

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>- 0 -</u>	_____	_____	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes ___ No ___
 Budget Account No.: Fund ___ Dept ___ Unit ___ Object ___

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Budget and/or Contract Dev. and Control Comments:
There is no fiscal impact associated with this agenda item.
Jim DeL... 3-25-08 Jim J. Jacoby 3/26/08
 OFMB/Budget Contract Development and Control
 (NO) 3/25/08 7M 03/24 10 03/14 6 Jones 3/25/08

B. Legal Sufficiency:
[Signature] 4/3/08
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

**SUMMARY OF RECOMMENDED CHANGES
TO THE PURCHASING CODE**

<u>Section</u>	<u>Page</u>	<u>Change and Rationale</u>
2-51(f)(1)j.	1	<p><i>"Goods or services purchased with donations, gifts, or bequests containing restrictions that would interfere with or prevent the application of the requirements of the Purchasing Code."</i></p> <p>This added exemption to the Purchasing Code enables the receiving user County department to procure goods or services with donations, gifts or bequests, when the requirements of the Purchasing Code would conflict with restrictions imposed on the donations, gifts or bequests.</p>
2-51(f)(1)l.	1	<p>This sentence is added at the request of the Clerk and Comptroller's Finance Department.</p>
2-51(f)(1)q.	2	<p><i>"Event specific stage production or programming including individuals or groups providing musical or theatrical performances or lectures."</i></p> <p>This is added as an exemption to the Purchasing Code to provide an efficient process for entertainment and recreational types of programs.</p>
2-51(f)(1)r.	2	<p><i>"Solicitation of sponsorships."</i></p> <p>The added exemption to the Purchasing Code enables user County departments to solicit sponsorships and to procure related goods or services.</p>
2-52	2	<p>The definition of <i>"best and final offer"</i> is being added to clarify an additional process that may be used in the evaluation of proposals.</p>
2-52	2	<p>The definition of <i>"debarment"</i> is being clarified to include "subcontractors". This was necessary in order to clarify the Director of Purchasing's authority to debar subcontractors.</p>
2-52	2	<p>The definition of <i>"suspension"</i> is being clarified to include "subcontractors". This was necessary in order to clarify the Director of Purchasing's authority to suspend subcontractors.</p>
2-54(d)(6)c.	2	<p>This sentence is added to the Purchasing Code for clarification purposes. The Purchasing Department utilizes the "Best and Final Offer" process.</p>
2-54(d)(7)	2	<p>This sentence is added to the Purchasing Code to facilitate the use of Special Masters for protest hearings and for the use of specialized prequalified consultants utilized by various county departments.</p>
2-55(a)	3	<p>The deletion of the word <i>"actual or prospective"</i> would prohibit bidders or proposers that have <u>not</u> submitted a bid or proposal from protesting the recommended award of a contract.</p>
2-56(a) – (d)	3 & 4	<p>The addition of the word <i>"subcontractors"</i> throughout this section clarifies the Director of Purchasing's authority to suspend or debar subcontractors with cause. This clarification was requested by the County's Office of Small Business Administration.</p>
2-56(a)	3	<p>The addition of the words <i>"the renewal of an existing contract"</i> clarifies the Director of Purchasing's authority to prohibit suspended vendors from profiting from new business with the County via the renewal of existing contracts.</p>

- | | | |
|------------|---|--|
| 2-56(b) | 3 | This sentence clarifies that a suspended or debarred contractor cannot bid or propose as a subcontractor on a County project; and, that a suspended or debarred subcontractor cannot bid or propose as a contractor on a County project. |
| 2-56(b)(1) | 4 | The word "fully" is deleted due to clarification questions raised by a Special Master regarding to the meaning of the word in relation to the suspension of a contractor. |
| 2-56(d)(4) | 5 | This sentence is added to clarify the process whereby the Board of County Commissioners may reject or accept the recommendation of suspension or debarment by the Special Master. A similar provision currently exists in the Purchasing Code for recommendations made by a Special Master resulting from a protest hearing. |

