

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

| | | | | |
|--------------------------------|-----|----------|-------|----------------|
| Meeting Date: October 16, 2018 | [] | Consent | [] | Regular |
| | [] | Workshop | [X] | Public Hearing |

Department: Purchasing Department

Submitted By: Purchasing Department

Submitted For: Purchasing Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: 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 "Application/Exemptions"; amending Section 2-52 "Definitions"; amending Section 2-54 "Source Selection"; amending Section 2-55 "Protested Awards"; amending 2-57 "Vendor Preferences"; 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.

Summary: The current Purchasing Code (Ordinance No. 2005-062), as amended in 2008 (Ordinance No. 2008-009) and April 20, 2010 (Ordinance 2010-010), established a centralized purchasing system for the procurement of the County's goods and services. This Amendment to the Purchasing Code includes necessary references to the Office of Equal Business Opportunity, the Equal Business Opportunity Program Ordinance, and the Equal Business Opportunity Program Policies and Procedures. Countywide (DW)

Background and Policy Issues.: Due to the results of the Disparity Study conducted by Mason Tillman and Associates, the Office of Small Business Assistance spearheaded the drafting of the Equal Business Opportunity Program Ordinance and the Equal Business Opportunity Program Policies and Procedures (collectively "EBO Ordinance and PPM") by the County's consultant, Franklin Lee. Input was provided in the drafting of the EBO Ordinance and PPM from both internal (County Departments) and external stakeholders. In order to provide consistent implementation of the EBO Ordinance and PPM, it is necessary to amend the Purchasing Code to include references to the Office of EBO and to the EBO Ordinance and PPM. The sections within the Purchasing Code to be amended include: application/exemptions; definitions; source selections; protested awards; and vendor preferences.

- Attachments:**
1. Proposed Purchasing Code Amendment: Strike-through version
 2. Proposed Purchasing Code Amendment: Clean version
 3. Current Purchasing Code

Recommended By: Kathy Scarlett 10/3/18
Department Director Date

Approved By: Nancy L. Bolton 10/12/18
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2019 | 2020 | 2021 | 2022 | 2023 |
|--|------|------|------|------|------|
| Capital Expenditures | | | | | |
| Operating Costs | | | | | |
| External Revenues | | | | | |
| Program Income(County) | | | | | |
| In-Kind Match(County) | | | | | |
| NET FISCAL IMPACT | | | | | |
| #ADDITIONAL FTE POSITIONS (CUMULATIVE) | | | | | |

Is Item Included in Current Budget? Yes _____ No _____
 Does this item include the use of federal funds? Yes _____ No X

Budget Account No:
 Fund _____ Agency _____ Organization _____ Object _____

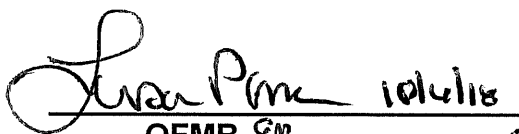
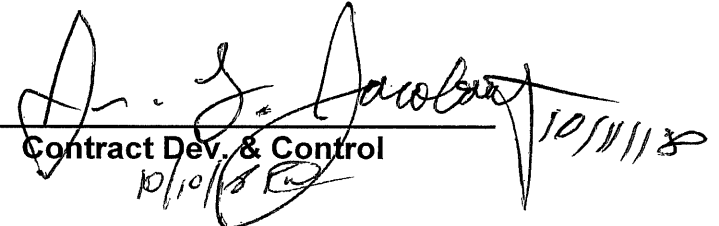
B. Recommended Sources of Funds/Summary of Fiscal Impact:

NO FISCAL IMPACT ASSOCIATED WITH THIS ITEM

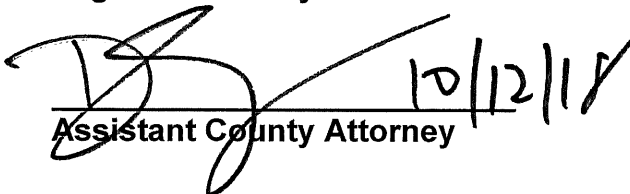
C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

| | |
|---|--|
|  _____ OFMB ^{Enr} 10/14/18 10/14 |  _____ Contract Dev. & Control 10/10/18 |
|---|--|

B. Legal Sufficiency



 Assistant County Attorney 10/12/18

C. Other Department Review

 Department Director

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6 **ORDINANCE NO. 2018 - _____**
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8 **AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF**
9 **PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH**
10 **COUNTY CODE CHAPTER 2, ARTICLE III, DIVISION 2, PART A (THE**
11 **PALM BEACH COUNTY PURCHASING CODE); AMENDING SECTION**
12 **2-51(f) "APPLICATION / EXEMPTIONS"; AMENDING SECTION 2-52**
13 **"DEFINITIONS"; AMENDING SECTION 2-54 "SOURCE SELECTION";**
14 **AMENDING SECTION 2-55 "PROTESTED AWARDS"; AMENDING**
15 **SECTION 2-57 "VENDOR PREFERENCES"; PROVIDING FOR REPEAL**
16 **OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY;**
17 **PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR INCLUSION**
18 **IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR**
19 **AN EFFECTIVE DATE.**
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22 **WHEREAS**, on December 20, 2005, the Board of County Commissioners of Palm
23 Beach County, Florida enacted Ordinance No. 2005-062 which repealed all prior Purchasing
24 Ordinances and established a centralized purchasing system to govern the procurement of goods
25 and services; and

26 **WHEREAS**, on April 15, 2008 and April 20, 2010, the Board of County Commissioners
27 of Palm Beach County, Florida enacted Ordinance Nos. 2008-009 and 2010-010 respectively,
28 thereby amending the Palm Beach County Purchasing Code in order to facilitate and enhance the
29 efficiency of the County's procurement process; and

30 **WHEREAS**, the Board of County Commissioners has deemed it necessary to further
31 amend Ordinance No. 2005-062, as amended by Ordinance Nos. 2008-009 and 2010-010, to
32 ensure that the Purchasing Code correctly references the Equal Business Opportunity Ordinance
33 and the Equal Business Opportunity Program Policies and Procedures.

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

36 **SECTION 1. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section**
37 **2-51 (f), "Application / Exemptions" is amended as set forth below:**

- 38 (1) The Purchasing Code shall not apply to:
- 39 f. Selection of professional services that are governed by the provisions of
- 40 the "Consultants Competitive Negotiation Act" ("CCNA"), F.S. Section 287.55, and by

41 County policies and procedures. Selection of professional services that are exempt from the
42 requirements, or that are above the statutory threshold, of, F.S. Section 287.55, shall be made in
43 accordance with the Purchasing Code.

44 1. Decentralized Purchase Orders; ~~however, S~~ said purchases shall be
45 procured in accordance with the applicable policy and procedure and shall not be exempt from
46 ~~the County's Small Business Enterprise Ordinance or any Minority/Women Business Enterprise~~
47 ~~Ordinance, if adopted, Equal Business Opportunity Ordinance ("EBO Ordinance"), the Equal~~
48 Business Opportunity Program Policies and Procedures ("EBO PPM"), or from Resource
49 Manager approval. These goods or services are not exempt in and of themselves but for the
50 dollar value being less than Five Thousand Dollars (\$5,000). No purchase shall be artificially
51 divided so as to constitute a decentralized purchase under this Section.

52 **SECTION 2. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section**
53 **2-52 "Definitions", is amended as set forth below:**

54 Equal Business Opportunity Ordinance means the EBO Ordinance, as adopted by the
55 Board and implemented through the Office of Equal Business Opportunity.

56 Equal Business Opportunity Program Policies and Procedures means the EBO PPM, as
57 implemented through the Office of Equal Business Opportunity.

58 Minority Women Business Enterprise ("M/WBE") means a business defined by an
59 M/WBE Ordinance, as may be adopted by the Board the EBO Ordinance or the EBO PPM.

60 Office of Equal Business Opportunity ("Office of EBO") means the County Office
61 responsible for implementing the EBO Ordinance and the EBO PPM.

62 Responsive Bid, Quote, Proposal, Submittal, or Response means a bid, proposal,
63 submittal, quotation, or response that conforms in all material respects to the solicitation.
64 Responsive also applies, where applicable, to compliance with specified S/M/WBE SBE
65 requirements, or SBE or Local Preference requirements, as set forth in the EBO Ordinance, the
66 EBO PPM and the County's Local Preference Code. A vendor can be responsive to a
67 solicitation but may be deemed non-responsive to SBE-requirements or Local Preference
68 requirements.

