted in the following circumstances:
 - 1. A Response submitted to the County as part of a Competitive Procurement may be withdrawn unilaterally by the Offeror only before the opening of the Responses. Withdrawal of a Response or correction of mistakes discovered before the Competitive Procurement opening may be accomplished by written notice provided to the Procurement Management Department prior to the time set for opening.

2. After the Competitive Procurement opening, no changes in prices or other provisions prejudicial to the interests of the County or fair competition are permitted. The assigned unit price, when applicable, will be the prevailing decision when an extension price is in error. In place of correction, a low Bidder establishing a non-judgmental Material Deviation of fact may be permitted to withdraw its Response if:
 - a. The Response was submitted in good faith
 - b. The magnitude of the error made would make enforcement a severe hardship
 - c. The miscalculation was not the result of gross negligence or willful inattention
 - d. The error was reported immediately to the County
3. All decisions to permit the correction or withdrawal of Responses, or to cancel Awards or Contracts based on Material Deviations, must be supported by a written determination by the Procurement Management Department.

5.4. Award and Negotiation.

- A. Once a Vendor has been selected in accordance with Section 5 of this Ordinance, the Procurement Management Department shall prepare and Post a Notice of Intended Decision.
 1. The Notice of Intended Decision shall also be Posted on the County website within a reasonable time of the selection.
 2. The time period for a Procurement Protest, as outlined in Section 5.7, shall begin to run upon Posting of the Notice of Intended Decision.
- B. After the Protest period in Section 5.7 has expired, the Procurement shall be awarded with reasonable promptness. After conclusion of Contract negotiations, as provided below, all Procurements will be formalized by entering into either a Contract with the Awarded Vendor or issuing a Purchase Order to the Awarded Vendor.
- C. In regards to a Request For Proposal, After the Notice of Intended Decision is issued, the Negotiation Team, if one is appointed, or the Department Director and Procurement Management Department with the assistance of the County Attorney's Office and County Manager's Office, if requested, will negotiate a Contract with the top ranked Vendor or a Purchase Order shall be issued to the selected Vendor in accordance with County policies and procedures. In the event the selected Vendor and County are unable to enter into a satisfactory Contract within a reasonable time, the Procurement Management Department may formally terminate negotiations, and begin negotiations with the next ranked Vendor. The Procurement Management Department may repeat this process with the ranked Vendors, in order, until a satisfactory Contract is achieved; however, at any time the Procurement Management Department may determine that it is in the best interest of the County to re-procure rather than continue negotiations with the ranked list of Vendors.

- ~~D. Once a satisfactory Contract has been reached, the Contract shall be presented for approval and execution by the Department with Approval Authority as provided in Section 3.2. Upon execution by both parties, the Notice to Proceed shall be issued to the Vendor. For Purchases that must be approved by the Board, the Award of a Procurement and approval of a Contract with the Vendor may be brought to the Board at the same time and approved with a single majority vote of the Board members who are present and eligible to vote. In regards to an Invitation to Negotiate the Negotiation Team, if one is appointed, or the Department Director and Procurement Management Department with the assistance of the County Attorney's Office and County Manager's Office, if requested, will negotiate with all Vendors until one is recommended for Contract award.~~
- ~~E. In the event of a Tie in a Competitive Procurement, the Procurement Management Department shall Award the Contract as outlined in the Solicitation documents. Once a satisfactory Contract has been reached, the Contract shall be presented for approval and execution by the Department with Approval Authority as provided in Section 3.2. Upon execution by both parties, the Notice to Proceed shall be issued to the Vendor. For Purchases that must be approved by the Board, the Award of a Procurement and approval of a Contract with the Vendor may be brought to the Board at the same time and approved with a single majority vote of the Board members who are present and eligible to vote.~~
- ~~F. In the event of a Tie in a Competitive Procurement, the Procurement Management Department shall Award the Contract as outlined in the Solicitation documents.~~

5.5. Consultants' Competitive Negotiation Act (CCNA) Professional Services.

5.5.1 General.

~~A. The purpose of obtaining CCNA Professional Services is to offer to the County special expertise, practical experience, knowledge, resources and an objective outside professional opinion. The provisions and exemptions contained in Section 287.055, Florida Statutes (commonly known as the Consultants' Competitive Negotiation Act, "CCNA"), shall apply herein for the Procurement of all professional architecture, engineering, landscape architecture, or registered surveying and mapping Services for projects that exceed the CCNA Thresholds.~~

~~B. The following provisions are applicable to the County's selection, engagement, and use of CCNA Professional Services for County projects exceeding CCNA Thresholds and for which CCNA Professional Services are required to be secured, pursuant to the Consultant's Competitive Negotiation Act, set forth in Section 287.055, Florida Statutes.~~

5.5.2 Prohibition.

~~A. The County is prohibited from soliciting a CCNA Professional Services firm to perform project design and/or Construction Services if the firm has or had been retained to perform the project feasibility planning or study analysis for the same project.~~

~~B. Unless waived, as set forth herein, the Request for Proposal documents shall contain a concise statement putting all prospective Vendors on notice of this restriction. The provisions of this Ordinance may be waived and set aside by the Board for an identified project on a finding of due cause and upon a favorable vote for waiver by at least four (4) members of the Board.~~

5.5.3 CCNA Procurement Process:

- A. The Competitive Procurement of CCNA Professional Services shall be conducted in accordance with the procedures in this Section 5.5 ~~of this Ordinance~~ for Request for Proposal with the following exceptions:
1. Price and compensation shall not be considered in the initial evaluation of Responses.
 2. In ranking responding Vendor's qualifications, the ~~selection~~ evaluation committee may consider: ability and adequacy of professional personnel; if applicable; past performance; willingness to meet time and budget requirements; location and whether the firm is a Local Vendor, if applicable; recent, current, and projected workloads; and other factors relevant to the specific Procurement, if any.
 3. In lieu of the procedures in Sections ~~5.45~~(B) and (C), the ~~selection~~ evaluation committee will rank all Vendors in numerical order and select no fewer than the top ranked three (3) firms deemed to be the most highly qualified for purposes of competitive negotiations. In the event three (3) qualified Vendors do not respond, the Procurement Management Department will reject all Proposals and reissue the Request for Proposal unless the Procurement Management Department deems it is in the best interest of public health, safety or welfare to move forward with two (2) or less Proposals. In the event the County does not receive three (3) qualified Proposals on the second Procurement, the Procurement Management Department may proceed with less than three (3) Proposals.
- B. Competitive negotiations for the Procurement of CCNA Professional Services shall be conducted in accordance with the Contract negotiation procedures in Section 5. The County may request, accept, and consider Proposals for compensation only during the competitive negotiation phase.
- C. The County may enter into Continuing Contracts with Vendors providing CCNA Professional Services; provided, however, that individual projects exceeding those amounts in Section 287.055(2)(g), Florida Statutes, shall not be authorized under a Continuing Contract.
- D. At the discretion of the Procurement Management Department, the County may procure Design-Build Contracts with Vendors pursuant to this Section 5.5 via a Request for Proposal with the following conditions:
1. The CCNA Professional Services Vendor, including any sub-Vendor that prepares the Design Criteria Package must be procured in accordance with Section 5.5 and said Vendor will not be eligible to provide design-build Services or act as a sub-

Vendor on the same project. The County is not prohibited from preparing the Design Criteria Package as the Design Criteria Professional.

