

# Gadsden County Board of County Commissioners



## Procurement Policy

Approved by the Board of County Commissioners  
June 21, 2022

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## **SECTION 1.0 PURPOSE**

This policy is adopted to promote the following purposes:

- 1.1 To simplify, clarify, and modernize the procurement practices used by the Gadsden County Board of County Commissioners.
- 1.2 To promote the continued development of professional and equitable procurement policies and practices.
- 1.3 To promote public confidence in the purchasing procedures followed by Gadsden County.
- 1.4 To ensure the fair and equitable treatment of all persons who deal with the procurement systems of Gadsden County.
- 1.5 To encourage the growth of small and minority businesses through the promotion of an atmosphere conducive to the development and maintenance of small and minority business participation in the County's procurement system.
- 1.6 To maximize economy in Gadsden County procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of Gadsden County.
- 1.7 To provide safeguards for the maintenance of a procurement system of quality and integrity in Gadsden County.

## SECTION 2.0 APPLICATION OF POLICY

- 2.1 Contracts: This policy shall apply to contracts/agreements solicited or entered into after the effective date of this policy or subsequent amendments or revisions, unless the parties agree to its application to a contract solicited or entered into prior to the effective date.
- 2.2 Activities: This policy shall apply to the purchase/procurement of all materials, supplies, services, construction, land acquisition and equipment, except as herein specifically exempted.
- 2.3 Exemptions from the Purchasing Policy: The *following types of purchasing exemptions do not preclude the County from utilizing competitive procurement practices where possible*. Signature authority shall still apply as specified in Section 5 this Purchasing Policy. The following types of purchasing activities shall be exempt from the purchasing policy unless otherwise prohibited by law or unallowable pursuant to the terms of a federal or state grant agreement, or except as otherwise noted:
- 2.3.1 All heavy equipment repairs shall be exempted from the competitive sealed bid requirements. The Purchasing Director shall review the quotations obtained by the applicable Department and the recommendation for award. Should a repair exceed \$35,000.00, the County Administrator shall agenda the item for ratification by the Board at a regularly scheduled Board meeting.
- 2.3.2 Utilities, meaning water, sewer, electrical, cable television, telephone, fiber, or other utility services.
- 2.3.3 All supplies, and materials, equipment, construction, or services purchased from non-profits, another unit of government, or other public entities.
- 2.3.4 Emergency purchases as provided in Section 5 herein.
- 2.3.5 Sole source purchases as provided in Section 5 herein.
- 2.3.6 All purchases of used equipment having a value greater than \$35,000.00 or less. All purchases of used equipment having a value greater than \$35,000.00 should be supported by an equipment appraisal or market value assessment, or by three quotes of similar equipment. Purchases of used equipment in excess of \$35,000.00 shall require Board approval.
- 2.3.7 Library/Training Media and Materials. When not available by competitive pricing and where such materials are purchased directly from the producer or

publisher, the owner of the copyright or patent, or an educational institution which is a sole source.

2.3.8 Grants (Direct Payment) and social services (e.g., burials and indigent patient services).

2.3.9 Advertisements.

2.3.10 Cooperative Procurements as defined in Sections 3 and 5 herein. All supplies, materials, equipment, or services procured pursuant to an existing Contract of Gadsden County or another unit of government, if the vendor-party to the existing contract extends the terms and conditions of the existing contract to the County and the existing contract was awarded pursuant to procedures substantially similar to those required under this Procurement Policy.

2.3.11 Appraisers, and expert witnesses for condemnation matters, and similar services; sale, acquisition, or lease of real property; real estate brokers; title insurance, abstracts, opinions, or title; surveys in connection with acquisition, sale, or lease of real property; room and board for social service license and funeral related services. Contracts for these services shall be negotiated by the County Attorney.

2.3.12 Service/Maintenance Agreements. Continuing service and/or maintenance contracts that are initially awarded by the Board as part of a product acquisition/installation or lease purchase to a vendor who is the manufacturer, developer or is the authorized service agent thereof and for which funds are annually appropriated in the County's budget are exempt from further competitive requirements or Board approval. Examples are software/hardware maintenance, copier maintenance, security systems, etc.

2.3.13 Software Upgrades, software modification services by the copyright holder (e.g., Microsoft) and related software enhancement to installed software purchased through competitive means are exempt. The purchase of "new" software packages or systems shall follow the purchasing thresholds and procedures of this Purchasing Policy to ensure competitive selection.

2.3.14 Corporate and media sponsorship agreements.

2.3.15 Training and educational courses, meeting rooms, and hotels; continuing education events or programs; and lectures by individuals.

2.3.16 Travel arrangements and expenses.

## SECTION 3.0 DEFINITIONS

The following terms defined in this section shall have the meanings set forth below whenever they appear in this purchasing policy, unless otherwise defined in law:

- 3.1 “Addendum” is a document used to expand or more fully explain the terms of a bid instrument (e.g., Invitation to Bid or Request for Proposals). An addendum is not to be confused with a contract “amendment.”
- 3.2 “Agreement” means all types of Gadsden County agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment, land acquisition, or construction.
- 3.3 “Blanket Purchase Order” means a purchase order issued to a vendor for an amount not to exceed the face value of the purchase order. A blanket purchase order is for the procurement of commodities or services which shall exceed the threshold for small purchases unless the appropriate method of procurement was used to generate the Blanket Purchase Order.
- 3.4 “Board” means the Board of County Commissioners of Gadsden County, Florida.
- 3.5 “Brand Name or Equivalent Specification” means a specification limited to one or more items by manufacturers’ names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the county requirements, and which provides for the submission of equivalent products.
- 3.6 “Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- 3.7 “Change Order” means a written order amending the scope of work, or correcting errors, omissions, or discrepancies in a contract or purchase order.
- 3.8 “Commodity” means a product that the County may contract for or purchase for the use and benefit of the County. A specific item, it is different from the rendering of time and effort by a provider.
- 3.9 “Competitive Sealed Bidding” (Invitation for Bid) means a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The Invitation for Bids must be publicly advertised and has the title, date, and hour of the public bid opening designated and specifically defines the commodity, group of commodities, or services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be distributed to all prospective bidders simultaneously. The invitation for bids is used when the County is capable of specifically defining the scope of work for which a

contractual service is required or when the county is capable of establishing precise specifications defining the actual commodity or group of commodities required.

- 3.10 “Cone of Silence” means the prohibition of any communication between a vendor and a Board officer, contract staff or employee, or agent regarding a pending competitive procurement, except for communication at a duly noticed pre-proposal conference, oral presentation, or with the Board’s designated representative noted in the competitive procurement documents. Upon the advertisement of the competitive procurement, the cone of silence shall apply. The cone of silence shall terminate upon the issuance of an award, the rejection of all responses, or the termination of competitive procurement, whichever occurs first. Violation of the cone of silence by a vendor shall disqualify the vendor from participation in the competitive procurement
- 3.11 “Confirming Order” means a purchase order restating the same terms originally placed orally or in writing other than a purchase order.
- 3.12 “Construction” means the process of building, attaining, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. It does not include routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- 3.13 “Contract” means all types of Gadsden County agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment, or construction.
- 3.14 “Contract amendment or modification” means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- 3.15 “Contractor” means any person having a contract with Gadsden County.
- 3.16 “Contractual Services” means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting educational training programs; research and development studies or reports on the findings of consultant engaged there under; and professional, technical, and social services.
- 3.17 “Contractual Services Contract” is a contract for a contractor’s time and effort rather than the furnishing of specific commodities. Satisfactory completion of the service and/or a specified period of time or date complete such contract.
- 3.18 “Consultant’s Competitive Negotiations Act (CCNA)” professional services. Services performed by architect, professional engineer, landscape architect, or registered



surveyor and mapper in connection with his or professional employment practice pursuant to section 287.055, Florida Statutes.

- 3.19 “Cooperative Purchasing” is procurement conducted by, or on behalf of, more than one public procurement unit.
- 3.20 “Cost Analysis” is the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- 3.21 “County” means the County of Gadsden, Florida.
- 3.22 “Data” means recorded information, regardless of form or characteristic.
- 3.23 “Debarment” A vendor is prohibited from submitting bids, proposals, quotes, or responses to any competitive procurement, or otherwise conducting business with the county until such time they are reinstated to the status of active vendor.
- 3.24 “Define Quantity Contract” is a contract whereby the contractor(s) agrees to furnish a specific quantity of an item or items at a specified price and time to specified locations. Delivery by the vendor and acceptance of the specific quantity by the County complete such contract.
- 3.25 “Department Director” means the director of a department as designated in the job description and organizational chart.
- 3.26 “Designee” means a duly authorized representative of a person holding a superior position.
- 3.27 “Emergency” means when there exists a threat to public health, welfare, or safety; natural unexpected events; accidents; or loss to the county under emergency conditions which shall be considered to mean those situations where the operation of a department or division would be seriously impaired if immediate action were not taken.
- 3.28 “Emergency Purchase” is a purchase necessitated by a sudden unexpected turn of events (e.g., acts of God, riots, fires, floods, accidents or any circumstances or cause beyond the control of the agency in the normal conduct of its business where the delay incident to competitive bidding would be detrimental to the interests of the county.
- 3.29 “Employee” means an individual drawing a salary from Gadsden County, whether elected or non-elected. For the purposes of this policy, it also means that any non-compensated individual performing personal services for Gadsden County is to be governed by these rules.
- 3.30 “Established Catalog Price” is the price included in a catalog, price list, schedule, or other form that:

- a. Is regularly maintained by a manufacturer or contractor;
  - b. Is either published or otherwise available for inspection by customers; and
  - c. States prices at which sales are currently or were last made to a significant number or any category of buyers or those buyers constituting the general buying public for the supplies or services involved.
- 3.31 “f.o.b. or FOB (free on board)” is a term used in conjunction with an identified physical location to determine the responsibility and basis for payment of freight charges, and the point at which title for the shipment passes from seller to buyer. Commonly used deliveries are:
- a. FOB Destination: A shipment to be delivered to a destination designated by the buyer and the point at which buyer accepts title.
  - b. FOB Shipping Point (Origin): A shipment is to be delivered to the buyer with passage of title, on board the indicated conveyance or carrier at the contractor’s designated facility.
- 3.32 “Formal Solicitation” means the placement of a (legal) notice in a newspaper of general circulation according to legal requirements to inform the public that the County is requesting responses for a specific procurement it intends to make.
- 3.33 “Gratuity” is a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, inuring to the benefit of an employee, unless consideration of substantially equal or greater value is given by the employee.
- 3.34 “Informal Sealed Bids” is the procurement method used by the county for selecting a provider of commodities or services with a value within the threshold for this category. Informal Sealed Bids have the title, date, and hour of the public bid opening designated, specifically define the commodity, group of commodities, or services for which bids are sought in written specifications and do not require public advertisement. A recommendation of award is made by the Purchasing director and awarded by the County Administrator. It is normally the intent of the county to select the qualified and responsive bidder primarily on the basis of price.
- 3.35 “Invitation for Bid (Competitive Sealed Bidding)” means a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The Invitation for Bids must be publicly advertised and has the title, date, and hour of the public bid opening designated and specifically defines the commodity, group of commodities, or services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be distributed to all prospective bidders simultaneously. The invitation for bids is used when the County is capable of specifically defining the scope of work for which a contractual service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required.