69 Small Business Enterprise ("SBE") means a business as defined in Chapter 2, Article III,
70 Division 2, Part C of the Palm Beach County Code.

71 Small/Minority/Women/Business/Enterprise ("S/M/WBE") means a business as defined in
72 the EBO Ordinance or the EBO PPM.

73 **SECTION 3. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section**
74 **2-54 "Source Selection", is amended as set forth below:**

75 (a) The procurement of all goods or services, including those transactions through
76 which the Board shall receive revenue in an amount equal to or greater than the Mandatory Bid
77 or Proposal Amount of One Hundred Thousand Dollars (\$100,000), shall be awarded by a formal
78 competitive bid or proposal process or as set forth herein, unless otherwise provided by state or
79 federal law. As applicable, the provisions of the County's ~~SBE Ordinance~~ EBO Ordinance, the
80 EBO PPM and the Local Preference ~~Ordinance Code~~ shall apply to all source selections,
81 including alternate source selections, and awards ~~which~~ that are subject to the provisions of the
82 Purchasing Code.

83 (c) Formal Competitive Bid Process.

84 (9) *Changes After Award.* The Director of Purchasing may authorize
85 decreases or increases to the authorized revenue or expenditure amount(s) of a contract, except
86 that increases of more than ten (10) percent to authorized expenditure amounts which have
87 reached or exceeded Two Hundred Thousand Dollars (\$200,000) per annum must be approved
88 by the Board. After Board approval of an increased authorized expenditure amount, the Director
89 of Purchasing may authorize additional increases of up to ten (10) percent of the increased
90 authorized expenditure amount. Authority to increase any authorized expenditure amount is
91 predicated on the condition that all provisions of the original award, including the ~~level of SBE~~
92 or the S/M/W/B/E requirements, which shall ~~participation, or M/WBE participation if the Board~~
93 ~~adopts and M/WBE Ordinance participation,~~ remain intact and unchanged. The Director of
94 Purchasing may approve extensions of delivery dates or performance time on all contracts to a
95 maximum of three (3) months provided that any changes to the existing authorized expenditure
96 amount comply with the provisions of the Purchasing Code. After Board approval of an
97 extension of delivery dates or performance time, the Director of Purchasing may authorize
98 additional delivery dates or performance time extensions up to three (3) months. Further,
99 changes to the Contract may be made by the Director of Purchasing if considered minor or non-
100 material in nature.

101 (f) Alternate source selection.

102 (5) *Purchases Off Contracts of Other Entities ("piggyback purchases")*.

103 Notwithstanding any requirements of the Purchasing Code, the purchase of goods or services
104 under contract with a federal, state or municipal government or any other governmental agency,
105 political subdivision, or government-related association, may be piggybacked or purchased off
106 contracts of other entities providing that:

107 h. There are no certified S/M/WBE ~~SBE~~ vendors ~~or M/WBE vendors~~
108 ~~if an M/WBE Ordinance is adopted by the Board~~, that can provide the service as required and to
109 the extent required by the County Department;

110 **SECTION 4. Palm Beach County Code Chapter 2, Article III, Division 2, Part A,**
111 **Section 2-55 "Protested Awards", is amended as set forth below:**

112 (c) Authority to resolve.

113 (2) When a protest is filed by a certified S/M/WBE ~~SBE~~ contractor or where
114 the protest involves a ~~small business~~ S/M/WBE issue, the Director of the Office of EBO ~~Small-~~
115 ~~Business Assistance~~ will act in conjunction with, and with authority equal to, the Director of
116 Purchasing in arriving at the determination to be made in this step of the process. After
117 reviewing the facts surrounding the issues raised in the written protest, the Director of
118 Purchasing, and the Director of the Office of EBO ~~Small Business Assistance~~ may make the
119 determination to:

120 b. Deny the protest in accordance with Section 2-55(c)(1) b.
121 hereinabove. However, notwithstanding the above, the Director of Purchasing and the Director
122 of the Office of EBO may deny the protest with good cause until a date certain when specified
123 requirements are to be met. If the specified requirements are not met by the date certain, the
124 protest will be upheld in accordance with Section 2-55(c)(1)b. hereinabove.

125 c. Refer the protest to a special master in accordance with Section 2-
126 55(c)(4) hereinbelow, in those instances when a determination is not unanimous between the
127 Director of Purchasing and the Director of the Office of EBO ~~Small Business Assistance~~. In
128 this specific instance, the protestor will be exempt from posting a protest bond.

129 ~~In the event that the County adopts an M/WBE Ordinance, any protest process shall be~~
130 ~~set forth by adopted Board policy.~~ A protest process shall be set forth in the EBO Ordinance or

131 the EBO PPM.

132 **SECTION 5. Palm Beach County Code Chapter 2, Article III, Division 2, Part A,**
133 **Section 2-57 “Vendor Preferences”, is amended as set forth below:**

134 The Purchasing Department shall strictly comply with the EBO Ordinance, the EBO
135 PPM SBE Ordinance, the Local Preference Ordinance Code, and any future M/WBE Ordinance
136 adopted by the County, all pertinent County policies and procedures, to ensure that the vendor
137 preferences are awarded in accordance with adopted Board policy.

138 **SECTION 6. Repeal of Laws in Conflict.**

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

141 **SECTION 7. Severability.**

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

145 **SECTION 8. Savings Clause.**

146 Notwithstanding anything to the contrary, all provisions of Palm Beach County
147 Ordinance No. 2005-062, as amended by Ordinance No. 2008-009 and Ordinance No. 2010-010,
148 which are codified in Sections 2-51 through 2-58 of the Palm Beach County Code, are
149 specifically preserved and remain in full force and effect for the limited purpose of enforcing any
150 alleged violations of said Code which occurred prior to its repeal or amendment.

151 **SECTION 9. Inclusion in the Palm Beach County Code.**

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

156 **SECTION 10. Effective Date.**

157 The provisions of this Ordinance shall become effective January 1, 2019.

158
159 **APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach**
160 **County, Florida, on this the _____ day of _____, 2018.**

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164 SHARON R. BOCK,
165 CLERK & COMPTROLLER

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

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169 By: _____
170 Deputy Clerk

By: _____
Melissa McKinlay, Mayor

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175 APPROVED AS TO FORM AND
176 LEGAL SUFFICIENCY

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178 By: _____
179 County Attorney

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183 EFFECTIVE DATE: Filed with the Department of State on the _____ day of _____,
184 2018.

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6 **ORDINANCE NO. 2018 - _____**
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8 **AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF**
9 **PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH**
10 **COUNTY CODE CHAPTER 2, ARTICLE III, DIVISION 2, PART A (THE**
11 **PALM BEACH COUNTY PURCHASING CODE); AMENDING SECTION**
12 **2-51(f) “APPLICATION / EXEMPTIONS”; AMENDING SECTION 2-52**
13 **“DEFINITIONS”; AMENDING SECTION 2-54 “SOURCE SELECTION”;**
14 **AMENDING SECTION 2-55 “PROTESTED AWARDS”; AMENDING**
15 **SECTION 2-57 “VENDOR PREFERENCES”; PROVIDING FOR REPEAL**
16 **OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY;**
17 **PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR INCLUSION**
18 **IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR**
19 **AN EFFECTIVE DATE.**
20
21

22 **WHEREAS**, on December 20, 2005, the Board of County Commissioners of Palm
23 Beach County, Florida enacted Ordinance No. 2005-062 which repealed all prior Purchasing
24 Ordinances and established a centralized purchasing system to govern the procurement of goods
25 and services; and

26 **WHEREAS**, on April 15, 2008 and April 20, 2010, the Board of County Commissioners
27 of Palm Beach County, Florida enacted Ordinance Nos. 2008-009 and 2010-010 respectively,
28 thereby amending the Palm Beach County Purchasing Code in order to facilitate and enhance the
29 efficiency of the County's procurement process; and

30 **WHEREAS**, the Board of County Commissioners has deemed it necessary to further
31 amend Ordinance No. 2005-062, as amended by Ordinance Nos. 2008-009 and 2010-010, to
32 ensure that the Purchasing Code correctly references the Equal Business Opportunity Ordinance
33 and the Equal Business Opportunity Program Policies and Procedures.

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

36 **SECTION 1. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section**
37 **2-51 (f), “Application / Exemptions” is amended as set forth below:**

- 38 (1) The Purchasing Code shall not apply to:
- 39 f. Selection of professional services that are governed by the provisions of
40 the “Consultants Competitive Negotiation Act” (“CCNA”), F.S. Section 287.55, and by County
41 policies and procedures. Selection of professional services that are exempt from the

42 requirements, or that are above the statutory threshold, of F.S. Section 287.55, shall be made in
43 accordance with the Purchasing Code.