ORDINANCE NO. 2008 - _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE CHAPTER 2, ARTICLE III, DIVISION 2 PART A (THE PALM BEACH COUNTY PURCHASING CODE); AMENDING SECTION 2-51(f)(1) "APPLICATION / EXEMPTIONS"; AMENDING SECTION 2-52 "DEFINITIONS"; AMENDING SECTION 2-54(d)(6) "PROPOSAL EVALUATION"; AMENDING SECTION 2-54 (d)(7) "PROPOSAL AWARD"; AMENDING SECTION 2-55(a) "RIGHT TO PROTEST"; AMENDING SECTION 2-56 "SUSPENSION AND DEBARMENT; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida enacted Ordinance No. 2005-062, referred to as the "Palm Beach County Purchasing Code", which established a centralized purchasing system to govern the procurement of goods and services; and

WHEREAS, there is a recognized need to make minor revisions to the Purchasing Code in order to facilitate and enhance the efficiency of the County's procurement process; and

WHEREAS, the Board of County Commissioners desires to amend the Palm Beach County Purchasing Code as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:

SECTION 1. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-51(f)(1), "Application/exemptions", is amended as set forth below:

(f). *Application/Exemptions:* Except as otherwise specified herein or by law, the Purchasing Code shall apply to every purchase by the Board of County Commissioners to be paid from County funds, including those purchases made by the County with state and federal assistance moneys.

(1) The Purchasing Code shall not apply to:

j. Goods or services by purchased with donations, gifts, or bequests containing restrictions that would interfere with or prevent the application of the requirements of the Purchasing Code.

l. Any purchase of value less than One Thousand Dollars

(\$1,000.00); however, the total dollar amount of such purchases shall not be exempt from the County's Small Business Enterprise Ordinance or from Resource Manager approval. These goods or services are not exempt in and of themselves but for the dollar value being less than One Thousand Dollars (\$1,000.00).

g. Event specific stage production or programming including individuals or groups providing musical or theatrical performances or lectures.

r. Solicitation of sponsorships.

SECTION 2. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-52

"Definitions", is amended as set forth below:

Best and Final Offer means the process used in competitive proposal evaluation whereby final proposals containing the vendors' most favorable terms for price and services or goods to be delivered are requested and considered prior to proposal award.

Debarment means the exclusion for cause of a vendor, or contractor or subcontractor from responding to any county solicitation or from doing business with the county directly or indirectly.

Suspension means the suspending for cause of a vendor, or contractor or subcontractor from responding to any county solicitation, or from doing any new business with the county directly or indirectly, for up to a two year period.

SECTION 3. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-54

(d)(6), "Proposal evaluation", is amended as set forth below:

(6) *Proposal evaluation.* The county reserves the right to accept or reject any and all proposals. The county further reserves the right to award to the responsive, responsible proposer whose proposal conforms to the solicitation and is determined to be the most advantageous to the county taking into consideration the evaluation factors set forth in the request for proposal.

c. Upon concurrence by the Director of Purchasing, the Selection Committee may determine that it is not in the best interest of the County to award solely on the basis of initial proposals and may utilize a "Best and Final Offer" process to further evaluate the proposals.

SECTION 4. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-54

(d)(7), "Proposal award", is amended as set forth below:

- (7) *Proposal award.* Upon recommendation by the selection committee, award shall be made to one or more the responsive, responsible proposers whose proposals are is in the best interest of the County, and shall be effective upon issuance of a contract by the Director of Purchasing. However, all awards in which the County is contracting to expend, to reimburse, or to receive in revenue an amount of Two Hundred Thousand Dollars (\$200,000.00) or more per annum shall be effective upon Board approval. The Board may reject any proposal prior to the issuance of an award. Award recommendations equal to or greater than the mandatory bid or proposal amount shall be posted at a designated location(s) for a period of five (5) business days. In the event only one (1) responsive, responsible proposal is received, an award may be made that proposal may be awarded to the sole proposer or re-solicited or canceled as provided in the Purchasing Code. Where consultants or special masters are selected through a formal competitive proposal process and more than one (1) award and contract are issued, individual orders for projects may be assigned or awarded upon justification of availability, cost to perform the project, conflict of interest, and/or specific and necessary expertise of the required consultant or special master.