- 3.36 “Irregularity” Any change or omission in an offer or contract that does not have an adverse effect on the County’s best interest and does not affect the outcome of the source selection process by giving an offer an advantage or benefit not enjoyed by any other offeror, and, not consistent with applicable laws.
- 3.37 “Joint Venture” means:
- a. A **combination of contractors** performing a specific job in which business enterprises participate and share a percentage of the net profit or loss; or,
  - b. A **joint business association** of a minority individual(s)/firm(s) to carry out a single business enterprise for which purpose the individuals/firms combine their property, money, efforts, skills and/or knowledge.
- 3.38 “Manufacturer” means a person or firm engaged in the process of making, fabricating, constructing, forming, or assembling a product(s) from raw, unfinished, semi-finished, finished, or recycled materials through a direct contract/agreement on behalf of the general contractor.
- 3.39 “Material Mistake” means any deviation or variance from the procurement requirements or other mistake that gives one vendor a substantial advantage over other vendors in a competitive procurement.
- 3.40 “Non-materials Mistake” means any deviation variance from the procurement requirements or other mistake that does not affect price, give one vendor an advantage or benefit not enjoyed by other vendors and does not adversely affect the interest of the County.
- 3.41 “Option to Renew” means a contract clause that allows the County and the contracted a party an option to renew the Contract for defined additional terms if mutually agreeable to both parties and subject to the same terms and conditions of the original contract. to reinstate the contract for an additional term.
- 3.42 “Payment Bond” means the approved form of security furnished by the vendor and its surety that assures payments, as required by law, to all persons supplying goods, equipment, or services, for the completion of work under the contract, also known as a contract bond.
- 3.43 “Performance Bond” means the approved security furnished by the vendor and its surety as a guarantee that the vendor will fully perform in accordance with the terms of the contract.
- 3.44 “Option to Renew” means a contract clause that allows the County and the contracted party an opportunity to renew the contract for a defined period of time and shall be in writing and approved in the same manner as the original contract.

- 3.45 “Person” means any business, individual, committee, club, other organization, or group of individuals.
- 3.46 “Personal Property” means property consisting of movable articles that are either tangible, such as furniture or computers, or intangible such as stocks, bonds, licenses.
- 3.47 “Posting” means the act whereby the County places on a bulletin board, in a designated location, and/or on the County website, a listing which indicates the County’s recommendations for bid awards and solicitations for bids, proposals or formal quotes.
- 3.48 “Pre-Bid Conference” means a meeting held with prospective bidders prior to solicitation of or the date for 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 bidders’ interest in pursuing the task.
- 3.49 “Professional Services” means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined by the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with his professional employment or practice.
- 3.50 “Proposal” means an executed document submitted to the County stating the goods, consultant services, and/or services order to satisfy the need as requested in the request for proposal.
- 3.51 “Purchase Order” means that document used by Gadsden County to request that a contract be entered into for a specified need, and may include, but not be limited to, the technical description of the requested item, delivery schedule, transportation, and criteria for evaluation, payment terms, and other specifications.
- 3.52 “Purchasing” means buying, procuring, renting, leasing, or otherwise acquiring any materials, supplies, services, construction, or equipment. It also includes all functions that pertain to the obtaining of any material, supplies, services, construction, and equipment, including description of specifications and requirements, selection and solicitation resources, preparation, and award of contract.
- 3.53 “Purchasing Director” means the Gadsden County employee duly authorized to enter into and administer contracts and make written determinations with respect thereto under the terms of the purchasing policies of the Board of County Commissioners.
- 3.54 “Purchasing Quotes” is the procurement procedure used to purchase commodities or contractual services with a value within the threshold amounts set for this category. Purchasing quotes are conducted by the Purchasing Director or Purchasing Agents obtaining either written or oral quotations from two or more vendors, do not require a public bid opening, and are awarded by the Purchasing Director. Written evidence of all quotations must be maintained in the Purchasing Division.

- 3.55 “Real Property” means property consisting of land and all rights, privileges, or improvements belonging to and passing to lands, as buildings, crops, or mineral rights.
- 3.56 “Recycled Content” means materials that have been recycled and are contained in the products or materials to be procured, including, but not limited to, paper, plastic, aluminum, glass, and composted materials. The term does not include internally generated scrap purchased from another manufacturer who manufactures the same or a closely related product.
- 3.57 “Regulation” means a statement by the Board of County Commissioners having general or particular applicability and future effect, designed to implement, interpret, or prescribe law, policy, or practice.
- 3.58 “Request for Proposals” means a written solicitation for sealed proposals with the title, date and hour of public opening designated. The request for proposals is used when the County is unable to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required, and when the County is requesting that a qualified offeror proposed a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. A request for proposals includes, but is not limited to, applicable laws and rules, functional or general specifications, statement of work, proposal instructions, and evaluation criteria. Request for proposals shall state the relative importance of price and any other evaluation criteria. Evaluation of a proposal, when such proposal is for “professional services” shall be in accordance with Florida Statutes, chapter 287.055.
- 3.59 “Request for Qualifications (RFQ)” means a written, competitive solicitation of responses for services where the specifications of required services are broad and specialize in nature, such as attorney, auditor, CPA, etc. The RFQ outlines the procurement process and contract terms and provides guidance on how the response should be formatted and presented. RFQ solicitations focus on the qualifications of the potential providers of service rather than price. Primary qualifications include key staff, relevant past experience of the company and client references.
- 3.60 “Responsible Bidder or Offeror” means a person who has the capability, in all respects, to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- 3.61 “Responsive Bidder” means a person who has submitted a bid which conforms in all material respects to the invitation to bid or the request for proposals.
- 3.62 “Selection Committee” means a group of members established by the County pursuant to this Purchasing Policy for the purpose of evaluating RFPs, RFQ, and ITN as part of a competitive procurement.

- 3.63 “Services” means the furnishing of labor, time, or offeror by a contractor, not involving the delivery of a specific end product other than those which are not defined as supplies, and which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
- 3.64 “Small Purchases” means the procurement of commodities or services with a value within the thresholds set for this category without the requirement of quotes, bids, or public notice under procedures established by the Purchasing Division.
- 3.65 “Single Source Purchases” means that the goods, services, or equipment can be procured from multiple sources, but in order to meet certain functional or performance requirements (repair parts, matching existing equipment or materials) there is only one economically feasible (single) source for the purchase.
- 3.66 “Sole Source Purchases” means a commodity, equipment or service that can be legally procured from only one source. This is usually due to the source owning patents and/or copyrights. A requirement for a particular proprietary item does not justify a sole source purchase if there is more than one potential supplier. Use of brand names and model numbers does not constitute a sole source purchase.
- 3.67 “Specification” means any description of the physical or functional characteristics of the nature of a material, supply, service, construction, or equipment item. It may include a description of any requirement for inspection, testing, recycled or degradable materials content, or preparing a material, supply, service, construction, or equipment item for delivery.
- 3.68 “Supplier” means a person or firm who engages in the selling of materials and supplies to contractors, subcontractors, and/or manufacturers for the purpose of constructing, repairing, altering, remodeling, adding to or subtracting from or improving any building, structure, or property through a direct contract/agreement on behalf of the general contractor.
- 3.69 “Suspension” means a vendor is prohibited from submitting bids, quotes, or responses to any competitive procurement, or otherwise conducting business with the County for a definite period of time.
- 3.70 “Term Contract” means indefinite quantity contract whereby a contractor(s) agrees to furnish an item or items during a prescribed period of time (such as 3, 6, 9, 12 months or a specific date). The specified period of time or date completes such contract.
- 3.71 “Tie (Identical) Bid” is when two or more bids are equal with respect to price, and it appears that the quality and service offered by the vendor are otherwise comparable.
- 3.72 “Vendor” any business or individual that will be or has been awarded a contract by the County.

## **SECTION 4 AUTHORITY OF PURCHASING DIRECTOR**

- 4.1 The Assistant County Administrator shall serve as the Purchasing Director, unless otherwise delegated, and is the official purchasing officer of Gadsden County.
- 4.2 The Purchasing Director shall develop and administer operational procedures governing the internal functions of the Division of Purchasing.
- 4.3 Except as otherwise specifically provided in this policy, the Purchasing Director, or his/her designee, shall, in accordance with regulations promulgated by the Board of County Commissioners:
  - a. Purchase or supervise the purchase of all supplies, services, materials, equipment, and construction services defined within the scope of this policy.
  - b. Operate a central supply office for the purchasing, in bulk, of items which may be more economically bought and distributed than when purchased on an individual basis; and to provide facilities for storage of critically needed supplies.
- 4.4 Upon the prior approval of the County Administrator, the Purchasing Director may delegate authority to designee(s) as allowed by law or rule.
- 4.5 The Purchasing Director shall act as the Minority Business Enterprise Coordinator, implement, monitor, and enforce the County's Minority Business Enterprise program policy, if applicable.

## SECTION 5.0 PURCHASING AUTHORITY, THRESHOLD, AND CATEGORIES

5.1 Purchasing Authority and thresholds identifies who must approve the purchase of goods and services up to a dollar threshold amount and when a purchase must be brought before the Board for approval and award. The following purchasing thresholds and authorities are established regardless of the purchasing process:

- |    |   |                           |
|----|---|---------------------------|
| a. | Division Manager/Superintendent/<br>Buyer (Purchasing Department) | Not to Exceed \$3,500.00  |
| b. | Department Director   | Not to Exceed \$10,000.00 |
| c. | Purchasing Director/<br>Assistant County Administrator            | Not to Exceed \$25,000.00 |
| d. | County Administrator  | Not to Exceed \$35,000.00 |
| e. | Board   | Over \$35,001.00          |

5.1.1 Each individual representing a level of purchasing authority must have on file with the Purchasing Department and Clerk's Finance Office, a completed signature authorization.

5.1.2 The County Administrator shall report to the Board no less than quarterly all purchases approved under the delegations as set forth in section 5.1 above.

5.2 Contract Authority identifies who must approve contracts, task orders, purchase orders and agreements (i.e., "Contracts") up to a dollar threshold amount for goods, services, equipment, and real property, and when a contract, task order or agreement must be brought before the Board for approval and award. The following purchasing thresholds and authorities are established regardless of the purchasing process.

- |    |  |                           |
|----|--|---------------------------|
| a. | Purchasing Director/<br>Assistant County Administrator | Not to Exceed \$25,000.00 |
| b. | County Administrator                                   | Not to Exceed \$35,000.00 |
| c. | Board  | Over \$35,001.00          |

5.3 **Purchasing Categories (Tiers) and Requirements.** The following establishes requirements for purchases by dollar thresholds. Each purchase, contract and/or request for payment associated with the purchase or contract, must be signed by the appropriate approving authority as set forth in sections 5.1 and 5.2



- a. **Up to \$3,500.00, Small Purchases:** Quotes are required but best practices should be used to ensure a competitive price.
- b. **Over \$3,501.00 up to \$10,000, Verbal Quotes:** Three (3) telephone quotes are required. The quotes should be documented in writing using the format or form provided by the Purchasing Office.
- c. **Over \$10,000 up to \$25,000.00, Written Quote:** Three (3) formal written quotes from separate vendors. Each vendor shall be provided the same written request for a quote with the scope of work and specifications, and project background.
- d. **Over \$25,00.00, Competitive Solicitation** is required.
- e. **Exemptions** are discussed in Section 2.0 Application of Policy.
- f. **Procurements and contract that are funded in part or in whole, regardless of costs, shall follow grant administrative and programmatic requirements as set forth in the grant agreement as set forth herein (see Section 11 Federal Policy Notice).**

#### 5.4 Small Purchases (up to \$3,500)

5.4.1 The purchase of commodities, equipment and services which cost less than the threshold authorized in Section 5.3 does not require solicitation of quotes or bids. Small purchases shall be authorized by the Purchasing Director or designees in accordance with Sections 5.1, 5.2 and 5.3 of this Purchasing Policy.