44 1. Decentralized Purchase Orders. Said purchases shall be procured in
45 accordance with the applicable policy and procedure and shall not be exempt from the County's
46 Equal Business Opportunity Ordinance ("EBO Ordinance"), the Equal Business Opportunity
47 Program Policies and Procedures ("EBO PPM"), or from Resource Manager approval. These
48 goods or services are not exempt in and of themselves but for the dollar value being less than
49 Five Thousand Dollars (\$5,000). No purchase shall be artificially divided so as to constitute a
50 decentralized purchase under this Section.

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

53 *Equal Business Opportunity Ordinance means* the EBO Ordinance, as adopted by the
54 Board and implemented through the Office of Equal Business Opportunity.

55 *Equal Business Opportunity Program Policies and Procedures means* the EBO PPM, as
56 implemented through the Office of Equal Business Opportunity.

57 *Minority Women Business Enterprise ("M/WBE") means* a business defined by the EBO
58 Ordinance or the EBO PPM.

59 *Office of Equal Business Opportunity ("Office of EBO") means* the County Office
60 responsible for implementing the EBO Ordinance and the EBO PPM.

61 *Responsive Bid, Quote, Proposal, Submittal, or Response means* a bid, proposal,
62 submittal, quotation, or response that conforms in all material respects to the solicitation.
63 Responsive may also apply, where applicable, to compliance with specified S/M/WBE
64 requirements, or SBE or local preference requirements as set forth in the EBO Ordinance, the
65 EBO PPM and the County's Local Preference Code. A vendor can be responsive to a
66 solicitation but may be deemed non-responsive to SBE or local preference requirements.

67 *Small/Minority/Women/Business/Enterprise ("S/M/WBE") means* a business as defined in
68 the EBO Ordinance and the EBO PPM.

69 **SECTION 3. Palm Beach County Code Chapter 2, Article III, Division 2, Part A, Section**
70 **2-54 "Source Selection", is amended as set forth below:**

71 (a) The procurement of all goods or services, including those transactions through
72 which the Board shall receive revenue in an amount equal to or greater than the Mandatory Bid

73 or Proposal Amount of One Hundred Thousand Dollars (\$100,000), shall be awarded by a formal
74 competitive bid or proposal process or as set forth herein, unless otherwise provided by state or
75 federal law. As applicable, the provisions of the County's EBO Ordinance, the EBO PPM and
76 the Local Preference Code shall apply to all source selections, including alternate source
77 selections, and awards that are subject to the provisions of the Purchasing Code.

78 (c) Formal Competitive Bid Process.

79 (9) *Changes After Award.* The Director of Purchasing may authorize
80 decreases or increases to the authorized revenue or expenditure amount(s) of a contract, except
81 that increases of more than ten (10) percent to authorized expenditure amounts which have
82 reached or exceeded Two Hundred Thousand Dollars (\$200,000) per annum must be approved
83 by the Board. After Board approval of an increased authorized expenditure amount, the Director
84 of Purchasing may authorize additional increases of up to ten (10) percent of the increased
85 authorized expenditure amount. Authority to increase any authorized expenditure amount is
86 predicated on the condition that all provisions of the original award, including the SBE or the
87 S/M/WBE requirements, which shall remain intact and unchanged. The Director of Purchasing
88 may approve extensions of delivery dates or performance time on all contracts to a maximum of
89 three (3) months provided that any changes to the existing authorized expenditure amount
90 comply with the provisions of the Purchasing Code. After Board approval of an extension of
91 delivery dates or performance time, the Director of Purchasing may authorize additional delivery
92 dates or performance time extensions up to three (3) months. Further, changes to the Contract
93 may be made by the Director of Purchasing if considered minor or non-material in nature.

94 (f) Alternate source selection.

95 (5) *Purchases Off Contracts of Other Entities ("piggyback purchases").*

96 Notwithstanding any requirements of the Purchasing Code, the purchase of goods or services
97 under contract with a federal, state or municipal government or any other governmental agency,
98 political subdivision, or government-related association, may be piggybacked or purchased off
99 contracts of other entities providing that:

100 h. There are no certified S/M/WBE vendors that can provide the
101 service as required and to the extent required by the County Department;

102 **SECTION 4. Palm Beach County Code Chapter 2, Article III, Division 2, Part A,**
103 **Section 2-55 "Protested Awards", is amended as set forth below:**

104 (c) Authority to resolve.
105 (2) When a protest is filed by a certified S/M/WBE or where the protest
106 involves an S/M/WBE issue, the Director of the Office of EBO will act in conjunction with, and
107 with authority equal to, the Director of Purchasing in arriving at the determination to be made in
108 this step of the process. After reviewing the facts surrounding the issues raised in the written
109 protest, the Director of Purchasing and the Director of the Office of EBO may make the
110 determination to:

111 b. Deny the protest in accordance with Section 2-55(c)(1) b.
112 hereinabove. However, notwithstanding the above, the Director of Purchasing and the Director
113 of the Office of EBO may deny the protest with good cause until a date certain when specified
114 requirements are to be met. If the specified requirements are not met by the date certain, the
115 protest will be upheld in accordance with Section 2-55(c)(1)b. hereinabove.

116 c. Refer the protest to a special master in accordance with Section 2-
117 55(c)(4) hereinbelow, in those instances when a determination is not unanimous between the
118 Director of Purchasing and the Director of the Office of EBO. In this specific instance, the
119 protestor will be exempt from posting a protest bond.

120 A protest process shall be set forth in the EBO Ordinance or the EBO PPM.

121 **SECTION 5. Palm Beach County Code Chapter 2, Article III, Division 2, Part A,**
122 **Section 2-57 “Vendor Preferences”, is amended as set forth below:**

123 The Purchasing Department shall strictly comply with the EBO Ordinance, the EBO
124 PPM, the Local Preference Code, and all pertinent County policies and procedures, to ensure that
125 the vendor preferences are awarded in accordance with adopted Board policy.

126 **SECTION 6. Repeal of Laws in Conflict.**

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

129 **SECTION 7. Severability.**

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

133 **SECTION 8. Savings Clause.**

134 Notwithstanding anything to the contrary, all provisions of Palm Beach County

135 Ordinance No. 2005-062, as amended by Ordinance No. 2008-009 and Ordinance No. 2010-010,
136 which are codified in Sections 2-51 through 2-58 of the Palm Beach County Code, are
137 specifically preserved and remain in full force and effect for the limited purpose of enforcing any
138 alleged violations of said Code which occurred prior to its repeal or amendment.

139 **SECTION 9. Inclusion in the Palm Beach County Code.**

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

144 **SECTION 10. Effective Date.**

145 The provisions of this Ordinance shall become effective January 1, 2019.

146
147 **APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach**
148 **County, Florida, on this the _____ day of _____, 2018.**
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152 **SHARON R. BOCK,**
153 **CLERK & COMPTROLLER**

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

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157 By: _____
158 Deputy Clerk

By: _____
Melissa McKinlay, Mayor

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163 **APPROVED AS TO FORM AND**
164 **LEGAL SUFFICIENCY**

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166 By: _____
167 County Attorney

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171 **EFFECTIVE DATE:** Filed with the Department of State on the _____ day of _____,
172 2018.

nolo contendere to, or is convicted of or adjudicated delinquent for, a felony, a misdemeanor, or a criminal traffic offense under state law, or a violation of any municipal or County ordinance if the violation constitutes a misdemeanor under state law.

- (2) The fine shall be fifty dollars (\$50.00) for a felony and twenty dollars (\$20.00) for any other offense. When the defendant enters the plea or is convicted or adjudicated, in a court in the County, the court may order the defendant to pay such fine if the court finds that the defendant has the ability to pay the fine and that the defendant would not be prevented thereby from being rehabilitated or making restitution.
- (3) The Clerk of the Court shall collect and deposit the assessments collected pursuant to this section in an appropriate designated County account established by the Clerk of the Court, which shall be a separate interest bearing trust fund for disbursement to the county as needed for the implementation and operation of crime prevention programs.
- (4) The Clerk of the Court shall withhold five (5) percent of the assessments each court collects pursuant to this section for the costs of administering the collection of assessments under this section.
- (5) The County shall account for the fines separately from other county funds, as crime prevention funds.