2. The County shall solicit, through a Competitive Procurement process Responses based on the Design Criteria Package and evaluate the Responses based upon the evaluation criteria in the Competitive Procurement documents which ~~shall~~ may include price, technical, and design aspects of the public Construction project, weighted for the project.
- E. At the Procurement Management Department's discretion, the County may procure a Construction Manager at Risk pursuant to this Section 5.5, which Vendor shall provide advice to the County during the project planning phase on cost effectiveness of various design and Construction alternatives, scheduling, value engineering, and management, and will then take on the obligation for Construction of the project.
1. The Construction Manager at Risk Vendor shall establish a Guaranteed Maximum Price and guaranteed completion date after the planning and design of the public Construction project is completed and prior to the initiation of Construction Services. The Guaranteed Maximum Price and guaranteed completion date shall be included in an Amendment and approved by the Vendor and the County.
 2. Performance and Payment Bonds, when required, must be provided prior to the Notice to Proceed for the Construction phase.

5.6. Public-Private Partnerships and Unsolicited Proposals.

5.6.1 General.

A. Section 255.065, Florida Statutes, outlines certain procedures for the Procurement of public-private partnership Contracts for the provision of Qualifying Projects, including the receipt and consideration of Unsolicited Proposals from interested private Vendors seeking to partner with the County. In the event the County determines on its own initiative that it is both practicable and advantageous for the County to pursue a Qualifying Project and consider a range of competing plans, Specifications, standards, terms and conditions so that adequate competition will result and Award be made not principally on the basis of price, but to the Proposer whose Proposal contains the most advantageous combination of price, quality or other features, the County shall utilize the procedures in this Ordinance for Request for Proposal or Invitation to Negotiate, as the County Manager or Designee deems appropriate. If a Qualifying Project includes CCNA Professional Services, the County shall comply with the provisions of Section 5.5.

B. The following provisions are applicable to the County's receipt and consideration of Unsolicited Proposals from interested private Vendors seeking to partner with the County on a Qualifying Project:

~~C. In the event the County determines on its own initiative that it is both practicable and advantageous for the County to pursue a Qualifying Project and consider a range of competing plans, Specifications, standards, terms and conditions so that adequate competition will result and Award be made not principally on the basis of price, but to the Proposer whose Proposal contains the most advantageous combination of price, quality or other features, the County shall utilize the procedures in this Ordinance for Request For Proposal or Invitation to Negotiate, as the County Manager or Designee deems appropriate.~~

~~D. If a Qualifying Project includes CCNA Professional Services, the County shall comply with the provisions of Section 5.5.~~

5.6.2 Unsolicited Proposals

- A. The County may receive Unsolicited Proposals for a Qualifying Project and may thereafter enter into a Contract with a private Vendor, or a consortium of private Vendors, for said Qualifying Project, subject to the procedures and conditions set forth herein. Any Unsolicited Proposal shall include sufficient detail and information for the County to evaluate the Proposal in an objective and timely manner.
- B. Any private Vendor desiring to submit an Unsolicited Proposal for a Qualifying Project shall submit to the County an application fee of \$25,000.00 payable to the County in the form of a money order or cashier's check at the time of Unsolicited Proposal submittal. If the cost of evaluating the Unsolicited Proposal exceeds \$25,000.00, the application fee shall be increased to a reasonable fee to pay the costs of evaluating the Unsolicited Proposal. The Vendor will be notified and will promptly pay the balance of the application fee needed to pay the costs of evaluating the Unsolicited Proposal. As provided for in Section 255.065(3), Florida Statutes, the purpose of this application fee is to pay the costs of evaluating the Unsolicited Proposal. The County shall refund any portion of the initial application fee paid in excess of its direct costs associated with evaluating the Proposal.
- C. If the County receives an Unsolicited Proposal for a Qualifying Project pursuant to this section and the County desires to pursue the Qualifying Project, the Board will be notified of the receipt of said Unsolicited Proposal by placement of a discussion item on the next available Board meeting agenda. Upon the Board's approval to proceed with the Qualifying Project outlined in the Unsolicited Proposal, the County shall prepare a Request for Proposal or Invitation to Negotiate for the Qualifying Project. The Competitive Procurement for the Qualifying Project shall be conducted in accordance with the procedures in Section 5 of this Ordinance for Request for Proposal or Invitations to Negotiate with the following exceptions:
 - 1. The County shall place an Advertisement of the Competitive Procurement in the Florida Administrative Register and a newspaper of general circulation at least once per week for two weeks stating that the County has received an Unsolicited Proposal and that the County will accept other Proposals for the same Qualifying Project. A copy of the notice must be mailed to each local government in the affected area of the Qualifying Project which shall mean any municipality and/or special district in which all or a portion of the Qualifying Project is located.
 - 2. If an Unsolicited Proposal involves architecture, engineering, or landscape architecture, the County must ensure that the initial and any subsequent Responses are reviewed by an architect, landscape architect, or engineer licensed in Florida, as applicable, and such a professional shall advise the County through completion of design and Construction of the Qualifying Project.

3. The Vendor submitting the original Unsolicited Proposal may submit a more detailed Proposal in Response to the County's notice.
4. The timeframe for accepting other Proposals shall be no fewer than twenty-one (21) calendar days but no more than one-hundred-twenty (120) calendar days after the initial date of publication.
5. An selection evaluation committee shall be appointed by the County Manager or Designee for the purpose of evaluating and ranking the Responses based upon factors that include, but are not limited to: professional qualifications and experience, general business terms, innovative design techniques or cost-reduction terms, and finance plans. Vendors may be invited to make oral presentations regarding their Responses. In the event only one Proposal is received, the selection evaluation committee may proceed with the evaluation, or the County Manager or Designee may reject all Proposals, whichever is in the best interest of the County.