#### 5.5 Blanket Purchase Orders

5.5.1 Non-contractual Basis: No purchase order shall be issued for an amount greater than the limit established for a non-contractual blanket purchase order in Sections 5.1, 5.2 and 5.3 of this purchasing policy for the purchase of goods or services not under a contractual arrangement authorized under this purchasing policy or approved by the Board.

5.5.2 Contractual Basis: No purchase order shall be issued for an amount greater than the limit established for a contractual blanket purchase order in Sections 5.1, 5.2 and 5.3 of this purchasing policy for the purchase of goods or services unless approved by the Board.

#### 5.6 Verbal Quotes (\$3,501.00 Up To \$10,000.00)

5.6.1 The purchase of goods, equipment and services which cost within the range authorized for verbal purchasing quotes in Section 5.3 shall require verbal written, competitive quotations from three (3) or more vendors. The quotations shall be obtained by the Department Director or Purchasing Office and shall be reviewed and approved by the Purchasing Director.

**5.7 Written Quotes (\$10,000.01 Up To \$25,000.00)**

5.7.1 For purchases within the cost range authorized for written quotes in Section 5.3, the Purchasing Director shall secure, when possible, a minimum of three (3) written quotations which shall be the result of written specifications transmitted orally, by email, mail, or by “fax”.

5.7.2 In those instances where the securing of three quotations is not practicable, the Purchasing Director shall provide written justification of such.

5.7.3 The quotations shall be reviewed, and a written recommendation of award shall be prepared by the Department Director for approval by the Purchasing Director. Either a purchase order or contract will be used for the award and the scope of work and the vendor’s written quote shall be attached to the purchase order or contract.

**5.8 Competitive Sealed Bidding (Over 25,000.00)**

5.8.1 Conditions For Use – All contracts and purchase orders for purchases of a single item or the aggregate in excess of the established base amount for competitive sealed bidding as provided in Section 5.3 of this purchasing policy shall be awarded on the basis of sealed competitive bidding, except as provided in this herein. Competitive sealed bidding, includes but may not be limited to the following procurement methods pursuant to this purchasing policy and law:

- a. Invitation to Bid (section 5.9)
- b. Request for Qualifications (section 5.10)
- c. Request for Proposal (section 5.11)

**5.9 Invitation to Bid (ITB)**

5.9.1 An invitation to bid shall be issued and shall include specifications, all contractual terms and conditions, and the place, date, and time for opening or submittal. Additionally,

- a. No later than five (5) working days prior to the date of receipt of bids, a

vendor shall make a written request to the County for interpretations or corrections of any ambiguity, inconsistency, or error which the vendor may discover.

- b. All interpretations or corrections will be issued as addenda.
- c. The county will not be responsible for oral clarifications.

5.9.2 No negotiations, decisions or actions shall be initiated or executed by the proposer as a result of any discussions with any County employee prior to the opening of proposals. Only those communications which are in writing from the County may be considered as a duly authorized expression on the behalf of the Board. Also, only communications from firms or individuals which are in writing and signed will be recognized by the Board as duly authorized expressions on behalf of proposers. (see **“Cone of Silence” definition.**)

5.9.3 Alternate(s) bids will not be considered unless authorized by and defined in the special Conditions of the bid specifications.

5.9.4 Approved Equivalents: The County reserves the right to determine acceptance of item(s) as an approved equivalent. Bids which do not comply with stated requirements for equivalents in the bid conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the general conditions of the bids.

5.9.5 Public Notice: Public notice shall be by publication in a newspaper of general circulation, the local papers and posted to the Board’s website and a minimum of three weeks for LAP projects prior to bid opening. Notice of the Invitation to Bid shall give the date, time, and place set forth for the submittal of proposals and opening of bids and shall reference the grant agreement/program if funded in part or in whole with federal or state funds.

5.9.6 Bid Opening: Bids shall be opened publicly by the Selection Committee at the time and place designated in the Invitation to Bid, at least one representative from the Purchasing Office shall attend all bid openings. The amount of each bid, and such other relevant information as may be deemed appropriate by the Purchasing Director, together with the name of each bidder, and all witnesses shall be recorded. The record (Bid Report) and each bid shall be open to public inspection.

5.9.7 Bid Acceptance and Evaluation: Bids shall be unconditionally accepted without alteration or correction, except as authorized in this purchasing policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include, but not be limited to criteria to determine acceptability such as: inspection, testing, quality, recycled or degradable materials content,

workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measured, such as discounts, transportation costs, and total of life cycle costs. No criteria may be used in bid evaluation that is not set forth in the Invitation to Bid, in regulations, or in this purchasing policy.

5.9.8 Bid Agenda Item: The Bid Report shall be presented to the appropriate department or committee head for review and recommendation. The department or committee head shall prepare the recommendation as an agenda item for review by the Purchasing Director prior to submission to the County Administrator for review and approval. Upon approval, the County Administrator shall place the item on the agenda of the board of County Commissioners.

5.9.9 Correction or Withdrawal of Bids; Cancellation of Awards

- a. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted where appropriate.
- b. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the Invitation for Bids prior to the time set for bid opening.
- c. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended.
- d. After bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted.
- e. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
  - 1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or,
  - 2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the Purchasing Director and concurred with the County Administrator.

- 5.9.10 Award: The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. The County reserves the right to waive any informality in bids and to make an award in whole or in part when either or both conditions are in the best interest of Gadsden County.
- 5.9.11 Notice of Intended Award: The contract shall be awarded by purchase order or other written notice. Every procurement of contractual services shall be evidenced by a written agreement. Notice of the intended award, including rejection of some or all of bids received, may be given by posting the bid tabulations where the bids were opened, by telephone, by first class mail, or by certified United State mail, return receipt requested, whichever is specified in the bid solicitation. A vendor may request, in their bid submittal, a copy of the tabulation sheet to be mailed in a vendor provided, stamped, self-addressed envelope for their record.
- 5.9.12 Notice of Right to Protest: All notices of decision or intended decisions shall contain the statement: “*Failure to file a protest within the time prescribed in Section 5 of the Purchasing Policy of the Gadsden County board of County Commissioners shall constitute a waiver of proceedings under that section of this Policy*”.
- 5.9.13 Cancellation of Invitations for Bids: An invitation for bids or other solicitation may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interest of the County, as determined by the Board. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to complete on any re-solicitation or future procurement of similar items.
- 5.9.14 Disqualification of Vendors: For any specific bid, vendors may be disqualified by the Purchasing Director for the following reasons:
- a. Failure to respond to bid invitation three consecutive times.
  - b. Failure to update the information on file including address, project or service, or business description.
  - c. Failure to perform according to contract provisions.
  - d. Conviction in a court of law of any criminal offense in connection with the conduct of business.

- e. Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
- f. Clear and convincing evidence that the vendor has attempted to give a board employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
- g. Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133(3)(a).
- h. Other reasons deemed appropriate by the Board of County Commissioners.

#### 5.10 Request For Qualifications (RFQ) for Professional Services

5.10.1 An RFQ is competitive procurement issued when a professional service is required for architectural, engineering, landscaping architectural and/or land surveying services. A single project specific RFQ may be issued, or the County may elect to use a CCNA Consultant as discussed below, if allowable based on funding source, and more efficient than issue project specific RFQ.

5.10.2 Consultants' Competitive Negotiation Act (CCNA): The purpose of obtaining professional services is to offer the County special expertise, practical experience, knowledge, resources, and an objective outside professional opinion. The provisions and exemptions contained in the CCNA pursuant to section 287.017 and 287.055, Florida Statutes, shall apply herein for the procurement of all professional architecture, engineering, landscape architecture, or registered surveying and mapping services for projects that exceed certain statutory dollar thresholds.

5.10.3 An RFQ's focus is on the proposers' qualifications, staff, and relevant recent experience, and price **is not included** as an evaluation factor. The process as set forth in section 287.017 and 287.055, Florida Statutes shall be followed for a specific, one-time RFQ and for CCNA consultants.

5.10.4 Contracts shall be negotiated on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the Purchasing Director may require firms to submit a statement of qualifications, performance data and other related information of the performance of professional services

5.10.5 Public Announcement: All RFQs for professional architectural, engineering, landscape architectural, and land surveying services shall be publicly advertised to the extent required by law and this purchasing policy.

5.10.6 Scope of Project Requirements: Prior to issuance of an RFQ for professional services, and if required as an agenda item for approval by the Board, the County department for which the professional services are requested shall submit to the Purchasing Director a written project requirement indicating the nature and scope of the professional services needed for the project, including but not limited to the following:

- a. The general purpose of the needed services or study;
- b. The objectives of the study or service;
- c. Estimated period of time needed for the service or study;
- d. The estimated cost of the service or study;
- c. Whether the proposed study or service would or would not duplicate any prior or existing study or service;
- d. List of current contracts or prior services or studies which are related to the proposed study or service; and
- e. The desired qualifications, listed in order of importance, of the person or firm applicable to the scope and nature of the services requested.

5.10.7 Review of Project Requirements: The Purchasing Director or his/her designee shall review the scope of project requirements and, if revisions of project requirements are warranted to best meet the needs of the County, copies of the revised project requirements shall be submitted to the user department for consideration prior to public distribution of the project requirements.

5.10.8 Distribution of Project Requirements (Public Notice): The Purchasing Director shall distribute the written project requirements (RFQ) to all persons on the mailing list, should the County have a vendor list, who have indicated an interest in being considered for the performance of such professional services, W/MBEs, and to any other additional person as the Purchasing director or using agency deems desirable, and publicly notice the RFQ to the extent required by law and this purchasing policy.

- a. The project requirements shall be accompanied by an invitation (RFQ) to such person to submit an indication of interest in performing the required services, and by notification of the date and time when such indications of interest are due.
- b. The due date of written qualifications in response to the RFQ shall not be less than 14 calendar days from the date of public notice which the Purchasing Director shall publish in at least one newspaper of general circulation in Gadsden County, unless otherwise required by law or policy.

- 5.10.9 Resolution: If the County receives indications of interest from less than three firms, the Purchasing Director may resolicit indications of interest from all persons previously solicited and from such additional firms as may seem advisable. Thereafter, the Purchasing Director may proceed to consider those firms responding to the solicitation or re-solicitations, and with the approval of the granting agency if the project is funded in part or whole with federal or state funds.
- 5.10.10 Modification Prohibition: After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Selectin Committee pursuant to law and this purchasing policy, prior to making its selection of those best qualified firms to be formally considered and/or interviewed.
- 5.10.11 Reuse of Existing Plans: There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the County is able to reuse existing plans from a prior project. However, public notice of any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.
- 5.10.12 A Task Order (aka Work Authorization) shall be issued for each specific project as the needed and are subject to the contract authority as set forth in this section with a contracted consultant for professional services.
- 5.10.13 Selection Committee Membership: Depending on the expected complexity and expense of the professional services to be contracted, the County Administrator or his/her designee shall determine whether a three-member or five-member selection committee will best serve the needs of the County and shall appoint the selection committee members.
- 5.10.14 Selection Committee Evaluation: Only written responses of statement of qualifications, performance data, and other data received in the purchasing office by the publicized submission time and date shall be evaluated. Only those respondents who are determined to be best qualified based upon the evaluation of written responses and selected for formal interview may submit additional data. Form among those persons evidencing, by timely submission of written responses, an interest in performing the services the Selection Committee shall:
- a. Prepare an alphabetical list of those persons determined by the Selection Committee to be qualified, interested, and available; and



- b. Designate no less than three persons on the alphabetical list considered by the Selection Committee to be best qualified to perform the work required.