SECTION 5. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-55

(a), "Right to protest", is amended as set forth below:

- (a) *Right to protest.* After posting of the recommended awardee, any actual or prospective bidder or proposer who is aggrieved in connection with the recommended award may protest in writing to the Director of Purchasing. The right to protest is limited to those procurements of goods or services solicited through an Invitation For Bid or a Request For Proposal. Recommended awards less than the Mandatory Bid or Proposal Amount cannot be protested.

SECTION 6. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-56,

"Suspension and debarment", is amended as set forth below:

- (a) *Authority.* The Director of Purchasing may suspend or debar for cause the right of a vendor, or contractor or subcontractor to be included in the renewal of an existing contract or any solicitation process, and any bid, proposal, submittal,

or quote received from that vendor, ~~or contractor~~ or subcontractor shall be rejected; ~~however, the~~ The Board shall have the power to waive or lift such suspension or debarment.

(b) *Suspension and debarment.* A vendor, ~~or contractor~~ or subcontractor may be suspended for a period not to exceed two (2) years as determined by the Director of Purchasing, or may be permanently debarred. A suspended or debarred vendor or contractor shall not bid or propose as a subcontractor during their suspension or debarment; and, a suspended or debarred subcontractor shall not bid or propose as a vendor or contractor during their suspension or debarment. A suspension or debarment may be based upon the following:

- (1) Failure to fully comply with the conditions, specifications or terms of a contract with the County, including but not limited to the unilateral withdraw of a bid, quote, submittal, or proposal that has been received from the recommended awardee.
- (2) Any misrepresentation in connection with a solicitation or any misrepresentation of fact upon which the County has based a decision, including but not limited to a misrepresentation by a vendor, ~~or contractor~~ or subcontractor on a small business application, or a local preference affidavit.
- (3) Charged and convicted by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (4) Charged and convicted by a court of competent jurisdiction for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County government contractor. If charges are dismissed or the vendor, ~~or contractor~~ or subcontractor is found not guilty, the suspension or debarment shall be lifted automatically upon written notification and proof of final court disposition.
- (5) Any other cause the Director of Purchasing determines to be so serious and compelling as to materially and adversely affect the responsibility of a vendor, ~~or contractor~~ or subcontractor, including but not limited to suspension by another governmental entity for substantial cause.
- (6) Violation of the ethical standards set forth in local, state or federal

law.

- (c) *Decision.* Upon a determination to suspend or debar a vendor, or contractor or subcontractor, the Director of Purchasing shall notify the vendor, or contractor or subcontractor in writing of the suspension or debarment along with the reasons for the action taken.
- (d) *Finality of decision.* The suspension or debarment shall be final and conclusive unless the suspended or debarred vendor, or contractor or subcontractor initiates protest proceedings. Protests will be initiated under the procedures provided in Section 2-55 hereinabove except that:
 - (1) The preliminary review by the Director of Purchasing as set forth in Section 2-55 (c)(3) hereinabove will be waived.
 - (2) The suspension or debarment shall be in effect pending result of the protest.
 - (3) The allowable time for protesting the suspension or debarment shall be ten (10) calendar days after the date of notification of said suspension or debarment.
 - (4) The Board of County Commissioners, upon recommendation of the Director of Purchasing, may accept or reject the recommendation of the Special Master.

SECTION 7. Repeal of Laws In Conflict.

All local laws and ordinances in conflict with any provision of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 8. Severability.