5.7. Procurement Protest.

- A. Any Notice of Intended Decision of a Competitive Procurement may be protested by a Vendor that submitted a Bid, Proposal, or Response to the County, with a substantial interest, as defined below, on the grounds of Material Deviations in the Procurement procedure or Material Deviations in the evaluation of the Responses. To initiate a protest, the protestor must file a Notice of Intent to Protest the Procurement in writing with the Procurement Management Director within seventy-two (72) hours, excluding weekends and County holidays, of Posting of the Notice of Intended Decision in accordance with Section 5.4. A formal written Procurement Protest must then be filed with the Procurement Management Director within ten (10) business days of Posting of the Notice of Intended Decision. Failure to file a timely Notice of Intent to Protest or failure to file a timely formal written Procurement Protest shall constitute a waiver of the protestor's right to protest the Competitive Procurement and Award.
 1. Only protestors with a "substantial interest" that has been adversely affected by the County's intended Award may protest the selection by complying with the requirements set forth herein. A protestor has a "substantial interest" if the protestor would have been Awarded the Contract but for the alleged mistake or irregularity described in the protest. If the Procurement Management Director determines that a protestor does not have a "substantial interest," that protestor is precluded from bringing a protest pursuant to this section.
 2. A protestor objecting to terms, conditions, Specifications, procedures, selection criteria, or other matters set forth in the Competitive Procurement documents must make such objections in writing during the period of time set forth for questions and answers in the Competitive Procurement documents. A protestor who has not raised such objections in writing during the question and answer time may not use the Procurement Protest process to object to these matters once a Notice of Intended Decision has been Posted.

3. The protest shall only come from the firm submitting the proposal. Subcontractors cannot file protests.

B. The Notice of Intent to Protest shall contain at a minimum:

1. Name of the protestor;
2. Protestor's address;
3. E-mail address;
4. Fax number and phone number;
5. Name of the protestor's representative to whom notices may be sent;
6. Project name and number of the Competitive Procurement; and
7. A brief factual summary of the basis of the intended protest.

C. The formal written Procurement Protest shall:

1. Identify the protestor and the Competitive Procurement involved.
2. 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 protestor deems applicable to such grounds, and specifically request the relief to which the protestor deems itself entitled by application of such authorities to such grounds.
3. Any other information that the protester deems to be material to the protest.
4. A Procurement Protest bond in the form of a certified check, cashier's check, or money order made payable to Lee County in an amount equal to five (5) percent of the protestor's Bid or ten thousand dollars (\$10,000.00), whichever is less, provided, however, if no value is attached then the bond will be \$10,000.00. The entire amount of the bond is forfeited if the County determines that the protest was without merit, was filed to cause harm or delay, or was filed for some other improper purpose.
5. The protestor shall ~~mail~~ send a copy of the Notice of Intent to Protest and the formal written Procurement Protest to the ~~Awarded Vendor(s)~~ named on the Notice of Intended Decision, on the same date that the notice is filed with the County. Receipt of notification must be provided to the County upon request.
6. ~~D-~~ Upon receipt of a timely filed and complete formal written Procurement Protest, the Procurement Management Director shall stay Award of the Competitive Procurement until the protest is resolved unless the Procurement

Management Director provides a written determination that compelling circumstances exist which require that the Award be processed without further delay in order to protect the County's interest or for the purpose of avoiding an immediate and serious danger to the public health, safety or welfare.

7. ~~E.~~ After receipt of the timely filed and complete formal written Procurement Protest, the Procurement Management Director, at his/her discretion, may meet with the protester to discuss the allegations and to attempt to resolve the matter. The Procurement Management Director shall issue his/her decision on the protest within fourteen (14) business days of the meeting, or if no meeting is requested, within fourteen (14) business days of receipt of the timely filed and complete written Procurement Protest. Such decision shall be e-mailed or sent by facsimile to the protester on the date of issuance.
- ~~D.~~ ~~F.~~ The protester may appeal the decision of the Procurement Management Director to the County Manager by filing a written appeal with the County Manager's office within three (3) business days of issuance of the Procurement Management Director's decision. The appeal must be in writing and must include a full explanation of the basis of disagreement with the decision rendered by the Procurement Management Director, as well as the relief sought. The County Manager shall issue his/her decision on the appeal within ten (10) business days of receipt of the appeal. The County Manager's decision shall be e-mailed or sent by facsimile to the protester on the date of issuance.
- ~~E.~~ ~~G.~~ The decision of the County Manager may be appealed to the Board by the filing of a written appeal with the Chair of the Board within three (3) business days of issuance of the County Manager's decision. The Board shall overturn the selection if the protester proves by clear and convincing evidence that the selection did not comply in material respects with the requirements contained in the Competitive Procurement documents, with this Procurement Ordinance, or with applicable law.
- F. ~~H.~~ Failure by a protestor to comply with the timelines and requirements set forth herein shall result in an immediate invalidation and termination of the protest and a waiver of the right to seek further redress or to appeal the alleged adverse action in a court of law.
- G. ~~I.~~ Nothing herein relinquishes the County's rights to waive Minor Irregularities. Further, nothing herein shall grant any rights to the unsuccessful Offeror. All decisions of the Board are final.

SECTION 6. UNAUTHORIZED PROCUREMENT.

- A. Except as herein provided, it is a violation for any officer, employee, or agent of the Board to order the Purchase of any Commodities, ~~or Services~~ or Construction or to make any Contract within the purview of this Ordinance other than through the guidelines established in this Ordinance. Any Purchase Order or Contract made contrary to the provisions herein is an ultra vires act, shall not be approved, and the County shall not be bound thereby.

- B. Purchase Orders or Contracts that are Split to circumvent the requirements of this Ordinance are considered unauthorized Purchases and are prohibited. Any Purchase Order or Contract made contrary to the provisions herein through Splitting is an ultra vires act, shall not be approved, and the County shall not be bound thereby.

SECTION 7. BONDS.

- A. The Procurement Management Department shall determine if a Bid Bond shall be required for any Competitive Procurement. All contracts for Construction or facility improvements governed by 2 CFR §200.325 shall require a Bid Bond in accordance therewith for such projects exceeding the Simplified Acquisition Threshold in 2 CFR §200.88. If required, the Bid Bond will be five percent (5%) of the amount of the bid or Proposal. Unsuccessful Vendors are entitled to full return of their Bid Bond. Upon determination by the Board, the successful Vendor shall forfeit this Bid Bond, or a portion thereof, upon failure to enter into a Contract or act on the Purchase Order issued within ten (10) working days of presentation of a Contract or Purchase Order by the County.
- B. The Procurement Management Department shall determine if Payment Bonds and Performance Bonds are required. All Contracts for Construction or repairs of public buildings and public works projects shall require Payment and Performance Bonds in accordance with Section 255.05, Florida Statutes. All Contracts for Construction or facility improvements governed by 2 CFR §200.325 shall require Payment and Performance Bonds in accordance therewith for such projects exceeding the Simplified Acquisition Threshold in 2 CFR §200.88. Any required bond(s) shall be noted in the Competitive Procurement documents, if applicable.
 - 1. Payment and Performance Bonds shall be at least 100% of the Contract price.
 - 2. All required bonds shall be from a surety company authorized to do business in the State of Florida to guarantee the full and faithful performance of the Contractual obligations and the payment of labor and material expended pursuant to the Contract whenever and in such amounts as is deemed necessary by the Procurement Management Department. Alternative surety devices, such as letters of credit or cash, may be authorized by the Procurement Management Department.
 - 3. The Vendor is required to record the Payment and Performance Bonds and riders with the Lee County Clerk of Court and pay all associated costs.