5.10.15 Shortlisting: The best qualified respondents shall be based upon the Selection Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed. The Selection Committee shall determine qualifications, interest, and availability by reviewing the written responses that express an interest in performing the services, and by conducting formal interviews of no less than three selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determinations may be based upon, but not limited to, the following considerations:

- a. Competence, including technical education and training, experience in the kind of project to be undertaken, availability of adequate personnel, equipment, and facilities, the extend of repeat business of the persons, and where applicable, the relationship of construction cost estimates by the person to actual costs on previous projects;
- b. Current work load;
- c. Financial responsibility;
- d. Ability to observe and advise whether plans and specifications are being complied with, where applicable;
- e. Record of professional accomplishments;
- f. Proximity to the project involved, if applicable;
- g. Record of performance;
- h. Ability to design an approach and work plan to meet the project requirements, where applicable.

5.10.16 Interview and Board Approval: After conducting the formal interviews, if determined necessary, in a publicly noticed meeting the Selection Committee shall list those respondents interviewed in order of preference based upon the considerations in accordance with the RFQ. The respondents so listed shall be considered to be the most qualified and shall be listed in order of preference starting at the top of the list. The list of best qualified persons shall be presented to the Board for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.

5.10.17 Negotiation Staff: Contract negotiations shall be conducted by the County Administrator unless the County Administrator directs those negotiations be conducted by a Negotiation Committee.

5.10.18 Negotiation Committee Membership: Membership of the three-member Negotiation Committee shall consist of:

- a. The County Administrator or the designee of the County Administrator who shall chair the committee.
- b. The head of the primary using department or agency, or his/her designee,
- c. The County Attorney or designee.

5.10.19 Negotiation: The County Administrator and the Negotiation Committee shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the County Administrator determines to be fair and reasonable to the County.

- a. In making this decision, the County Administrator and the Negotiation Committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered.
- b. Should the County Administrator and the Negotiation Committee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be formally terminated.
- c. The County Administrator and the Negotiation Committee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the County Administrator and the Negotiation Committee shall formally terminate negotiations and shall then undertake negotiations with the third most qualified firm.
- d. Should the County Administrator and the Negotiation Committee be unable to negotiate a satisfactory contract with any of the selected firms, the Selection Committee shall select additional firms in order their competence and qualifications, and the County Administrator and the Negotiation committee shall continue negotiations in accordance with this Section until an agreement is reached or until a determination has been made not to contract for such services.

5.10.20 Continuing Contracts: Nothing in this section (RFQ's) shall be construed to prohibit continuing contracts for professional services between a firm and the County.

## Section 5.11 Request for Proposals (RFP)

5.11.1 An RFP is a competitive, written solicitation for sealed proposals with the title, date and hour of public opening designated.

- a. An RFQ is used when the County is unable to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required, and when the County is requesting that a qualified offeror proposed a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.
- b. A request for proposals shall include, but is not limited to, applicable laws and rules, functional or general specifications, statement of work, proposal instructions, and evaluation criteria. Request for proposals shall state the relative importance of price and any other evaluation criteria.
- c. “Professional services” shall be in accordance with section 287.055, FS, and this purchasing policy (see section 5.10 RFQ).

5.11.2 Board Approval: Proposals anticipated to exceed the threshold established in Section 5.1. 5.2, and 5.3 of this purchasing policy for competitive Sealed Proposals shall be approved by the Board of County Commissioners prior to solicitation.

5.11.3 Public Notice: Adequate public notice of the Request for Proposals shall be given in the same manner as required for an ITB (section 5.9) and to the extent required by law and this purchasing policy.

5.11.4 Evaluation: The Request for Proposals shall state the relative importance of criteria outlined in the scope of services, fee proposal, and other evaluation.

5.11.5 Proposal Cancellation or Postponement: The Director of Purchasing may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission.

5.11.6 Revisions and Discussions with Responsible Offerors: As provided in the Request for Proposals, and under regulations promulgated by the Board of County Commissioners, discussions may be conducted with responsible offerors who submit proposals determined to be qualified or being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to

award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- 5.11.7 **Award:** Award shall be made to the lowest responsible offeror whose proposal is determined in writing to be the most advantageous to Gadsden County, taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation criteria that is not included in the Request for Proposal.

### **Section 5.12 Single Source and Sole Source Purchases**

5.12.1 **Single Source Certification** means that the goods, services, or equipment can be procured from multiple sources, but in order to meet certain functional or performance requirements (repair parts, matching existing equipment or materials) there is only one economically feasible (single) source for the purchase. A requirement for a particular proprietary item does not justify a sole source purchase if there is more than one potential supplier. Use of brand names and model numbers does not constitute a sole source purchase.

- a. A **single source award** may be awarded for a supply, service, material, equipment or construction item(s) without competition when the Purchasing Director, with the concurrence of the County Administrator, certified in writing, after conducting a good faith review of available sources, that there is only one available source for the required material, supply, services, equipment or construction item(s). Such award will be made within the authorized procurement limits.
- b. **When a single source purchase exceeds the written quote threshold (or \$25,000.00), the item shall require Board approval and certification that the vendor and item has been determined to be a single source purchase.**

5.12.2 **Sole Source Certification** means a commodity, equipment or service that can be legally procured from only one source. This is usually due to the source owning patents and/or copyrights. A requirement for a particular proprietary item does not justify a sole source purchase if there is more than one potential supplier. Use of brand names and model numbers does not constitute a sole source purchase.

- a. A **sole source award** may be awarded for a supply, service, material, equipment, or construction item(s) without competition when the Purchasing Director, with the concurrence of the County Administrator,

certified in writing, after conducting a good faith review of available sources, that there is only one available source for the required material, supply, services, equipment or construction item(s). Such awards will be made within the authorized procurement limits.

- b. When a sole source purchase exceeds the written quote threshold (or \$25,000), the item shall require Board approval and certification that the vendor has been determined to be a sole source.

5.12.3 Additional Purchases from Certified Single or Sole Source: The Purchasing Director shall be authorized, after initial sole source certification, to make additional purchases from a single or sole source vendor for not less than one year or until such time as contrary evidence is presented regarding single or sole source eligibility, whichever period is less.

### **Section 5.13 Emergency Purchases (as defined in Section 3.0)**

5.13.1 Authorization During Normal Business Hours: In the case of emergencies which require the immediate purchase of goods, equipment or services, the County Administrator, Purchasing Director, Department Head, or his designee shall be empowered to secure such goods or services without competitive bidding when there exists: a threat to public health, welfare, or safety; natural unexpected events; accidents; or loss to the County under emergency conditions. In this event, all measures reasonably possible under the circumstances shall be taken to assure the maximum cost benefit to the County of the goods or services procured.

5.13.2 Authorization Outside of Normal Business Hours: A department, during non-business hours, is authorized to make purchases without competitive bids, when an emergency arises, and such purchases are necessary to protect the safety, health, welfare, or property of the county or any of its citizens.

5.13.3 Documentation and Approval: Documentation for emergency purchases pertaining to the above shall be submitted to the Purchasing Office on the standard requisition form with a detailed explanation, and support material attached, if applicable, within ten (10) workdays after the event occurred. Emergency purchases that exceed the competitive sealed bid thresholds pursuant to Sections 5.1, 5.2, and 5.3 of this Purchasing Policy, shall be approved by the County Administrator after-the-fact.

## **Section 5.14 Cooperative Purchasing**

- 5.14.1 State Contracts: The Purchasing Director is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts of the Department of Management Services. Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Board of County commissioners in Department/Division accounts.
- 5.14.2 Other Governmental Units: The Purchasing Director shall have the authority to join with other units of government in cooperative purchasing ventures when he best interest of the County would be served thereby, and the same is in accordance with the County and State law. The Purchasing Director shall make a written recommendation for approval by the County Administrator for such cooperative purchasing arrangements.
- 5.14.3 Using Federal or State Funds in Whole or Part: Refer to Attachment A: Procurement and Contract Federal Requirements to this Purchasing Policy.

## **Section 5.15 Bid Protest**

- 5.15.1 Right to Protest: Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of contract may protest to the Board of County Commissioners. Protestors shall seek resolution of their complaints initially with the Purchasing Director, and secondly with the County Administrator prior to protesting to the Board of County Commissioners.
- 5.15.2 Filing a Protest: Any person who is affected adversely by the decision or intended decision of the county shall file with the Purchasing Division a notice of protest in writing within 72 hours after the posting of the bid tabulation or protest within ten (10) calendar days after the date he/she filed the notice of protest.
- 5.15.3 Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this Section. A written protest is filed with the County when it is delivered to and received by the Purchasing Division.
- 5.15.4 The notice of protest shall contain at a minimum; the name of the bidder; the bidder's address and phone number; the name of the bidder's representative to whom notices may be sent; the name and bid number of the solicitation; and a brief factual summary of the basis of the protest.

5.15.5 The formal written protest shall: identify the protestant and the solicitation involved; include a plain, clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and, specifically request the relief to which the protestant deems himself entitled by application of such authorities to such grounds. The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom he/she is in dispute.

5.15.6 Settlement and Resolution – The Director of Purchasing shall, within 14 days of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position. Provided, however, if such settlement will have the effect of determining a substantial interest of another party or business, such settlement must be reached in the course of the proceedings provided herein.

5.15.7 Protest Proceedings – If the protest cannot be resolved by mutual agreement, the County Administrator shall conduct or designate another to conduct a protest proceeding pursuant to the following procedures.

- a. The presiding officer shall give reasonable notice to all substantially affected persons or business. Otherwise petitions to intervene will be considered on their merits as received.
- b. At or prior to the protest proceeding, the protestant may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issued raised.
- c. In the proceeding, the protestant, or his representative or counsel, may also make an oral presentation of his evidence and arguments. However, neither direct nor cross examination of witnesses shall be permitted, although the presiding officer may make whatever inquiries he/she deems pertinent to a determination of the protest.
- d. The judicial rules of evidence shall not apply, and the presiding officer shall base his/her decision on such information given in the course of the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.
- e. Within seven (7) working days of the conclusion of the proceeding, the presiding officer shall render a decision which sets forth the terms and conditions of any settlement reached. Such decision of the presiding

officer shall be conclusive as to the recommendation of the Board of County Commissioners.

- f. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

5.15.8 Intervener: The participation of interveners shall be governed by the terms of the order issued in response to a petition to intervene.

5.15.9 Time Limits: Time limits in which protests must be filed as provided herein may be altered by specific provisions in the Invitations to Bid or Requests for Proposal documents.

5.15.10 Entitlement to Costs: In no case will the protesting bidder or offeror be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney's fees.

5.15.11 Stay of Procurements During Protests: In the event of a timely protest under this Section, the Purchasing Director shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the County Administrator makes a written determination that the award of a contract without delay is necessary to protect the substantial interest of the County.

## **Section 5.16 Contract Claims**

5.16.1 Authority of the Purchasing Director to Settle Bid Protests and Contract Claims: The Purchasing Director is authorized to settle any protest regarding the solicitation or award of a County contract, or any claim arising out of the performance of a County contract, prior to any appeal to the Board of County Commissioners or the commencement of an action in a court of competent jurisdiction, but may not settle any such protest or claim for consideration of \$10,000 or greater in value without the prior approval of the Board of County Commissioners.