(c) *Use of funds.* The County, in consultation with the Sheriff and the Criminal Justice Commission, must expend such fines exclusively for the costs of collecting the fines and for crime prevention programs in the county, including safe neighborhood programs under F.S. §§ 163.501—163.523.

(Ord. No. 01-030, §§ 1—4, 8-3-01; Ord. No. 01-099, § 1, 12-18-01)

Secs. 2-43—2-50. Reserved.

DIVISION 2. PURCHASES*

Part A. General Provisions†

Sec. 2-51. General provisions.

(a) *Authority.* The provisions of Sections 2-51 through 2-58 are based upon the authority granted to the Board of County Commissioners ("Board"), and the County Administrator ("Administrator") in Article VIII, Section 1, of the Florida Constitution; F.S. Ch. 125, Pt. IV; and the Palm Beach County Charter.

(b) *Short title.* The provisions of Sections 2-51 through 2-58 shall be known and cited as the "Palm Beach County Purchasing Code" ("Purchasing Code").

(c) *General purpose.* The purpose of the Purchasing Code is to place the County's purchasing function under a centralized system which will enable the County and the County's Purchasing Department to:

- (1) Establish policies and procedures governing the purchase of goods and services, including those goods and services that are revenue generating;
- (2) Provide fair and open competition among all persons desiring to do business with the County in a manner that reduces the appearance and opportunity for favoritism, and inspires public confidence that contracts are awarded in an equitable manner;
- (3) Provide, encourage, and promote fair and equitable treatment for all persons desiring to do business and who currently do business with the County; and
- (4) Obtain goods and services of satisfactory quality and quantity at a reasonable cost.

**State law reference*—Home rule powers of chartered counties, Fla. Const., Art. VIII, § 1(g).

†*Editor's note*—Ord. No. 2015-004, §§ 1—9, adopted Jan. 13, 2015, repealed Part A and enacted a new part as set out herein. The former Part A, §§ 2-51—2-58, pertained to similar subject matter and derived from Ord. No. 05-062, §§ 1—9, adopted Dec. 20, 2005; Ord. No. 08-009, §§ 1—6, adopted April 15, 2009; and Ord. No. 2010-010, §§ 1—3, adopted April 20, 2010.

(d) *Policy decision.* The authority granted hereunder shall not include fundamental policy decisions regarding the County's purchasing functions and procedures. These powers, including the determination of the total funds to be spent pursuant to the Purchasing Code by County Departments and the setting aside of those funds, shall remain solely with the Board and are not and shall not be delegated. County Departments may not request procurements that are not budgeted or that are beyond the limitations imposed in the County's budgetary process, and shall make annual accountings to the Board of their expenditure of these funds.

(e) *Requirements of good faith.* The Purchasing Code requires all parties involved in procuring goods or services, or in administering the contracts for procured goods or services, to act in good faith.

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

(1) The Purchasing Code shall not apply to:

- a. Agreements between the Board and nonprofit organizations or other governments that provide for the transfer, sale or exchange of goods or services.
- b. Procurement of dues and memberships in trade or professional organizations; subscriptions to periodicals; advertisements; postage; utility services; copyrighted materials; professional medical services; authorized hospitality expenses; fees and costs of job-related seminars and training, including materials provided with, or as an integral part of, that training; and, admission fees for amusement parks and entertainment activities included in County recreational programs for youth, teens, adults, seniors, and persons with disabilities.

- c. Presenters, lecturers, and facilitators for County sponsored programs.
- d. Recreational instructors and sports officials.
- e. Procurements for Constitutional officers, specifically the Clerk and Comptroller, Sheriff, Supervisor of Elections, Property Appraiser, State Attorney, Public Defender, and Tax Collector.
- f. Selection of professional services that are governed by the provisions of the "Consultants Competitive Negotiations Act" ("CCNA"), F.S. § 287.055, and by County policies and procedures. Selection of professional services that are exempt from the requirements of F.S. § 287.055, shall be made in accordance with the Purchasing Code.
- g. Real property interests or any acquisition, disposition or lease made pursuant to the Palm Beach County Real Property Acquisition, Disposition, and Leasing Ordinance, applicable law, or Federal rule/regulation.
- h. Concessions as defined in 49 CFR Part 23.
- i. Vending machines.
- 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.
- k. Goods purchased with petty cash in accordance with established County procedures.
- l. Decentralized Purchase Orders; however, said purchases shall not be exempt from the County's Small Business Enterprise Ordinance or any Minority/Women Business Enterprise Ordinance, if adopted, or from Resource Manager approval. These goods or services are not exempt in and of themselves but for the dollar

value being less than five thousand dollars (\$5,000.00). No purchase shall be artificially divided so as to constitute a decentralized purchase under this Section.

- m. Labor negotiation services, legal services, expert witnesses, court reporter services, and other expenses pertaining to claims, negotiations, or litigation.
 - n. Insurance policies costing less than the Mandatory Bid or Proposal Amount.
 - o. Artwork as defined by applicable County policy and procedure.
 - p. Full or part-time contractual employees of the Board.
 - q. Event specific stage production or programming including, but not limited to, fireworks or individuals or groups providing musical or theatrical performances or lectures.
 - r. County sponsorships or the solicitation of sponsorships.
 - s. Golf tee time advertising and sales services for County golf courses.
 - t. Bond underwriters.
 - u. Grant funded training, events, activities, and grant payments to recipients and sub-recipients.
 - v. Codification of County Ordinances.
- (2) *Procurement of exempt purchases.* Exempt purchases shall, where possible, be competitively procured by the County Department. The procurement of exempt purchases shall be made by written contract between the vendor and the Board or authorized designee; by direct payment in accordance with applicable policy and procedure; or, by purchase order. County Departments shall maintain an internal policy and procedure for procurement of all exempt purchases.

(Ord. No. 2015-004, § 2, 1-13-15)

Sec. 2-52. Definitions.

Administrator means the County Administrator.

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

Bid means a formal price offer by a vendor to furnish specific goods or services in response to an Invitation for Bid or a multistep bidding procedure.

Board means the Board of County Commissioners.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Capital Improvement Project means any public improvement which the County undertakes, including the construction or reconstruction in whole or in part of any building, road, highway, street improvements, plant, structure, or facility necessary in carrying out the functions of the County government.

Change Order means a written document executed to direct a contractor to make changes or additions to a purchase order or contract, including monetary, time and specified changes.

Construction means the process of building, altering, improving, demolishing, or major repairing or renovating of any structure or building, or other improvements of any kind to any real property, or other activity specifically related to, or part of, these processes, as determined by the Director of Purchasing.

Construction Departments collectively means the Departments of Engineering, Water Utilities, Airports, Facilities Development and Operations, and Environmental Resources Management.

Contract means a binding written agreement, enforceable by law, between two (2) or more parties for the purchase or sale of goods or services. A purchase order is a contract.

Contractor means any awardee having a contract with the Board.

County means the Palm Beach County Board of County Commissioners or any of its authorized representatives pursuant to ordinance, resolution, Board authorization, or administrative Code.

County Department means any Department under the direction of the Board.

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

Decentralized Purchase Orders means any purchase of value less than five thousand dollars (\$5,000.00).

Designee means a duly authorized representative of the Board, the County Administrator, Director of Purchasing, or a Director of a Construction Department, as applicable.

Emergency Purchase means a procurement made in response to a need when the delay incident to complying with all governing rules, regulations, or procedures would be detrimental to the interests, health, safety, or welfare of the County.

Glades means the area from the Broward County line north along Canal L-36 to the Loxahatchee National Wildlife Refuge, thence north to Southern Boulevard along Canal L-40, thence west along Southern Boulevard to a north-south 1½ miles west of Canal L-8, which coincides with a private agricultural road heading north from Southern Boulevard at the point where State Road 880 intersects Southern Boulevard from the South, thence north along the line of this north-south road to the boundary of the J.W. Corbett Wildlife Management Area, thence east and north along the boundary of the J.W. Corbett Wildlife Management Area to the Martin County line.

Glades Business means a bidder or proposer which has a permanent place of business within the Glades and which holds a business tax receipt issued by the County that authorizes the bidder or proposer to provide the goods, services, or construction to be built and which is issued prior to the issuance of the Invitation for Bids/Request for Proposals for which a preference is sought. If

the Business is a joint venture/partnership, it is sufficient for qualification as a Glades Business if at least one (1) of the joint venturers/partners meets the requirements set forth in this Section.

Goods mean any tangible personal property other than services or real property.

Inspector General Fee means the fee that is or may be imposed by the Board pursuant to the Palm Beach County Inspector General Ordinance.