SECTION 8. SUSPENSION AND DEBARMENT.

8.1. Suspension and Debarment.

- A. As set forth below, the Procurement Management Department may suspend or debar for cause the right of a Vendor to participate in County Procurements. Additionally, any subsequent Bid, Proposal or Quotation from that Vendor during the pendency of such Suspension or Debarment shall be rejected by the County and that Vendor shall have no right to challenge that rejection or the applicable Procurement.

- B. Any Vendors on a State or federal convicted Vendor's list are automatically debarred by the County until that Vendor is no longer on such list and such Vendor is reinstated in accordance with Section 8.7.
- C. The County shall solicit offers from, Award Contracts to, and consent to sub-Contracts only with Vendors known to be reliable, ethical and responsible. To that end, the County may suspend or debar Vendors from County work that do not meet these criteria. The serious nature of Suspension or Debarment requires that such sanction be imposed only when it is in the County's best interest. Such Suspension or Debarment shall be imposed in accordance with the procedures contained in this Section 8.
- D. Suspension or Debarment applies to all officers, principals, directors, partners, qualifiers, divisions, subsidiaries, or other organizational elements of the suspended or debarred Vendor. The Suspension or Debarment applies to any existing affiliates of the Vendor if they are specifically named and are given written notice of the proposed Suspension or Debarment and an opportunity to respond.

8.2. Suspension.

~~A~~-Vendors may be suspended based upon the following:

- A. Failure to fully comply with the conditions, Specifications, or terms of a Contract with the County.
- B. Failure to fulfill a Bid, Proposal or Quotation upon Award.
- C. Commission of any misrepresentation in connection with a Bid, Quotation or Proposal.
- D. Charged by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private Contract or sub-Contract, or in the performance of such Contract or sub-Contract. If charges are dismissed or the Vendor is found not guilty, the Suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the Vendor to the County.
- E. Charged by a court of competent jurisdiction with the following: 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 may affect the responsibility as a County government contractor. If charges are dismissed or the Vendor is found not guilty, the Suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the Vendor to the County.
- F. Vendor becomes insolvent, proceedings in bankruptcy regarding the Vendor are filed or, Vendor compounds its debts or assigns over its estate or effects for payment thereof, or has a receiver or trustee appointed over its property.
- G. Commission of any act or omission to perform any act that is grounds for Debarment.
- H. Any other cause the Procurement Management Department determines to be compelling as to materially and adversely affect the responsibility of a Vendor as a

County government contractor, including but not limited to, Suspension by another governmental entity.

- I. Violation of the ethical standards set forth in local, State or federal law.

8.3. Debarment.

A-Vendors may be debarred for the following:

- A. Repeated failure to fully comply with the conditions, Specifications, or terms of a Contract with the County.
- B. Repeated failure to fulfill a Bid, Proposal or Quotation upon Award.
- C. Conviction by or judgment obtained in a court of competent jurisdiction for commission of those offenses in connection with the Vendor's commercial enterprise stated in Section 8.2 (D) and (E). If the conviction or judgment is reversed through the appellate process, the Debarment shall be removed immediately upon written notification and proof of final court disposition from the Vendor to the County.
- D. Conviction for the commission of any fraud or act of collusion in connection with any sale, Bid, Quotation, Proposal or other act incident to doing business with the County.

8.4. Effect of Suspension and Debarment.

The County will not solicit offers from, Award Contracts or Purchase Orders to, or consent to sub-Contracts with suspended or debarred Vendors unless the County Manager or Designee determines that an Emergency exists justifying such action. Such Vendors are also excluded from conducting business with the County as agents, representatives, sub-contractors, or partners of other Vendors.

8.5. Suspension and Debarment Process.

The following procedures shall be utilized for the Suspension or Debarment of a Vendor:

- A. The County Department requesting the Suspension or Debarment shall submit to the Procurement Management Department a written complaint which shall state with specificity the facts supporting such a request for Suspension or Debarment and shall identify a recommended Suspension or Debarment period.
- B. The Procurement Management Director shall review the complaint, verify whether it is compliant with the provisions of this Ordinance, direct any appropriate changes and forward the complaint to the Vendor.
- C. The Vendor shall review the complaint and provide a written Response, with supporting documentation, to each allegation. The Response shall be provided to the Procurement Management Department within ten (10) business days of receipt of the complaint from the County. In the event the Vendor fails to respond to the complaint within the prescribed time period, the complaint, as forwarded to the Vendor, shall become an effective Suspension or Debarment decision without further appeal.

- D. In the event the Vendor files a timely and complete response to the complaint, the Procurement Management Director shall determine whether the Vendor should be suspended or debarred and, if applicable, the time period for such Suspension. The Procurement Management Director's decision shall be based on the facts set forth in the complaint, the Vendor's rResponse and the parameters set forth in this Ordinance.
- E. If the Vendor chooses to appeal the Procurement Management Director's determination, the Vendor shall have three (3) business days to file an appeal with the Chair of the Board. At its next available meeting, the Board shall review the Suspension or Debarment record compiled by the Procurement Management Department and the Vendor. If the original decision to suspend or debar is determined to be proper and justified, the Vendor shall be suspended or debarred.

8.6. Suspension or Debarment Period.

- A. **Suspension.** The County Manager or Designee, or the Board in the case of an appeal, shall determine the period of Suspension. Such period shall be commensurate with the severity of the cause(s). At the conclusion of the Suspension period, the Vendor shall automatically be reinstated to the status of active Vendor and be eligible to submit Bids, Proposals, Quotations, or otherwise conduct business with the County.
- B. **Debarment.** The period of Debarment shall remain in effect until the Vendor is reinstated to the status of active Vendor.
- C. **Reinstatement.** A suspended or debarred Vendor may appeal for reinstatement at any time during the Suspension or Debarment period based on one or more of the following reasons:
 - 1. Newly discovered relevant and material evidence that would have changed the County's decision;
 - 2. A reversal of the conviction, civil judgment or other action upon which the Suspension or Debarment was based;
 - 3. Bona fide change in ownership or management;
 - 4. Elimination of other causes for which the Suspension or Debarment was imposed; or
 - 5. Other reasons that the Board deems appropriate.
- D. The Vendor's appeal for reinstatement shall be based on one or more of the aforementioned reasons. The Procurement Management Department, with the assistance of the affected Department, shall have thirty (30) business days from receipt of such appeal to submit a written rResponse thereto. The matter will be presented to the Board for a final determination at its next available meeting.