5.16.2 Decision of the Purchasing Director: All claims by a contractor against the county relating to a contract, except bid protests, shall be submitted in writing to the Purchasing Director for a decision. The contractor may request a conference with the Purchasing Director on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.



5.16.3 Notice to the Contractor of the Purchasing Director's Decision: The decision of the Purchasing Director shall be promptly issued in writing and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached and shall inform the contractor of his appeal rights pursuant to section 5.16.4 (below) of this Purchasing Policy.

5.16.4 Finality of Purchasing Director's Decision; Contractor's Right to Appeal: The Purchasing Director's decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the contractor files a notice of appeal with the Board of County Commissioners.

### Section 5.17 Remedies for Solicitations or Awards in Violations of Law

5.17.1 Prior to Bid Opening or Closing Date for Receipt of Proposals: If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.

5.17.2 Prior to Award: If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Purchasing director, after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.

5.17.3 After Award: If after award, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, then

- a. If the person awarded the contract **has not** acted fraudulently or in bad faith, then:
  - 1) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County; or
  - 2) The contract may be terminated, and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, but excluding attorney's fees, prior to termination; or
- b. If the person awarded the contract **has acted** fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interest of the County.

## **SECTION 6 CONTRACT ADMINISTRATION**

### **Section 6.1 Contract Provisions**

6.1.1 Standard Contract Clauses and Modifications: The Purchasing Director, after consultation with the County Attorney, may establish standard contract clauses for use in County contracts. However, the Purchasing Director may, upon consultation with the County Attorney, vary any such standard contract clauses for any particular contract.

6.1.2 Contract Clauses: All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the Contract. The Purchasing Director, after consultation with the county Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among other the following subjects:

- a. The unilateral right of the County to order, in writing, changes in the work within the scope of the contract.
- b. The unilateral right of the County to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract.
- c. Variations occurring between estimated quantities or work in contract and actual quantities.
- d. Defective pricing.
- e. Time of performance and liquidated damages.
- f. Specified excuses for delay or nonperformance.
- g. Termination of the contract for default.
- h. Termination of the contract in whole or in part for the convenience of the County.
- i. Suspension of work on a construction project ordered by the County.
- j. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
  - 1) When the contract is negotiated.
  - 2) When the contractor provides the site or design.
  - 3) When the parties have otherwise agreed with respect to the risk of differing site conditions; and
  - 4) Value engineering proposals.

### **Section 6.3 Price Adjustments**

6.3.1 Method of Price Adjustment: Adjustments in price during the term of a contract

shall be computed in one or more of the following ways upon approval by the Board:

- a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable.
- b. By unit prices specified in the contract or subsequently agreed upon.
- c. By the costs attributable to the events or situations under such clauses with adjustment or profit or fee, all as specified in the contract or subsequently agreed upon by the Board.
- d. In such other manner as the contracting parties may mutually agree; or,
- e. In the absence of agreement by the parties, by a unilateral determination by the county of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County, subject to the provisions of this section.

6.3.2 Cost or Pricing Date Required – A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

#### **Section 6.4 Change Orders/Contract Amendments**

6.4.1 Change Orders: For change orders, whether a capital improvement or a consultant services project, the following limits shall apply:

- a. The County Administrator is granted authority to approve, within budgeted funds, change orders within the authority, thresholds, and categories pursuant to Sections 5.1, 5.2, and 5.3 of this purchasing policy.
- b. Change orders which exceed the County Administrator's authority thresholds and categories pursuant to Sections 5.1, 5.2, and 5.3 of this purchasing policy shall require approval of the Board of County Commissioners.

#### **Section 6.5 Assignment of Contracts**

6.5.1 No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the County nor shall the contractor assign any monies due or to become due to the contractor

hereunder without the previous written consent of the County.

### **Section 6.6 Right to Inspect Plant**

6.6.1 The County may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded, or to be awarded, by Gadsden County. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving Gadsden County.

## **SECTION 7 RIGHTS OF BOARD OF COUNTY COMMISSIONERS**

7.1 Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Board, in the best interests of the County, to reject all bids received in response to a request, to determine in its sole discretion the responsiveness and responsibility of any bidder, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when desirable for the public good.

## **SECTION 8 COUNTY PROCUREMENT RECORDS**

8.1 Contract File: All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the County in a contract file by the Purchasing Director.

8.2 Retention of Procurement Records: All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules established by the State of Florida.

## **SECTION 9 SPECIFICATIONS**

### **Section 9.1 Maximum Practicable Competition**

9.1.1 All specifications shall be drafted to promote overall economy and encourage competition in satisfying the County's needs and shall not be unduly restrictive. This policy applies to all specifications including, but not limited to, those prepared for the County by architects, engineers, designers, and draftsmen pursuant to the CCNA, section 287.055, FS, and this purchasing policy.

### **Section 9.2 Brand Name Specifications**

9.2.1 Use of Brand Name Specifications: Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing

Director makes a determination that only the identified brand name item or items will satisfy the County's needs.

- 9.2.2 Competition: The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 5, Single and Sole Source Purchases of this purchasing policy.

## **SECTION 10 ETHICS IN PUBLIC CONTRACTING**

### **Section 10.1 Criminal Penalties**

- 101.1 To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

### **Section 10.2 Employee Conflict of Interest**

- 10.2.1 Participation: It shall be unethical for any County employee to participate directly or indirectly in a procurement contract when the County employee knows that:
- a. The County employee or any member of the County employee's immediate family (father, mother, brother, sister, child, grandparent, or grandchild of employee or spouse) has a financial interest pertaining to the procurement contract; or
  - b. Any other person, business, or organization with whom the County employee or any member of a County employee's family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- 10.2.2 Blind Trust: A County employee or any member of a County employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

### **Section 10.3 Contemporaneous Employment Prohibited**

- 10.3.1 It shall be unethical for any County employee who is participating directly or indirectly in the procurement process to become or to be, while such a County employee, the employee of any person contracting with the County.

10.3.2 **Waivers from Contemporaneous Employment Prohibition and Other Conflicts of Interest:** The County Administrator may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- a. The contemporaneous employment or financial interest of the County employee has been publicly disclosed.
- b. The County employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- c. The award will be in the best interest of the County.

#### **Section 10.4 Uses of Confidential Information**

10.4.1 It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

#### **Section 10.6 Gratuities and Kickbacks**

10.6.1 **Gratuities:** It shall be unethical for any person to offer, give or agree to give any County employee, or for any County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendations, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal thereof.

10.6.2 **Kickbacks:** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

10.6.3 **Contract Clause:** The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation, therefore.

#### **Section 10.7 Sanctions**

10.7.1 **Employee Sanctions:** Upon violation of the ethical standards by an employee,

the County Administrator, Purchasing Director, or other appropriate authority may:

- a. Impose one or more appropriate disciplinary actions as defined in the County Personnel Rules and Regulations, up to and including termination of employment; and,
- b. May request investigation and prosecution.

10.7.2 Nonemployee Sanctions: The Board may impose any one or more of the following sanctions on a nonemployee for violation of the ethical standards:

- a. Written warnings.
- b. Termination of contracts; or
- c. Debarment or suspension as provided for in the purchasing policy.

### **Section 10.8 Recovery of Value Transferred or Received in Breach of Ethical Standards**

10.8.1 General Provisions: The value of anything being transferred or received in breach of the ethical standards of this policy by a County employee or nonemployee may be recovered from both county employee and nonemployee.

10.8.2 Recovery of Kickbacks by the County: Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

## **SECTION 11 FEDERAL POLICY NOTICE**

**This section shall apply to all purchases and contract funded in part with federal and/or state funds.**

### **Section 11.1 Patents**

11.11.1 If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include the following provisions.

- a. Notice to Contractor – The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery of invention arising out of the contract.
- b. Notice by Contractor – The contract shall require the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

### **Section 11.2 Notice of Federal Public Policy Requirements**

11.2.1 Applicability: If the contract is being funded in whole or in part by assistance from any federal agency, the contract is subject to one or more federal public policy requirements such as:

- a. Equal employment opportunity;
- b. Affirmative action;
- c. Fair labor standards;
- d. Energy conservation;
- e. Environmental protection; or,
- f. Other similar socio-economic programs.

11.2.2 Notice of Federal Policy Requirements: The Purchasing Director shall include in the contract all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Purchasing Director shall include in the contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

### **Section 11.3 Community Development Block Grant (CDBG) Awards, and other federal funds:**

11.3.1 All procurements using CDBG grant funds (or other federal funds, e.g., FEMA) shall be in accordance with this Procurement Policy and those CDBG or other federal fund specific policy requirements in Appendix A: Procurements and Contracts with Federal Funds, of this Purchasing Policy, herein incorporated by reference. The specific grant award shall also be reviewed and any and all procurement and contract requirements not addressed herein shall be followed. Should a conflict arise between this Purchasing Policy and the CDBG or other federal program laws (i.e., FEMA), regulations, or award agreement, then the federal laws will take precedence.



## **SECTION 12 INSURANCE REQUIREMENTS**

- 12.1 **Minimum Requirements:** Contractor shall purchase and maintain such insurance as will protect it from claims under Workers' Compensation laws, disability benefit laws or other similar employee benefits plans; from claims or damages because of bodily injury, occupational sickness or disease or death of its employees and claims insured by usual personal injury liability coverage in amounts determined and set annually by a committee composed of the Management Service director, County Administrator, and the Director of the Office of Management and Budget.
- 12.2 **Certificates of Insurance:** Certificates of Insurance acceptable to the County shall be filed with the Purchasing Division prior to the commencement of the work.
- 12.3 **Cancellation Clause:** These Certificates of Insurance shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the County. The cancellation clause should read as follows: "Should any of the above-described policies be canceled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the certificate holder named herein".
- 12.4 **Change of Insurance Requirements:** The Board of County Commissioners reserves the right to change the insurance requirements based on the project scope, or when determined in the best interest of the County.

## **SECTION 13 BONDS AND DEPOSITS**

When any of the following bonds is (are) required, the bond(s) will be requested in the bid document. No work in connections with the fulfillment of a contract shall commence until the appropriate bonds(s) is (are) accepted by the County.

### **Section 13.1 Types of Bonds and Deposits**

- 13.1.1 **Combination Payment and Performance Bond:** This type of bond is required for repairs, renovations, new construction, and other public works costing in excess of \$50,000. For projects less than the amount, it may be required at the discretion of the Purchasing director with the approval of the County Administrator. When a payment and performance bond is required, the bond will be requested in the bid document. No work in connection with the fulfillment of a contract shall commenced until the payment and performance

bond is accepted by the County.

- 13.1.2 Performance Bond: For a project of an estimated value less than \$50,000, requirement of a performance bond will be at the discretion of the Purchasing Director with the approval of the County Administrator. For projects estimated to be \$50,000 or more, such bond will be required to ensure that a contract is carried out in accordance with the applicable specifications and at the agreed contract price.
- 13.1.3 Payment and Material Bond: For a project of an estimated value less than \$50,000, requirement of a payment and material bond will be at the discretion of the Purchasing Director with the approval of the County Administrator. For projects estimated to be \$50,000 or more, such bond will be required to protect the County from suites for non-payment of debts which might be incurred by a contractor's performance for the County.
- 13.1.4 Warranty Bond: At the discretion of the Purchasing Director, after consultation with user departments, a Warranty Bond may be required from a successful bidder to ensure warranty provisions are fulfilled.
- 13.1.5 Guaranty of Good Faith Deposit (Bid Deposit) – For purchases of an estimated value less than \$100,000, and projects estimated to be less than \$40,000, requirement of a bid bond will be at the discretion of the Purchasing Director with the approval of the County Administrator. For purchases estimated to be \$100,000 or more, and projects estimated to be \$40,000 or more, bidders will be required to submit with their bid or proposal a guaranty of good faith deposit. When in the best interest of the County, it is recommended by the Purchasing Director and approved by the County Administrator, these requirements may be waived.
- a. Return of Bond. Such deposit may not be withdrawn until a specified time after the proposals are opened and awards made. The deposit of the bond shall be retained by the Finance Officer of the Board until the Purchasing Director is satisfied that the contractor's obligations have been satisfactorily completed.
  - b. Substitutes. In lieu of a surety bid bond, contractor may submit a certified check, cashier's check, or treasurer's check, on any national or state bank. Such deposits shall be in the same percentage amounts as the bond. Such deposits shall be retained by the Finance Officer of the Board until all provisions of the contract have been complied with.