Invitation for Bid ("IFB") means a solicitation used in the formal competitive bid process to solicit sealed bids for the purchase of goods or services that are equal to or greater than the Mandatory Bid or Proposal Amount.

Living Wage Ordinance means an ordinance adopted by the Board that requires construction or transit contractors and subcontractors as defined in Chapter 2, Article IV, Division 3, of the County Code, to pay a living wage and provide minimal health benefits to employees directly providing construction-related services or transit services to the County pursuant to a contract.

Local Preference Ordinance means an ordinance adopted by the Board that applies a local preference to responses submitted by local vendors to solicitations for construction and non-construction goods and services as defined in Sections 2-80.41 through 2-80.48 of the Palm Beach County Code.

Mandatory Bid or Proposal Amount means the threshold dollar amount established by the Board whereby the formal competitive bid or proposal process must be used, except as otherwise provided herein. The Mandatory Bid or Proposal Amount shall be one hundred thousand dollars (\$100,000.00) per annum.

May denotes the permissive.

Minority Women Business Enterprise ("M/WBE") means a business defined by an M/WBE Ordinance, as may be adopted by the Board.

Posting means an act whereby the County publicly notices, in a designated location(s), the recommended awardee of an Invitation for Bid or a Request for Proposal.

Professional Services mean those services as defined in Section 2-80.21 of the Palm Beach County Code.

Proposal means a formal offer by a vendor to furnish goods or services in response to a Request for Proposal.

Proprietary means there is only one (1) item that meets the need of the County Department as determined by a reasonably thorough analysis of the marketplace; however, the item may be obtained through more than one (1) vendor.

Purchase Order means a contract used to authorize a purchase from a vendor that includes specific goods or services ordered, applicable terms as to payment, discounts, date of performance and transportation; and other factors pertinent to the transaction. A Purchase Order is referred to herein as a Contract.

Quotation means a written informal offer by a vendor to furnish specific goods or services in response to a Request for Quotation.

Request for Information ("RFI") means a solicitation that will satisfy a need or that will determine available sources rather than provide a firm specification; thereby giving the respondent latitude to develop a good or service that will fulfill the need, or thereby provide available sources for the good or service.

Request for Proposal ("RFP") means a solicitation used in the formal competitive proposal process to solicit sealed proposals for a good or service that is equal to or greater than the Mandatory Bid or Proposal Amount; where the scope of work or specifications may not be closely defined; and, where the evaluation is based on established criteria which may include, but is not limited to, price.

Request for Quotation ("RFQ") means a solicitation used in the informal competitive bid process to solicit quotations for a specific good or service that is less than the Mandatory Bid or Proposal Amount.

Request for Submittal ("RFS") means a solicitation used in the informal competitive proposal process to solicit submittals for a good or service that is less than the Mandatory Bid or Proposal

Amount; where the scope of work or specifications may not be closely defined; and, where the evaluation is based on criteria which may include, but is not limited to, price.

Resource Manager means the Director of a County Department, or Designee, who has been given the responsibility of monitoring and approving the County's procurements of specific commodity groups as specified in the Purchasing Department's policies and procedures.

Responsible Bidder, Quoter, Proposer, or Respondent means a bidder, quoter, proposer, or respondent who is fully capable of meeting all the requirements contained in the solicitation.

Responsive Bid, Quote, Proposal, Submittal, or Response means a bid, proposal, submittal, quotation, or response that conforms in all material respects to the solicitation. Responsive also applies, where applicable, to compliance with specified SBE requirements, Local Preference requirements, or M/WBE requirements that may be adopted by the Board. A vendor can be responsive to a solicitation but may be deemed non-responsive to SBE requirements, Local Preference requirements, or M/WBE requirements that may be adopted by the Board.

Services mean the furnishing of labor, time, or effort by a Contractor wherein the provisions of goods or other specific end products (other than reports, studies, plans, advisories, contractual documents, or other documents relating to the required performance) is incidental or secondary. This term shall not include construction, employment agreements, or collective bargaining agreements.

Shall denotes mandatory.

Small Business Enterprise ("SBE") means a business as defined in Chapter 2, Article III, Division 2, Part C of the Palm Beach County Code.

Sole Source means there is only one (1) good or service that meets the need of the County Department and that good or service is available through only one (1) source as determined by a reasonably thorough analysis of the marketplace.

Specification means the description within a solicitation or contract for the good or service to be provided by a Contractor.

Suspension means the suspending for cause of a Vendor or Contractor from responding to any County solicitation, or from doing any new business with the County, for up to a two-year period.

Vendor means an actual or potential supplier of a good or service. A Vendor includes an owner, director, manager or employee of the supplier and can be a quoter, bidder, respondent, or proposer, or a successful quoter, bidder, respondent, or proposer; however, upon execution of a Contract with the Board or Designee, the Vendor is referenced herein as a "Contractor."

(Ord. No. 2015-004, § 3, 1-13-15)

Sec. 2-53. Organization.

(a) *Purchasing Department*. Except as provided otherwise in the Purchasing Code, the Purchasing Department shall purchase all goods and services on behalf of the Board, and shall procure and manage any inventory necessary to stock the County warehouse.

(b) *Director of Purchasing*. Under the direction of the Administrator, the Director of Purchasing shall serve as the principal officer for the purchase and sale of goods and services for the County.

(c) *Duties of the Director of Purchasing*. The Director of Purchasing shall:

- (1) Administer the central purchasing function for the County.
- (2) Maintain a warehouse stock of commonly used items and a catalog system for use by County Departments and agencies.
- (3) Maintain a current list of Vendors that supply goods and services purchased by the County.
- (4) Establish and implement policies and procedures with regard to the procurement of goods and services.
- (5) Take all necessary action to further the objectives of all County ordinances, reso-

lutions, policies and procedures that pertain to the procurement of goods and services by the County.

- (6) Perform other duties as directed by the Board or the Administrator.

(d) *Authority of the Director of Purchasing*. Subject to the direction of the Board or the Administrator, the Director of Purchasing is delegated all powers, duties and authority relating to the procurement of goods and services for the Board, including the authority to execute contracts to expend, reimburse, or to receive in revenues an amount less than two hundred thousand dollars (\$200,000.00) per annum, subject to the same limitations specified in Section (h) hereinbelow. The Director of Purchasing may also execute contracts for the purchase of goods or services that are exempt from the Purchasing Code, subject to the same limitations as specified herein. The authority granted in the Purchasing Code is specifically limited by the provisions herein and any award must be made in strict compliance herewith. The Director of Purchasing shall have no independent discretion in the award process except as specifically granted herein. In the absence of the Director of Purchasing, the Assistant Director of Purchasing, or the Administrator or Designee, may assume the powers, duties, and authority vested in the Purchasing Code.

(e) *Delegation of Authority*. Delegation of authority by the Director of Purchasing may be made to the Assistant Director of Purchasing and to subordinate staff as designated in writing by the Director of Purchasing. Purchasing Department employees designated in writing by the Director of Purchasing may execute any contract to expend, reimburse, or to receive in revenues an amount less than two hundred thousand dollars (\$200,000.00) per annum, subject to the same limitations specified in Section (h) hereinbelow. All further references in the Purchasing Code to the Director of Purchasing shall include the Assistant Director of Purchasing or Designee.

(f) *Authority of the Construction Departments*. In addition to specific authority provided herein, the Directors of each of the Construction Departments may individually: Approve source selection via a formal or informal competitive solicitation

process; provide for the solicitation, cancellation or postponement of a procurement; approve procurement award or award recommendation as applicable; execute amendment/changes after award; and approve alternate source selection for construction related contracts, including but not limited to, design-build contracts and all architectural, professional engineering, landscaping architectural or registered land surveying services. Award of any Construction Contract to expend, reimburse, or to receive in revenues an amount equal to or greater than two hundred thousand dollars (\$200,000.00) per annum, shall be approved by the Board. This authority shall be subject to the provisions of the Purchasing Code and shall be limited to the same powers, duties, and authorities granted to the Director of Purchasing as set forth herein.

(g) The authority to purchase goods or services on behalf of the Board shall not be delegated unless provided for herein or otherwise delegated by the Board.