SECTION 9. PUBLIC RECORDS AND PUBLIC MEETINGS.

9.1. Public Records.

- A. The County is governed by the State Public Records Laws provided in Chapter 119, Florida Statutes, and Article I, section 24(a) of the Florida Constitution. Pursuant to current State law, Responses to Competitive Procurements received by the County are exempt until the County provides the Notice of Intended Decision or until thirty (30) calendar days after opening, whichever occurs first. Certain proprietary and financial information from Vendors may also be trade secrets, confidential, or otherwise exempt from public disclosure.
- B. If the County rejects all Responses received pursuant to a Competitive Procurement and concurrently provides notice of its intent to reissue the Competitive Procurement, the rejected Responses remain exempt until the County provides the Notice of Intended Decision for the reissued Competitive Procurement or until the County withdraws the reissued Competitive Procurement. Responses may not remain exempt for more than twelve (12) months from the date the County rejected all Responses.
- C. Unsolicited Proposals for Qualifying Projects and any Responses from a resulting Competitive Procurement pursuant to Section 5.5 of this Ordinance are subject to the following rules:
 - 1. If the County does not elect to issue a Competitive Procurement for the Qualifying Project, the Unsolicited Proposal shall cease to be exempt 180 calendar days after receipt by the County.
 - 2. If the County issues a Competitive Procurement for the Qualifying Project, the provisions of paragraphs A. and B. of this section shall apply except that Responses may not remain exempt for longer than 90 calendar days from the date the County rejected all Responses.
- D. Official records and documents shall be retained per the requirements set forth in the Florida Statutes regarding records retention.

9.2. Public Meetings.

- A. The County is governed by the State public meeting laws as provided in Section 286.011, Florida Statutes, and Article I, Section 24(b) of the Florida Constitution. Any meetings of a committee where presentations, rankings, short listings, or other Award decisions are to be made shall be done at a duly noticed public meeting, unless otherwise exempt from Section 286.011, Florida Statutes.
- B. Any portion of a meeting at which a negotiation with a Vendor is conducted pursuant to a Competitive Procurement, at which a Vendor makes an oral presentation as part of a Competitive Procurement, or at which a Vendor answers questions as part of a Competitive Procurement is exempt from Section 286.011, Florida Statutes.
- C. Any portion of a Negotiation Team meeting at which negotiation strategies are discussed is exempt from Section 286.011, Florida Statutes.

- D. Any portion of a meeting at which an exempt Unsolicited Proposal is discussed pursuant to Section 5.5 of this Ordinance is exempt from Section 286.011, Florida Statutes.
- E. For all Competitive Procurements except for Unsolicited Proposals and Competitive Procurements in accordance with Section 5.5, a complete recording shall be made of any meeting, or portions thereof, that are exempt from State public meeting laws. The recording of, and any records presented at, the exempt meeting are exempt from Section 119.07(1), Florida Statutes, until the County provides its Notice of Intended Decision or until thirty (30) calendar days after opening the Bids, Proposals, or final replies, whichever occurs first.
- F. For Unsolicited Proposals for Qualifying Projects and any resulting Competitive Procurement in accordance with Section 5.5 of this Ordinance, a complete recording shall be made of any meeting, or portions thereof, that are exempt from State public meeting laws. The following rules shall then apply:
 - 1. The recording of, and any records presented at, the exempt meeting are exempt from Section 119.07(1), Florida Statutes, until the County provides its Notice of Intended Decision or until 180 calendar days after receipt of the Unsolicited Proposal if the County does not issue a Competitive Procurement for the Qualifying Project.
 - 2. If the County issues a Competitive Procurement for the Qualifying Project, rejects all Responses and concurrently provides notice of its intent to reissue a Competitive Procurement, the recording and any records generated at the exempt meeting remain exempt from Section 119.07(1), Florida Statutes, until such time as the County provides its Notice of Intended Decision concerning the reissued Competitive Procurement or until the County withdraws the reissued Competitive Procurement for such project.
 - 3. A recording and any records generated during an exempt meeting are exempt for no longer than 90 calendar days after the initial notice by the County rejecting all Proposals.

SECTION 10. GRANTS.

- A. Expenditures from funds Awarded to the County through a grant or government loan may require special processing because of specific legal terms and conditions placed by the funding agency. Grants often have certain purchasing requirements that are different or additional to the County's Procurement Ordinance and they require special purchasing procedures. It is the responsibility of the using Department to identify any special purchasing requirements or provisions, notify the Procurement Management Department of them, and to ensure that all requirements are followed.
- B. For federal and State grant funded projects the County shall follow the Procurement process required by the funding agency and grant agreement. Unless otherwise specified in the grant, all grant funded Purchases shall follow the County's Procurement Ordinance.

- C. The provisions of Title 2 of the Code of Federal Regulations (CFR) Part 200 and Chapter 73C-23, Florida Administrative Code (F.A.C.), as amended from time to time, are hereby incorporated herein by reference and shall be applicable to Procurements funded pursuant to a grant agreement that is governed by those provisions. When procuring property and services under a Federal award, the County will follow the procurement standards as outlined in the 2 CFR Part 200.318 through 2 CFR Part 200.327 and its Appendix II provisions, as applicable and unless waived by the awarding agency. Such standards are outlined in Exhibit 1 of this Ordinance and are current as the published date listed thereon. Amendments made by the federal government to the regulations and standards of the 2 CFR Part 200.318 through 2 CFR Part 200.327 and its Appendix II provisions shall be automatically incorporated herein.
- D. Purchases utilizing Federal Transit Administration (FTA) and/or other federal funds must comply with all requirements of Title 2 of the Code of Federal Regulations (CFR) and FTA Circular C 4220.1F, as amended from time to time, and the resulting Contract shall include all federal Contract clauses, as applicable.

SECTION 11. SURPLUS PROPERTY

11.1. ~~Obtaining Surplus Property.~~

- A. The Procurement Management Department has the authority to obtain property from authorized surplus property programs such as other government agencies, manufacturers, Businesses or public auction when Purchased in accordance with the thresholds established in Section 3.2 of this Procurement Ordinance.
- B. Surplus property obtained from another government agency (e.g. a county or a city) shall be reviewed and the appropriate process determined by the Procurement Management Department on a case-by-case basis.