- 13.1.6 Irrevocable Letter of Credit: Upon approval of the Purchasing Director, a contactor may present an irrevocable Letter of Credit from a national or state-chartered bank in lieu of any of the foregoing bonds for the same face value as required for the bond. The letter of credit shall be for a period of time not less than three months beyond the scheduled completion date of the purchase of the contracted services or materials.
- 13.1.7 Retention of Payments: The County may require the payment for a project, or a portion thereof, be withheld until the project has been completed as a method of protecting the County's interest. Retention may also be used in lieu of the above listed bonds. The solicitation document shall specifically state if retention of any portion or all of the payment for the project is to be done.

### **Section 13.2 Amount of Bond or Deposit**

- 13.2.1 Amount of Bond: Bonds or deposits which may be required shall normally be in the following amounts, except as provided for in Section 13, of this purchasing policy.
- a. Performance Bond: 100% of contract price.
  - b. Payment Bond: 100 % of contract price.
  - c. Payment and Performance Bond: 100% of contract price.
  - d. Guaranty of Good Faith Deposit (Bid Deposit or Bond): The bid deposit will be 5% of the price bid by the vendor.
- 13.2.2 Exceptions to Amount of Bond: Any of the above listed bonds may be required at another amount recommended by the Purchasing director and approved by the county Administrator when in the best interest of the County.

### **Section 13.3 Processing of Bonds and Deposits**

- 13.3.1 Responsibility for Securing Bonds: The contractor shall be responsible for securing the bond. Any costs may be included in the contract price.
- 13.3.2 Licensure of Bonding Company: The company acting as surety for any bond issued shall be licensed to do business in the State of Florida.
- 13.3.3 Review of Bonds by County Attorney: Surety bonds furnished will be reviewed by the County Attorney, who shall either accept or reject it for the Board. All surety bonds accepted shall be forwarded to the Finance Officer of the Board by the Purchasing Director to be filed in the official records of the Board.
- 13.3.4 Failure to Provide Required Bond: In the event a contractor fails to provide an

acceptable bond when required, within ten (10) days after notification, the County Attorney will be notified. Upon the recommendations of the County Attorney, the Board may declare the contract null and void, and retain in the account of Gadsden County any good faith deposits or guaranty which may be submitted as liquidated damages under the terms of the solicitation.

13.3.5 Filing of Bonds: Bonds, when accepted, shall be forwarded to the Finance Officer of the Board, and shall be filed with the applicable contract documents.

13.3.6 Deposits: Cash deposits (cashier's check, money orders, bank drafts, etc.) of all bidders shall be forwarded to the Finance Officer of the Board for deposit to the account of the Board of County Commissioners. Upon award of Contract, the Purchasing Director or designee shall be responsible for approving the return of deposits to unsuccessful bidders.

13.3.7 Plans and Specification Deposit: Deposits of all bidders for plans and specifications shall be forwarded to the Finance Officer of the Board for deposit to the account of the Board of County Commissioners. Upon award of contract, the Purchasing Director or designee shall be responsible for approving the return of refundable deposits to unsuccessful bidders.

## **SECTION 14 PAYMENT TO VENDORS**

14.1 Outright Purchases: Payment of invoices shall be made within thirty (30) days of receipt of invoice. All invoices shall be approved by the department or division head, or authorized designee and submitted to the Finance Officer of the Board for payment.

14.2 Contractual Purchases: Payment of invoices shall be made in accordance with the contract terms, conditions, and scopes of service being provided.

14.3 Prompt Payment Act: All payment to vendors shall also be in accordance with the amended "Prompt Payment Act", Florida Statutes.

## SECTION 15 AUTHORIZATION TO DEBAR OR SUSPEND VENDOR(S)

- 15.1 Suspension: After consultation with the County Attorney, the Purchasing Director is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three (3) months, and the Purchasing Director shall immediately inform the Board and provide notice to the affected person.
- 15.2 Debarment: After reasonable notice and a reasonable opportunity for the suspended person to be heard, the board shall either disbar such person or terminate the suspension. The debarment should be for a period of not more than three (3) years.
- 15.3 Causes for Debarment: The causes for debarment include:
- a. Entry of a plea of guilty, no contest, or nolo contendere to or conviction of a criminal offense as incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  - b. Entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;
  - c. Entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
  - d. Violation of contract provisions, as set forth below, of a character which is regarded by the Board to be so serious as to justify debarment action;
  - e. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - f. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
  - g. Having been adjudicated guilty of any violation by the Gadsden County Contractor's Licensing Board, or the State of Florida Construction Industry Licensing Board within the past twelve (12) month period at the time of bid submittal;

- h. Having been adjudicated guilty by the Gadsden County Code Enforcement Board of any violation of an environmental ordinance within the past six (6) month period at the time of bid submittal; and
  - i. Any other cause the Purchasing Director or Board determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity.
- 15.4 Notice of Decision: The Purchasing Director shall issue a written notice to the person of the decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review. The written decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.
- 15.5 Appeal of Decision to Debar Or Suspend: The Board's decision to debar or suspend a person or business shall be final and conclusive unless the debarred person commences a timely action in court in accordance with applicable law.

**AMENDMENT HISTORY**  
**By Date**

5.3.94 – Adopted

Section 2.3.3 amended by Board on 5-21-96

Section 2.3.7 and 2.3.8 amended by Board 1-20-98

Section 5.7.3 amended by Board 4-4-00

Section 2.3.1, 2.3.8, 5.0, 5.3.2, 6.3.1 amended by Board on 4-4-06

Section 5.0 amended by Board on 3-3-15

Section 2.3.13 added by Board 12-1-2015

Section 2.3.1 amended by Board on 3-1-2016

2022 Purchasing Policy Revisions included revisions and updates to all sections to reflect current laws and purchasing methods; delete obsolete language; clarify purchasing and contract authority and thresholds (categories); and compliance requirements for the acceptance and expenditures of federal and state funds.

**Procurement Policy**  
**Attachment A: Procurements and Contracts with Federal Funding**

**PURPOSE**

This Appendix A, Procurements and Contracts with Federal Funding to the County's Purchasing Policy policy is adopted to assure that commodities, equipment, real property, and services purchased in part or in whole with federal funds, specifically the **Community Development Block Grant Programs and FEMA**, are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices compliant with federal administrative and programmatic laws.

All County staff and other persons (subgrantees or contractors) with designated responsibility for the administration of CDBG, FEMA or other federal/state funded contracts, in part or in full, are responsible for ensuring compliance with all applicable federal and state laws and regulations, which includes but are not limited to:

1. OMB Circular A - 102, Attachment O,
2. 2 CFR 200-.317-.326,
3. s. 255.0525 and 287.055 Florida Statutes,
4. Chapters 215 and 216, Florida Statutes,
5. Rule 73C-23 Florida Administrative Code,
6. The County's Grant Handbook, and
7. The County Purchasing Policy as approved by Board.

**APPLICATION OF ATTACHMENT A: PROCURMENT AND CONTRACTS WITH FEDERAL (AND STATE WHEN APPLICABLE) FUNDS**

- A. This Attachment A, to the County Purchasing Policy shall apply to purchases and contracts for all materials, supplies, services, construction, land acquisition and equipment funded in part or in whole with federal funds (i.e., CDBG or FEMA), solicited or entered into after the effective date which the Board adopted this Purchasing Policy.
- B. In the event there is a conflict between this Attachment A and the County Procurement Policy, the following hierarchy of law shall be followed, unless otherwise allowed by law:
  1. Federal Law
  2. The executed Agreement
  3. State Law
  4. County Purchasing Policy, with the exception of the bid protest procedures.



5. Appendix A: Procurements and Contracts with Federal Funding
- B. Vendors who assist with or are involved with the development of draft specifications, requirements, statements of work or development of competitive procurement solicitations may not compete for such procurements.
  - C. Procurement documents (paper and electronic form) shall be ADA accessible in accordance with section 508, of the Rehabilitation Act of 1973, as amended.
  - D. The County will ensure that personally identifiable information, bids/proposals that include proprietary or copyrighted information, and any financial statements are kept secure and private. Should any public record be made for procurement or contract documents such information shall redacted and protected in accordance with federal and state laws concerning such matters.
  - E. All competitive procurements shall include a “Cone of Silence” as set forth in the County’s Purchasing Policy, Section 5.
  - F. Time and material contracts are not encouraged and in the event a time and materials contract are awarded it shall have a “not-to-exceed” clause and dollar amount cap. Each invoice will be reviewed closely to ensure that the cap will not be exceeded prior to completion of the contract work.
  - G. Competitive procurements shall not be written as to restrict competition. However, examples or information about the geography or area can be used to ensure that interested firms are aware of physical conditions such as wetlands, areas of historical significance, flooding, distance of project from major cities, roads, or airports.
  - H. Labor Standards/Davis-Bacon Act requirements when applicable shall be addressed in the competitive procurement document and included as contract requirements pursuant to labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141, *et seq.*) and 29 CFR part 1, 3, 5, 6 and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

## **PURCHASING OFFICER**

The County employee designated pursuant to section 4 of this Purchasing Policy, shall serve as the central purchasing officer (the “Purchasing Officer”) of Gadsden

County for all contracts or agreements described herein.

## **PURCHASING AUTHORITY, THRESHOLDS AND CATEGORIES, AND CONTRACT AWARD PROCEDURES**

The County Purchasing Policy, Section 5, provides the purchasing authority, thresholds, and categories for all County purchases, and shall be followed for purchasing and contracting activities funded in part or whole with federal or state funds. However, the purchasing methods and procedures as set form below shall be followed when using federal and or state funds in whole or part.

All competitive, single source and sole source procurements, awards and contracts herein are subject to the awarding agency's approval and the executed grant agreement for each project, which should be reviewed for compliance with the grant agreement requirements and any special terms and conditions not included herein.

### A. Small Purchases

The purchase of commodities, equipment and services which cost less than the threshold authorized for "Small Purchases" is set forth in the Purchasing Policy, Section 5, and does not require solicitation of quotes or bids. Small purchases shall be authorized by the Purchasing Officer or his/her designees.

### B. Purchasing Quotes, Verbal and Written

The purchase of goods and services which cost within the range authorized for verbal and written purchasing quotes is set forth in the Purchasing Policy, Section 5. shall require competitive quotations from three (3) or more vendors. The quotations shall be obtained by and shall be reviewed and awarded by the Purchasing Officer or his/her designee.

### C. Competitive Sealed Bidding

All contracts for purchases of a single item, services, or aggregate in excess of the established base amount for Competitive Sealed Bids/Proposals in this Purchasing Policy, Section 5, shall be awarded by competitive sealed bidding, with the exception of Single Source or Sole Source procurement.