(h) *Board Approval.*

- (1) The Board hereby approves every contract executed by the Director of Purchasing and every award made in accordance with the Purchasing Code in an amount less than two hundred thousand dollars (\$200,000.00) per annum, and for a duration not to exceed five (5) years. No purchase shall be artificially divided so as to not require Board approval. The Clerk and Comptroller as ex-officio Clerk and Accountant of the Board and as auditor, recorder, and custodian of all County funds, is authorized to accept and process all such contracts made on behalf of the Board pursuant to the Purchasing Code as the act and deed of the Board.
- (2) All awards in which the County is contracting to expend, to reimburse, or to receive in revenues in an amount equal to or greater than two hundred thousand dollars (\$200,000.00) per annum shall be effective upon Board approval.
- (3) All purchases of goods and services recommended to the Board for approval shall

be reviewed by the Director of Purchasing or by a director of a Construction Department prior to Board approval.
(Ord. No. 2015-004, § 4, 1-13-15)

Sec. 2-54. Source selection.

(a) The procurement of all goods or services, including those transactions through which the Board shall receive revenue in an amount equal to or greater than the Mandatory Bid or Proposal Amount of one hundred thousand dollars (\$100,000.00), shall be awarded by a formal competitive bid or proposal process or as set forth herein, unless otherwise provided by state or federal law. As applicable, the provisions of the County's SBE Ordinance and the Local Preference Ordinance shall apply to all source selections, including alternate source selections, and awards which are subject to the provisions of the Purchasing Code. In the event that the County adopts an M/WBE Ordinance, such Ordinance shall also apply to all source selections, including alternate source selections, and awards which are subject to the provisions of the Purchasing Code.

(b) Nothing in the foregoing shall prohibit the Board from renewing contracts entered into as a result of a competitive selection process, an alternate source selection process, or from purchasing goods or services for inclusion in a Capital Improvement Project, whose price has been incorporated as part of a bid or proposal selected in a competitive or alternate source selection process provided for herein. Further, nothing in the foregoing shall prohibit the Board from extending contracts, entered into as a result of a competitive or alternate source selection process, beyond the specified term or renewal period when the Board determines that such an extension of the term or renewal period is beneficial to the interest, health, safety or welfare of the County. However, any such extension of the term or renewal period by the Board shall not exceed twelve (12) months, unless the Director of Purchasing or a Director of a Construction Department, deem said extension to be an emergency as set forth hereinbelow or the Board, upon good cause, deems that the extension provides a cost savings to the County that would not result if an extension were not granted.

- (c) *Formal Competitive bid process.*
- (1) *Invitation for bid.* An Invitation for Bid shall be issued which shall include the scope of work and specifications for the purchase of the goods or services sought. Terms and conditions may include, but not be limited to, the requirement of insurance or surety.
 - (2) *Public notice.* Public notice of the Invitation for Bid shall be published in a newspaper of general circulation for a reasonable period prior to bid opening or in accordance with applicable federal or state law.
 - (3) *Bid submission.* Bids should state the name and address of the bidder on the outside of the envelope, package or container, and must be received no later than the time and date and at the location specified in the Invitation for Bid. No bids shall be accepted after such time and date or at any location other than specified, and any bids received later or at any location other than specified shall be returned unopened to the bidder.
 - (4) *Bid opening.* All bids timely received shall be opened internally by the Director of Purchasing or Designee. A list of bidders that have submitted bids in response to an Invitation for Bid shall be recorded.
 - (5) *Bid cancellation or postponement.* The Director of Purchasing may, prior to Bid Opening, elect to cancel a bid or postpone the date or time of Bid Submission or opening. After Bid Opening, the Director of Purchasing may cancel a bid if no or only one (1) responsive, responsible bid is received, or if the lowest responsive, responsible bid is in excess of the funding limits established by the County for that bid. In the event of discovery after bid opening of a patent irregularity or procedural flaw which is so severe as to render the process invalid, or in the event that the County determines that the need for the procurement no longer exists and will not exist in the immediate future, or in the event the cancellation or postponement is in the best interest of the County, the Administrator or Designee may cancel the bid.
- (6) *Corrections, additions to and withdrawal of bids.*
- a. The following shall govern the correction of information submitted in a bid when that information is a determinant of the responsiveness of the bid:
 1. Errors in the extension, addition or multiplication of unit prices stated in a bid or in multiplication, division, addition, or subtraction in a bid shall be corrected by the Director of Purchasing or designee prior to award recommendation. However, actual unit prices included in the bid shall not be changed under this or any other circumstance.
 2. No bidder shall be permitted to correct a bid mistake after bid opening.
 3. Nothing herein is intended to prohibit the acceptance of a voluntary reduction in price from the lowest responsive, responsible bidder after bid opening, provided such reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or conditions contained in the Invitation for Bid or alter the determination of which bidder is to be awarded the bid or portion thereof.
 - b. A bidder who has made a clearly evident mistake of fact may be permitted to withdraw its bid only when it is determined by the Director of Purchasing that there is reasonable proof that such a mistake was made. However, if a bidder unilaterally withdraws its bid without permission after bid opening, the Director of Pur-

chasing may suspend the bidder for up to two (2) years from the date of the unilateral withdrawal. Further, if the apparent lowest responsive, responsible bidder has made a mistake of any kind in a lump sum construction-related bid, the bid bond may not be returned.

(7) *Bid evaluation.*

- a. The County reserves the right to accept or reject any and all bids and to make award to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bid and whose award will, in the opinion of the County, be in the best interest of and most advantageous to the County.
- b. A bid shall be considered responsive only if it conforms to the requirements of the Invitation for Bid.
- c. Information in a bid that concerns the responsibility of the bidder shall not necessarily be considered conclusive at the time of bid opening, except when the Invitation for Bid unequivocally states that the bid shall not be considered responsive unless the particular information is provided in the bid at the time of submittal.
 1. The bidder shall supply information requested by the County concerning the responsibility of such bidder. If such bidder fails to supply the requested information, the County shall base the determination of responsibility upon available information and may find the bidder non-responsible and reject the bid.
 2. The Director of Purchasing may determine the information submitted concerning the responsibility of the bidder is so inadequate as to warrant a

recommendation of rejection of the bid based upon a lack of demonstrated responsibility on the part of the bidder.

3. Pursuant to the particular solicitation, the Director of Purchasing, after bid opening, may request additional information of the bidder concerning his responsibility to perform. The Director of Purchasing shall consider this and all other information gained prior to award recommendation.
 - d. Notwithstanding Sections 2-54(c)(7)b. and c., a lack of conformity as to an issue(s) of responsiveness or responsibility that is non-substantive in nature may be considered a technicality or irregularity that may be waived by the Director of Purchasing.
- (8) *Bid Award.* Awards in which the County is contracting to expend, reimburse, or receive in revenue an amount less than two hundred thousand dollars (\$200,000.00) per annum shall be made to the lowest responsive, responsible bidder and shall be effective upon issuance of a Contract by the Director of Purchasing. Awards in which the County is contracting to expend, reimburse, or receive revenues in an amount equal to or greater than two hundred thousand dollars (\$200,000.00) per annum shall be made to the lowest responsive, responsible bidder and shall be effective upon Board approval. The Board may reject any bid prior to issuance of an award. Recommended awards 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 bid is received, an award may be made to the sole bidder or rebid or canceled as provided herein.
- (9) *Changes after award.* The Director of Purchasing may authorize decreases or in-

creases to the authorized revenue or expenditure amount(s) of a contract, except that increases of more than ten (10) percent to authorized expenditure amounts which have reached or exceeded two hundred thousand dollars (\$200,000.00) per annum must be approved by the Board. After Board approval of an increased authorized expenditure amount, the Director of Purchasing may authorize additional increases of up to ten (10) percent of the increased authorized expenditure amount. Authority to increase any authorized expenditure amount is predicated on the condition that all provisions of the original award, including the level of SBE participation, or M/WBE participation if the Board adopts an M/WBE Ordinance, remain intact and unchanged. The Director of Purchasing may approve extensions of delivery dates or performance time on all contracts to a maximum of three (3) months provided that any changes to the existing authorized expenditure amount comply with the provisions of the Purchasing Code. After Board approval of an extension of delivery dates or performance time, the Director of Purchasing may authorize additional delivery dates or performance time extensions up to three (3) months. Further, changes to the Contract may be made by the Director of Purchasing if considered minor or non-material in nature.

(d) *Formal competitive proposal process.* If it is neither practical nor in the best interest of the County to procure a good or service by a formal competitive bidding process, the Director of Purchasing may determine that the use of a competitive proposal process may be used.

- (1) *Requests for proposals.* A Request for Proposal shall be issued which shall include a scope of work and specifications for the purchase of goods or services sought, and shall also include evaluation criteria to be used in evaluating proposals. Terms and conditions included in a Request for Proposal may include, but not be limited to, the requirement of insurance or surety.