~~SECTION 12. DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND MINORITY BUSINESS ENTERPRISE PROGRAM (MBE).~~ STATE OF FLORIDA DBE/MBE PROGRAM

- A. The purpose of the ~~DBE/MBE~~Disadvantaged Business Enterprise and Minority Business Enterprise Program ("DBE/MBE") is to provide guidance for outreach to DBE/MBE to ensure awareness and opportunities of doing business with the County.
- B. The DBE/MBE program shall only apply to those Projects, Services, or Commodities funded by a federal or State grant or agreement having DBE/MBE and, not otherwise covered by a DBE/MBE program. The Procurement Management Department will ensure compliance with this purpose by ensuring its requirements are included in Informal Procurement and Competitive Procurement as it applies to both primary and sub-contractors.
- C. The County will accept certification of DBE/MBE status from the State of Florida Office of Supplier Diversity and the Florida Department of Transportation (FDOT) DBE program in lieu of creating its own certification program. The County may also consider and accept certification from other State of Florida, county or city programs on a case-by-case basis.

- D. The County will utilize the State of Florida Office of Supplier Diversity and, when appropriate, FDOT directories to notify certified DBE/MBE Vendors of Procurement opportunities in the County. The efforts of such outreach shall be maintained in the original Procurement Solicitation file.
- E. Each Vendor that intends to use sub-contractors shall also use the State of Florida Office of Supplier Diversity and, when deemed appropriate, FDOT directories to solicit DBE/MBE for sub-contracting opportunities under a primary Contract. Each Vendor that intends to use sub-contractors shall be responsible for documenting outreach activities in accordance with the Competitive Procurement Solicitation and the Contract.

SECTION 13. VIOLATIONS

A violation of any of the provisions of this Ordinance may be grounds for disciplinary action and may result in Suspension, Debarment, termination and/or the County's refusal to pay for any improperly procured Commodities, Services or Construction.

SECTION THREE: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of other lawfully adopted ordinances or statutes, the most restrictive requirements will apply.

SECTION FOUR: SEVERABILITY

If any provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, it is the Board's intention that such portion will become a separate provision and will not affect the remaining provisions of the ordinance. The Board further declares that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FIVE: CODIFICATION AND SCRIVENER'S ERRORS

The Board intends that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

SECTION SIX: MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION SEVEN: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner Hamman made a motion to adopt the foregoing ordinance, seconded by Commissioner Sandelli. The vote was as follows:

Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 1st day of March 2022.

ATTEST:
CLERK OF THE CIRCUIT COURT

BY: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Cecil L. Pendergrass, Chair



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY


Office of the County Attorney

Exhibit 1

Federal Procurement Standards under 2 CFR Part 200 and Appendix II

The following clauses shall apply to any Purchase Orders issued under declaration of emergency and/or where federal funds apply.

ANY/ALL THRESHOLD AMOUNTS

1. EQUAL EMPLOYMENT OPPORTUNITY:

1.1. During the performance of this contract, the contractor agrees as follows:

- A. The CONSULTANT/CONTRACTOR/VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT/CONTRACTOR/VENDOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT/CONTRACTOR/VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- B. The CONSULTANT/CONTRACTOR/VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT/CONTRACTOR/VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The CONSULTANT/CONTRACTOR/VENDOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT/CONTRACTOR/VENDOR's legal duty to furnish information.
- D. The CONSULTANT/CONTRACTOR/VENDOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other

contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the CONSULTANT/CONTRACTOR/VENDOR's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- E. The CONSULTANT/CONTRACTOR/VENDOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The CONSULTANT/CONTRACTOR/VENDOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the CONSULTANT/CONTRACTOR/VENDOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONSULTANT/CONTRACTOR/VENDOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The CONSULTANT/CONTRACTOR/VENDOR will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-CONSULTANT/CONTRACTOR/VENDOR. The CONSULTANT/CONTRACTOR/VENDOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONSULTANT/CONTRACTOR/VENDOR becomes involved in, or is threatened with, litigation with a sub-CONSULTANT/CONTRACTOR/VENDOR as a result of such direction, the CONSULTANT/CONTRACTOR/VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

2. MAINTENANCE OF RECORDS:

- 2.1. The CONSULTANT/CONTRACTOR/VENDOR will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this agreement. Said records and documentation will be retained by the CONSULTANT/CONTRACTOR/VENDOR for a minimum of five (5)

years from the date of termination of this agreement, or for such period is required by law.

2.2. CONSULTANT/CONTRACTOR/VENDOR shall provide, when requested, access by the County, Federal granting agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONSULTANT/CONTRACTOR/VENDOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

2.3. CONSULTANT/CONTRACTOR/VENDOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

2.4. CONSULTANT/CONTRACTOR/VENDOR agrees to provide the GRANT AGENCY Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.

2.5. CONSULTANT/CONTRACTOR/VENDOR shall retain all records associated with this solicitation and any agreements that are created in response to the solicitation for a period of no less than five (5) years after final payments and all other pending matters are closed.

2.6. The County and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the County deems necessary during the period of this agreement, and during the period as set forth in the paragraphs above; provided, however, such activities shall be conducted only during normal business hours of the CONSULTANT/CONTRACTOR/VENDOR and at the expense of the County.

3. DHS SEAL, LOGO, AND FLAGS:

3.1. The CONSULTANT/CONTRACTOR/VENDOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific GRANT AGENCY pre-approval.

4. LOCAL VENDOR PREFERENCE EXCLUSION:

4.1. Local Vendor Preference Ordinance has been waived for this service/purchase request and any and all references contained herein are non-applicable to this request and subsequent contract and/or purchase order(s).

5. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS:

5.1. This is an acknowledgment that GRANT AGENCY financial assistance will be used only to fund the services requested. The CONSULTANT/CONTRACTOR/VENDOR will comply with all applicable federal law, regulations, executive orders, GRANT AGENCY policies, procedures, and directives.

6. NO OBLIGATION BY THE FEDERAL GOVERNMENT:

6.1. The Federal Government is not a party to this solicitation and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT/CONTRACTOR/VENDOR, or any other party pertaining to any matter resulting from the Solicitation.

7. FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS:

7.1. The CONSULTANT/CONTRACTOR/VENDOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT/CONTRACTOR/VENDORS actions pertaining to this solicitation.

8. SUBCONTRACTS:

8.1. The selected firm must require compliance with all federal requirements of all sub-CONSULTANT/CONTRACTOR/VENDORS performing work for Prime CONSULTANT/CONTRACTOR/VENDOR under this Agreement, by including these federal requirements in all contracts with sub-CONSULTANT/CONTRACTOR/VENDORS.

9. CONFLICT OF INTEREST:

9.1. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officers, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from CONSULTANT/CONTRACTOR/VENDORS or parties to subcontracts.

10. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY):

10.1. Statutes and Executive Orders require employers to abide by the Immigration laws of the United States and to employ only individuals who are eligible to work in the United States. The Employment Eligibility Verification System (E-Verify) operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) to provides an internet-based means of verifying

employment eligibility of workers in the united States; it is not a substitute for any other employment eligibility verification requirements.