### D. Invitation to Bid.

1. Under Section 255.0525(2), F.S. and Rule 73C-23.00521 (2) (a), F.A.C., an invitation to bid for construction projects that are projected to cost more than \$200,000 meeting the threshold category for competitive bids shall be published (i.e., publicly noticed) as follows:

- a. Project Cost is Greater than \$200,000.00 shall be publicly advertised in at least one daily newspaper of general circulation in Gadsden County as well as a nearby federal Office of Management and Budget (OMB) designated metropolitan statistical area (MSA) newspaper (i.e., Tallahassee) at least **21 days** prior to the established bid opening and at **least 5 days prior** to any scheduled pre-bid conference.
  - b. Project Cost is Greater than \$500,000.00. An invitation to bid for construction projects that are projected to cost more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in Gadsden County at least 30 days prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference.
  - c. Furthermore, notice shall be sent to those vendors and contractors on the County's and/or the State of Florida, the Florida Department of Transportation, and/or other local MBE offices MBE/WBE solicitation list to notify and encourage MBE/WBE participation in accordance with the Purchasing Policy and this Attachment A.
  - d. Alternatively, the County may substitute the above notice with any solicitation procedure which generates at least three responsible and responsive bids or proposals which can be considered.
2. If three (3) responsible and responsive bids or proposals are not received, the procurement may be invalid, unless the awarding grant agency approves the award.
  3. An invitation to bid (ITD) shall be issued and shall include specifications, all contractual terms and conditions, and the place, date, and time for opening or submittal.
  4. No later than five (5) working days prior to the date for receipt of bids, a vendor shall make a written request to the County for interpretations or corrections of any ambiguity, inconsistency, or error, which the vendor may discover.
  5. All interpretations or corrections to the ITB will be issued as addenda. The County will not be responsible for oral clarifications.

6. No negotiations, decisions or actions shall be initiated or executed by the proposer as a result of any discussions with any County employee prior to the opening of proposals.
7. Only those communications which are in writing from the County may be considered as a duly authorized expression on the behalf of the Commission.
8. Only communications from firms or individuals which are in writing and signed will be recognized by the Commission as duly authorized expressions on behalf of proposers.
9. Alternate(s). Alternate bids will not be considered unless authorized by and defined in the Special Conditions of the bid specifications.
10. Approved Equivalents. The County reserves the right to determine acceptance of item(s) as an approved equivalent. Bids which do not comply with stated requirements for equivalents in the bid conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the general conditions of the bid.
11. Public Notice. For projects not covered above, a public notice shall be by publication in a newspaper of general circulation at least twelve (12) working days prior to bid opening for all solicitations, or to the extent required by law.
  - a) This requirement does not apply to bidding on behalf of a client for Housing Rehabilitation/Replacement, which shall be in accordance with the Gadsden County Housing Assistance Plan.
  - b) Notice of the invitation to Bid shall give the date, time, and place set forth for the submittal of proposals and opening of bids.
12. Bid Opening. Bids shall be opened publicly on the date and time specified in the ITB. The Purchasing Officer or his designee shall open the bids in the presence of one or more witnesses at the time and place designated in the Invitation to Bid.
  - a. The amount of each bid, and other such relevant information as may be deemed appropriate by the Purchasing Officer together with the name of each bidder, and all witnesses shall be recorded.

- b. The record (Bid Report) and each bid shall be open to public inspection.
13. Bid Acceptance and Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy.
14. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include, but not be limited to criteria to determine acceptability such as inspection, testing, quality, recycled or degradable materials content, workmanship, delivery, and suitability for a particular purpose.
15. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measured, such as discounts, transportation costs, and total or life cycle costs.
16. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid, in regulations, or in this policy.
17. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in the bid price or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw his bid if:
  - a. The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or  
The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the Purchasing Officer.

18. Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation of bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
19. Award. The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The County reserves the right to waive any informality in bids and to make an award in whole or in part when one or both conditions are in the best interest of Gadsden County.
20. Notice of Intended Award. The contract shall be awarded by written notice to the successful bidder/proposer and posted on the County's website. Every procurement of contractual services shall be evidenced by a written agreement. Notice of the intended award, including rejection of some or all of bids received, may be given by posting the bid tabulations where the bids were opened, by telephone, by first class mail, or by certified United States mail, return receipt requested.
21. Cancellation of Invitations for Bids. An invitation for bids or other solicitation may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interests of the County, as determined by the Commission as long as such action does not violate federal code, state statutes, Rule 73C-23 Florida Administrative Code, and program requirements. Notice of cancellation shall be sent to all businesses solicited.
22. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Purchasing Officer, for the following reasons:
  - a. Failure to respond to bid invitation three consecutive times within the last eighteen (18) months period.
  - b. Failure to update the information on file including address, project or service, or business description.
  - c. Failure to perform according to contract provisions.
  - d. Conviction in a court of law of any criminal offense in connection with the conduct of business.
  - e. Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.

- f. Clear and convincing evidence that the vendor has attempted to give a Countycounty employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the County's purchasing activity.
- g. Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133(3)(a).
- h. Other reasons deemed appropriate by the County.

E. Request for Qualifications (RFQ)

The Consultant's Competitive Negotiation Act (CCNA) provides the statutory requirements for the procurement and contracting of professional architectural, engineering, landscape architectural, and land surveying services, which shall be in accordance with, section 287.055, FS, **this Attachment A, and this Purchasing Policy, Section 5.**

1. Public Announcement. It is the policy of the County to publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the County may require firms to submit a statement of qualifications, performance data and other related information for the performance of professional services.
2. Distribution of Project Requirements. The Purchasing Officer shall distribute the written Request for Proposals, which shall include the project requirements. The RFQ shall be publicly noticed (via legal advertisement) and proposals solicited in accordance with this Attachment A, and the Purchasing Policy. The RFQ shall include notification of the date, time, and address of when such indications of interest are due. This date shall not be less than 12 calendar days from the date of public notice which the Purchasing Officer shall publish in at least one newspaper of wide general circulation in the region, unless otherwise required by law.
3. Modification Prohibition. After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may allowed by the Selection Committee prior to making its selection of those best qualified to be formally interviewed.

4. Reuse of Existing Plans. There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the County is able to reuse existing plans from a prior project. However, public notice of any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to use.
5. Selection Committee Membership and Evaluation. The County has the option of using a selection committee or designate the Commission as the committee that reviews the proposals.
7. Selection Committee Evaluation. Only written responses of statements of qualifications, performance data, and other data received in the purchasing officer by the publicized submission time and date shall be evaluated. The selection committee may interview the offerors prior to evaluation or evaluate the offers based on their written response to the Request for Proposals. The selection committee may “shortlist” proposals received, or received or appoint a subcommittee to “shortlist” by evaluating those proposals received and selecting those proposals deemed most responsive to the RFQ. The proposals selected by the “shortlisting” process shall then be presented to the Evaluation Committee for an evaluation utilizing the evaluation criteria utilized in the public announcement and RFQ. The Selection Committee may interview shortlisted respondents.
8. Board Approval. Evaluation results shall be presented to the Board as an agenda item by the Purchasing Director for approval to begin Contract negotiations as set forth below and this **Purchasing Policy, Section 5**.
9. Negotiation.
  - a. Negotiation Team: Contract negotiations shall be conducted by the Purchasing Officer, County staff as appropriate for the project appointed by the County Administrator, and the County Attorney.
  - b. The Negotiation Team shall negotiate a contract with the firm considered to be the most qualified to provide the services at composition and upon terms which the Negotiation Team determines to be fair and reasonable to the County. In making this decision, Negotiation Team shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered.



- c. As part of the negotiation, but prior to requesting cost proposals, the Negotiation Team shall conduct a cost analysis, including evaluation of profit if applicable, based on a cost breakout by the firm of its proposed price. Should the Negotiation Team be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be formally terminated. The Negotiation Team shall then undertake negotiations with the second most qualified firm. Failing accord with the second most-qualified firm, the Negotiation Team may negotiate with the third most qualified firm or may reach a determination not to contract for services.

F. REQUEST FOR PROPOSALS (RFP) (non-287.055 services)

1. Commission Approval. Proposals anticipated to exceed the threshold established this Procurement Policy, Section 5 for Competitive Sealed Proposals shall be approved by Gadsden County prior to solicitation and award.
2. Public Notice. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in this purchasing policy for competitive sealed bidding, and to the extent required by law.
3. Evaluation Factors. The Public Notice and Request for Proposals shall identify evaluation factors and their relative importance. When services are not covered by CCNA, cost will be an evaluating factor. Ranking forms, reflecting evaluation factors and importance will be developed prior to evaluation.
4. Proposal Cancellation or Postponement. The Purchasing Officer may, prior to a proposal opening, elect to cancel or postpone that date and/or time for proposal opening or submission.
5. Award. An Award shall be made by the County Commission to the highest-ranking responsible offeror whose proposal is determined to be the most advantageous to Gadsden County, taking into consideration the evaluation factors set forth in the evaluation criteria, and cost that are included in the Request for Proposals.

G. Single Source and Sole Source Purchase

1. Refer to the **Purchasing Policy, Section 5** for single source and sole source purchases.

2. When a purchase exceeds (\$25,000) it will require prior approval by grant awarding agency.

#### H. Cooperative Purchasing

1. Use of cooperative purchasing, while allowed, is not encouraged for procurements and contracts using federal grant funds. In the event the use of a state contract or other governmental unit is more efficient and time consideration is a factor, the County shall seek the written approval of the granting agency prior to exercising **Cooperative Procurement as set forth in the Purchasing Policy, Section 5.**

#### I. BID PROTEST

1. Right to Protest. Any actual prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of contract may protest to the County Commission. Protestors shall seek resolution of their complaints initially with the Purchasing Officer prior to protesting to the County Commission.
2. Filing a Protest. Any person who is effectedaffected adversely by the decision or intended decision of the County shall file with the Purchasing Officer a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of intended decision and file a formal written protest shall constitute a waiver of proceedings under this Section. A written protest is filed with the County when it is delivered to and received in the office of the Purchasing Officer.
  - a. The notice of protest shall contain at a minimum; the name of the bidder; the bidder's address and phone number; the name and bid number of the solicitation; and a brief factual summary of the basis of the protest.
  - b. The formal written protest shall identify the protestant and the solicitation involved; include a plain, clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and specifically request the relief to which the Protestant deems himself entitled by application of such authorities to such grounds.
  - c. The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom he/she is in dispute.

3. Settlement and Resolution. The Purchasing Officer shall within 14 days of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position. Provided, however, if such settlement will have the effect of determining a substantial interest of another party or business, such settlement must be reached in the course of the proceedings provided herein.
4. Protest Proceedings If the protest cannot be resolved by mutual agreement, the Purchasing Officer shall conduct or designate another to conduct a protest proceeding pursuant to the following procedures.
5. Protest Proceeding Procedures
  - a. The presiding officer shall give reasonable notice to all substantially affected persons or businesses. Otherwise petitions to intervene will be considered on their merits as received.
  - b. At or prior to the protest proceeding, the Protester may submit any written or physical material, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.
  - c. In the proceeding, the Protester, or his representative or counsel, may also make an oral presentation of his evidence and arguments. However, neither direct nor cross examination of witness shall be permitted, although the presiding officer may make whatever inquiries he/she deems pertinent to a determination of the protest.
  - d. The judicial rules of evidence shall not apply, and the presiding officer shall be his/her decision on such information given in the course of the proceeding upon which resale prudent persons rely in the conduct of their affairs.
  - e. Within seven (7) working days in the conclusion of the proceeding, the presiding officer shall render a decision which sets forth the terms and conditions of any settlement reached. Such decision of the presiding officer shall be conclusive as to the recommendation the County Commission.
  - f. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.
6. Intervenor. The participation of intervenors shall be governed by the terms of the offer issued in response to petition to intervene.
7. Time Limits. The time limits in which protests must be filed as provided herein may be altered by specific provisions in the invitation for bids or request for proposals documents.