- (2) Requests for Proposals shall be noticed, and cancelled or postponed, in accordance with Section 2-54(c)(2) and (5) hereinabove.
- (3) *Proposal submission.* Proposals should state the name and address of the proposer on the outside of the envelope, package or container, and must be received no later than the time and date and at the location specified in the Request for Proposal. No proposal shall be accepted after such time and date or at any location other than specified. Any proposals received later or at any location other than specified shall be returned unopened to the proposer, if requested, at the proposer's sole expense. The proposer shall be notified by the Purchasing Department that the proposal was late and the proposer shall be given ten (10) business days from the date of notification to request the return of the unopened proposal. If no such request is received from the proposer within the designated time frame, the Purchasing Department shall discard the unopened and untimely proposal.
- (4) *Proposal opening.* All proposals timely received shall be opened internally by the Director of Purchasing or Designee. A list of proposers that have submitted proposals in response to a Request for Proposal shall be recorded.
- (5) Corrections, additions to, and withdrawal of proposals shall be addressed in accordance with Section 2-54(c)(6) hereinabove.
- (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 criteria set forth in the Request for Proposal.
 - a. Evaluation of the responsiveness of proposals shall be performed by the

Purchasing Department. Evaluation of the responsibility of a proposer shall be made by a selection committee and shall be based upon the evaluation criteria as set forth in the Request for Proposal and upon any other relevant information obtained through the evaluations process.

- b. Issues of responsiveness and responsibility shall be addressed in accordance with Sections 2-54(c)(7)b., c. and d. hereinabove.
 - 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.
- (7) *Proposal award.* Upon recommendation by the selection committee, award shall be made to the responsive, responsible proposer whose proposal is in the best interest of the County, and shall be effective upon issuance of a contract by the Director of Purchasing. Awards in which the County is contracting to expend, reimburse, or receive revenues in an amount equal to or greater than two hundred thousand dollars (\$200,000.00) per annum shall be effective upon Board approval. The Board may reject any proposal prior to issuance of an award. Recommended awards 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 to the sole proposer or re-solicited or canceled as provided herein. Where consultants, contractors, 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, Contractor, or Special Master.

- (8) *Amendments / changes after award.* Amendments or changes after award of the proposal shall be made in the same manner and in accordance with Section 2-54(c)(9) hereinabove. Amendments to the contract may be made by the Director of Purchasing if considered minor or non-material in nature.
- (e) *Request for information.*
 - (1) A Request for Information may be used to satisfy a need or to determine available sources for goods or services. The Request for Information shall specify a need or provide a description of the goods or services, and shall provide vendors the latitude to develop goods or services that will fulfill the County's need.
 - (2) Public notice of the Request for Information may be published in a newspaper of general circulation or may be mailed directly to potential vendors.
 - (3) Based upon the statements of interest received from vendors responding to the Request for Information, the County Department, upon approval from the Director of Purchasing, may request a trial use of two (2) or more of the products for a limited period of time. Upon receipt of the statements of interest or at the end of the trial period for approved goods, the Purchasing Department may initiate a competitive process for the goods or services. A Request for Information shall not result in a purchase without a competitive or alternate source selection process conducted by the Purchasing Department. If goods or services are exempt, the Request for Information may be conducted by a Construction Department or by a County Department, as applicable.
 - (4) The Purchasing Department shall have unlimited use of the information included within the statements of interest submitted in response to a Request for Informa-

tion. The County is required to comply with F.S. Ch. 119, Public Records Act, and therefore accepts no responsibility for the protection of the information submitted unless the vendor requests that privileged or confidential information be protected in the manner prescribed by law. The County shall have no further obligation to any vendor who furnishes information.

(f) *Alternate source selection.*

- (1) *Small purchases.* Any purchase for an amount over the Decentralized Purchase Order Amount and less than the Mandatory Bid or Proposal Amount shall be made in accordance with policies and procedures promulgated by the Purchasing Department utilizing a Request for Quote or a Request for Submittal or other such procurement method authorized herein or in said policies and procedures. However, the Director of Purchasing has the sole discretion to utilize the Invitation for Bid process or the Request for Proposal process if the procurement is complex, or for other sound reason, even though the specific good or service is budgeted less than the Mandatory Bid or Proposal Amount.
- (2) *Sole source purchases.* The Director of Purchasing may make or authorize the purchase of goods or services without competitive solicitation when the Director of the County Department, or designee has documented in writing and has provided information supporting the fact, that the good or service requested is the only item that meets their need and that the good or service is available through only one (1) source.
- (3) *Proprietary purchases.* The Director of Purchasing may make or authorize the purchase of goods or services via a competitive solicitation when the Director of the County Department, or Designee, has documented in writing that the good or service is the only item that meets their need and that the good or service is available through more than one (1) source.
- (4) *Emergency purchases.* The Director of Purchasing, upon receipt of written verification of the emergency circumstance by the Director of the County Department or Designee, may authorize emergency purchases. Emergency purchases must meet the definition provided for in section 2-52 above. Emergency purchases in which the County is to expend or to reimburse an amount of two hundred thousand dollars (\$200,000.00) or more per annum shall be approved by the Board. However, in emergency circumstances where approval by the Board cannot be obtained in a timely manner, the Director of Purchasing may authorize a purchase(es) of two hundred thousand dollars (\$200,000.00) or more provided that said purchase(es) and expenditure(s) of funds shall be presented to the Board for ratification as soon as possible following signature or approval by the Director of Purchasing.
- (5) *Purchases off contracts of other entities ("piggyback purchases").* Notwithstanding any requirements of the Purchasing Code, the purchase of goods or services under contract with a federal, state or municipal government or any other governmental agency, political subdivision, or government-related association, may be piggybacked or purchased off contracts of other entities providing that:
 - a. The County Department, in its sole discretion, has determined that the piggyback purchase is deemed advantageous to the County;
 - b. The contractor extends the terms and conditions specified in the originating contract to the County and the County accepts the terms and conditions specified;
 - c. The goods or services available under the originating contract meet the County's needs and specifications;
 - d. The quantity and specifications of the goods or services being purchased from the originating contract do not substantially change the terms

- and conditions specified in the originating contract, and unsubstantial increases or decreases in quantity requested or rendered shall not invalidate any contract;
- e. The County does not currently have a contract that can be utilized for the good or service being requested by the County Department;
 - f. The County Department determines and documents with processing expense estimates, pricing data and schedule implications that the utilization of the piggyback purchase would likely result in a financial advantage to the County;
 - g. The County Department determines and documents that the impact to local vendors is minimally negative or is a benefit to the County that positively outweighs any negative impact to local vendors;
 - h. There are no certified SBE vendors, or M/WBE vendors, if an M/WBE Ordinance is adopted by the Board, that can provide the service as required and to the extent required by the County Department; and
 - i. The originating entity utilized a competitive process similar to the County's, as determined by the Director of Purchasing. However, this provision (i) is not applicable to contracts procured or solicited by the State of Florida.
- (6) *Cooperative purchases.* The County may participate in, sponsor, conduct, or administer a cooperative purchase with other government entities for the procurement of goods or services.
 - (7) *Direct purchases.* Notwithstanding the provisions of the Purchasing Code, in the event that no bids, proposals, quotes, responses or submittals are received, or that no responsive, responsible bids, proposals, quotes, responses or submittals are received, and the Director of Purchasing documents that no significant alteration in the specifications, qualifications, or terms and conditions can be made to encourage competition, the Administrator or Designee may authorize the Director of Purchasing to make a direct purchase of the goods or services from any vendor identified as being qualified and capable of meeting the original specifications. A direct purchase may be made for items for resale, that, subsequent to a market analysis, meet the definition of a sole source.
 - (8) *Prequalification of vendors.* Prospective vendors may be prequalified for specified types of goods or services when deemed advantageous to the County and when the amount of each order for a good or service is less than the County's Mandatory Bid or Proposal Amount. The method for submitting prequalification information and the information required in order to be prequalified shall be set forth in the applicable solicitation for prequalified vendors. All vendors deemed responsive and responsible shall be considered prequalified for the specific good or service. Once a vendor is prequalified, they are permitted to submit price offers or qualifications for each individual order for a good or service, or take turns via rotation, depending upon the language within the applicable solicitation.
 - (9) *Items for resale.* All applicable County Departments shall implement policies and procedures regarding the procurement of items for resale. The County Department shall conduct a thorough market research analysis of the available items for resale in order to determine the specific types of goods to be procured. A market analysis shall not result in the purchase of goods without a competitive or alternate source selection process conducted by the Purchasing Department.
 - (10) *Sales tax recovery program for construction-related purchases.* Purchase orders for the purchase of goods, materials, or equipment in any dollar amount, additive or deductive, included in a Capital Improve-

ment Project, and the corresponding change order required to implement those purchases, may be approved by the Director of Purchasing or by the Director of the appropriate Construction Department in accordance with the County's sales tax recovery program.