10.2. Sub-CONSULTANT/CONTRACTOR/VENDOR requirement: Vendors shall require all subcontracted vendors to flow down the requirement to use E-Verify to sub-CONSULTANT/CONTRACTOR/VENDORS.

10.3. It shall be the vendor's responsibility to familiarize themselves with all rules and regulations governing this program.

10.4. For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>.

11. ENERGY POLICY AND CONSERVATION ACT:

11.1. CONSULTANT/CONTRACTOR/VENDOR must follow any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

12. SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:

12.1. Place qualified small and minority businesses and women's business enterprises on solicitation lists.

12.2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

12.3. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

12.4. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

12.5. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

12.6. Requiring the prime CONSULTANT/CONTRACTOR/VENDOR, if subcontracts are to be let, to take the five previous affirmative steps.

13. DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322):

13.1. As appropriate and to the greatest extent consistent with law, state and non-state entities should, to the greatest extent practicable under its GRANT AGENCY award, provide a preference for the purchase of goods, products or materials

produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. 2 C.F.R. § 200.322 also provides specific definitions for “Produced in the United States” and “manufactured products” that states should review.

14. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS OR SERVICES (2 C.F.R. § 200.216):

- 14.1. 2 C.F.R. § 200.216 prohibits state and non-state entities from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system as identified in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. See Prohibitions on Expending GRANT AGENCY Award Funds for Covered Telecommunications Equipment or Services-Interim Policy for additional information.

OVER \$10K ADD THE FOLLOWING TO THE ABOVE

15. TERMINATION FOR CAUSE AND/OR CONVENIENCE:

- 15.1. The County, by written notice to the CONSULTANT/CONTRACTOR/VENDOR, may terminate this Agreement with or without cause (for convenience), in whole or in part, when the County determines in its sole discretion that it is in the County’s best interest to do so. In the event of termination the CONSULTANT/CONTRACTOR/VENDOR will not incur any new obligations for the terminated portion of the Agreement after the CONSULTANT/CONTRACTOR/VENDOR has received notification of termination.
- 15.2. If the Agreement is terminated before performance is completed, the CONSULTANT/CONTRACTOR/VENDOR shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount that is the same percentage of the Agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the County and shall be turned over promptly by the CONSULTANT/CONTRACTOR/VENDOR.

OVER \$25K ADD THE FOLLOWING TO THE ABOVE

16. SUSPENSION AND DEBARMENT:

- 16.1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT/CONTRACTOR/VENDOR is required to verify that none of the CONSULTANT/CONTRACTOR/VENDOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. §180.935).
- 16.2. The CONSULTANT/CONTRACTOR/VENDOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 16.3. This certification is a material representation of fact relied upon by the awarded CONSULTANT/CONTRACTOR/VENDOR. If it is later determined that the CONSULTANT/CONTRACTOR/VENDOR did not comply with 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Lee County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 16.4. The CONSULTANT/CONTRACTOR/VENDOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

17. RECOVERED MATERIALS:

- 17.1. In the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR shall make maximum use of products containing recovered material that are EPA-designated items unless the product cannot be acquired:
- Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- 17.2. Information about this requirement is available on EPA'S Comprehensive Procurement Guidelines web site at <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products/htm>.

OVER \$100K/SIMPLIFIED ACQUISITION ADD THE FOLLOWING TO THE ABOVE

18. REMEDIES:

- 18.1. In the event the CONSULTANT/CONTRACTOR/VENDOR fails to satisfactorily perform or has failed to adhere to the terms and conditions under this Agreement, the County may, upon fifteen (15) calendar days written notice to the

CONSULTANT/CONTRACTOR/VENDOR and upon the CONSULTANT/CONTRACTOR/VENDOR's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:

- 18.1.1. Withhold or suspend payment of all or any part of a request for payment.
- 18.1.2. Require that the CONSULTANT/CONTRACTOR/VENDOR refund to the County any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- 18.1.3. Exercise any corrective or remedial actions, to include but not be limited to:
- 18.1.4. Requesting additional information from the CONSULTANT/CONTRACTOR/VENDOR to determine the reasons for or the extent of non-compliance or lack of performance;
- 18.1.5. Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;
- 18.1.6. Advising the CONSULTANT/CONTRACTOR/VENDOR to suspend, discontinue or refrain from incurring costs for any activities in question; or
- 18.1.7. Requiring the CONSULTANT/CONTRACTOR/VENDOR to reimburse the County for the amount of costs incurred for any items determined to be ineligible.

19. OTHER REMEDIES AND RIGHTS:

- 19.1. Pursuing any of the above remedies will not keep the County from pursuing any other rights or remedies, which may be otherwise available under law or in equity. If the County waives any right or remedy in this Agreement or fails to insist on strict performance by the CONSULTANT/CONTRACTOR/VENDOR, it will not affect, extend or waive any other right or remedy of the County, or affect the later exercise of the same right or remedy by the County for any other default by the CONSULTANT/CONTRACTOR/VENDOR.
- 19.2. Unless otherwise provided by the Contract, all claims, counter-claims, disputes and other matters in question between the County and the CONSULTANT/CONTRACTOR/VENDOR arising out of or relating to the Agreement between the parties, or the breach of it, that cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

20. CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708):

- 20.1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 20.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 20.3. Withholding for unpaid wages and liquidated damages. The State of Florida Division of Emergency Management shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- 20.4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

21. CLEAN AIR ACT:

- 21.1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 21.2. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 21.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

22. FEDERAL WATER POLLUTION CONTROL ACT:

- 22.1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 22.2. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 22.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

23. BYRD ANTI-LOBBYING AMENDMENT:

- 23.1. CONSULTANT/CONTRACTOR/VENDORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

CONSTRUCTION ONLY, if Applicable

24. DAVIS-BACON ACT:

24.1. Minimum wages

i. All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis - Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be Posted at all times by the CONTRACTOR and its sub- CONTRACTORS at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii.

A. The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 C.F.R. 5.2(n) (4), such a classification prevails in the area in which the work is performed.

- B. If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- C. In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- D. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (ii) (B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

24.2. Withholding - LCBOCC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR under the Contract or any other Federal contract with the same prime CONTRACTOR, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any sub-CONTRACTOR the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing

Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, LCBOCC may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

24.3. Payrolls and basic records

i. Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTORS employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii.

A. The CONTRACTOR shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to LCBOCC for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime CONTRACTOR is responsible for the submission of copies of payrolls by all sub-CONTRACTORS.

B. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or sub- CONTRACTOR or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;
 2. That each laborer or mechanic (including each helper, apprentice, and trainee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;
 3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the Contract.
- C. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c) (i) (B) of this section.
- D. The falsification of any of the above certifications may subject the CONTRACTOR or sub-CONTRACTOR to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- iii. The CONTRACTOR or sub- CONTRACTOR shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the CONTRACTOR or sub-CONTRACTOR fails to submit the required records or to make them available, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

24.4. Apprentices and trainees

- i. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire Work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid

not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a CONTRACTOR is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CONTRACTOR's or sub- CONTRACTOR's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

- ii. Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

- iii. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.
- 24.5. Compliance with Copeland Act requirements. The CONTRACTOR shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in the Contract.
- 24.6. Subcontracts. The CONTRACTOR or sub-CONTRACTOR shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-CONTRACTORS to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any sub- CONTRACTOR or lower tier sub-CONTRACTO with all the Contract clauses in 29 C.F.R. 5.5.
- 24.7. Contract termination: debarment. A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a CONTRACTOR and a sub-CONTRACTOR as provided in 29 C.F.R. 5.12.
- 24.8. Compliance with Davis - Bacon and Related Act requirements. All rulings and interpretations of the Davis - Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.
- 24.9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its sub- CONTRACTORS) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- 24.10. Certification of eligibility
 - i. By entering into the Contract, the CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).
 - ii. No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).
 - iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

March 2, 2022

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attn: Chris Jagodzinski

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 22-06, which was filed in this office on March 2, 2022.

Sincerely,

Anya Owens
Program Administrator

AO/lb

RECEIVED

By Chris Jagodzinski at 1:42 pm, Mar 02, 2022

FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee

COUNTY ORDINANCE #: 22-06
(e.g., 93-001)

PRIMARY KEYFIELD

DESCRIPTOR: Purchasing

SECONDARY KEYFIELD

DESCRIPTOR: _____

OTHER KEYFIELD

DESCRIPTOR: _____

ORDINANCE DESCRIPTION: Procurement Ordinance
(25 Characters Maximum Including Spaces)

ORDINANCES AMENDED: (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

AMENDMENT #1: 18-22 AMENDMENT #2: _____

ORDINANCES REPEALED: (List below the ordinances that are repealed by this legislation.)

REPEAL #1: 00-10 ; REPEAL #3: _____
REPEAL #2: _____ ; REPEAL #4: _____

(Others Repealed: List All That Apply): _____

(FOR OFFICE USE ONLY):

COUNTY CODE NUMBER: _____

KEYFIELD 1 CODE: _____

KEYFIELD 2 CODE: _____

KEYFIELD 3 CODE: _____

Rev. 09/11/02

CODING

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

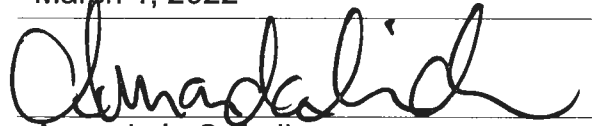
VIA HAND DELIVERY

DATE: March 1, 2022

TO: Commissioner Cecil L Pendergrass

Chair, Board of County
Commissioners

FROM:



Amanda L. Swindle
Assistant County Attorney, Senior

RE: **Ordinance No. 22-06
Ordinance Amending Procurement Ordinance 18-22
Agenda Item Public Hearing #1, March 1, 2022**

Attached, approved as to form, please find the original of the above-referenced ordinance adopted by the Board of County Commissioners on March 1, 2022.

The original ordinance is attached to the memorandum for execution. Kindly execute the ordinance at your earliest convenience and then forward to the Minutes Department for filing and transmittal to Tallahassee.

By copy of this memorandum to Eileen Gabrick, I request that a clerk attest to the Chair's signature on the attached ordinance and return the fully executed copy with all exhibits to my attention via email.

Insofar as State Statute mandates that the ordinance reach Tallahassee within ten (10) days of the adoption, please expedite the above request so that the ordinance arrives in Tallahassee no later than March 11, 2022.

Also attached please find the Data Retrieval form. Kindly include this ordinance in the Lee County Ordinance History.

Thank you for your prompt attention to this matter.

Attachment

VIA EMAIL ONLY:

Laurel Chick, Manager, Internal Services
Joyce Conatser, Senior Fiscal Officer
Samantha Westen, Executive Assistant
Rose Bahena, Administrative Specialist, Senior
Eileen Gabrick, Office Manager, Minutes Department
Andrea Eggen, Legal Administrative Specialist (for ordinance history)

2022 MAR -2 AM 11:38

M I T S I C R

AGENDA ITEM REPORT

DATE: March 1, 2022
DEPARTMENT: County Attorney
REQUESTER: Amanda Swindle
TITLE: Conduct Public Hearing to Amend Procurement Ordinance 18-22

I. MOTION REQUESTED

Conduct Public Hearing to approve Ordinance to amend County Procurement Ordinance No. 18-22.

II. ITEM SUMMARY

The proposed amendments will provide additional clarity in the Procurement process and enhance the County's existing Local Vendor Preference provisions. Changes include the adoption of Solicitation and Approval Thresholds, the enhancement of the County's existing Local Vendor Preference provisions, the establishment of certain exemptions, and the incorporation of applicable federal procurement guidelines.

III. BACKGROUND AND IMPLICATIONS OF ACTION

A) Board Action and Other History

In 2018, the Board adopted Ordinance 18-22, known as the County Procurement Ordinance, and rescinded certain other prior Lee County Ordinances and Administrative Codes related to the procurement of goods and services. Since that time, the Board and staff have identified the need for certain changes in order to provide additional clarity in the procurement process, and to enhance the County's existing Local Vendor Preference provisions.

B) Policy Issues

C) BoCC Goals

D) Analysis

E) Options

IV. FINANCIAL INFORMATION

A)	Current year dollar amount of item:	No funding required.
B)	Is this item approved in the current budget?	N/A
C)	Is this a revenue or expense item?	N/A
D)	Is this Discretionary or Mandatory?	Discretionary
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	
F)	Fund: Program: Project: Account Strings:	
G)	Fund Type?	N/A
H)	Comments:	

V. RECOMMENDATION

Approve

Approve

VI. TIMING/IMPLEMENTATION

VII. FOLLOW UP

ATTACHMENTS:

Description	Upload Date	Type
Ordinance	2/15/2022	Ordinance
Summary	2/8/2022	Backup Material
FAIS Form	2/8/2022	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
County Attorney	Wesch, Richard Wm.	Approved	2/16/2022 - 9:59 AM
Budget Services	Henkel, Anne	Approved	2/16/2022 - 11:36 AM
Budget Services	Winton, Peter	Approved	2/17/2022 - 8:57 AM
County Attorney	Swindle, Amanda	Approved	2/18/2022 - 8:25 AM
County Manager	Winton, Peter	Approved	2/18/2022 - 1:45 PM