8. Entitlement to Cost. In no case will this protesting bidder or offeror be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney's fees.
9. Stay of Procurement during Protests. In the event of a timely protest under Subsection A of this Section, the Purchasing Officer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or unless the County Commission makes a determination that the award of a contract without delay is necessary to protect the substantial interest of the County.

## J. CONTRACT CLAIMS

1. Authority of the Purchasing Officer to Settle Bid Protest and Contract Claims. The Purchasing Officer is authorized to settle any protest regarding the solicitation or award of a County contract, or any claim arising out of the performance of a County contract, prior to an appeal to the County Commission or the commencement of an action in court of competent jurisdiction but may not settle any such protest or claim for consideration of \$1,000.00 or greater in value without the prior approval the County Commission.
2. Decision of the Purchasing Officer. All claims made by a contractor against the County, relating to a contract, except bid protests, shall be submitted in writing to the Purchasing Officer for a decision. The contractor may request a conference with the Purchasing Officer on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract mistake, misrepresentation, or other cause for contract modification or rescission.
3. Notice to the Contractor of the Purchasing Officer's Decision. The decision of the purchasing officer shall be promptly issued in writing, and writing and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached and shall inform the contractor of his appeal rights under Paragraph I, Attachment A to this Purchasing Policy.
4. Finality of the Purchasing Officer Decision; Contractor's Right to Appeal. The purchasing Officer's decision shall be final and conclusive unless within ten calendar days from the date or receipt of the decision, the contractor files a notice of appeal with the County Commission.

5. Failure to Render Timely Decision. If the Purchasing Officer does not issue a written decision regarding any contract controversy within fourteen calendar days after receipt of a written request for a final decision, or within such longer period may be agreed upon between the parties, then the approved party may proceed as if an adverse decision had been issued.
  
6. Remedies for Solicitations or Awards in Violation of Law
  - a. Prior to Bid Opening or Closing Date for receipt of Proposals. If prior to the bid opening or the closing date for receipt or proposals, the Purchasing Officer after consultation with County Attorney, determines that a solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.
  
  - b. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award contract, the Purchasing Officer after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.
  
  - c. After Award If, after award, the Purchasing Officer after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law or ordinance then,
    - (1) If the person awarded the contract has not acted fraudulently or in bad faith:
      - (a) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County and such action does not violate federal code, state statutes, Rule 73C-23 Florida Administrative Code and program requirements; or
      - (b) the contract may be terminated, and the person awarded the contract shall be compensated for the actual cost reasonably incurred under the contract plus a reasonable profit, but excluding attorney's fees, prior to termination; or,
    - (2) If the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or violable, if such action is in the best interest of the County.

## K. Contract Administration

### a. Standard Contract Clauses and Modifications.

All County contracts for supplies, services, and construction shall include standard contract clauses necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Officer after consultation with the County Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects, and other for compliance with federal and state programmatic and administrative laws:

- a. The unilateral right of the County to order, in writing changes in the work within the scope of the contract;
- b. The unilateral right of the County or offer in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- c. Variations occurring between estimated quantities or work in contract and actual quantities;
- d. Defective pricing;
- e. Time of performance and liquidated damages;
- f. Specified excuses for delay or nonperformance;
- g. Termination of the contract for default;
- h. Termination of the contract in whole or in part for the convenience of the County;
- i. Suspension of work on a construction project ordered by the County;
- j. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
  - (1) when the contract is negotiated;
  - (2) when the contractor provides the site or design; or
  - (3) when the parties have otherwise agreed with respect to the risk of differing site conditions.
- k. Value engineering proposals;
- l. Remedies;
- m. Access to records/retention records;
- n. Environmental compliance; and
- o. Prohibition against contingent fees.
- p. Insurance to be provided by contractor covering employee, property damage liability and other claims, with requirements of certificates of insurance cancellation clauses.
- q. Bonding requirements as set by the County Commission.

- r. Causes of and authorization for suspension of contract for improper contractor activity.

2. Price Adjustments

- a. Methods of Price Adjustment Adjustments in price during the term of a contract shall be computed in one or more of the following ways upon approval by the County:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the contract or subsequently agreed upon;
  - (3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the County;
  - (4) In such other manner as the contracting parties may mutually agree; or
  - (5) In the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County, subject to the provisions of this section.

3. Cost or Pricing Data Required. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

4. Change Orders/Contract Amendments

- a. Change orders and contract amendments, which provide for the alteration of the provisions of a contract may be approved by an appropriate person based upon the dollar cost of the change or amendment.
- b. The purchasing authority, thresholds and categories thresholds designated in this Purchasing Policy; Section 5 shall govern the appropriate level of approval.

5. Assignments of Contracts: No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the County nor shall the contractor assign any moneys due or to become due to the contractor hereunder without the previous written consent of the County.

6. Right to Inspect Plant: The County may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded, or to be awarded, by the County. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the County.

**L. Rights of County Commission**

Nothing in this policy shall be deemed to abrogate, annul, or limit the right of the Commission, in the best interests of the County, to reject all bids received in response to a request, to determine in its sole discretion the responsiveness and responsibility or of any bidder, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when desirable for the public good; and such action does not violate federal code, state law, Rule 73C-23 Florida Administrative Code, and program requirements.

**M. County Procurement Records**

See **Section 8, Procurement Records** of this Purchasing Policy.

**N. Specifications**

1. All specifications shall be drafted to promote overall economy and encourage competition in satisfying the County needs and shall not be unduly restrictive.
2. This policy applies to all specifications including, but not limited to, those prepared for the County by architect, engineers, designers, and draftsman.
3. Use of Brand Name or Equivalent Specifications (see Single Source/Sole Source Purchases). Brand name or equivalent specifications may be used when the County determines that:
  - a. No other designs, performance, or qualified product is applicable;
  - b. Time does not permit the preparation of another form of purchase description, not including a brand name specification;
  - c. The nature of the product or the nature of the County requirements makes use of a brand name or equivalent specification suitable for the procurement; or
  - d. Use of brand name or specification is in the County's best interest.
4. Designation of Several Brand Names. Brand name or equivalent specifications shall seek to designate three, or as many different brands



as are practicable, as products to those designated may be considered for award.

5. Required Characteristics. The brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristic required.
6. Nonrestrictive Use of Brand Name or Equivalent Specifications. Where a brand name or equivalent specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
7. Determination of Equivalents. Any prospective bidder may apply, in writing for a pre-bid determination of equivalence by the Purchasing Director. If sufficient information is provided by the prospective bidder, the Purchasing Director may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.
8. Specifications of Equivalents Required for Bid Submittal. Vendors proposing equivalent products must include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.
9. Use of Brand Name Specifications. Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Director makes a determination that only the identified brand name item or items will satisfy the County needs.
10. Competition. The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such one source that can supply the requirement, the procurement shall be made pursuant to this Purchasing Policy, Section 5, Single Source and Sole Source Purchases, and this Attachment A.

**O. Ethics in Public Contracting**

See Section 10, Ethics in Public Contracting of this Purchasing Policy.

**P. Federal Policy Notice**

See Section 11, Federal Policy Notice of this Purchasing Policy.

**P. Payment to Vendors**

1. The County employee preparing the purchase order for goods or services under the programs covered by this policy shall not be the same employee that prepares the voucher for the payment for the goods or services covered by the purchase order. The employee preparing the payment voucher shall insure that there is a properly prepared purchase order or contract in place and invoices are properly prepared prior to preparing payment vouchers. The County Commission shall approve all payment vouchers.
2. See Section 14, Payment to Vendors of this Purchasing Policy.

**Q. Minority Business Enterprise Participation Program**

1. It shall be the policy of the County to encourage minority and women's business enterprises to submit proposals, bids, or quotes.
2. The Purchasing Officer is responsible for the coordination of the Minority Business Enterprise Program and shall ensure that all MBE/WMB efforts are undertaken and documented in the procurement file to include at a minimum the company names and addresses of those MBE/WMB's that received notice of the competitive solicitation.
3. Furthermore, notice shall be sent to those vendors and contractors on the County's and/or the State of Florida, the Florida Department of Transportation, and/or other local MBE offices MBE/WBE solicitation list to notify and encourage MBE/WBE participation in accordance with this Purchasing Policy and this Attachment A.
4. Capital Improvement Projects
  - a. Review: The Purchasing Officer and an appropriate department representative shall review each proposed project or bid to determine potential for utilization of MBE/WBEs. This review is based on known availability of capable MBE/WBEs in the area in relation to the scope of the bid package and considers how a project might be broken down into sub-bids.
  - b. Contractor Responsibilities
    - (1) Contractors are required to make good faith efforts to obtain MBE/WBE participation when so stipulated by bid specifications and/or contracts. If these efforts are unsuccessful, the contractor will submit a non-availability

or refusal to participate and will request waiver of MBE/WBE participation.

- (2) The contractor who is the successful bidder will attend pre-construction conferences with appropriate County representatives to review the project scope and the MBE/WBE utilization plan.
- (3) The contractor who is the successful bidder must request a change order for any modification to the MBE/WBE plan. Change orders require Commission approval and are contingent on contractor documentation or MBE/WBE involvement in the change requested and documentation of cause for the change.
- (4) Fulfilling MBE/WBE Participation Requirements: For the purpose of this policy, a general contractor may utilize the services of an MBE/WBE subcontractor, manufacturer and/or supplier in estimating and satisfying the scope of work, provided that written contact/agreement is executed between the general contractor and the subcontractor, manufacturer, and/or the supplier.

#### **S. Waiver of Bid Bond and Insurance Requirements**

See **Section 12, Insurance Requirements and Section 13, Bonds** and Deposits of this Purchasing Policy for all procurements and contracts. The Commission may at its discretion, waive any of the requirements when it is determined to be in the best interest of the County provided such action does not violate federal code, state statutes, Rule 73C-23 Florida Administrative Code, or program requirements.

#### **T. Bid List**

1. A bid list for the purpose of bid solicitations shall be maintained by the County. The list shall consist of firms that apply.
3. The County staff may remove firms from the bid list for any of the following reasons:
  - a. Consistent failure to respond to bid invitations three (3) consecutive instances within the last eighteen months.; or
  - b. Failure to update the information on file including address, product or service description or business description.

4. The Commission may remove firms from the bid list for the following reasons:
  - a. Failure to perform according to contract provisions.
  - b. Conviction in a court of law of any criminal offense in connection with the conduct of business.
  - c. Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals or the awarding of contracts.
  - d. Clear and convincing evidence that the vendor has attempted to give a Commission employee, officer, or agent a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Commission's purchasing activity.
  - e. Violation or circumvention of the Minority Business Enterprise Program; or
  - f. Other reason deemed appropriate by the County Commission.

#### **U. Reporting**

1. The Purchasing Officer or appropriate person will report, at least annually, to the Commission on the status of the Minority Business Enterprise Program.
2. Records will be maintained reflecting participation of local minority and women owned businesses and shall be reported.
3. See Section 5.1.2 of this Purchasing Policy for additional reporting requirements.

#### **V. Severability Clause**

Each separate provision of this program is deemed independent of all other provisions herein so that if any provision or provisions be declared invalid, all other provisions hereof shall remain valid and full force and effect.