(g) *Informal competitive solicitation process.* Solicitations for goods or services valued at less than the Mandatory Bid or Proposal Amount shall be made in accordance with policies and procedures established by the Purchasing Department for Requests for Quotes and Requests for Submittals.

(h) *Waiver of requirements for competitive selection for professional and consultant services.* The Board may waive the requirements for competitive selection and approve professional or consulting services upon recommendation of the Administrator.

(Ord. No. 2015-004, § 5, 1-13-15)

Sec. 2-55. Protested awards.

(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. Notwithstanding the above, the Director of Purchasing may, in his or her sole discretion, include the right to protest in any solicitation process if in the best interests of the County.

(b) *Notice of protest.* The protest shall be submitted within five (5) business days after posting of the award recommendation. The protest shall be in writing and shall identify the protestor and the solicitation, and shall include a factual summary of the basis of the protest. Such protest is considered filed when it is received and date/time stamped by the Department of Purchasing. Neither the Director of Purchasing nor a special master shall consider any issue not submitted in writing within the time frame specified for the notice of protest.

(c) *Authority to resolve.* Protests filed in accordance with Section 2-55(b) hereinabove shall be resolved under the provisions of this Section.

(1) The Director of Purchasing shall have the authority to:

- a. Uphold the Protest. The protest may be upheld based upon a violation of the provisions of this Purchasing Code or of any other County Ordinance, resolution, policy, or procedure, or upon discovery of an irregularity or procedural flaw that is so severe as to render the process invalid. If the upholding of the protest will result in a change of the recommended awardee, a new recommended award shall be posted in accordance with Section 2-54(c)(8) and 2-54(d)(7) hereinabove. If the upholding of the protest will result in a cancellation of the protested solicitation, a recommendation to uphold the protest and cancel the solicitation will be made to the Administrator, who may then direct the cancellation of the solicitation.
- b. Deny the Protest. If the protest is denied, the protestor has the right to request that the protest be referred to a special master in accordance with Section 2-55(c)(4) hereinbelow.
- c. Refer the protest directly to a special master with no determination made by the Director of Purchasing, in accordance with Section 2-55(c)(4) hereinbelow.

(2) When a protest is filed by a certified SBE contractor or where the protest involves a small business issue, the Director of the Office of Small Business Assistance will act in conjunction with, and with authority equal to, the Director of Purchasing in arriving at the determination to be made in this step of the process. After reviewing the facts surrounding the issues raised in the written protest, the Director of Pur-

chasing, and the Director of the Office of Small Business Assistance may make the determination to:

- a. Uphold the protest in accordance with Section 2-55(c)(1) b. hereinabove.
- b. Deny the protest in accordance with Section 2-55(c)(1) b. hereinabove.
- c. Refer the protest to a special master in accordance with Section 2-55(c)(4) hereinbelow, in those instances when a determination is not unanimous between the Director of Purchasing and the Director of the Office of Small Business Assistance. In this specific instance, the protestor will be exempt from posting a protest bond.

In the event that the County adopts an M/WBE Ordinance, any protest process shall be set forth by adopted Board policy.

- (3) The Director of Purchasing shall issue a written statement of the determination within a reasonable period of time. The written statement shall provide the general rationale for said determination and shall be provided to the protestor and to any other party to the protest.
- (4) Upon receipt of a denial of the protest, the protestor may request a hearing before a special master. The request for a hearing shall be in writing to the Director of Purchasing and shall be made within five (5) business days of issuance of the Director of Purchasing's determination. The request for a hearing shall be accompanied by a protest bond of fifteen hundred dollars (\$1,500.00) which shall be remitted in the form of a money order, a certified check, a cashier's check, or a bank check payable to Palm Beach County.
- (5) At no time shall a protestor, party, or any other person, contact a special master regarding any issue pertaining to or involving the protest. Contact between the County and the special master shall be limited to scheduling and other adminis-

trative issues, including the provision and copying of public records pertinent to the protest.

(d) *Establishment of rules.* The Purchasing Department shall establish rules and regulations by separate policy and procedure detailing the selection of special masters, the protest process, and the conduct governing protest hearings.

(e) *Authority of special masters.* Special masters shall have the jurisdiction and authority to hear and decide protests.

- (1) The special master shall make a recommendation as to whether the protest should be upheld or denied.
- (2) If the special master upholds the protest, the special master shall either make a recommendation to cancel the solicitation, or to cancel the award recommendation and post a new award recommendation after re-evaluation based on the special master's determination of the facts in the case. In these instances, the Purchasing Department shall return the protestor's bond to the protestor.
- (3) If the special master denies the protest, the special master shall recommend that the Director of Purchasing proceed with the posted award recommendation. In these instances, the protestor's bond shall be forfeited.
- (4) In making contract awards for procurements in an amount equal to or greater than two hundred thousand dollars (\$200,000.00) per annum, the Board, upon recommendation of the Director of Purchasing, may accept or reject the recommendation of the special master.
- (5) In making contract awards for procurements of less than two hundred thousand dollars (\$200,000.00) per annum, the Director of Purchasing may accept the special master's recommendation or, if the Director of Purchasing determines the special master's recommendation is not in the County's best interest, the original award recommendation may be referred

to the Board for approval. At that time, the Board may accept or reject the recommendation of the special master.

- (6) Nothing contained herein shall limit or divest the Board of its authority pursuant to F.S. Ch. 125, Pt. IV, as referenced in Section 2-51 of the Purchasing Code.

(f) *Stay of procurement during protests.* Notwithstanding anything contained herein to the contrary, in the event of a timely protest, the Director of Purchasing shall stay the award of the contract unless the Director of Purchasing, with the advice of the County Attorney and after consultation with the County Department, makes a determination that the award of the contract without delay is necessary to protect substantial interests of the County.

(Ord. No. 2015-004, § 6, 1-13-15)

Sec. 2-56. Suspension and debarment.

(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. However, any suspension imposed pursuant to the provisions of subsections (b)(3) and (4) below shall be in effect during the pendency of the applicable proceeding, regardless of duration. 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, contractor or subcontractor on a small business application, or a local preference affidavit.
- (3) Charged or convicted 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. 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. However, nothing herein shall preclude the Director of Purchasing from imposing an additional suspension or debarment following said dismissal or finding of not guilty where the Director of Purchasing determines that the additional suspension or debarment is otherwise supported by the Purchasing Code. In such case, the suspended or debarred vendor, contractor, or subcontractor may avail themselves of the protest procedure set forth in subsection (d) below.
- (4) Charged or convicted 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. However, nothing herein shall preclude the Director of Purchasing from imposing an additional suspension or debarment following said dismissal or finding of not guilty where the

Director of Purchasing determines that the additional suspension or debarment is otherwise supported by the Purchasing Code. In such case, the suspended or debarred vendor, contractor, or subcontractor may avail themselves of the protest procedure set forth in subsection (d) below.

- (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.
- (7) Violation of a County Ordinance.

(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 shall 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, upon recommendation of the Director of Purchasing, may accept or reject the recommendation of the Special Master.

(Ord. No. 2015-004, § 7, 1-13-15)

Sec. 2-57. Vendor preferences.

The Purchasing Department shall strictly comply with the SBE Ordinance, the Local Preference Ordinance, any future M/WBE Ordinance adopted by the County, and all pertinent County policies and procedures, to ensure that the vendor preferences are awarded in accordance with adopted Board policy.

(Ord. No. 2015-004, § 8, 1-13-15)

Sec. 2-58. Conflict of interest.

Special Masters. Special masters shall be subject to a policy and procedure implemented by the Purchasing Department relating to outside counsel conflicts of interest. In addition, the ethics rules promulgated by the Florida Bar pertaining to conflicts of interest shall apply. If a special master is unable to provide a fair hearing for any reason, the special master shall not accept the case and shall immediately notify the Director of Purchasing of the conflict. The Director of Purchasing shall reassign the case to a special master who does not have a conflict with the case.

(Ord. No. 2015-004, § 9, 1-13-15)

Secs. 2-59—2-70. Reserved.