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

SECTION 9. Savings Clause.

All provisions of Ordinance No. 2005-062, the Palm Beach County Purchasing Code, are specifically preserved and remain in full force and effect for the limited purpose of enforcing any violation of said Ordinance, which violations occurred prior to its appeal.

SECTION 10. Inclusion In The Code Of Laws And Ordinance.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 11. Effective Date.

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the _____ day of _____, 2008.

**SHARON R. BOCK,
CLERK & COMPTROLLER
PALM BEACH COUNTY**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Addie Greene, Chairperson

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the _____ day of _____, 2008.

ORDINANCE NO. 2008 - _____

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(1) The Purchasing Code shall not apply to:

* * * * *

j. Goods or services purchased with donations, gifts, or bequests containing restrictions that would interfere with or prevent the application of the requirements of the Purchasing Code.

l. Any purchase of value less than One Thousand Dollars

(\$1,000.00); however, the total dollar amount of such purchases shall not be exempt from the County's Small Business Enterprise Ordinance or from Resource Manager approval. These goods or services are not exempt in and of themselves but for the dollar value being less than One Thousand Dollars (\$1,000.00).

- q. Event specific stage production or programming including individuals or groups providing musical or theatrical performances or lectures.
- r. Solicitation of sponsorships.

SECTION 2. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-52 "Definitions", is amended as set forth below:

Best and Final Offer means the process used in competitive proposal evaluation whereby final proposals containing the vendors' most favorable terms for price and services or goods to be delivered are requested and considered prior to proposal award.

Debarment means the exclusion for cause of a vendor, contractor or subcontractor from responding to any county solicitation or from doing business with the county directly or indirectly.

Suspension means the suspending for cause of a vendor, contractor or subcontractor from responding to any county solicitation, or from doing any new business with the county directly or indirectly, for up to a two year period.

SECTION 3. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-54

(d)(6), "Proposal evaluation", is amended as set forth below:

- (6) *Proposal evaluation.* The county reserves the right to accept or reject any and all proposals. The county further reserves the right to award to the responsive, responsible proposer whose proposal conforms to the solicitation and is determined to be the most advantageous to the county taking into consideration the evaluation factors set forth in the request for proposal.

* * * *

- c. Upon concurrence by the Director of Purchasing, the Selection Committee may determine that it is not in the best interest of the County to award solely on the basis of initial proposals and may utilize a "Best and Final Offer" process to further evaluate the proposals.

SECTION 4. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-54

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SECTION 5. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-55

(a), "Right to protest", is amended as set forth below:

- (a) *Right to protest.* After posting of the recommended awardee, any bidder or proposer who is aggrieved in connection with the recommended award may protest in writing to the Director of Purchasing. The right to protest is limited to those procurements of goods or services solicited through an Invitation For Bid or a Request For Proposal. Recommended awards less than the Mandatory Bid or Proposal Amount cannot be protested.

SECTION 6. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section 2-56,

"Suspension and debarment", is amended as set forth below:

- (a) *Authority.* The Director of Purchasing may suspend or debar for cause the right of a vendor, contractor or subcontractor to be included in the renewal of an existing contract or any solicitation process; and any bid, proposal, submittal, or quote received from that vendor, contractor or subcontractor shall be rejected.

The Board shall have the power to waive or lift such suspension or debarment.

(b) *Suspension and debarment.* A vendor, contractor or subcontractor may be suspended for a period not to exceed two (2) years as determined by the Director of Purchasing, or may be permanently debarred. A suspended or debarred vendor or contractor shall not bid or propose as a subcontractor during their suspension or debarment; and, a suspended or debarred subcontractor shall not bid or propose as a vendor or contractor during their suspension or debarment. A suspension or debarment may be based upon the following:

- (1) Failure to comply with the conditions, specifications or terms of a contract with the County, including but not limited to the unilateral withdraw of a bid, quote, submittal, or proposal that has been received from the recommended awardee.
- (2) Any misrepresentation in connection with a solicitation or any misrepresentation of fact upon which the County has based a decision, including but not limited to a misrepresentation by a vendor, contractor or subcontractor on a small business application, or a local preference affidavit.
- (3) Charged and convicted by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (4) Charged and convicted by a court of competent jurisdiction for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County government contractor. If charges are dismissed or the vendor, contractor or subcontractor is found not guilty, the suspension or debarment shall be lifted automatically upon written notification and proof of final court disposition.
- (5) Any other cause the Director of Purchasing determines to be so serious and compelling as to materially and adversely affect the responsibility of a vendor, contractor or subcontractor, including but not limited to suspension by another governmental entity for substantial cause.
- (6) Violation of the ethical standards set forth in local, state or federal law.

- (c) *Decision.* Upon a determination to suspend or debar a vendor, contractor or subcontractor, the Director of Purchasing shall notify the vendor, contractor or subcontractor in writing of the suspension or debarment along with the reasons for the action taken.
- (d) *Finality of decision.* The suspension or debarment shall be final and conclusive unless the suspended or debarred vendor, contractor or subcontractor initiates protest proceedings. Protests will be initiated under the procedures provided in Section 2-55 hereinabove except that:
 - (1) The preliminary review by the Director of Purchasing as set forth in Section 2-55 (c)(3) hereinabove will be waived.
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All local laws and ordinances in conflict with any provision of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 8. Severability.

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

SECTION 9. Savings Clause.

All provisions of Ordinance No. 2005-062, the Palm Beach County Purchasing Code, are specifically preserved and remain in full force and effect for the limited purpose of enforcing any violation of said Ordinance, which violations occurred prior to its appeal.

SECTION 10. Inclusion In The Code Of Laws And Ordinance.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 11. Effective Date.

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the _____ day of _____, 2008.

**SHARON R. BOCK,
CLERK & COMPTROLLER
PALM BEACH COUNTY**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Addie Greene, Chairperson

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____ day of _____, 2008.

**FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
(CODRS) CODING FORM**

Instructions: Florida's Department of State, Bureau of Administrative Code has developed the County Ordinance Data Retrieval System (CODRS) to facilitate the tracking of County ordinances in Florida's 67 Counties. CODRS' data base is composed of over 25,000 county ordinances enacted since 1974.

We request your cooperation in completing this coding form. It is to be completed whenever your county enacts a new ordinance. Simply complete this form and include it with other pertinent ordinance information that is submitted to the Bureau of Administrative Code.

To code this form properly, please refer to the "keyfields" description sheet that has been given to your County Attorney's Office. If you do not have this sheet please contact the Bureau. We will be happy to fax one to you for referencing purposes. Please fill out this form as completely as is possible.

Thank you for your assistance. Should you need further assistance please contact the Bureau of Administrative Code, Department of State at (850)245-6270 or Suncom 205-6270.

COUNTY: (Palm Beach) COUNTY ORDINANCE # (_____)
(e.g., 00-001)

PRIMARY KEYFIELD
DESCRIPTOR: (PURCHASING)

SECONDARY KEYFIELD
DESCRIPTOR: (_____)

OTHER KEYFIELD
DESCRIPTOR: (_____)

ORDINANCE DESCRIPTION: (PURCHASING CODE AMENDMENT)
(25 characters maximum including spaces)

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

AMENDMENT # 1: (2005-062) AMENDMENT # 2: (_____)

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

REPEAL # 1: (_____) REPEAL # 3: (_____)

REPEAL # 2: (_____) REPEAL # 4: (_____)

(Others repealed: List all that apply): _____

(FOR OFFICE USE ONLY): COUNTY CODE NUMBER: (_____)

KEYFIELD 1 CODE: (_____) KEYFIELD 2 CODE: (_____)

KEYFIELD 3 CODE: (_____)

Rev. 4/10/04